THE FOOTHILLS COUNTY COMPOSITE ASSESSMENT REVIEW BOARD AGENDA

Tuesday, November 5, 2024, 9:00 a.m.
Foothills County Administration Office
309 Macleod Trail South – High River

Board Members: B. Samuels, M. Reid, B. Ersson

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1.	**9:00 a.m - La Société Franco-Canadienne de Calgary - Roll #2004257520**		
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Appendix 1 - Complaint and Related Materials

Alberta Government

Assessment Review Board Complaint

Municipality Name (as shown on your assessment notice or tax notice)	Tax Year
FOOTHILLS COUNTY	2024

Section 1 - Notice Type

Assessment Notice:
- [x] Annual Assessment
- [ ] Amended Annual Assessment
- [ ] Supplementary Assessment
- [ ] Amended Supplementary Assessment

Tax Notice:
- [ ] Business Tax
- [ ] Other Tax (excluding property tax and business tax)

Name of Other Tax

Section 2 - Property Information

Assessment Roll or Tax Roll Number: 2004257520

Property Address: 288002 2338 Drive West

Legal Land Description (i.e. Plan, Block, Lot or ATS 1/4 Sec-Twp-Rng-Mer): NE-25-20-4-5

Property Type *(check all that apply)*
- [ ] Residential property with 3 or fewer dwelling units
- [ ] Residential property with 4 or more dwelling units
- [ ] Farm land
- [x] Non-residential property
- [ ] Machinery and equipment

Business Name (if pertaining to business tax): Societe Franco Canadienne Calgary

Business Owner(s): Stella Bergeron

Section 3 - Complainant Information

Is the complainant the assessed person or taxpayer for the property under complaint? [ ] Yes [ ] No

Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted with this complaint form.

Complainant Name (if the complainant, assessed person, or taxpayer is a company, enter the complete legal name of the company): LA SOCIETE FRANCO-CANADIENNE CALGARY

Mailing Address (if different from above)	City/Town	Province	Postal Code
#102, 1809-5TH STREET SW	CALGARY	ALBERTA	T2S 2A8

Telephone Number	Fax Number	Email Address
[redacted]		[redacted]president@sfcdecalgary.ca

If applicable, please indicate any date(s) that you are not available for hearing: OCTOBER 06 TO NOVEMBER 02, 2024; NOVEMBER 25 TO DECEMBER 14, 2024

Section 4 - Complaint Information

Check the matter(s) that apply to the complaint (see reverse for coding)

[x] 1 [ ] 2 [x] 3 [x] 4 [ ] 5 [x] 6 [x] 7 [ ] 8 [x] 9 [ ] 10

Note: Some matters or information may be corrected by contacting the municipal assessor prior to filing a formal complaint.

If information was requested from the municipality pursuant to sections 299 or 300 of the *Municipal Government Act*, was the information provided? [ ] Yes [ ] No

Section 5 - Reason(s) for Complaint

Note: An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

A complainant must:
- indicate what information shown on an assessment notice or tax notice is incorrect,
- explain in what respect that information is incorrect,
- indicate what the correct information is, and
- identify the requested assessed value, if the complaint relates to an assessment.

Requested assessed value: $1.00

Property is exempt from taxation under 664 and 362 MGA, held by a non-profit recreation, and used for charitable purposes.
Land value is excessive as restricted use, in a flood plain, no development potential.
Improvements are non assessable, and over-assessed, mis-described.
Other grounds as may be included, including improvements not owned by Complainant.
Limited discussions and future discussions we are hopeful will occur.

(a) include a statement that the complainant and the respondent have discussed the matters for complaint, specifying the date and outcome of that discussion, including the details of any issues or facts agreed to by the parties, or
(b) include a statement, if the complainant and the respondent have not discussed the matters for complaint, specifying why no discussion was held.

Note: If necessary, additional pages or documentation required to complete this section may be submitted with this complaint form.

Section 6 - Complaint Filing Fee

If the municipality has set filing fees payable by persons wishing to make a complaint, the filing fee must accompany the complaint form, or the complaint will be invalid and returned to the person making the complaint.

If the assessment review board makes a decision in favour of the complainant, or if all the issues under complaint are corrected by agreement between the complainant and the assessor and the complaint is withdrawn prior to the hearing, the filing fee will be refunded.

Section 7 - Complainant Signature

[redacted] Stella Bergeron — Printed Name of Signatory Person and Title — 2028-08-07 — Date *(yyyy-mm-dd)*

Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

Assessment Review Board Clerk Use Only

Was the complaint filed on time?	[ ] Yes	[ ] No		
Is the required information included on or with the complaint form?	[ ] Yes	[ ] No		
Was the required filing fee included?	[ ] Yes	[ ] No	[ ] N/A	Date received _____
Was a properly completed authorization form attached?	[ ] Yes	[ ] No	[ ] N/A	
Complaint to be heard by:	[ ] LARB	[ ] CARB		

MATTERS FOR A COMPLAINT

A complaint to the assessment review board may be about any of the following matters shown on an assessment notice or on a tax notice (other than a property tax notice).

1. the description of the property or business
2. the name or mailing address of an assessed person or taxpayer
3. an assessment amount
4. an assessment class
5. an assessment sub-class
6. the type of property
7. the type of improvement
8. school support
9. whether the property or business is assessable
10. whether the property or business is exempt from taxation

Note: To eliminate the need to file a complaint, some matters or information shown on an assessment notice or tax notice may be corrected by contacting the municipal assessor. It is advised to discuss any concerns about the matters with the municipal assessor prior to filing this complaint.
If a complaint fee is required by the municipality, it will be indicated on the assessment notice. Your complaint form will not be filed and will be returned to you unless the required complaint fee indicated on your assessment notice is enclosed.

ASSESSMENT REVIEW BOARDS

A Local Assessment Review Board will hear complaints about residential property with 3 or fewer dwelling units, farm land, or matters shown on a tax notice (other than a property tax notice).
A Composite Assessment Review Board will hear complaints about residential property with 4 or more dwelling units or non-residential property.

DISCLOSURE

Disclosure must include:

All relevant facts supporting the matters of complaint described on this complaint form.
All documentary evidence to be presented at the hearing.
A list of witnesses who will give evidence at the hearing.
A summary of testimonial evidence.
The legislative grounds and reason for the complaint.
Relevant case law and any other information that the complainant considers relevant.

Disclosure timelines:

For a complaint about any matter other than an assessment, the parties must provide full disclosure at least 7 days before the scheduled hearing date.

For a complaint about an assessment - Local Assessment Review Board:
Complainant must provide full disclosure at least 21 days before the scheduled hearing date.
Respondent must provide full disclosure at least 7 days before the scheduled hearing date.
Complainant must provide rebuttal at least 3 days before the scheduled hearing date.

For a complaint about an assessment - Composite Assessment Review Board:
Complainant must provide full disclosure at least 42 days before the scheduled hearing date.
Respondent must provide full disclosure at least 14 days before the scheduled hearing date.
Complainant must provide rebuttal at least 7 days before the scheduled hearing date.

DISCLOSURE RULES

Timelines for disclosure must be followed;
Information that has not been disclosed will not be heard by an assessment review board; and
Disclosure timelines can be reduced if the disclosure information is provided at the time the complaint form is filed. Both the complainant and the assessor must agree to reduce the timelines.

PENALTIES

A Composite Assessment Review Board may award costs against any party to a complaint that has not provided full disclosure in accordance with the regulations.

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

The assessment review board clerk will notify all parties of the hearing date and location.

For more details about disclosure please see the *Matters Relating to Assessment Complaints* Regulation.

To avoid penalties, taxes must be paid on or before the deadline specified on the tax notice even if a complaint is filed.

The personal information on this form is being collected under the authority of the *Municipal Government Act*, section 460 as well as the *Freedom of Information and Protection of Privacy Act*, section 33(c). The information will be used for administrative purposes and to process your complaint. For further information, contact your local Assessment Review Board.

2024 COMBINED ASSESSMENT AND TAX NOTICE

Foothills County

Box 5605 309 Macleod Trail SW High River AB T1V 1M7

T: 403-652-2341 F: 403-652-7880 www.foothillscountyab.ca

** R E P R I N T **

Date Printed May 27, 2024

Date Mailed June 05, 2024

Roll Number	Legal Description	Civic Address	Acres
2004257520	;A;1306JK NE 25;20;4 W5	288002 2338 Dr W	18.660

La Societe Franco-Canadienne

328150

102, 1809 - 5 St SW 01

Calgary AB Canada T2S 2A8

TAX LEVY SUMMARY

Total Property Tax	$14,092.24
Local Improvement	$0.00
Prepay or TIPP Discount	$0.00
Previous Balance	$0.00
Amount Due	**$14,092.24**
Taxes Due Date	**October 01, 2024**

A copy of this notice has been sent to the following:

Take notice that you have been assessed under the provision of the Municipal Government Act for the lands on this notice.

Assessment	Land	Improv.	Other	Total
Residential		1,114,910		1,114,910
Commercial Recreation	587,000			587,000

Taxable Total 1,701,910 **Assessment Total** 1,701,910

Notice of Assessment Date June 13, 2024

Final Date for Complaint August 12, 2024

To file an assessment complaint please see reverse side of this notice for further details.
Not applicable to Linear or Designated Industrial Property Assessments

Tax Levies	Assessment	Tax Rate	Levy
Senior's Foundation	1,701,910	0.099340	$169.07
School - Residential or Farm	1,114,910	2.295498	$2,559.27
School - Non-Residential	587,000	3.590228	$2,107.46
Municipal Residential	1,114,910	3.637804	$4,055.82
Municipal Non-Residential	587,000	8.859663	$5,200.62
		Total Property Tax	**$14,092.24**

Penalty Rates 6% Penalty on Current Taxes after October 1st
12% Penalty on Outstanding Balance after December 31st

School Support

Public	Separate	Undeclared
	100.00%	

Local Improvement

Bylaw	Expiry	Amount

Discounts for Early Payment or TIPP

Prepay by January 31 for 6%

TIPP Discount is 5%

see website for details

Personal information on this form is collected under the authority of the Municipal Government Act for use in Assessment & Tax systems, and is protected by the Freedom of Information and Protection of Privacy Act.

Foothills County

Box 5605 309 Macleod Trail SW High River AB T1V 1M7

REMITTANCE....See reverse for payment options

La Societe Franco-Canadienne

328150

102, 1809 - 5 St SW 01

Calgary AB Canada T2S 2A8

Tax Year	2024
Due Date	October 01, 2024
Roll Number	2004257520
Amount Due	$14,092.24

Amount Paid

ASSESSMENT REVIEW BOARD (Foothills County)
Box 5605 High River, Alberta T1V 1M7
Telephone: (403) 652-2341 Fax: (403) 652-7880

La Societe Franco-Canadienne
102, 1809 - 5 Street West
Calgary, AB T2S 2A8

Notice Mailed: August 23, 2024

Copy To: Respondent
Land and Property Rights Tribunal

TAKE NOTICE

That your complaint lodged against the assessment of the undermentioned properties, has been received and will be heard concurrently by the Composite Assessment Review Board beginning:

November 5, 2023 at 9:00 a.m.

Hybrid: Via Zoom and In-Person at the Foothills County Administration Building, Council Chambers
309 Macleod Trail
High River, AB T1V 1M7

Roll Numbers	*Size of Parcel*	*Legal Description*	*Assessment Notice*
2004257520	18.66 Acres	NE 25-20-04 W5M	ATTACHED

DISCLOSURE DEADLINES

As per Provincial legislation, disclosure of evidence must take place. This evidence is a summary of the testimonial evidence and any written argument that the complainant or the respondent intends to present at the hearing. The Municipal Government Act and Matters Relating to Assessment Complaints Regulation (MRACR) provides rules for the disclosure of documents and the exchange of information between the parties. As a complainant, it is necessary for you to disclose:

- All relevant facts supporting the matters of complaint
- All documentary evidence to be presented at the hearing
- A list of witnesses who will give evidence at the hearing
- A summary of testimonial evidence
  - -The legislative grounds and reason for the complaint
  - Relevant case law and any other information that you consider relevant
  - Provide an estimate of the amount of time necessary to present evidence at the hearing

The dates by which disclosure must occur are as follows:

Complainant Disclosure – September 23, 2024
Respondent Disclosure – October 21, 2024
Complainant Rebuttal – October 28, 2024

Additional information on the disclosure of documents may be found at:
https://www.foothillscountyab.ca/media/64
NOTE: Please review the information booklet that accompanies this notice of hearing.
Should you require additional assistance, contact the Clerk of the Assessment Review Board at (403) 603-6227 or by e-mail at: Appeals@FoothillsCountyAB.ca

Government of Alberta ■

Assessment Complaints Agent Authorization

SECTION 1 - Assessed Person / Taxpayer Information

Tax Year: 2023

Assessed Person(s) or Taxpayer(s) *(if the assessed person or taxpayer is a company, enter the complete legal name of the company)*

Business Name (if pertaining to business tax)	Business Owner(s)
La Societe Franco -Canadienne	Stella Bergeron (President Volunteer)

SECTION 2 - Municipal and Property Information

(for designated industrial property go to Section 3)

Municipality Name (as shown on your assessment notice or tax notice)	Assessment Roll or Tax Roll Number
Foothills County	2004257520

Property Address	Legal Land Description (i.e. Plan, Block, Lot or ATS 1/4 Sec-Twp-Rng-Mer)
288002 23378 Dr W	1306JK A NE-25-20-4-S

Property Type *(check all that apply)*

- ☐ Residential property with 3 or less dwelling units
- ☒ Residential property with 4 or more dwelling units SB
- ☐ Farm land
- ☒ Non-residential property SB
- ☐ Machinery and equipment

SECTION 3 - Agent Information

Note: Agent means a person or company who for a fee or potential fee acts for an assessed person or taxpayer during the assessment complaint process or at a hearing before an assessment review board or the Municipal Government Board.

Agent Name	Contact Name (if different) and Position Held
Wilson Laycraft	Gilbert J. Ludwig, K.C./Jeffery D. Talbot, Barristers and Solicitors

Mailing Address (if different from above)	City/Town	Province	Postal Code
#650, 211 - 11th Avenue SW	Calgary	Alberta	T2R 0C6

Telephone Number *(include area code)*	Fax Number *(include area code)*	Email Address
403-290-1601	403-290-0828	rsemchuk@wilcraft.com

SECTION 4 - Acknowledgement and Certification

By signing below, I acknowledge and certify that:

1. I am the assessed person or taxpayer identified in section 1, or a legally authorized officer of the assessed person or taxpayer.
2. To initiate the processing of this agent authorization, I am attaching this agent authorization form to:
   (a) the complaint form if the agent is authorized to file the complaint on my behalf, or
   (b) a letter, signed by me on my personal or company letterhead, and the letter is submitted to the municipality's assessment review board clerk or to the Municipal Government Board administrator, as the case may be, before the hearing of the complaint.
3. I provide authority to the agent, as identified in section 3, to represent the assessed person or taxpayer, identified in section 1, to:
   (a) file a complaint on behalf of the assessed person or taxpayer for the property described on this form,
   (b) discuss the issues or matters of the complaint with the municipality's assessor (or the assessor designated by the Minister for linear property),
   (c) prepare and submit disclosure regarding the complaint,
   (d) represent the assessed person or taxpayer at hearings before the assessment review board (or before the Municipal Government Board for linear property),
   (e) reach an agreement with the assessor to correct a matter under complaint, and
   (f) to withdraw the complaint at any time.
4. I understand that the assessed person or taxpayer continues to be subject to all provisions required by the *Municipal Government Act* and its attendant regulations, and any authorization of agency is not a substitute for any of those provisions.
5. I understand that this document does not act as an authorization of agency for the purposes of Section 299 or Section 300 of the *Municipal Government Act.*
6. I understand that the assessed person or taxpayer is liable for any costs awarded against the agent by an assessment review board (or by the Municipal Government Board for linear property), or for any change in assessment that may result from a hearing.
7. I understand that this authorization is only applicable to the tax year entered on this form.
8. The agent has disclosed the qualifications, professional designations, certifications, or affiliations of the agent, if any, with respect to property assessment or appraisal.
9. I may revoke authorization at any time in writing to the assessment review board clerk, or the Municipal Government Board administrator.

[redacted]	Stella Bergeron	10/04/2024
Signature of the Assessed Person or Taxpayer	Printed Name of Signatory Person and Title	Date *(mm/dd/yyyy)*

Appendix 2 - Complainant Disclosure

COMPOSSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe Franco Canadienne de Calgary

Complainant

-and-

Foothill County Assessor

Respondent

Brief of the Complainant

La Societe Franco-Canadienne

Roll Number: 2004257520

Hearing Date: November 5th, 2024

WILSON LAYCRAFT
Barristers & Solicitors
#650, 211 – 11th Avenue SW
Calgary, AB T2R 0C6
Attn.: Gilbert J. Ludwig, K.C.

INTRODUCTION

1. This is an appeal of the 2023 assessment year concerning an 18.66 acre property located in Foothills County (the "Property"). The Property is currently used as a recreation space for members of the La Societe Franco-Canadienne (the "Society"), which is a registered non-profit organization in Alberta.

2. The 2023 assessment saw an increase of the assessed value of the property from $611,710 to $1,701,910, an over 100% percent increase in the assessed value.

3. The assessment has had a severe impact on the SFCC. As a non-profit, SFCC is severely limited in mitigating the increased tax burden. The SFCC submits that the Property is non-assessable under the exemptions in section 362 of the *MGA,* on the basis of the charitable purpose which the Property is used for.

4. Alternatively, if the Property is determined to be taxable, there are serious issues with the assessed value which warrant an adjustment, first among them was the decision by the Assessor to add the travel trailers owned by members of the Society to the roll as improvements. SFCC also submits that the value of the land is itself excessive and does not account for the severe land use restrictions which limit the market value of the land.

FACTS

5. SFCC is a non-profit registered under the laws of Alberta. Among its charitable purposes is the advancement of education through French language programs and initiatives in Calgary and the surrounding areas.

6. The Society owns the subject property of this appeal which is named "Parc Beauchemin" located in the Municipal District of Foothills County, a roughly hour drive from Calgary. It is located in the Three Point Creek floodplain in a low-lying riparian area. The property is heavily forested by spruce trees which prohibits any arable or grazing activities.

7. Parc Beauchemin was heavily flooded in 2013. The course of the Three Point Creek changed substantially, with the Creek now separating roughly 1.3 acres from the Property. Given the Property's location on a floodplain, the use of the property is severally restricted by law, including:
    - No residential development;
    - No permanent habitation with access to travel trailers being limited to May to October, at which point the Property is winterized and non-accessible by users;

    The Property's limitations mean it cannot be used for any other purpose than for recreation.

8. The society allows individuals to park their travel trailers, at the site for a nominal fee. This fee is used for maintenance and services and SFCC does not make any profit from the fee.

9. The purpose of the recreational space is the advancement of the French language by allowing people who are learning or fluent in French to communicate in a recreational setting. When a space becomes available, the spot is available to the general public so long as the person is willing to speak French in the park. Membership to SFCC is also open to the general public, subject only basic French language skills.

10. On April 16, 2024, SFCC was notified that the Property's assessment was increasing by over 100% from $611,710 to $1,701,910. The increase appears to be due to the addition of travel trailers which are parked by users of the Property for recreational purposes being added to the assessment as improvements.

ISSUES

11. The following are at issue in this appeal:

- **a.** Is Property tax exempt under the *MGA?*
- **b.** If the Property is assessable:

i. Is the land over assessed?

ii. Are the travel trailers inappropriately assessed as improvements?

iii. If the trailers are appropriately assessed as improvements, are they overvalued?

ISSUE A: THE PROPERTY IS NOT ASSESSABLE UNDER THE *MGA*

12. SFCC is a registered non-profit which owns and operates the Property for the purpose of providing an outdoors recreational space for members of SFCC and their guests.

13. As the Property's primary use is connected to the charitable purpose of the SFCC to advance the learning and speaking of French through education, it is tax exempt. Furthermore, it is also used solely for recreation for the benefit of the general public. The relevant provisions of the *MGA* and its regulations which support this exemption, are as follows:

362(1) The following are exempt from taxation under this Division:
[…]

(n) property that is

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

[…]

(B)By a non-profit organization

The ***Community Organization Property Tax Exemption Regulation* ("*COPTER")*** *provides* that:

1(1)(b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;

10(1) Property Referred to in section 362(1)(n)(iii) of the Act is not exempt from taxation unless

(a) The charitable or benevolent purpose for which the property is primarily use is a purpose that benefits the general public in the municipality in which the property is located, and

(b) The resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent for which the property is used.

(2) Property is not exempt from taxation under section 362(1)(n)(iii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

Meaning of restricted

7(1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on

(a) race, culture, ethnic origin or religious belief;

(b) the ownership of property,

(c) the requirement to pay fees of any kind, other than minor entrance or service fees, or

(d) the requirement to become a member of an organization.

(2) The requirement to become a member of an organization does not make the use of the property restricted so long as

(a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and

(b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.

Part 3

Other Property Exempt Under Section 362(1)(n)

Definitions

13 In this Part,

(c) "ethno-cultural association" means an organization formed for the purpose of serving the interests of a community defined in terms of the racial, cultural, ethnic, national or linguistic origins or interests of its members;

(d) "linguistic organization" means an organization formed for the purpose of promoting the use of English or French in Alberta;

Community Organization Property Tax Exemption Regulation, Alta Reg 281/1998

14. To summarize, the *MGA* and *COPTER* provide the following requirements for exemptions applicable in this case: first, the property must be primarily used for a charitable or

benevolent purpose for the general public and is owned by a non-profit organization. Second, the property's primary use must be for a charitable or benevolent purpose, or for recreational purposes listed under paragraph (i), for the general public in the municipality it is located and the charity is devoted chiefly to that benevolent purpose. Third, the property cannot be used for a restricted use more than 30% of the time.

Judicial guidance

15. The term "used solely" for found in section 362(1)(n)(ii) does not mean exclusively, or for no other purpose. The term is relative to the overall use and objects of a property. The Alberta Court of Queen's Bench dealt with this issue in the case of *Ukrainian Youth Unity of General Roman Schuchewych-Chuprynka* v. *Edmonton (City)* (1997), 41 M.P.L.R. (2d) 5 (Alta. Q.B.). The Court was considering *section* 362(n)(ii) and (iii) of the ***MGA.*** In reviewing a decision of the MGB, the Court held that partial use for purposes for other than an exempt use did not form a proper basis in law to deny an exemption under the *MGA* and Regulations, even though the legislation required that for exemption purposes the facility be used "solely" for community games, sports, athletics or recreation.

16. **A** similar finding occurred in *Carmelite Nuns of Western Canada* v. *Alberta (Assessment Appeal Board)* [1994] A.J. No. 595. The Alberta Court of Queen's Bench was dealing with exempting provisions under the former *Municipal Taxation Act,* which provided that parcels held by religious bodies used chiefly for divine service, public worship or religious education were exempt from assessment. The Court held at paragraph 12:

> Exemptions are not lost simply because part of a building that would otherwise be exempt has an ancillary or incidental purpose in addition to the chief purpose of divine service, public worship or religious education. In *Carmelite* the Court went on to find that food service areas, dining rooms, sleeping rooms, and craft rooms within a monastery where entitled to the exemption.

17. The plain meaning of "for the benefit of the general public" was also considered in *Ukrainian Youth Unity.* Bielby J., at 12, finds the words do not mean that all of the public must gain a benefit from a facility:

> The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any

> other for the exemption to apply ... Nor does the plain wording of the section exclude activities designed to benefit only one segment of the public. In fact, the City has extended the exemption to groups which, by definition or location, are designed and likely to benefit only certain segments of the public.

Application

18. SFCC could be considered as exempt under paragraphs (i) or (ii). It has a charitable purpose of advancing the French language through educational initiatives and support. This falls clearly within the definition of a charitable purpose under "advancement of education". It is also clearly an organization which was "formed for the purpose of promoting the use of English or French in Alberta;"

19. The Property is owned by SFCC and is used for and in connection with this charitable purpose of advancing education by providing a recreational space for people from the general public to learn, speak, and advance the French language. There is no restriction on member to the This charitable purpose is the only use of the Property, and as such, meets the requirement of a primary charitable use.

20. SFCC resources are exclusively used towards the advancement of the French language through educational and community initiatives. The SFCC also has other charitable purposes including the relief of poverty by providing low-income housing to its members.

21. While a membership to SFCC is required to access the Property, the only restriction on membership is a nominal membership fee and basic French language ability. For these reasons, the Property is non-assessable per the *MGA.*

ISSUE: THE LAND IS OVERVALUED

22. If this Board determines that the Property is assessable, SFCC submits that both the land value and improvements are over assessed.
23. The land is to be assessed on market value principles. The *Municipal Government Act* defines market value as meaning "the amount that a property, as defined in section

284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer."

***Municipal Government Act*, RSA 2000. c. M-26. s. 1(1)(n)**

The test, therefore, is not about the value to the SFCC, but the value to a buyer on an open market.

See ***T. Eaton Company Ltd. v. Alberta (Assessment Appeal Board)*, 1995 ABCA 361**

24. Chiasson J.A., of the BC Court of Appeal, in an opinion concurred with by Frankel J.A., had the following to say with respect to market value in the context of B.C.'s property tax regime:

> **26** Actual value means market value. It is the overriding requirement for valuation in the section. Subsection (3) permits the Assessor to consider present use, but that does not mean that market value can be value in use rather than value in exchange. In my view, consideration of present use can be relevant to determining market value for at least two reasons: first, to answer the question, "is there a market for that use?" (that is the question in this case); if so, to assess whether the present use is the highest and best use. (As stated in para. 15 of this Court's decision in ***Southam***, "[h]ighest and best use is the use that produces the highest estimate of market value [...]".)

Pacific Newspaper Group Inc. v. Surrey/White Rock (Assessor) Area #14 **2008 BCCA 284**

25. The *Eaton Company* case dealt with the issue of whether development restrictions must be taken into account in assessment. The Court held that development limitations are a factor to be taken into account in determining market value of the land, and that by focusing on the value of the land to the seller instead of the buyer, the Board made an erroneous and unreasonable valuation of the land.

***T. Eaton Company Ltd. v. Alberta (Assessment Appeal Board)*, 1995 ABCA 361**

See also: *Calgary (City) v. Alberta (Municipal Government Board)* 2004 ABCA 10

26. The Property's land is currently assessed at $33,000 an acre. The land is highly overvalued in light of the severe limitations on the land. The Property is comprised of land nearly

entirely situated within the Three Point Creek floodplain. It has no agricultural use, no development use, and is severely limited in its recreational use. The Bylaw restricts land use to recreational activities including the use of travel trailers on up to 50 lots for a limited time of year. Through fall and winter, no use can occur at all. Because of these restrictions—environmental and legal—the land has no development potential.

27. Part of the property includes a section of land which was made inaccessible when the river changed course after the 2013 floods and which shouldn't be assessed at all. The section of land is now a gravel bar which can only be reached by wading across the river. The section which is river which lays in the property boundary's is Crown property and should not be included in the assessment.

28. The Property is also overvalued relative to comparable land. At $33,000/acre the land is expense even in comparison to comparable farmland in the municipality, land not subject to legal and environmental restrictions.

ISSUE II: THE TRAVEL TRAILER'S ARE EXEMPT FROM TAXATION

29. The improvements added to the assessment included over 40 privately owner travel trailers.

Non-assessable property
298(1) No assessment is to be prepared for the following property:

(bb) travel trailers that are

(i) not connected to any utility services provided by a public utility, and

(ii) not attached or connected to any structure;

30. The *MGA* clearly exempts travel trailers from assessment. The only service that trailers parked at the Property may access is a standard 120v outlet located on each lot which can be connected by extension cord. This means that a trailer can only use very limited amounts of electricity. By way of comparison, a standard home oven requires a 220v outlet.

31. The trailers do not have access to potable water from the municipality nor-sewage or wastewater disposal. They must haul their trailers to the septic tanks to pump out waste.

The Bylaw requires these trailers to be moveable within 48hrs and they can only be used from May to October.

32. Furthermore, these trailers are not property SFCC. They are individually owned and may be moved from the property by the owners at any time. Furthermore, even if the owners of the trailers wished, they could not live permanently in the trailers. There is no plumbing or water source that can over winter, and the electricity is shut off during this time.

CONCLUSION

33. In conclusion, the assessment of the Property is incorrect on multiple basis. First, the Property is non-assessable under the charitable exemptions provided for under section 362(1) of the *MGA.* Alternatively, if the Property is assessable, the assessment is too high given the severe land use restrictions caused by flood plain restrictions and corresponding land use restrictions which reduce the land value far below the $33,000/ acre recognized in the assessment. Further, the assessment of privately owned travel trailers is inappropriate. Not only are these travel trailers not assessable as improvements under the *MGA,* they are privately owned, temporary chattel property which must be removable within 48 hour notice.

COMPOSSITE **ASSESSMENT REVIEW BOARD**

BETWEEN:

La Societe franco-canadienne **de Calgary**

Complainant

-a n d-

Foothill County Assessor

Respondent

Will Say Statement of Stella Bergeron and Jean Fournet

Societe franco- canadienne de Calgary.

WILSON LA YCRAFT
Barristers & Solicitors
#650,211 -11th Avenue SW
Calgary, AB T2R OC6
Attn.: Gilbert J. Ludwig, K.C. and Jeffery D. Talbot

1. Mrs. Bergeron and Mr. Fournet are being presented as fact witnesses to provide information relating to the La Societe franco-canadienne de Calgary **("SFCC"),** and its ownership of the property located in Foothills County (the "Property") which is the subject of this property tax appeal.

2. Mr. Fournet and Mrs. Bergeron will discuss their roles with SFCC including their background and current roles. Mr. Fournet will also discuss his background as a real estate agent in Calgary, Rocky View County, Airdrie and Wheatland County and may present his opinion on the land value of this type of property along with the impact of restrictions which give it nominal value.

SFCC's non-profit status

3. Mr. Fournet and Mrs. Bergeron may refer to various documents which demonstrate SFCC's non-profit status and purpose, including its incorporation documents, bylaws, and documents relating to its taxable exemptions. These documents are enclosed as **Schedule "A".**

4. Mrs. Bergeron will discuss the SFCC's purpose, including its main purposes of:
    a. Promoting the study and use of the French language in the City of Calgary and its surrounding area.
    b. Promoting French-Canadian culture through education, culture, sports and community efforts in the City of Calgary and Its surrounding area.
    c. To promote the study and use of the French language in the City of Calgary and its surrounding
    d. Supporting French language educational institutions in the City of Calgary and its surrounding areas.
    e. Providing scholarship to students who live in the City of Calgary and its surrounding area who are pursuing university studies in French.
    f. Providing affordable housing to seniors' residents of the City of Calgary and its surrounding area.
    g. Providing its members with a basic camp where they can meet and speak French during the summer and transmit the French-Canadian Culture.
    h. Assisting French speaking charities in the City of Calgary and its surrounding area.

5. Mrs. Bergeon will discuss the role the Property plays in the overarching cultural purpose of SFCC. She will speak to how offering a recreational space advances SFCC's purpose of providing French education by offering the ability for site users to speak French in a community setting, which allows beginner and intermediate French speakers the opportunity to speak and learn from fluent French speakers.

6. Mrs. Bergeron will speak to how the SFCC is open to the public whereby anyone may join so long as they have a basic understanding of French including the willingness to communicate in French at a basic level. Mrs. Bergeron will discuss that membership to SFCC requires a nominal fee of $5.00. She will discuss an annual service fee which must be paid to secure a lot at the Property and how that rent is used towards maintaining the site.

7. With reference to documents in Schedule "B", Mr. Fournet will discuss how the nature of SFCC's incorporation prohibits the SFCC from distributing income or property to its shareholders or members during its existence.

8. Mr. Fournet will discuss how the doubling of the tax assessment has meant that the SFCC is now operating at a loss. Mr. Fournet will discuss how, as a not-for-profit, the use of the Property provides nominal revenue to the society to be put towards maintaining the property and how the over 278% increase in assessment has impacted SFCC's bottom line to the point where it is now losing money. Mrs. Bergeron will discuss how the Property is owned by SFCC which is subject to tax, while property owned by SFCC in Calgary is exempt.

Land is overvalued.

9. Mr. Fournet will discuss how the land value of the Property is over assessed relative to comparable sales of farmland. He may reference the Altus land comparison report enclosed as Schedule "C". He will discuss how the property is not capable of either arable farming nor grazing for cattle given that it is heavily forested with evergreens which make the underlying soil acidity and ill-suited for crops or for grazing.

10. Mr. Fournet will discuss the severe land use constraints imposed by the land being in a flood plain. Mr. Fournet will also discuss legal restrictions imposed on the land which further restrict the use and enjoyment of the land, including the inability to develop the land other than a campground. Mr. Fournet thinks that the Property being mainly covered with trees and being in a flood plain is environmental land and has no value for any other user. Mr. Fournet may refer to the documents enclosed in Schedule "D" which outline these land use restrictions.

11. Mr. Fournet will discuss how the assessment includes land which is no longer accessible due to the change in course of Three Point Creek which severed roughly 1.31 acres of land from the site. This land is now only accessible by walking across the creek and has no value. Secondly, since 2013 Three Point Creek has been crossing the western part of the Property and like any waterway in Alberta, it is Crown land.

Therefore, the usable area is only 16.85 acres and not 18.66 acres, but Foothills County does assess the Property as being 18.66 acres, although they know perfectly well that the usable area has changed.

12. Mrs. Bergeron will discuss the nature of travel trailers parked on the Property, which are subject to assessments as improvements. She will explain that these trailers are not owned by SFCC; are required by the FC to be moved within 48hrs notice. She will discuss how the trailers are not permanent. Site users can only use their trailers from May to October of each year as per the Land Use Bylaw. The owners of the trailers must winterize these trailers at the end of summer. The Residential Tenancy Act is not applicable to trailer users. Further, during the period from October to May, the Property is not used or maintained; there is no access by members; there is no plowing; and all utilities are shut off. Once the travel trailers are winterized and have no access to electricity.

13. Mrs. Bergeron will discuss how the travel trailers at the campground provide accommodation for vacation use and are all licensed and equipped to travel on a road. The only utilities the trailers can use is a standard 120v plugin at the site which the trailers can connect to by an extension cord. This provides very limited power to the trailers. There is no hookup to potable water or sewage. There is a shared septic tank which the trailers can use to discharge waste. Trailers must be moved to the septic area to discharge waste where needed.

14. Mrs. Bergeron may refer to videos of the site and of the trailers along with the Municipality's site use restrictions written from the development permit issued by FC dated of January 2024 which restrict the tenants of these trailers' use of the lots. These are enclosed in **Schedule** "D".

15. Mrs. Bergeron will also reference the pictures of these trailers to observe that the value of these trailers is very likely not commensurate with the values ascribed to the trailers in the assessment. Mrs. Bergeron will reference her own trailer which is assessed at over $30,000 dollars but which she purchased for only $8,000. The description of the trailers from the assessment summary does not correspond to the trailers actually at the campground. Ex: green tarped trailer- 12 lots (2,5,6, 10, 11, 12, 17,22,25, 34, 39, 42) description with the color tarped trailer (how can we assess their value with the wrong year in the built column and 4 lots (54, 55, 56) have no deck, shed and 3 lots are empty (6, 33, 34).

September 23,2024.

Stella Bergeron
"STELLA
BERGERON"

Jean (John) Fournet

[redacted]

CHANGE OFFICERS/DIRECTORS/SHAREHOLDERS FOR ANON-PROFIT COMPANY - Proof of Filing

Alberta Amendment Date: 2023/11/24

Service Request Number: 41221293
Corporate Access Number: 510537806
Business Number:
Legal Entity Name: LA SOCIETE FRANCO-CANADIENNE DE CALGARY
Legal Entity Status: Active
Legal Entity Type: Non-Profit Private Company
Limited by Shares: Y

LA SOCIETE FRANCO-CANADIENNE DE CALGARY - 510537806

This confirms the Officers/Shareholders are amended/updated as of 2023/11/24

Officers / Directors / Shareholders

Status: Inactive
Officer / Director / Shareholder Type: Secretary - Treasurer
Individual / Legal Entity Type: Individual
Last Name / Legal Entity Name: SANI
First Name: AMOS
Street / Box Number: [redacted]
City:
Province:
Postal Code:
Appointment Date: 2017/05/22
Cessation Date: 2018/08/01

Status: Inactive
Officer / Director / Shareholder Type: Director
Individual / Legal Entity Type: Individual
Last Name / Legal Entity Name: LAROCHELLE
First Name: GILLES
Street / Box Number: [redacted]
City:
Province:
Postal Code:
Appointment Date: 2015/03/11
Cessation Date: 2015/08/19

Status: Inactive
Officer / Director / Shareholder Type: President
Individual / Legal Entity Type: Individual
Last Name / Legal Entity Name: TOUZIN
First Name: INOUK
Street / Box Number: [redacted]
City:
Province:
Postal Code:
Appointment Date: 2017/05/22
Cessation Date: 2020/07/15

ALBERTA
MUNICIPAL AFFAIRS

Office of the Minister
MLA, Calgary-Hays

AR106721

November 17, 2021

Jean (John) Fournet
Director
Villa Jean Toupin
Société Franco-Canadienne de Calgary
102, 1809 5 Street SW
Calgary, AB T2S 2A8
[redacted]

Dear Mr. Fournet,

Municipal Affairs has provided a Grant in Place of Taxes (GIPOT) for specific unsubsidized non-profit seniors' housing facilities under Schedule 2 of the Municipal Affairs Grants Regulation, which was set to conclude in 2021.

I am pleased to inform you the regulation has been extended for three years. This extension enables the payment of GIPOT until the end of the 2024 taxation year on behalf of eligible seniors' housing facility operators.

The extension will ensure any impacts on seniors and municipalities resulting from changes to these grants will not occur during the COVID-19 economic recovery.

Sincerely,

Ric McIver
Minister

320 Legislature Building, 10800 - 97 Avenue, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-3744 Fax 780-422-9550

Form 2205-AC-1

No 53780

PROVINCE OF ALBERTA

CANADA

Certificate of Incorporation

I hereby Certify that

- la Societe franco-canadienne de Calgary -

is this day incorporated under The Companies Act of the Province of Alberta as a Limited Company.

Given under my hand and seal of office at Edmonton this eighteenth day of February A.D. 19 70

(Jas. Warr)
Registrar of Companies

ls

(3)

COOK DUKE COX
BARRISTERS & SOLICITORS

William J. Fowlis, C.A.

2700 ENCOR PLACE
645 - 7TH AVENUE S.W.
CALGARY, ALBERTA T2P 4G8
TELEPHONE: (403) 298-2400
FAX: (403) 262-0007

1900 SCOTIA PLACE
10060 JASPER AVENUE
EDMONTON, ALBERTA T5J 3V4
TELEPHONE: (403) 429-1751
FAX: (403) 424-5866

PLEASE REPLY TO CALGARY OFFICE

Rec'd Feb 10/93

95753/WJF

December 30, 1992

LA SOCIÉTÉ FRANCO-CANADIENNE DE CALGARY
[redacted]

Attention: Michele Stanners

RP 0001
890897648 RC0001

Dear Sirs:

Re: Income Tax Ramifications Relating to Revocation of Status as a Registered Charity by Revenue Canada, Taxation

We are writing to set forth our recommendations relating to the tax status of La Société Franco-Canadienne de Calgary (the "Society"). We understand that the Society became incorporated under Part 9 of the Companies Act (Alberta) on February 18, 1970. The Society has twice amended its objects contained in its Memorandum of Association, once in 1971 and most recently effective June 21, 1990. The Society had been registered with Revenue Canada, Taxation as a "charitable organization" form of registered charity. However, the Society's status as a registered charity was revoked sometime in the late 1980's, presumably for failure to file annual charitable returns. When the Society attempted to re-register itself as a charity in late 1989 and early 1990, Revenue Canada took the position that the objects of the Society were no longer charitable and that the Society therefore should not be re-registered as a registered charity.

Subsection 188(1) of the Income Tax Act (Canada) (the "Act") imposes a penalty tax upon a charity where the registration of the charity has been revoked by Revenue Canada, Taxation. This tax is payable by the charity within one year after the effective date of the revocation. The tax is computed as the amount equal to:

1. Purpose of the Société

The Société franco-canadienne de Calgary (the "Society") was incorporated on February 18, 1970 under the Companies Act of the Province of Alberta. The Society is a non-profit organization that is tax-exempt.

The purpose of the Society is to promote French Canadian culture by providing community services through the Villa Jean-Toupin and the Parc Beauchemin campground, as well as by providing donations and scholarships.

2. Significant accounting policies

The Society applies the Canadian accounting standards for not-for-profit organizations.

Use of estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the amounts recognized as revenues and expenses for the periods covered. Actual results may differ from these estimates. The critical estimates relate to the provision for doubtful accounts, the impairment of property, plant and equipment, the useful lives of property, plant and equipment subject to amortization.

Revenue recognition

The Society uses the deferral method of accounting for contributions (i.e. grants and contributions). Under this method, contributions restricted to expenses of future periods are deferred and recognized as revenue in the period when the related expenses are incurred.

Dividends and interest are recognized when they are received.

Net gains realized on the disposition of investments are recognized when the disposition of the security has taken place.

Unrealized gains on investments measured at fair value at the end of the year are recognized in the income statement under "Investment income (loss)".

Rental income is recognized on a linear basis over the term of the leases.

Contributed services

Volunteers contribute many hours per year to assist the organization in carrying out its service delivery activities. Because of the difficulty of determining their fair value, contributed services are not recognized in the financial statements.

ARTICLES OF ASSOCIATION OF
LA SOCIÉTÉ FRANCO-CANADIENNE DE CALGARY

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ARTICLES OF ASSOCIATION OF
LA SOCIÉTÉ FRANCO-CANADIENNE DE CALGARY

INTRODUCTION

1. The following shall consist of all the Bylaws of the Société franco-canadienne de Calgary (the "SFCC" or the "Company"), whose incorporation number is 510537806, incorporated under Part 9 of the *Companies Act* of the Province of Alberta, RSA 2000, c. C-21 (the "*Act*"), as amended.

OFFICIAL LANGUAGE

2. The French language will be the official language used for the preparation of the meetings and during the holding of the meetings.

INTERPRETATION

3. In these Articles of Association (including this subsection and the recitals, if any) and any amendments thereto, except as otherwise provided or unless the context otherwise requires:

a. The words "herein", "hereafter", "hereunder", "hereof" and other words of similar import refer to these Articles of Association as a whole and not to any particular section or other subdivision;

b. The headings and subheadings inserted in these articles are designed for convenience only and do not form a part of these articles nor are they intended to interpret, define or limit the scope, extent or intent of these articles or any provision hereof;

c. Any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto;

d. Terms used in the masculine include the feminine and those used in the singular include the plural and vice versa;

e. The terms "shareholder" and "member" are synonymous and interchangeable; and

f. "Person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, governmental agency or board or commission or authority, and other forms or entity or organization.

ARTICLES OF ASSOCIATION OF
LA SOCIÉTÉ FRANCO-CANADIENNE DE CALGARY

MEMBERS

I. Membership

4. It is under the provisions of the Company's Memorandum of Association and these Bylaws that the shares for membership in the SFCC shall be controlled by the Directors. The Directors will be able to distribute the shares or dispose of them according to the following terms:

a) To be eligible for membership in the Company, a person must:

a. Be a Canadian citizen or permanent resident for at least twelve (12) months prior to submitting the application;

b. Speak French;

c. Be a resident of the City of Calgary or the surrounding area within a radius of fifty kilometers (50 km) outside its limits;

d. Be 18 years of age or older;

e. Be sponsored by an active member of the Company;

f. Complete an application form issued by the Directors; and

g. Pay to the Company the sum of five (5) dollars, being the value of the share issued by the Directors of the Company.

b) The application to become a member of the SFCC will be submitted directly to the Directors who, in reviewing it, will have the power to accept or reject it. If the application is rejected, the candidate may appeal this decision at the next annual general meeting. Upon acceptance of the application a certificate of one (1) share will be issued with the seal of the Company and, thereafter, inserted in the files of the Company. The Secretary-Treasurer of the SFCC shall be the sole trustee of the seal approved by the SFCC.

c) If the application to become a member of the SFCC is denied, the Directors will refund five (5) dollars to the applicant.

d) Membership of the SFCC will terminate temporarily or permanently in any of the following cases:

i) upon the member ceasing to be a resident of the City of Calgary or the surrounding area which is fifty kilometers (50 kms) from the limits of the City of Calgary;

ii) upon the member's resignation in writing to the President of the Board of Directors of the SFCC, in which case the resignation will take effect on the date specified in the notice of resignation;

iii) upon the death of the member;

iv) upon the liquidation or dissolution of the SFCC under the *Act*.

If the inactive member returns to Calgary and intends to become an active member again, he may inform the Company, at which time he will be automatically reinstated after paying the cost of five (5) dollars for a membership share.

e) Upon termination of membership, the Directors will pay to the former member the amount of five (5) dollars and the member's share and share certificate will be transferred to the Company.

f) No member shall hold more than one (1) share in the Company.

II. Register of Shareholders

5. The Secretary-Treasurer shall cause to be kept and maintained a register of the Directors and officers of the SFCC and a register of shareholders of the SFCC containing the following information:

a. The full name and address of the shareholders, the number and class or series of shares held, the date such shares were issued or acquired and details of the transfer or repurchase for cancellation of any shares of the SFCC; and

b. The full name and address of the Directors and officers of the SFCC, the date on which a person is elected or appointed as a Director or officer and the date on which a person ceases to be a Director or officer. Within fifteen (15) days of a change in address by a director, the SFCC shall file with the Registrar of Companies a notice of such change.

6. The register of shareholders and the register of Directors and officers shall be kept at the SFCC's registered office and shall be made available for inspection by any Director, officer or shareholder.

III. Shareholders' meeting

7. The only persons entitled to attend a meeting are the shareholders of the SFCC. Any other person may be invited by the chair or by resolution. Annual general meetings will be held once (1) per year or within a period of sixteen (16) months after the last annual meeting. These general meetings will take place at the time and place to be determined by the Directors. The Board of Directors will give twenty-one (21) days notice to all shareholders of any general meeting.

8. The business of the annual general meeting shall be:

a. to receive the report of the Nominating Committee;

b. to appoint the auditor of the SFCC for the current financial year;

c. to receive the financial statements of the SFCC for the immediately preceding fiscal year and the report of the auditor thereon; and

d. to consider such other business as may be properly brought before the meeting.

9. Subject to Section 21, all general meetings of members will be held within the city limits of Calgary. In times of a pandemic, or any other extraordinary situation, general or special meetings may be held by videoconference in order to meet the health standards imposed by the civil authorities of Alberta.

10. The Directors may, if they deem it necessary, hold a general or special meeting.

11. The Directors will hold a special meeting when a minimum of ten percent (10%) of shareholders request it. Such a request must be submitted in writing and addressed to the President of the SFCC. The letter must mention the nature of the subject to be discussed at this meeting. Following such a request, the Board of Directors will convene the meeting within twenty-one (21) days. In the event that such a request cannot be accommodated within the twenty-one (21) day period, the parties shall negotiate the best arrangement for holding the special meeting. The Secretary-Treasurer must then notify all members of the SFCC at least twenty-one (21) days before the date of a special meeting.

12. The notice of meeting, as required by law, must contain the day, time, place of this special meeting, the nature of the meeting or the agenda. Notice will be given personally, by email or by mail to each active member.

13. The accidental omission to give notice to all shareholders of the SFCC, any irregularity in the notice, or the non-receipt by any shareholders of such notice, shall

not invalidate any resolution passed or the proceedings taken at any meeting of shareholders

14. A notice of a meeting of shareholders shall state the right of shareholder to be represented by proxy at a meeting in accordance with Section 15, and each notice shall provide a form of proxy to each shareholder.

15. Any shareholder may be represented at any meeting of shareholders and vote on any matter properly brought before the meeting by any other shareholders as proxy for the shareholders, provided that a written proxy in form acceptable to the Secretary-Treasurer is deposited with the Secretary-Treasurer prior to commencement of the meeting.

16. For any general or special meeting, twenty (20) members present with the right to vote shall constitute a quorum.

17. The President, or in his or her absence, a member chosen by the majority of the members of the SFCC present at the general or special meeting will chair this meeting.

18. If, within thirty (30) minutes of the time scheduled for the general or special meeting, there is no quorum, the meeting will be dissolved, or it will be postponed to the same day of the following week, at the same time and same place, at the option of the President.

19. Any question submitted to a general meeting will be decided by a show of hands first or by secret ballot if a minimum of ten (10) shareholders so request it. The President will not vote except in the event of a tie after a show of hands or by secret ballot, in which case he will have the casting vote.

20. Each member of the SFCC shall be entitled to one (1) vote.

IV. Resolutions in Writing, Teleconference Meetings and Electronic Resolutions

21. Subject to the other provisions of these Articles of Association and the *Act*:

a. A resolution in writing signed by all of the shareholders is as valid as if it had been passed at a duly convened meeting of shareholders;

b. A meeting of shareholders may be held or a shareholder may participate in a meeting of the shareholders by means of telephone conference or other communication facilities that allow all shareholders participating in the meeting to simultaneously hear each other and the proceedings of the meeting, provided that all shareholders present agree to the holding of such meeting or the participation by such means; a shareholder

participating in a meeting in accordance with this paragraph shall be deemed to be present at the meeting and (absent his or her express objection) to have so agreed and shall be counted in the quorum therefore and entitled to participate in the meeting and vote thereat; and at any such meeting all votes shall be by poll of those shareholders participating in the meeting in person or by proxy and a declaration by the chairperson, following a poll, that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority, shall be conclusive evidence of the fact;

c. A resolution communicated electronically and consented to by all shareholders by electronic means which are equally accessible to all shareholders is as valid as if it had been passed at a duly convened meeting of shareholders, and a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact; and

d. Subject to Section 79 hereof, any formality in the giving of notice or any other matters relating to meetings of shareholders required by these Articles of Association, or the *Act* may be waived by an instrument in writing signed by all shareholders.

Voting Representative

22. The President of the SFCC, or such other officer as designated by a resolution of the Board of Directors, shall for all purposes represent the SFCC at meetings of shareholders and shall, subject to any direction given to them by the President, exercise the voting rights of the SFCC at meetings of the shareholders and in respect of such other matters as may be properly brought before the shareholders.

DIRECTORS

I. Appointments and elections

23. Unless otherwise specified by the Board of Directors at a general meeting, the number of Directors is a minimum of five (5) and a maximum of nine (9).

24. The Directors shall have the power to appoint a person as a Director, to fill any vacancy or to add a Director. Such an appointment will require the support of at least two-thirds (2/3) of the Directors already elected for the chosen person to be accepted. The mandate of this new member will end at the next general meeting.

25. All Directors must own one (1) share of the Company.

26. A Director may resign from office, and such resignation shall be effective five (5) days after receipt of notice.

27. A retiring Director is eligible for re-election.

28. The Directors elected at a general meeting and who are assigned to important positions by the Board of Directors may sit in their position for a term of two (2) years while the other Directors will have a term of one (1) year. The important positions are those filled by the President, the Treasurer, the Director of Villa Jean Toupin and the Director of Parc Beauchemin. Such a procedure will allow the partial renewal of Directors and will ensure the continuity of the functioning of the Board of Directors.

29. A Director may be removed from office by a special resolution passed by at least two-thirds (2/3) of the Directors on the Board of Directors or by a simple majority at a general meeting. Any Director who is dismissed by the Board of Directors has the right as a shareholder to appeal against this decision at the next general or special meeting.

30. The Board of Directors may exclude or dismiss any member of the Board of Directors who acts contrary to the proper functioning of the SFCC or who contravenes the regulations in place or the applicable laws. Any Director who is dismissed by the Board of Directors has the right as a shareholder to appeal against this decision at the next general or special meeting.

31. The Board of Directors will establish a Nominating Committee before each general meeting for the purpose of seeking and recruiting future directors. This Nominating Committee will submit a report to the Board of Directors reflecting the results of its research fifteen (15) days before the general meeting. The Board of Directors will submit a list of future directors who will be recommended to the vote of the shareholders on the day of the general meeting. No nominations will be accepted at the general meeting.

II. Procedures

32. The Directors will meet to conduct the business of the Company. Half the number of Directors will constitute a quorum.

33. The Directors will manage the Company and must exercise their rights and powers while assuming the resulting responsibilities.

34. Meetings will be chaired by the President or Vice-President.

35. Agenda items at Directors' meetings will be decided by a simple majority of votes. In the event of a tie, the chair will have the casting vote.

36. Directors may act despite vacancies.

37. For the purposes of carrying out its objects, the SFCC shall have the powers provided under the *Act*. Specifically, the Board of Directors in a meeting with a quorum shall have jurisdiction and power to exercise all authority under the Articles and By-Laws of the Company, EXCEPT FOR (i) the sale of any real property owned by the SFCC, including, without limitation, the Villa Jean Toupin and its parking lot or the Parc Beauchemin; (ii) the liquidation of the Investment Fund; and (iii) the dissolution of the Supervisory Committee, which shall be ratified by a vote of two-thirds (2/3) of the shareholders at a general or special meeting. The winding up of the Company shall be ratified by a vote of not less than seventy-five percent (75%) of the shareholders at a general or special meeting.

38. The Investment Fund Supervisory Committee is a permanent committee of the SFCC which reports directly to the Directors and provide reports for the general meetings. All the rules of this Supervisory Committee and of the Investment Fund must be voted on by two-thirds (2/3) of the shareholders at a general or special meeting in order to be adopted.

39. Directors may delegate, assign, or withdraw powers to committees with the exception of the Supervisory Committee. The Directors will also have the power to appoint or revoke members of these committees, with the exception of the Supervisory Committee. The committees thus formed must comply with the intention of the Articles of Association and Bylaws as well as the mandate conferred in the exercise of their functions.

40. A Director, delegate or committee member shall not, as such, be entitled to any remuneration or compensation for his or her services; provided however, if any Director, delegate or committee member is called upon to perform extraordinary services for the SFCC, as determined by the Board, the SFCC may remunerate him or her for the said services by such sum as may be determined by the Board of Directors. A Director, delegate or committee member is entitled to be reimbursed by the SFCC for his or her reasonable out-of-pocket expenses in carrying out his or her duties as a Director, delegate or committee member of the SFCC.

41. The Board of Directors may appoint such agents and engage such employees including (without limitation) an executive director of the SFCC, as is deemed necessary from time to time by the Board of Directors and such persons shall have such authority and shall perform such duties as prescribed by the Board of Directors at the time of such appointment, as varied by the Board of Directors from time to time. The remuneration of such agents or employees shall be determined by the Board of Directors.

42. The committees will submit the minutes of their meetings and their recommendations to the Board of Directors.

43. A written resolution signed by a majority of the Directors, or submitted electronically, shall be as valid as if passed at a meeting of the Board of Directors and shall be retained for future reference with the other minutes. An email response will be considered as a signature.

I. Minutes

44. At meetings of the Board of Directors, the following elements must be recorded in the minutes:

a) the date, place, and time of the meeting;

b) the names of the Directors present at each meeting;

c) the resolutions taken by the Directors;

d) possibly the appointment of a new director;

e) the proposals and proceedings of general and special meetings and the notes of the meetings of the Directors or of the Company, signed by the chairperson of such meeting or by the chairperson of the subsequent meeting, as evident proof of the points discussed.

f) Minutes of Directors' meetings relating to their activities; and

g) proposals that have been adopted by electronic mail between meetings.

II. Powers

45. The management of the affairs of the Company will be assigned to the Directors who, in addition to the powers and mandates conferred by the *Act*, may exercise such powers, and take actions, in the name of the Company and which will not need the approval of the shareholders at a general meeting, but which are subject to the provisions of the *Act* and the Bylaws of the Company.

46. The Directors will, from time to time, establish new regulations.

OFFICERS

I. Officers of the Board of Directors

47. The members of the Board of Directors will be the President, the Vice-President, the Secretary-Treasurer, the Director of Villa Jean Toupin, the Director of Parc Beauchemin, the Director of Education and History, the Director

Membership/Recruitment and Donations, Director of Legislation, Director of Public Relations and Social Activities, and such other directors as the Board of Directors may elect under the SFCC's Articles of Association and Bylaws. Any Director may be responsible for two (2) committees. It is within this framework that the members of the Board of Directors will be responsible for the management of the Company. Day-to-day operations will be delegated by the Board of Directors to the general management (and other employees and contractors) of the Company. The Board of Directors will establish the orientations and objectives and will monitor their implementation by management as well as day-to-day operations.

48. The positions of Directors will be determined, by vote, at their first meeting after the annual general meeting.

49. An officer of the SFCC shall be eligible for reappointment at the expiration of his or her term. It shall not be necessary that a person appointed as an officer of the SFCC be a Director.

50. In the case of the absence or inability to act of the President, any Vice-President or any other officer of the SFCC, the Board may delegate all or any of the powers of such officer or officers to any other officer or officers or to any Director or to any other person or persons.

II. Duties of Officers

51. The President will chair Board meetings and ensure that all bylaws are followed, and resolutions are formally accepted or rejected. He will also be the spokesperson for the SFCC or appoint another person if necessary.

52. The Vice-President shall, in the absence or inability of the President, exercise the powers and perform the duties of the President, as well as such other duties as may from time to time be imposed upon him by the Board of Directors.

53. The Secretary-Treasurer will be in charge of the funds and securities of the company and will work closely with the President or the general management. He shall keep up to date the accounts of assets and liabilities, receipts, and disbursements of the Company, in the books of the latter, and shall deposit all money and valuables in the name and to the credit of the Company, in a chartered bank or a trust company, or credit union or in the case of securities, with a registered securities dealer, to be appointed by the Board of Directors. He shall disburse the funds of the Company, under the direction of the governing authority, using adequate documentation for such disbursements and report to the President and Directors at regular meetings of the Board of Directors, or if they require it, an account of all transactions and the financial statement of the Company. He will sit *de facto* on the committees related to the finances of the Company. He will also perform any other duties which may from time to time be requested by the Board of

Directors. All or part of the duties of the Secretary-Treasurer may be delegated to an employee of the Company, by resolution of the Board of Directors.

54. The Secretary-Treasurer may be authorized by the Board of Directors, by resolution, to conduct the affairs of the Company. Generally, under the supervision of the Directors, he will attend all meetings, record all proposals, votes and minutes which will be kept in a book. He will inform the members of any meeting, as well as the Board of Directors. He will also perform any task described by the Board of Directors or the President, who will supervise him. He shall keep the seal of the Company, which he may hand over to one or more persons when the Board of Directors, by a resolution, gives him the authorization to do so. All or part of the functions of the Secretary-Treasurer may be delegated to an employee of the Company, by resolution of the Board of Directors. The Secretary-Treasurer will be an *ex-officio* member of the Investment Fund Supervisory Committee.

55. The duties of all other officers of the Company will be stipulated by the Board of Directors.

56. The President will be an *ex-officio* member of all committees.

57. The Directors may sometimes appoint a General Manager, either for a fixed or indefinite term position and may also, under the terms of the employment contract, replace him or dismiss him under the laws on labor standards that will be applicable.

58. The General Manager will take care of the day-to-day affairs of the SFCC and will maintain knowledge of the relevant business of the Company in order to keep the members of the Board of Directors well informed.

59. The remuneration of the General Manager will be subject to the terms of the employment contract with the Company.

EXECUTION OF INSTRUMENTS

60. Unless otherwise determined by a resolution of the Board of Directors, contracts, documents or instruments in writing requiring execution on behalf of SFCC may be signed by the President, together with one other Director or officer of SFCC and all contracts, documents and instruments in writing so signed shall be binding upon SFCC without any further authorization or formality. Unless otherwise determined by a resolution of the Board of Directors, the Board of Directors shall have the power from time to time by resolution to appoint any officer or officers, or any person or persons, on behalf of SFCC either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

61. The terms “contracts, documents or instruments in writing” as used in Section 61 shall include deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments or property, real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities and all other paper writings.

ANNUAL RETURNS

62. “Anniversary month” means the month in each year that is the same as the month in which the certificate of incorporation of the company was issued.

63. The SFCC shall each year on or before the last day of the month immediately following the anniversary month file an annual return with the Registrar of Companies that includes notices with respect to

a. Any change in the location of the registered office of the company, if a notice under Section 86(2) of the *Act* in respect of that change has not yet been filed with the Registrar of Companies, and

b. Any change among the Directors of the company, if a notice under Section 93(2) of the *Act* in respect of that change has not yet been filed with the Registrar of Companies.

64. The annual return shall include the name and address of each shareholder and the percentage of voting shares assigned to each shareholder.

MISCELLANEOUS

65. The Company shall have a seal of incorporation and will keep a Minute Book at the office of the Company.

66. The members, at the annual general meeting, shall, on the recommendation of the Board of Directors, appoint:

a) a legal adviser, who shall be a member in good standing of the “Law Society of Alberta/membre du barreau de l’Alberta)” and of the “Association des Juristes d’expression française de l’Alberta”

b) an auditor who shall be a Chartered or Chartered Professional Accountant.

ASSETS, REAL ESTATE, AND INVESTMENT FUNDS

67. The SFCC owns real and personal property and securities which are administered by the Board of Directors and managed in good faith by its members. It is within this

framework that the Board of Directors must consult the shareholders during a general or special meeting when the Company is purporting to: (i) sell any real property owned by the SFCC, including, without limitation, the Villa Jean Toupin and its parking lot or the Parc Beauchemin; (ii) liquidate the Investment Fund; and (iii) dissolve the Supervisory Committee, which actions shall be ratified by a vote of two-thirds (2/3) of the shareholders at a general or special meeting. Where the share capital of the SFCC is altered, such decision shall be ratified by a minimum of seventy-five percent (75%) of the votes of the shareholders.

68. For the purpose of carrying out its objects, the SFCC may borrow or raise or secure the payment of money in such manner as it thinks fit, and in particular by the issue of debentures, but this power shall be exercised only under the authority of the Board of Directors, and in no case shall debentures be issued without the sanction of a special resolution ratified by the shareholders.

69. The funds received by the SFCC shall be deposited to the credit of the SFCC in a chartered bank, Alberta Treasury Branches or a trust company approved by a resolution of the Board of Directors. All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officer or officers or person or persons, whether or not officers of the SFCC, and in such manner as determined by a resolution of the Board of Directors.

RESERVE OF FUNDS

70. The Directors may set aside part of the profits of the Company to create a reserve fund in order to maintain the properties of the Company in good condition, to replace goods which depreciate over time or to provide for unforeseen expenses in the budget of the SFCC while adopting an action plan that will be satisfactory to the Board of Directors.

71. The Directors must act in good faith and may carry over to the account of the following year or subsequent years the profits or part of the profits.

72. The Directors may create a fund or funds from the capital of the Company which does not exceed the amount of the reserves stipulated by virtue of resolutions passed at previous annual general meetings. The Directors will be able to use the reserve funds for the internal affairs of the Company, or by investing them in a prudent way while controlling the risks. The income obtained by such funds will form part of the profits of the Company in the year in which the profits were realized. Such funds may be used to maintain the properties of the Company, replace lost capital, cover unforeseen expenses, the form an insurance fund, or for any other legal reason.

ACCOUNTS

73. The Directors shall keep an account of the sums of money received or expended with the reason justifying the sum received or expended, of all sales and purchases of property by the Company and of all the assets and liabilities of the Company.

74. The accounting books will be kept at the office of the Company and will be available at all times for inspection by the Directors.

75. All Directors of the Company shall all have the right to inspect any account, book, and document of the Company. Meetings of directors and shareholders may be recorded at the option of the chairperson, and the chairperson shall advise the participants at the beginning that they are being recorded. Any audio recording of any meeting of the Board of Directors shall be kept for a period of sixty (60) days and shall be transcribed during this period. Any Director who disputes the transcript of a Board meeting shall have the right to verify his or her audio recording in the presence of two (2) Directors appointed by the Board of Directors provided that these two (2) Directors attended the said Board meeting. Any audio recording of any meeting of shareholders must be kept for a period of three (3) months and must be transcribed during this period. No shareholder, other than, a Director shall have the right to inspect any account, book, or document of the Company, except if the law grants him this right or if the Board of Directors of the Company authorizes it.

76. At each annual general meeting, the Directors shall submit to the Company financial statements including:

a) A statement of income and expenses for the current period as well as the previous period.

b) A balance sheet as of October 31 of the current year and the previous year, signed by two (2) Directors, with the date on which the profit or loss was accounted for, accompanied by an annual report of the Directors, the state of affairs of the company and the amount, if any, they propose for the reserve fund, general reserve, or reserve account specifically shown on the present or subsequent balance sheet.

77. A copy of the statement of results, balance sheet and annual report will be sent to all shareholders at least ten (10) days before the general meeting is held.

78. The auditor shall examine the financial statements of the Company and shall make a report to the shareholders on such statements. The auditor's report shall contain the following:

a. A statement as to the scope, extent and nature of the auditor's examination;

b. A statement as to whether, in the auditor's opinion, the financial statement, including any notes to the financial statement, presents fairly the financial position of the company; and

c. A statement of any concerns or qualifications the auditor has with respect to whether the financial statement was drawn up according to generally accepted accounting principles and generally accepted auditing standards.

NOTICE

79. Any notice must be given by the Company to any shareholder or Director (i) by post to the last mailing address in the records of the Company, or (ii) by e-mail if an e-mail address was provided to the Company. Any notice given by post shall be deemed to be received by the shareholder or Director at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or Director did not receive the notice or document at that time or at all, and any notice given by e-mail shall be deemed to have been sent and received immediately.

INDEMNITY

80. Unless otherwise specified, each Director, General Manager, Secretary-Treasurer, employee, or volunteer in the service of the Company, will be indemnified against all legal losses or expenses. It shall be the duty of the Directors to pay any legal losses or expenses with the funds of the Company, in the event that any Director, General Manager, Secretary-Treasurer, employee or volunteer in the service of the Company suffers or becomes liable to by reason of any contract signed legally , or thing done by him as a Director, General Manager, Secretary-Treasurer, employee or volunteer in the service of the Company or in any way in which a person is removed from office, including travel expenses.

81. No Director of the Company shall be liable for the acts, receipts, negligence or default of any other Director or for furnishing receipts or other conforming act, or for any loss or expense of the Company by the failure or deficiency of title to any property acquired by order of the directors in the name of the Company or for insufficiency or deficiency of any funds in which the money of the Company will be invested or for loss or damage arising out of bankruptcy or the bankruptcy or misdeeds of any person whose money, funds or property will be deposited or for any loss occasioned by error in judgment or omission on his part or for any other loss, damage or misfortune which may occur in performance of the duties of his office, unless such person has committed an illegal act.

ARTICLES OF ASSOCIATION OF
LA SOCIÉTÉ FRANCO-CANADIENNE DE CALGARY

AMENDMENTS TO THE STATUTES AND REGULATIONS

82. Any of the articles of the Articles of Association or Bylaws may be repealed or amended by an annual general meeting or a special meeting of the SFCC by a vote of at least seventy-five percent (75%) of the shareholders of the SFCC present, if there is a quorum.

83. The proposed changes will be sent to the members at the same time as the Notice of Meeting for the annual general meeting or for a special meeting at least twenty-one (21) days in advance, accompanied by the Agenda.

84. To be considered, an amendment must be submitted, in writing, to the Board of Directors in advance, so that the Board of Directors can make a recommendation to the general meeting or special meeting for the adoption or rejection of the amendment in question.

85. A change passed at a general or special meeting of the SFCC will not become effective until the change has been registered with the Registrar of the Government of Alberta in accordance with the procedures set out in the Act.

BEAUCHEMIN PARK

About an hour south of Calgary, Parc Beauchemin Campground is located in the Millarville area. Located in the heart of cowboy country, at the foot of the Rocky Mountains and bordering Three Point Creek, Parc Beauchemin offers a peaceful haven for French-speaking campers of all ages.

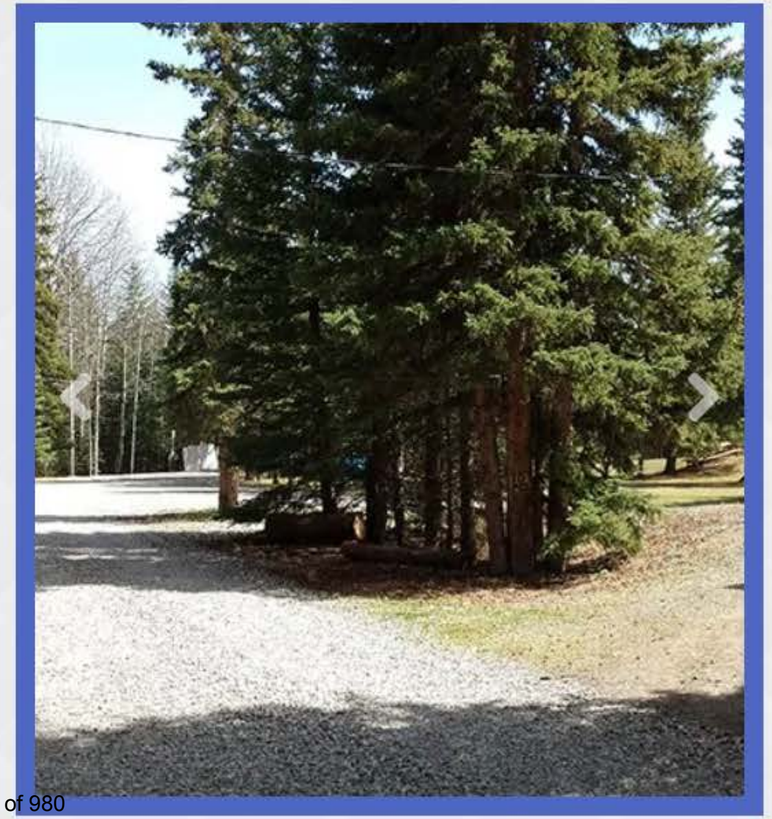
Two options are available:

Seasonal rental:
Seasonal rental is for those who wish to install their RV more or less permanently. For your comfort, you can add installations that comply with the regulations. For more information, click on the "Seasonal rental" tab.

Weekend Test:
Weekend trials are for individuals who want to become a shareholder and who want to familiarize themselves with our park and its facilities. Four lots are available for weekend trials. Click on the "Weekend Trial" tab to learn more.

For more information, contact 403-461-8565
or write to us at parc@sfcdecalgary.ca

Come meet us, camp for a weekend and familiarize yourself with the park and its facilities!



ALBERTA LAND SURVEYOR'S SITE SURVEY

AXIOM GEOMATICS LTD.
P: 403-472-7777 F: 403-775-2602
Email: info@axiomgeomatics.ca

Plan Showing Survey for
Site Survey

Plan 1306 JK
Block A

Address: 28802 2338 Drive W.
Foothills County, Alberta.

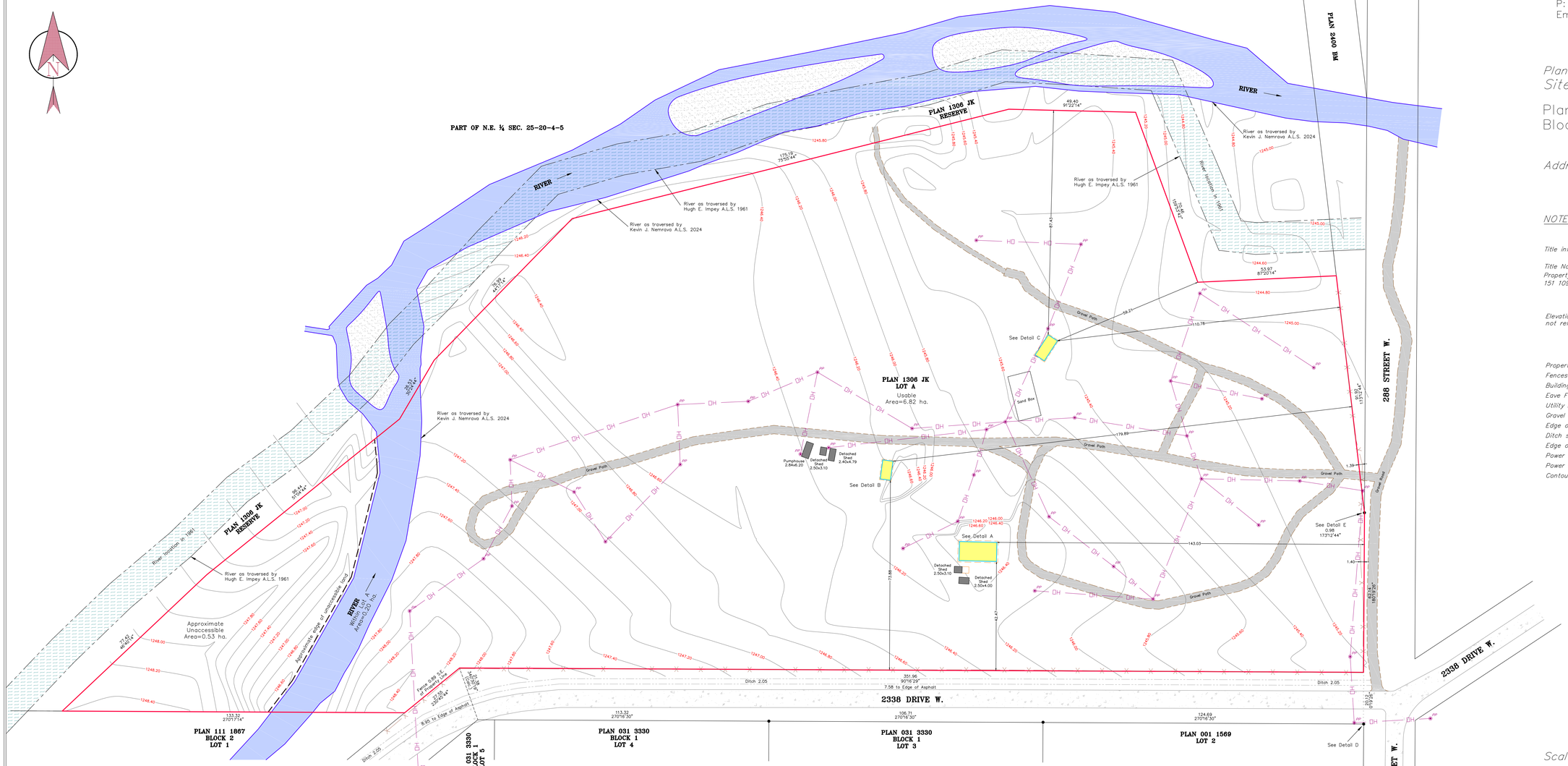
NOTE

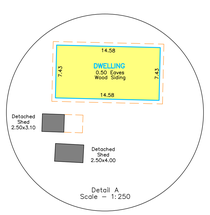
Title information is based on a Title Search dated April 2nd, 2024

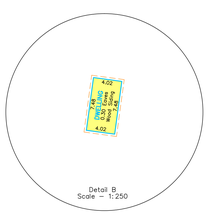
Title No: 168 B 82
Property is subject to:
151 109 792 UTILITY RIGHT OF WAY

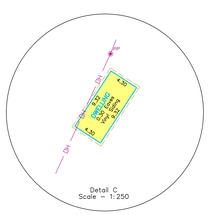
Elevations are local, based on GNSS single point positioning and not referenced to ASCMs

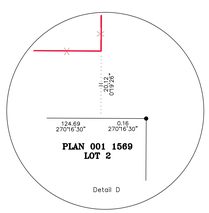
Property Boundaries of Parcel Affected shown thus:
Fences shown thus (not all fences may be shown):
Buildings shown thus:
Eave Fascia shown thus:
Utility Rights-Of-Way shown thus:
Gravel Path shown thus:
Edge of Asphalt shown thus:
Ditch shown thus:
Edge of River shown thus:
Power Line shown thus:
Power Pole shown thus:
Contours shown thus:

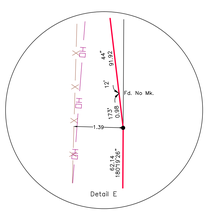












Lot A Area	
Total	7.55 ha.
Unaccessible	-0.53 ha.
Within River	-0.20 ha.
Usable Area	6.82 ha.

Scale : 1 : 500

This plan is not to be used for the establishment of boundaries and is intended for the purpose of applying for development permit only

This Site Survey makes no claims as to ownership relating to water boundaries

Dated this 22nd day of July, 2024.

ALBERTA LAND SURVEYORS ASSOCIATION
PERMIT NUMBER
P327
AXIOM GEOMATICS LTD.

AG File No : 7248

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About
Council
Services
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Assessments
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Flood Hazard Identification
Flood Scoping Study and Mitigation Program
Flood Recovery Erosion Control Program (FREC)
GIS - Geographic Information Systems
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Public Works
Regional Landfill

Flood Hazard Identification

The catastrophic flood event of 2013 brought flooding and flood hazard identification to the forefront in southern Alberta. There are measures being taken at both the provincial and municipal level to assist the public with identifying flood hazards and mitigating future flooding.

Government of Alberta Flood Hazard Identification Program

Updates as of June 21, 2019 - see below

To assist Albertans in mitigating potential flood losses, Alberta Environment and Parks (AEP) manages the production of flood hazard studies and mapping under the provincial Flood Hazard Identification Program (FHIP).

Flood hazard mapping identifies areas along water bodies where flood hazards exist using design flood levels. In Alberta the design flood level used is the one per cent flood event - events which have a one percent chance of occurring in any given year, (also sometimes referred to as the one in one hundred year flood).

The province's current flood hazard maps can be found on the Flood Hazard Mapping Application on the Government of Alberta's website here.

There are currently five river hazard studies being undertaken in Foothills County on the Bow River, Elbow River, the Highwood River, the Sheep River and Priddis and Fish Creeks. For detailed information please visit the Government of Alberta's website here.

The Bow and Elbow River Study

The Bow and Elbow River Study assesses 220 km of the Bow River and 70 km of the Elbow River

The study area covers the Bow River between Bearspaw Dam and the Highwood River confluence, and the Elbow River between Bragg Creek

Rural Addressing - 911
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Utilities
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Events at a glance

< October 2020 >

S	M	T	W	T	F	S
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

and the Bow River confluence.

Alberta Environment and Parks - Bow and Elbow River Hazard Study Update Notice - May 11, 2020

Alberta Environment and Parks - Bow and Elbow River Hazard Study Update Notice - June 21, 2019

Alberta Environment and Parks - Bow and Elbow River Hazard Study Update Notice - March 16, 2018

Alberta Environment and Parks - Bow and Elbow River Hazard Study Update Notice - March 21, 2017

Siksika Bow River Hazard Study

The Siksika Bow River Hazard Study will assess and identify river and flood hazards along 215 km of the Bow River downstream of the Highwood River confluence.

The study area includes Siksika Nation, Foothills County, Rocky View County, Vulcan County, Wheatland County, and County of Newell, including Bow City.

Alberta Environment and Parks - Siksika Bow River Hazard Study Update Notice - May 11, 2020

Alberta Environment and Parks - Siksika Bow River Hazard Study Update Notice - June 21, 2019

Alberta Environment and Parks - Siksika Bow River Hazard Study Update Notice - March 16, 2018

The Highwood River Study

The Highwood River Study includes 90 km of the Highwood River and 10 km of the Little Bow River

The study area on the Highwood River extends from upstream of Longview to the confluence with the Bow River and includes 10 km of the upper Little Bow River.

Alberta Environment and Parks - Highwood River Hazard Study Update Notice - May 11, 2019

Alberta Environment and Parks - Highwood River Hazard Study Update Notice - June 21, 2019

Alberta Environment and Parks - Highwood River Hazard Study Update Notice - March 16, 2018

Alberta Environment and Parks - Highwood River Hazard Study Update Notice - March 21, 2017

The Sheep River Study (Sheep River and Threepoint Creek)

The Sheep River Study assesses 50 km of the Sheep River and 35 km of Threepoint Creek

The Study area on the Sheep River extends downstream from approximately 336 Street West to the confluence with the Highwood River.

The Study area on Threepoint Creek begins at approximately 272 Street West and extends to the confluence with the Sheep River.

Alberta Environment and Parks - Sheep River Hazard Study Update Notice - May 11, 2020

Alberta Environment and Parks - Sheep River Hazard Study Update Notice - June 21, 2019

Alberta Environment and Parks - Sheep River Hazard Study Update Notice - March 16, 2018

Alberta Environment and Parks - Sheep River Hazard Study Update Notice - March 21, 2017

The Priddis River Study (Priddis Creek and Fish Creek)

The Priddis River Hazard Study will identify and assess river-related hazards along 30 km of Fish Creek and 15 km of Priddis Creek.

The study area includes Foothills County, Priddis, and Priddis Greens. This Study is being co-funded through the National Disaster Mitigation Program (NDMP) with support from Foothills County.

Alberta Environment and Parks - Priddis River Hazard Study Update Notice - May11, 2020

Alberta Environment and Parks - Priddis River Hazard Study Update Notice - June 21, 2019

Alberta Environment and Parks - Priddis River Hazard Study Update Notice - March 16, 2018

Foothills County's Flood Hazard Protection Overlay District

Foothills County's Land Use Bylaw 60/2014 created a new land use district in order to to provide for the safe and efficient use of lands within the floodway and flood fringe of all the rivers, streams, creeks and waterways.

The overlay district exists over top of a property's existing land use and includes areas within provincially mapped floodways and flood fringe as well as areas believed to have been impacted by the flood event of

2013.

The intent of this district is to discourage new development on lands subject to flooding and achieve the long term goal of maintaining or decreasing the overall density of development on lands that may be subject to flooding.

In the Flood Hazard Protection Overlay, the permitted and discretionary uses listed in the land use district in which the site is located shall continue to apply if supported by engineering and technical studies and are able to meet all applicable development requirements.

Foothills County River Modelling Projects

With the support of the Government of Alberta, Foothills County has retained the services of Advisian to produce detailed river modelling on the Highwood and Little Bow Rivers as part of the *Scoping Study of Flood Related Areas of Concern on the Highwood River and Little Bow River within Foothills County.*

For more information on this project please see the Flood Scoping Study and Mitigation Program page.

Foothills County
309 Macleod Trail
Box 5605
High River, Alberta
T1V 1M7

Tel: 403-652-2341 or
403-931-1905
Fax: 403-652-7880 or
403-652-6900

Hours:
Monday - Friday, 8:30
am - 4:30 pm

After Hours
Emergency Number:
1-888-808-3722

MUNICIPAL DISTRICT OF FOOTHILLS NO. 31
FLOOD MITIGATION
UTILITY RIGHT OF WAY AGREEMENT

This Utility Right of Way Agreement dated this 17 day of March. 2015 ~~2014~~

Whereas:

LA SOCIETE FRANCO CANADIENNE DE CALGARY
#102, 1809 – 5TH STREET SW
CALGARY, AB
T2S 2A8

(the "Grantors") are the registered owners of an estate in fee simple in those lands being legally described as follows:

PLAN 1306JK
BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA 7.55 HECTARES (18.66 ACRES) MORE OR LESS

(the "Lands")

DOES HEREBY, in consideration of the sum of one dollar ($1.00) DOLLAR(S) paid to the Grantor(s), the receipt and sufficiency whereof is hereby acknowledged, and in consideration of the covenants and conditions herein contained, grant and transfer unto the **Municipal District of Foothills No. 31** (the "Grantee") and its respective successors and assigns the right, license, privilege, liberty and easement to enter upon the Lands, to access the river bank for the purpose of constructing, inspecting, maintaining, replacing, repairing and remediating the bank and undertaking and carrying out flood mitigation, remediation and/or flood control measures pursuant to the Grantee's Flood Recovery and Erosion Control Program (hereinafter called the "Purpose"), on the following terms and conditions, namely:

1. This Right-of-Way and the rights and privileges hereby granted shall commence upon signing and shall be covenants running with the Lands.

2. The rights and privileges hereby granted shall be subject to the following terms and conditions, namely:

   (a) There shall be included in the said Grant all things necessary and incidental to the full enjoyment of the rights and privileges hereby specifically granted;

   (b) Neither the Grantor nor the Grantee or their respective successors or assigns shall use or permit to be used the Right-of-Way in any manner so as to interfere with the use and enjoyment thereof by both parties to the extent that each is entitled to use and enjoy the same, and each party shall use and enjoy the Right-of-Way in common and without

hindrance, molestation or interruption on the part of the other party or any firm, person or corporation claiming by, through, under or in trust for such party; and

(c) The rights, privileges, and easements herein granted shall be restricted to the Grantee, its agents, employees, contractors, and volunteers gaining access to the Right-of-Way with or without vehicles, machinery and equipment for the purposes set out herein.

3. Upon the commencement of the Term and at all times during the Term, the Grantee or any person, firm or corporation, or anyone claiming by, through, under or in trust for the Grantee, or any of them, may enter upon or occupy the Right-of-Way as agents, servants, employees, contractors or volunteers for the Purpose as aforesaid.

4. The Grantor agrees that the Grantee performing and observing the covenants and conditions as herein contained shall peaceably hold and enjoy all the rights, privileges, liberties and covenants hereby granted without any hindrance or interruption from the Grantor or any person or persons claiming by, through, under, or in trust for them or any person or persons whatsoever.

5. Neither the Grantor(s) nor the Grantee shall excavate, drill, install, erect or permit to be excavated, drilled, installed or erected over, under or through the said Right-of-Way any pit, foundation, building or other structure or installation without the prior written consent of the other party.

6. The Grantee covenants with the Grantor(s) as follows:

(a) The Grantee will at all times hereafter indemnify and keep the Grantor(s) indemnified against all actions, claims and demands which may be lawfully brought or made against the Grantor(s) by reason of any breach of this Agreement by the Grantee, anything done or not done by the Grantee or its agents, servants, employees, contractors or volunteers during the exercise or the purported exercise of the access right, license, privilege and easement hereby granted including negligence by the Grantee or its agents, servants, employees, contractors or volunteers in the exercise of the access right, license, privilege and easement hereby granted; and

(b) The Grantee and its successors and assigns will compensate the Grantor(s) and its/his/her/their successors and assigns for any damage or wear and tear caused to the Grantor's Land and the Right-of-Way with the exception of normal wear and tear occasioned by the lawful use by the Grantee or its agents, servants, employees, contractors or volunteers of the Grantor's Land and the Right-of-Way and the use and enjoyment of the rights herein granted.

7. The Grantor(s) agree(s) that any improvements constructed, installed and maintained over, under and through the Right-of-Way by the Grantee shall remain chattels and shall remain the sole and exclusive property of the Grantee.

8. If any part of this Agreement shall be void or unlawful for any reason whatsoever such part shall be severable from this Agreement without affecting or derogating from the validity and enforceability of the remainder thereof.

9. The parties hereto shall execute and make such other assurances and instruments as may be necessary to secure to the Grantee the right to use and enjoy as aforesaid, in common with the Grantor(s), the Right-of-Way and all roadways, passageways, entrances and other improvements therein or thereon.

10. The Grantor(s) and Grantee mutually covenant and agree each with the other that:

(a) This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their successors and assigns;

(b) Whenever the singular or masculine pronouns are used throughout this Agreement, the same shall be construed as meaning the plural, the feminine or the neuter for the context, or as the parties so require;

(c) This Agreement and the covenants herein contained are and shall be covenants running with the Lands, and, as such, the Grantee is hereby authorized to register this Agreement against the title to the Grantor's Land.

11. Notices to either the Grantor or the Municipal District of Foothills No. 31 shall be given in writing and will be personally served, delivered or sent by registered mail to the following:

(a) For the Grantor: At the address indicated on the certificate of title for the Land; and

(b) For the Municipal District of Foothills No. 31 currently 309 MacLeod Trail, Box 5605 High River, Alberta, T1V 1M7, Attention: Planning and Development

12. The Municipal District of Foothills No. 31 will be entitled to register this Agreement or a caveat in respect of this Agreement against title to the Lands.

IN WITNESS WHEREOF the Parties have hereunto affixed their corporate seals, as witnessed by the hands of their proper officers duly authorized in that behalf this 17 day of March 2014.S
VJM.

[redacted]
Witness

[redacted]
Witness

GRANTOR:

Danielle L. Racicot President

Secretary
(Seal)

MUNICIPAL DISTRICT OF FOOTHILLS NO. 31

Per: _____

Per: _____
(Seal)

Form 31.1

LAND TITLES ACT
(Section 161)

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

I. Danielle Lamoureux / Yvette Gauvreau of the SFCC of Calgary, make oath and say:

1. I am an officer or a director of Société Franco-Canadienne de Calgary named in the within or annexed instrument (or caveat).

2. I am authorized by the corporation to execute the instrument (or caveat) without affixing a corporate seal.

SWORN BEFORE ME AT CALGARY.
IN THE PROVINCE OF ALBERTA
THIS 18TH DAY OF MARCH, 2015

[redacted]

A Commissioner for Oaths in and for the
Province of ALBERTA

Print Name SHANE THOMAS MACMURCHY.
My commission expires 16 AUG year 2015.

SHANE THOMAS MACMURCHY
A Commissioner for Oaths
in and for the Province of Alberta
My Commission expires August 16, 2015
Appointee # 0698825

foip | Freedom of Information and Protection of Privacy Act

Authorization of Representative

I, Danielle Lauziere

living at [redacted] in the province of [redacted]

authorize Yvette Louise Gourdinne

living at [redacted] in the province of [redacted]

as my personal representative to act on my behalf, and to exercise:
(select one)

- ☐ all my rights under the *Freedom of Information and Protection of Privacy Act*
- ☐ my right to access all my records containing personal information in all categories of personal information
- ☐ my right to access all of the following records containing personal information or all of the following categories of personal information *(number and titles of records or categories)*:
- ☒ the rights that I have under the *Freedom of Information and Protection of Privacy* Act regarding the following other matters *(e.g. consent to disclose personal information)*:

I confirm that my representative has the authority to exercise the above right(s) under the Act for me.

This authorization will be in effect until [redacted]

Signed [redacted] in the presence of [redacted]

(See Affidavit of Witness form to complete)

Affidavit of Witness

CANADA

IN THE PROVINCE OF ALBERTA

I, Yvette Louise Goudimme
Name of the Witness in Full

Retired
Occupation of Witness

of [redacted]
Complete Home Address of Witness

in the province of [redacted], make oath and say that:

1. I was personally present and I saw Danielle Lanniere
Name of Individual
sign the Authorization of Representative form to which this is attached.

2. The Authorization of Representative form was signed by Danielle Lanniere
Name of Individual
at [redacted], in the province of Alberta
and that I am the one who witnessed the form.

3. I know Danielle Lanniere and I believe that he/she is
Name of Individual
18 years of age or older

[redacted]
Signature of Witness

Sworn before me at CALGARY
in the province of ALBERTA
on 18TH MARCH 2015

SHANE THOMAS MACMURCHY
A Commissioner for Oaths
in and for the Province of Alberta
My Commission expires August 15, 20 15
Appointee # 0698825

Commissioner for Oaths

SHANE THOMAS MACMURCHY
Print Name

16 AUGUST 2015
Expiry Date of Commission

SA 121 (2009/05)

Page 10 of 1

DEPARTMENT
OF THE ENVIRONMENT
GOVERNMENT OF ALBERTA

WATER RESOURCES DIVISION
JOHN J. BOWLEN BUILDING
620 - 7th AVENUE S.W.
CALGARY 2, ALBERTA

FILE:
TELEPHONE: (403) 268-8329

October 14, 1971

Mr. T. Motil
Secretary
Foothills Municipal Planning Commission
High River, Alberta.

Dear Sir;

Re: Proposed Recreational Development
NE. 25-20-4-W5 - S½ L.S.D. 16
Societe Franco Canadienne

I would refer you to my letter of June 18, 1970, concerning the above. We have recently been contacted by Mr. A. Comeault of the Societe Franco Canadienne. He was inquiring as to what type of recreation development we would be prepared to recommend for the above parcel and under what conditions. We therefore undertook a more detailed flood plain study of the area, the results of which I would like to pass on to you.

Basically our estimation that the parcel was in the flood plain of Threepoint Creek was correct. The bank-full discharge of the main channel is about 2000 c.f.s. which has a return period of once in 2-3 years. Discharge above this will begin filling all the small high water channels running through the flood plain. The channel and flood plain are rather constricted at cross-section (c.s.) D (see attached plan) where the distance between the road and the north valley wall is about 400 ft. This distance increases to 1200 ft at C.S.A. The road-way at C.S.D. will be overtopped at a discharge of 9000 - 1100 c.f.s. which has a return period of about once in 25 years. The entire floodway would be filled with water at this discharge, while downstream, because of the much larger flood plain, water would dissipate itself over a wider area. This factor would not

../2

reduce the flood height at C.S.C. to C.S.A. because water running in the flood plain could be 2-3ft. higher than in the main channel, primarily because water can enter the flood plain at a high level upstream at C.S.D. In addition when water overtops the roadway at C.S.D. it would run through the flood plain area south of the road and probably re-enter the main floodway at C.S.B.

In view of our study we would recommend that the following restrictions be placed on any development on the parcel:

(1) No residential development should be permitted

(2) Any recreational development, such as a club house, should be restricted to a strip within 100 ft. of the east-west road, and should either have the floor elevation 2 feet above the top of the road elevation or could be built at existing ground level provided the foundation and building are solidly anchored and that during any flood, water is permitted to enter the building to reduce the buoyancy effect.

We have included restriction # 2 because of our concern that, we do not want large objects being torn out or uplifted during a flood and swept downstream, in the process taking out a bridge or causing other damage.

I trust the above information will be of use to your Municipal Planning Commission when considering future development of this property.

Yours truly,

R J Hilton

R.J. Hilton, P. Eng.,
Regional Administrator.

RJH/ld
c.c. Mr. A. Comeault
619 Poplar Road S.W.

THIS AGREEMENT MADE EFFECTIVE this 19th day of April, 2024.

BETWEEN:

LA SOCIETE FRANCO-CANADIENNE DE CALGARY
(hereinafter referred to as the "Owner(s)")

OF THE FIRST PART

-and-

FOOTHILLS COUNTY
(hereafter referred to as the "Municipality")

OF THE SECOND PART

WHEREAS: the Owner(s) is the registered owner of the lands (hereinafter referred to as "the Lands") municipally known as **288002 – 2338 Drive W.**, being **Plan 1306JK, Block A; Ptn. NE 25-20-04 W5M**, Foothills County.

AND WHEREAS the Owner(s) has (have) made application for Municipal permits for the following described development to be located on the aforementioned land in accordance with the provisions of the Land Use Bylaw No. 60/2014 as amended:

Development Permit Application 23D 048 to allow for:
Campground, Major; Private Amenity Space; Utility Services, Minor; Special Events

AND WHEREAS the Municipality has approved the said application of the Owner(s) for permits, subject among other conditions to the Owner(s) entering a Flood Release Agreement with the Municipality, the terms and condition of which are hereafter set out.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING, the Owner(s) and the Municipality covenant and agree as follows:

1. The Owner(s) indemnifies and holds harmless the Municipality against the cost of any claims or actions, or awards for loss or damage to the Owner(s) arising out of flooding or inundation of the lands;

2. The Owner(s) acknowledge(s) that this Agreement is a covenant running with the lands and the Owner(s) undertake(s) to inform all future owners or occupants of the land of said Agreement;

3. The Owner(s) and the Municipality shall not take any action either jointly or individually that would result in the modification of this agreement unless consent of the approving authority has first been obtained;

4. This agreement shall be binding upon and shall endure to the benefit of the Owner(s) and the Municipality and their respective successors and assigns.

IN WITNESS WHEREOF both parties have hereunto set their hand:

FOOTHILLS COUNTY

at The Town of High River, this 22nd day of April, 2024.

DIRECTOR OF PLANNING

OWNER(S)

at THE TOWN OF HIGH RIVER, this 19TH day of APRIL, 2024.

[redacted]
LANDOWNER NAME

[redacted]
LANDOWNER NAME

[redacted]
WITNESS

AFFIDAVIT OF EXECUTION

CANADA
PROVINCE OF ALBERTA
TO WIT:

I, Brenda Bartnik
of Okotoks
in the Province of Alberta, MAKE OATH AND SAY:

1. That I was personally present and did see Stella Bergeron named in the within (or annexed) Instrument who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.

2. That the same was executed at High River in the Province of Alberta, and that I am the subscribing witness thereto.

3. That I know the said parties and they are in my belief of the full age of 18 years.

SWORN BEFORE ME at The Town of High River

WITNESS

in the Province of Alberta, this
19th day of April, 2024

A Commissioner for Oaths in
and for the Province of Alberta

SAMANTHA LYNN PAYNE
A Commissioner for Oaths
in and for Alberta
My Commission Expires December 11, 2025

FORM 31.1

LAND TITLES ACT
(Section 152.3)

AFFIDAVIT VERIFYING
CORPORATE SIGNING AUTHORITY

I, Stella Bergeron of Calgary make oath and say:

1. I am an officer or a director of Societe Franco Canadienne Calgary named in the within or annexed instrument (or caveat).

2. I am authorized by the corporation to execute the instrument (or caveat) without affixing a corporate seal.

SWORN before me at The Town of High River
in the Province
of Alberta this 18th day of April 2024.

[redacted]
(Signature)

A Commissioner for Oaths in and for
the Province of Alberta

My commission expires

SAMANTHA LYNN PAYNE
A Commissioner for Oaths
in and for Alberta
My Commission Expires December 11, 2025

DEVELOPMENT PERMIT DECISION

DATE OF DECISION: January 3rd, 2024

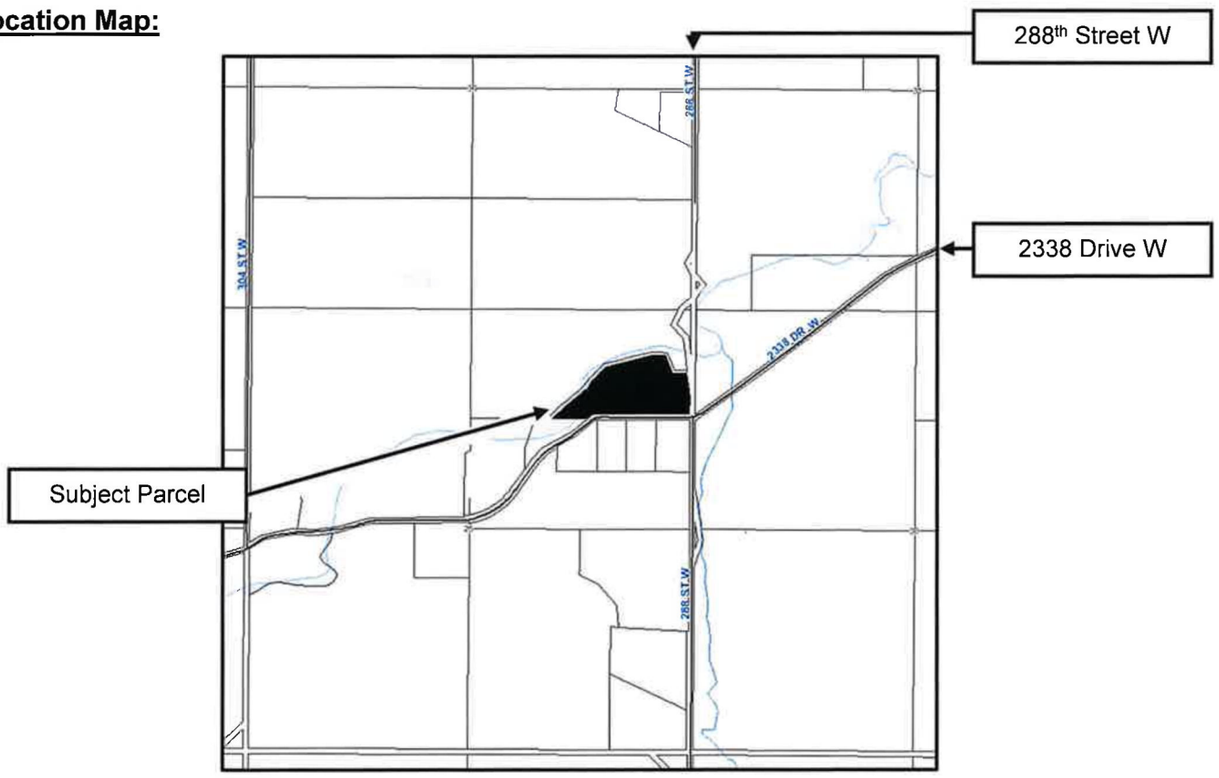
THIS IS NOT A DEVELOPMENT PERMIT OR BUILDING PERMIT. PLEASE REFER TO THE NOTES SECTION BELOW FOR ADDITIONAL INFORMATION.

APPLICATION FILE NUMBER: 23D 048
LANDOWNER(S)/APPLICANT(S): LA SOCIETE FRANCO-CANADIENNE / TOWNSHIP PLANNING + DESIGN INC.
PROPOSAL DESCRIPTION: CAMPGROUND, MAJOR; PRIVATE AMENITY SPACE; UTILITY SERVICES, MINOR; SPECIAL EVENTS
LEGAL DESCRIPTION: PTN. NE 25-20-04 W5M; PLAN 1306JK, BLOCK A

LOCATION AND DESCRIPTION OF SUBJECT PARCEL:

The subject property is an existing 18.66 acre Recreation District parcel located on the northwest corner of the intersection of 2338 Drive and 288th Street west.

Location Map:



INTENT OF THE DEVELOPMENT PERMIT APPLICATION:

At its November 15th, 2023 meeting, Foothills Council gave third and final reading to Bylaw 18/2023, which authorized the redesignation of this property to Recreation District, including a Site Specific Amendment; to bring development on the property into compliance under the County's Land Use Bylaw and allow for the continued operation of Parc Beauchemin: private campsites and a meeting place for the local Francophone community.

In addition to the Uses noted under the Recreation District (sec 16.1 Land Use Bylaw No. 60/2014), the Site Specific Amendment allows for:

1. Relaxations to the Minimum Yard Setback Requirements and Corner Parcel Restrictions under the Recreation District;
2. Country Recreational Center/Lodge as a Discretionary Use, rather than a Permitted Use;
3. Variance to the Criteria Used in Evaluating Campground, Major Development which specifically includes:
    i. Allowance for year-round storage of Recreation Vehicles and Accessory Buildings;
    ii. An on-site caretaker is not required;
    iii. Structural Improvements on the campsites and variance to the allowable number and square footage of Accessory Buildings permitted on a property without requiring a development permit;
    iv. Camping sites and/or related ancillary structures located as illustrated in the approved site plan, as per the site reviews submitted with this application for development permit, and in accordance with Council direction regarding the removal of sheds and decks as the sites change leaseholders.

This criteria is reflected within the conditions and requirements contained herein.

The application for a Development Permit in accordance with the provisions of Land Use Bylaw 60/2014 and Bylaw 18/2023 of Foothills County in respect of the operation of a Campground, Major; Private Amenity Space; Utility Services, Minor; and Special Events; on the subject parcel being a portion of NE 25-20-04 W5M; Plan 1306JK, Block A; has been considered by the Development Officer and is **APPROVED** subject to the following.

APPROVAL DESCRIPTION:

Upon completion of the below pre-release condition, this approval allows for the development and use of Ptn. NE 25-20-04 W5M; Plan 1306JK, Block A for:

1. Campground, Major, as per the site plan dated May 1, 2023 Project 2021-004, including:
    a. 50 seasonal campsites for La Société Franco-Canadienne de Calgary members & their invited guests
    b. 3 weekend-only campsites for use by guests
    c. Occupancy for not more than 200 consecutive days per year between May 1st to October 31st
2. Private Amenity Space; Utility Services, Minor (Private):
    a. Pumphouse - 204 sq. ft. & Tool Sheds - 442 sq. ft. in total
    b. Common washroom(s) – 325 sq. ft.
    c. Water, wastewater, and electrical servicing
    d. Hall – 1,200 sq. ft.
    e. Recreation room(s) – having a cumulative total area of 434 sq. ft.
    f. Playground
3. The year-round storage of Recreation Vehicles and Accessory Buildings
4. Day use of the on-site Private Amenity Space(s) by local community groups to share the francophone culture – 3 times annually
5. Exceptions to the Minimum Yard Setback Requirements under the Recreation District

PRE-RELEASE CONDITION(S):

*Pre-release condition(s) must be complied with before the Development Permit will be signed and issued. Failure to complete the pre-release condition(s) on or before **June 3rd, 2024** will see this development permit decision deemed null and void, unless a time extension is issued under agreement between the Development Authority and the Applicant(s).*

1. The applicant is required to submit a refundable security deposit in the amount of $3,000 to ensure compliance with the Building, Safety, and Fire Codes. This deposit will be refunded at such time that required permits and inspections for the existing development have been obtained and the related buildings and facilities have been verified to be suitable for intended use and occupancy;
2. The landowner is to enter into a Flood Hold Harmless agreement with the County.

CONDITIONS OF APPROVAL:

The following requirements must be completed within twenty-four (24) months from the date the Development Permit is signed and issued unless a time extension is approved under agreement between the Development Authority and the Applicant(s). Failure to complete the conditions of approval will see the Development Permit be deemed null and void.

1. The development shall be executed in accordance with all conditions of approval and plans that have been acknowledged by the municipality to be appropriate;
2. All necessary building and safety code permits and inspections for the development are to be obtained from the County. This includes any required approvals for the existing Private Amenity Space(s) and existing Utility Services buildings as well as any certification for existing wood stove installations, to the satisfaction of the County's Safety Codes Officer;
3. The applicant is to illustrate that water and wastewater facilities meet all requirements of the applicable authority(ies) holding jurisdiction;
4. It is the applicant's responsibility to contact the County's Fire Inspector and obtain all necessary approvals and inspections;
5. A secondary (emergency) approach to the property is to be established, to the satisfaction of the County's Public Works department. Please contact Foothills Public Works for requirements, prior to construction;
6. An Emergency Response Plan that provides extra consideration to environmental emergencies (ie: overland flooding and wildfire); and public evacuation is to be submitted for review and acceptance by the County;
7. The applicant shall provide written notification to the Development Authority upon completion of the development, as approved herein;
8. The applicant is responsible for payment of any professional costs including legal fees that may be incurred by the County with respect to the development approved on this permit.

ADVISORY REQUIREMENTS:

The following requirements are provided by Foothills County to inform the applicant(s) and landowner(s) of their necessity. It is the responsibility and liability of the applicant(s) and landowner(s) to ensure adherence with these requirements for the life of the development.

1. This approval wholly replaces any previously issued Development Permit specific to the subject property;
2. The landowner is responsible and accountable for all development on this property. The landowner shall inform all persons occupying the property of their responsibilities with respect to this permit and the requirements for obtaining permits and inspections for structure on the property.
   The landowner agrees to indemnify and hold Foothills County harmless from any and all third party claims, demands, or action for which the application is legally responsible, including those arising out of negligence or willful acts by the landowner or the landowner's employees or agents;
3. The development is to be maintained in accordance with all conditions of approval, advisory requirements and plans that have been acknowledged by the municipality to be appropriate and as per this application for development permit and those conditions contained herein. **Any revisions and/or additions to the development and use of this land shall not proceed except under benefit of appropriate approvals and permits;**

4. Excepting campsites 42, 43, 45 (creekside); 20, 21, 22, 23, 44, 52, 53, 54, 55 (south boundary); and 1a, 2a, 3a (guest camping); the following amenities may be located on each campsite.
Requirements to obtain any required building and safety code permits and inspections apply:
    a. one registered/licensed Recreation Vehicle
    b. one enclosed deck, with a hard/rigid roof having a maximum area of up to 592 sq.ft. (including the Recreation Vehicle), and a width of not more than 10 ft.

       A minimum of 50% of the outer walls must be open (windows, mosquito net and glass doors are considered part of the open surface).

       No more that 3 sides may be closed, and the side that adjoins the Recreation Vehicle must be 75% open, at minimum.

       The floor must be No more than 60 cm above ground.
    c. one three-sided firewood shelter having a maximum area of 32 sq. ft. and a maximum height of 6 ft.
    d. two prefabricated sheds having an area of no greater than 100 sq. ft. each
    e. fencing on the property is to comply with the Foothills Land Use Bylaw
    f. wood stove
    g. connection to power service
    h. individual in-ground wastewater tank (pump out)
    i. connection to communal non-potable water service
    j. connection to electric service
    k. additional occasional visitor units (Recreation Vehicle/tent(s))
    l. fire pit

   Development recorded as existing at the date of this decision may remain as non-conforming until such time that:
    a. it is appropriate to deal with them in accordance with Section 642 of the Municipal Government Act and the Land Use Bylaw and/OR
    b. the current tenant/leaseholder vacates the campsite;

   Exceptions:

   One only stand-alone Recreation Vehicle may be temporarily located on those campsites located creekside, south boundary, and/or on a guest camping site. No other development is permitted to be located on these sites.

   Ancillary development located on these sites as of the date of this decision may remain as non-conforming until such time that:
    c. it is appropriate to deal with them in accordance with Section 642 of the Municipal Government Act and the Land Use Bylaw and/OR
    d. the current tenant/leaseholder vacates the campsite;
5. Minimum Yard Setback Requirements and Environmental Considerations for campsites adjacent to a waterbody. *The County holds no responsibility respecting any impact in the event of future road widening requirements*;
    a. Campsites are permitted to be located:
        i. 4.7m from the east property line at nearest point;
        ii. 2.0m from the north property line at nearest point;
    b. Stand-alone Recreation Vehicles may be temporarily located within the prescribed setback distances (LUB 60-2014 – 16.1 and 9.27) on south boundary and creekside campsites. All other development must meet municipal setback requirements.

   Exceptions:

   Existing development located on creekside and south boundary campsites at the date of this decision may remain as non-conforming until such time that:
    a. it is appropriate to deal with them in accordance with Section 642 of the Municipal Government Act and the Land Use Bylaw and/OR
    b. the current tenant/leaseholder vacates the campsite;
6. Development shall comply with the requirements of the applicable Building, Safety and Fire Codes at all times;
7. As included within the application for development permit, Special Events included under this approval do not include for profit and/or fundraising events, nor commercial events with the public in attendance that extend beyond La Société Franco-Canadienne de Calgary members & their invited guests. Events proposed to exceed the approval and these parameters shall not proceed prior to obtaining independent approval from the County;
8. Private Amenity and Country Recreational buildings are not to be used as a residence or for the purposes of overnight accommodation at any time;
9. Fire pits shall meet any applicable requirements of the County's Fire Bylaw, and it is recommended that all development observe the FireSmart guidelines and recommendations;
10. Development is to comply with the County's Community Standards Bylaw and Dark Sky Bylaw at all times;
11. The applicant is responsible to maintain an annual business license with Foothills County;

12. The development shall be wholly contained within the boundaries of the legally titled lot. Internal access roads, sufficient parking, and turnaround space shall be provided within the boundaries of the titled parcel. All laneways and loading areas must be kept free of all debris, materials and/or equipment, and it is the landowner's responsibility to ensure that access for fire department apparatus is provided for at all times;
13. There shall be no long-term storage of refuse or recyclable materials on the property, nor burning of waste materials on the property. Containers for garbage and recycling materials that are located outdoors shall be weatherproof and animal-proof and must be visibly screened from adjacent lands. Waste materials shall be disposed of at an approved waste disposal site;
14. Natural drainage of the property must be maintained. Alterations to natural drainage may proceed only under the authorization of an issued Development Permit for Lot Grading;
15. The issuance of a development permit by the County does not relieve the landowners of the responsibility of complying with all other relevant County bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land.
    This includes, but is not limited to:
    a. compliance with the requirements of Alberta Health Services
    b. compliance with the requirements of Alberta Environment and Parks respecting any impact of the development on the waterway; and application for the diversion of groundwater, if applicable.

NOTES:

1. **This is not a Building Permit**. Construction practices and standards of construction of any building or any structure authorized by the Development Permit, once signed and issued, must be in accordance with the Building and Safety Codes Permits. An application must be made for all required Building and/or Safety Codes Permits.
2. **This is not a Development Permit.** The Development Permit may be signed and issued upon completion of the 21-day appeal period; should no appeals be received, and completion of all Pre-Release Conditions (if any). Development can not proceed until this permit has been signed and issued.
3. Notification of this Development Permit Decision will be advertised in two issues of the Western Wheel and circulated to area landowners (according to County Records at this time) within the subject quarter-section and for one-half mile surrounding the subject parcel. Development Permit Notices can also be viewed on our website, ***www.foothillscountyab.ca.***
4. This Development Permit Decision is subject to a 21-day appeal period. Pursuant to Section 685(2) of the Municipal Government Act, a person affected by this decision has a right of appeal.
5. The Development Permit, once signed and issued, shall thereafter be null and void if the development or use is abandoned for a period of six months.
6. The conditions of this Development Permit Decision must be met and adhered to at all times. Fines and/or Enforcement action may occur if operating outside of the Development Permit Decision.

PLAN SHOWING SUBDIVISION

OF PART OF

LEGAL SUBDIVISIONS 15 & 16

SEC. 25 TWP. 20 RGE. 4 W. 5 th. M.

ALBERTA

1962

BY

HUGH E. IMPEY A.L.S.

SCALE: 1" = 100'

LEGEND

Statutory Iron Survey Posts planted are shown thus o

Area to be registered is shown outlined in Red. 20.34 AC.

SIGNATURE OF OWNER: L. H. Foster

I, Hugh E. Impey of the City of Calgary, in the Province of Alberta, Alberta Land Surveyor, make oath and say: That the survey represented by this plan has been made by me in accordance with the provisions of the Alberta Surveys Act; That this survey was performed between the dates of Aug. 11, 1961 and Mar. 17, 1962 and that this plan is correct and true and is prepared in accordance with the provisions of the Land Titles Act.

Hugh E. Impey
Alberta Land Surveyor

Sworn before me at the City of Calgary in the Province of Alberta this 16 day of May A.D. 1962

D. L. Fronnes
A Commissioner for Oaths in and for the Province of Alberta

I, W. Dowhaniuk of the City of Calgary, in the Province of Alberta, make oath and say: That I was personally present and did see: Leslie H. Foster named in this plan who is ~~(or are)~~ personally known to me to be the person~~(s)~~ named herein duly sign and execute the same for the purpose named herein, that the same was executed in the M.D. of Foothills #31 in the Province of Alberta and that I am the subscribing witness thereto, that I know the said Leslie H. Foster and (s)he is ~~(they are)~~ in my belief of the full age of Twenty-One (21) years.

Sworn before me at the City of Calgary in the Province of Alberta this 27 day of March A.D. 1962

W. Dowhaniuk
Witness

Hugh E. Impey
A Commissioner for Oaths in and for the Province of Alberta

CALGARY DISTRICT PLANNING COMMISSION
APPROVED A. [signature] DIRECTOR
DATE 16th May 1962
C.D.P.C. NO. YoH-254-4
FILE NO. 61-C-121

1306 JK


Parc Beauchemin
Write a description for your map.
Legend
2338 Dr W
Parc Beauchemin
Parc Beauchemin
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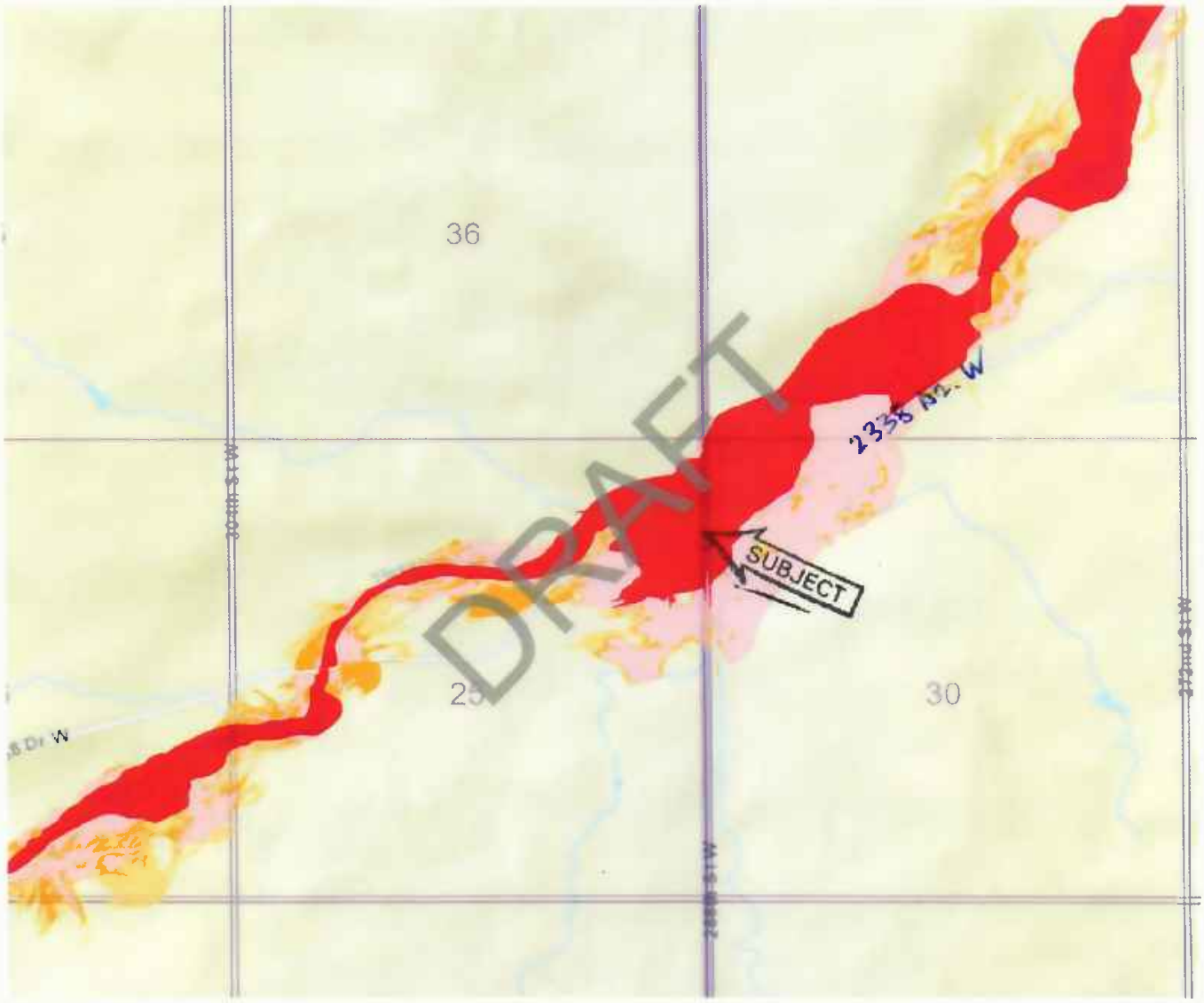
Township Rd 204A
288 St W
2338 Dr W
Google Earth
Image © 2024 Maxar Technologies
N
1000 ft

Flood Hazard Map



Design Flood

0 0.3 0.6 0.9 1.2 km

Design Flood

- Floodway
- Flood Fringe
- High Hazard Flood Fringe
- Protected Flood Fringe
- Overland Flow (Flood Fringe)

Note: Not all flood fringe zones have been defined for all studies

- Flood Berm

Larger Floods

- 1:200 Flood
- 1:500 Flood

Note: Larger floods are not part of the 1:100 Design Flood Hazard Area and may not be available for all areas

Map Projection: Mercator Auxiliary Sphere
Map Datum: World Geodetic System 1984
Flood Level Datum: Canadian Geodetic Vertical Datum of 1928

The flood information as depicted is subject to change, therefore the Government of Alberta assumes no responsibility for discrepancies at the time of use.

Flood Hazard Maps

Flood hazard maps define floodway and flood fringe areas for the 1:100 design flood. These maps are typically used for long range planning and to make local land use decisions, and are available to all levels of government and the public to help build resilient communities.

Flood Study Details

Sheep River Hazard Study

This study assesses and identifies river-related hazards along 60 km of the Sheep River upstream of the Highwood River confluence, and 35 km of Threepoint Creek upstream of the Sheep River confluence. The study area includes Diamond Valley, Okotoks, and Foothills County, including Millarville. Open water flooding is the design condition for this study. The design flow for the Sheep River ranges from 787 m^3/s at the upstream study extent to 1370 m^3/s at the Highwood River confluence. The design flow for Threepoint Creek ranges from 246 m^3/s at the upstream study extent to 616 m^3/s at the Sheep River confluence.

Study Status: Draft

Report Name: Sheep River Hazard Study - Multiple Reports

Report Author: Hatch Ltd., Calgary, Alberta

Report Date: February 2017 - March 2023

Limitations

The flood extents shown on this map are not expected to match previous floods due to different river flows, variations in local conditions, and assumptions made as part of the flood study. The flood mapping and other information presented were prepared in accordance with generally accepted engineering practices, using the best data available when the flood study was conducted. Information is subject to change, and the Government of Alberta assumes no responsibility for discrepancies at the time of use.

Contact Us

For more information about flood maps and the provincial Flood Hazard Identification Program please visit www.floodhazard.alberta.ca or email us at epa.flood@gov.ab.ca.

Current Land Assessment

Assessed Acres	= 16.77
Land Assessment	= $587,000
Rate Per Acre	= $33,239

Foothills County

Assessment Summary

As of: 16-Apr-2024

Roll: 2004257520
Legal: 1306JK A NE-25-20-4-5
Address: 288002 2338 Dr W
168B82

Land Area: 18.66 Acres
Subdivision:
Zoning: Cntry Residential
Actual Use: Improved Public Service / Recreational / Campground

		Asmt	Code	Value
Market Land Valuation	Site Area: 17.66 Acres	21	100%	587,000
Market Land Valuation	Site Area: 1.00 Acres	11	100%	0

Improvement Valuation

		Floor Area	Built	Asmt	Code	Value
Foundationless	Lot 1 - Dutchmen Fifth Wheel	224 Sq Feet	2000	11	100%	21,960
Foundationless	Lot 2 - Brown/White Trailer	192 Sq Feet	2000	11	100%	16,760
Foundationless	Lot 3 - Hideout Trailer	216 Sq Feet	2010	11	100%	15,300
Foundationless	Lot 4 - Surveyor Trailer	216 Sq Feet	2010	11	100%	25,650
Foundationless	Lot 5 - Beige Tarped Trailer	192 Sq Feet	2016	11	100%	35,180
Foundationless	Lot 6 - Green Tarped Trailer	192 Sq Feet	2005	11	100%	19,180
Foundationless	Lot 7 - Advantage Fifth Wheel	256 Sq Feet	2008	11	100%	34,230
Foundationless	Lot 8 - Vanguard Trailer	192 Sq Feet	2012	11	100%	26,770
Foundationless	Lot 9 - Titanium Fifth Wheel	256 Sq Feet	2010	11	100%	31,460
Foundationless	Lot 10 - Silver Tarped Trailer	192 Sq Feet	2005	11	100%	13,190
Foundationless	Lot 11 - Black Tarped Trailer	192 Sq Feet	2010	11	100%	29,150
Foundationless	Lot 12 - Black Tarped Trailer	208 Sq Feet	2015	11	100%	37,560
Foundationless	Lot 13 - Mallard Trailer	176 Sq Feet	2005	11	100%	18,920
Foundationless	Lot 14 - Shadow Cruiser Trailer	208 Sq Feet	2018	11	100%	30,900
Foundationless	Lot 17 - Faded Logo Fifth Wheel	224 Sq Feet	2004	11	100%	16,920
Foundationless	Lot 18 - Prowler Fifth Wheel	208 Sq Feet	2004	11	100%	15,880
Foundationless	Lot 21 - Scamper Trailer	176 Sq Feet	2002	11	100%	19,330
Foundationless	Lot 22 - Beige Trailer	192 Sq Feet	2014	11	100%	19,890
Foundationless	Lot 24 - Dutchmen Fifth Wheel	224 Sq Feet	2004	11	100%	24,700
Foundationless	Lot 25 - Silver Tarped Trailer	240 Sq Feet	2014	11	100%	20,020
Foundationless	Lot 26 - Chaparral Fifth Wheel	256 Sq Feet	2018	11	100%	52,160
Foundationless	Lot 27 - Wildcat Trailer	208 Sq Feet	2018	11	100%	42,030
Foundationless	Lot 28 - Chateau Trailer	208 Sq Feet	2005	11	100%	19,540
Foundationless	Lot 29 - Titanium Fifth Wheel	240 Sq Feet	2014	11	100%	28,290
Foundationless	Lot 30 - Scamper MotorHome	144 Sq Feet	2000	11	100%	12,570
Foundationless	Lot 31 - Citation Trailer	240 Sq Feet	2002	11	100%	17,320
Foundationless	Lot 32 - Tahoe Trailer	128 Sq Feet	2012	11	100%	12,610
Foundationless	Lot 33 - DutchmenTrailer	192 Sq Feet	2006	11	100%	13,840
Foundationless	Lot 34 - Grey Tarped Trailer	176 Sq Feet	2010	11	100%	23,380
Foundationless	Lot 36 - Cherokee Trailer	208 Sq Feet	2012	11	100%	28,370
Foundationless	Lot 37 - Southwind MotorHome	208 Sq Feet	2010	11	100%	35,010
Foundationless	Lot 38 - JayflightTrailer	160 Sq Feet	2012	11	100%	23,290
Foundationless	Lot 39 - Grey Tarped Trailer	208 Sq Feet	2006	11	100%	14,420
Foundationless	Lot 40 - Mallard Trailer	144 Sq Feet	2014	11	100%	17,070
Foundationless	Lot 41 - Terry Trailer	160 Sq Feet	2008	11	100%	21,710
Foundationless	Lot 42 - Silver Tarped FifthWheel	240 Sq Feet	2012	11	100%	32,810
Foundationless	Lot 44 - Mountaineer Trailer	192 Sq Feet	2008	11	100%	15,460
Foundationless	Lot 52 - Golden Falcon FifthWheel	256 Sq Feet	2005	11	100%	24,190
Foundationless	Lot 53 - Green Mtn. Logo Trailer	144 Sq Feet	2004	11	100%	15,420
Foundationless	Lot 54 - Raptor FifthWheel	256 Sq Feet	2014	11	100%	26,350
Foundationless	Lot 55 - CherokeeTrailer	192 Sq Feet	2020	11	100%	22,100

42 stalls

Foundationless	Lot 56 - Outback Trailer	240 Sq Feet	2021	11	100%	26,230
Marshall & Swift		Area (Ft2)	Built	Asmt	Code	Value
Hand Calculated	RV Stalls		1972	11	100%	117,790

Assessment Totals

Tax Status	Code	Description	Assessment
T	11	Residential	1,114,910
	21	Commercial - Rec.	587,000
		Totals For 2024 Taxable	**1,701,910**
		Grand Totals For 2024	**1,701,910**

Altus Group

Comparable Land Sales

MLS	Address	City	West Meridian	Range	Township	Section	Quarter	Current Price	Lot Size Acres	Price/Acre	DOM	Stat Date
A2083367	East side of Millarville Hamlet	Rural Foothills County	5	3	21	2	NW	$525,000	29.99	$17,506	23	10/21/2023
A1222976	HWY 22	Rural Foothills County	5	2	19	4	NE	$470,000	33.09	$14,204	88	9/5/2022
A1129510	514044 64 Street W	Rural Foothills County	5	1	19	4	NW	$425,000	40	$10,625	78	9/30/2021
A1035815	658 Avenue	Rural Foothills County	4	27	17	23	NE	$170,000	25.24	$6,735	292	7/13/2021
A1086746	290196 240 Street W	Rural Foothills County	5	3	21	15	SW	$650,000	39.33	$16,527	35	4/30/2021
A1081043	466 Avenue W	Rural Foothills County	5	2	19	20	NE	$250,000	13.91	$17,973	30	4/14/2021
							AVG =	**$415,000**	**30.26**	**$13,928**	**91**	**1/23/2022**
							MED =	**$447,500**	**31.54**	**$15,365**	**57**	**8/21/2021**

The 'comparable' land sales consist of properties that are suitable for development and appear to have few, if any, restrictions, unlike the subject property. As such, the value of the subject land should not exceed $15,365/Acre.

East Side Of Millarville Hamlet Rural Foothills County, AB T0L 1K0

Land W: 5 R: 3 T: 21 S: 2 Q: NW **DOM:** 23 **LP:** $550,000.00
Sold A2083367 **OP:** $550,000.00
SD: 10/21/2023 **SP:** $525,000.00

Class:	Residential Land	**LP/Acre:**	$18,339.45
County:	Foothills County	**SP/Acre:**	$17,505.84
City:	Rural Foothills County	**Type:**	
Levels:		**District:**	
Subdivision:	NONE	**Tax Amt/Yr:**	$3,502.87/2023
Possession:	30 Days / Neg		
LINC#:	0035625897		
Outbuildings:			
Rd Frontage:			
Zoning:	A	**Lot Size:**	29.99 Ac
Legal Pln:	1310753 **Blk:** 1	**Lot:**	16
Title to Lnd:	Fee Simple	**Ownership:**	
Exclusion:	No	**SRR:**	No
Sewer/Septic:		**Condo:**	No
Disclosure:			
Reports:	None		
Restrictions:	Utility Right Of Way		

Public Remarks: Two titles! Very pretty land surrounding a little "jewel box" lake beside the hamlet of Millarville. Great building sites with outstanding mountain views. The private lake is owned by the County of Foothills. The titles are 20.77 acres surrounding the lake and 9.22 acres on the south end. The larger parcel is zoned Agriculture and the smaller lot is Country Residential. Excellent value in this unique opportunity. No water well on either property. All the homes next door (Millarville Crossing) are serviced by the County. GST is applicable. Property taxes will be lowered to Agricultural levels in 2024 - documentation in supplements. Please don't drive on property.

Directions: At junction of Highway 22 and Highway 549 beside the Hamlet of Millarville.

Property Information

Fencing:	None	**Water Supply:**	
911 Addr:		**# Parcels:**	
Dist to Trans:		**Dist to School:**	
Irrigation Eqp:		**Farm Eqp Inc:**	
Road Access:		**Front Length:**	
Lot Dim:		**Lot Depth:**	M '
Front Exp:		**Local Imprv:**	
Water GPM:		**Acres Cleared:**	
Depth of Well:		**Acres Irrigat:**	
Reg Wtr Rgt:		**Acres Fenced:**	
Bus Service:		**Acres Cultivtd:**	
Elem School:		**Acres Pasture:**	
Jr/Mid Schl:		**Acres Lsehld:**	
High School:		**Acres Treed:**	
Amenities:		**Total Acres:**	29.99
Exterior Feat:			
Utilities:			
Access Feat:			
Goods Include:	none		
Goods Exclude:	none		

East Side Of Millarville Hamlet Rural Foothills County, AB T0L 1K0

MLS#®: A2083367 **Status:** Sold **List Price:** $550,000.00 **Sold Price:** $525,000.00









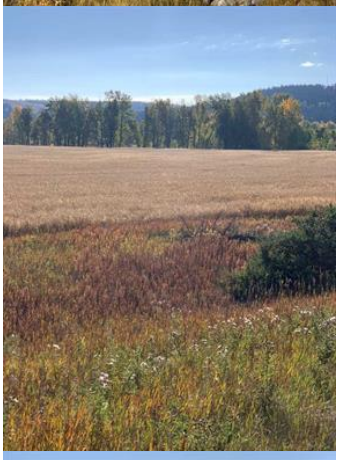




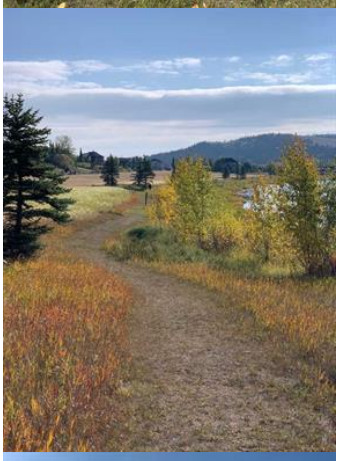

















next door subdivision

Printed Date: 09/18/2024 2:30:10 PM

INFORMATION HEREIN DEEMED RELIABLE BUT NOT GUARANTEED. AS OF 2017 MEASUREMENTS ARE PER RESIDENTIAL MEASUREMENT STANDARD

Criteria Map

Previous Next · **1** of **1** Checked **0** All · None · Page Agent Single Line display Display Agent Full at 1 per page

Listing

[Hwy 22 Rural Foothills County, AB T0L 1H0]

Land
Sold A1222976

W:5 **R:**2 **T:**19 **S:**4 **Q:**NE
SD: 09/05/2022

DOM: 88 **CDOM:** 88
LP: $500,000.00 **OP:** $500,000.00 **SP:** $470,000.00


1 / 5

Class: Residential Land
County: Foothills County
City: Rural Foothills County
Levels:
Subdivision: NONE
Possession: Negotiable
LINC#: 0018240721
Outbuildings:
Rd Frontage:
Zoning: A
Legal Pln: 5021GJ **Blk:** 3

LP/Acre: $15,110.31
SP/Acre: $14,203.69
Type:
District:
Tax Amt/Yr: $56.00/2021
Lot Size: 33.09 Ac
Lot:

Title to Lnd: Fee Simple
Exclusion: No
Sewer/Septic:
Disclosure: No Disclosure
Reports: None
Restrictions: Utility Right Of Way

Ownership:
SRR: No
Condo: No

Public Remarks: This is 33.09-acre parcel that forms part of 64-acre homestead, on the 31.2 acres parcel adjacent to the west is the house and out buildings detailed on MLS A1222974. This 33.09 acre portion provides a mixture of pasture and trees and is fully fenced. Nearby, Longview offers all the amenities you need, and recreation abounds to the west. Calgary & Okotoks are not far. Properties like this are few and far between. See this today!

Directions: Highway 2 south towards High River, Go West on Exit 498 Ave/ 543 (just before High River) Head west to Hwy 22/Cowboy Trail, turn left and head south 2.3km then turn left at directional sign, follow road turn right at the gate.

Property Information

Fencing: Fenced
911 Addr:
Dist to Trans:
Irrigation Eqp:
Road Access:
Lot Dim:
Front Exp:
Water GPM:
Depth of Well:
Reg Wtr Rgt:
Bus Service:
Elem School:
Jr/Mid Schl:
High School:
Amenities:
Exterior Feat:
Utilities:
Access Feat:
Goods Include: NONE- LAND ONLY
Goods Exclude: NONE- LAND ONLY

Water Supply:
 # Parcels:
Dist to School:
Farm Eqp Inc:
Front Length:
Lot Depth: M '
Local Imprv:
Acres Cleared:
Acres Irrigat:
Acres Fenced:
Acres Cultivtd:
Acres Pasture:
Acres Lsehld:
Acres Treed:
Total Acres: 33.09

Agent & Office Information

List Agent: Brian Currey brian@calgaryhomesales.com **Phone:** 403-259-4141
List Firm: RE/MAX REALTY PROFESSIONALS **Phone:** 403-259-4141
Firm Address: #10, 6020 - 1A STREET S.W., CALGARY, T2H 0G3 **Firm Fax:**
CoList Agent: Christina Hagerty christina@christinahagerty.ca **Phone:** 403-815-8185
CoList Firm: RE/MAX REALTY PROFESSIONALS **Phone:** 403-259-4141
Appt: Can view when showing in conjunction with A1222974
Showing Contact: None 000-000-0000 **List Date:** 06/09/2022
Comm: 3.5% on the first $100,000 & 1.5% on the balance of the sale price **Expiry Dt:**
LB Type/Info: / **With Dt:**
Owner Name: Blanca Botero **Ownership:** Private
Occupancy: **Exclusion:** No **SRR:** No
Member Rmks: There is power to property line. Property may be subject to GST as it is Zoned as "A". All offers must be left open 24 hours and the deposit must be a Bank Draft. Please DO NOT bother owners at Neighbouring properties.

Selling Information

Sell Agent: Kris Sales **Sell Firm:** EVOLVE REALTY
Cosell Agent: **Adjust Dt:** 09/23/2022
Pend Dt: **Sold Date:** 09/05/2022 **Sold Price:** $470,000.00

MLS®# is A1222976
Property Type is 'Land'
Found 1 result in 0.03 seconds.

Hwy 22 Rural Foothills County, AB T0L 1H0

Land	**A1222976**	**Sold**	**LP:** $500,000.00	**SP:** $470,000.00
W: 5 R: 2 T: 19 S: 4 Q: NE	**CDOM:** 88	**DOM:** 88	**OP:** $500,000.00	**SD:** 09/05/2022

514044 64 Street W Rural Foothills County, AB T1V 1M3

Land W: 5 R: 1 T: 19 S: 4 Q: NW **DOM:** 78 **LP:** $470,000.00
Sold A1129510 **OP:** $470,000.00
SD: 09/30/2021 **SP:** $425,000.00

Class:	Residential Land	**LP/Acre:**	$11,750.00
County:	Foothills County	**SP/Acre:**	$10,625.00
City:	Rural Foothills County	**Type:**	
Levels:		**District:**	
Subdivision:	NONE	**Tax Amt/Yr:**	$122.00/2021
Possession:	Negotiable		
LINC#:	0020907184		
Outbuildings:	None/		
Rd Frontage:			
Zoning:	A	**Lot Size:**	40.00 Ac
Legal Desc:	S660` of N1320`		
Legal Pln:	**Blk:**	**Lot:**	
Title to Lnd:		**Ownership:**	
Exclusion:	No	**SRR:**	No
Sewer/Septic:		**Condo:**	No
Disclosure:	No Disclosure		
Reports:	None		
Restrictions:	None Known		

Public Remarks: Extraordinary 40 acre parcel located on pavement southwest of Okotoks and west of High River on Hogg Park Road one mile south of Hwy 543. It has an exceptional view of the mountains and foothills, and also to the east overlooking the prairie. The land has a ridge that makes a perfect building site with a natural walk-out opportunity. There is a driveway up to an old building site that has some trees and bushes. Natural gas and electricity are available, and there is a well. It is approximately 30 acres hay, and the balance is pasture and a building site.

Directions: 9 miles west from Hwy 2A on Hwy 543, 1.2 miles south on 64th St W

Property Information

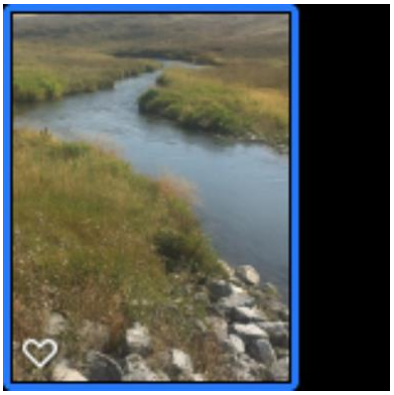
Fencing:	Partial	**Water Supply:**	
911 Addr:		**# Parcels:**	
Dist to Trans:		**Dist to School:**	
Irrigation Eqp:		**Farm Eqp Inc:**	
Road Access:		**Front Length:**	
Lot Dim:		**Lot Depth:**	M '
Front Exp:		**Local Imprv:**	
Water GPM:		**Acres Cleared:**	
Depth of Well:		**Acres Irrigat:**	
Reg Wtr Rgt:		**Acres Fenced:**	
Bus Service:		**Acres Cultivtd:**	
Elem School:		**Acres Pasture:**	
Jr/Mid Schl:		**Acres Lsehld:**	
High School:		**Acres Treed:**	
Amenities:		**Total Acres:**	40.00
Exterior Feat:			
Utilities:			
Access Feat:			
Goods Include:			
Goods Exclude:			

514044 64 Street W Rural Foothills County, AB T1V 1M3

MLS#®: A1129510 **Status:** Sold **List Price:** $470,000.00 **Sold Price:** $425,000.00

658 Avenue Rural Foothills County, AB T0L 0P0

Land W: 4 R: 27 T: 17 S: 23 Q: NE **DOM:** 292 **LP:** $199,900.00
Sold A1035815 **OP:** $199,900.00
SD: 07/13/2021 **SP:** $170,000.00



Class:	Land	**LP/Acre:**	$7,919.97
County:	Foothills County	**SP/Acre:**	$6,735.34
City:	Rural Foothills County	**Type:**	
Levels:		**District:**	
Subdivision:	NONE	**Tax Amt/Yr:**	$96.00/2020
Possession:	15 Days / Neg		
LINC#:	0021699319		
Outbuildings:			
Rd Frontage:	Municipal Road		
Zoning:	Agriculture	**Lot Size:**	25.24 Ac
Legal Pln:	**Blk:**	**Lot:**	
Title to Lnd:	Fee Simple	**Ownership:**	
Exclusion:	No	**SRR:**	No
Sewer/Septic:		**Condo:**	No
Disclosure:	See Attached document		
Reports:	None		
Restrictions:	Call Lister, Development Restriction		

Public Remarks: You have to see this. Just over 25 acres right on the Little Bow River. Your own private oasis.

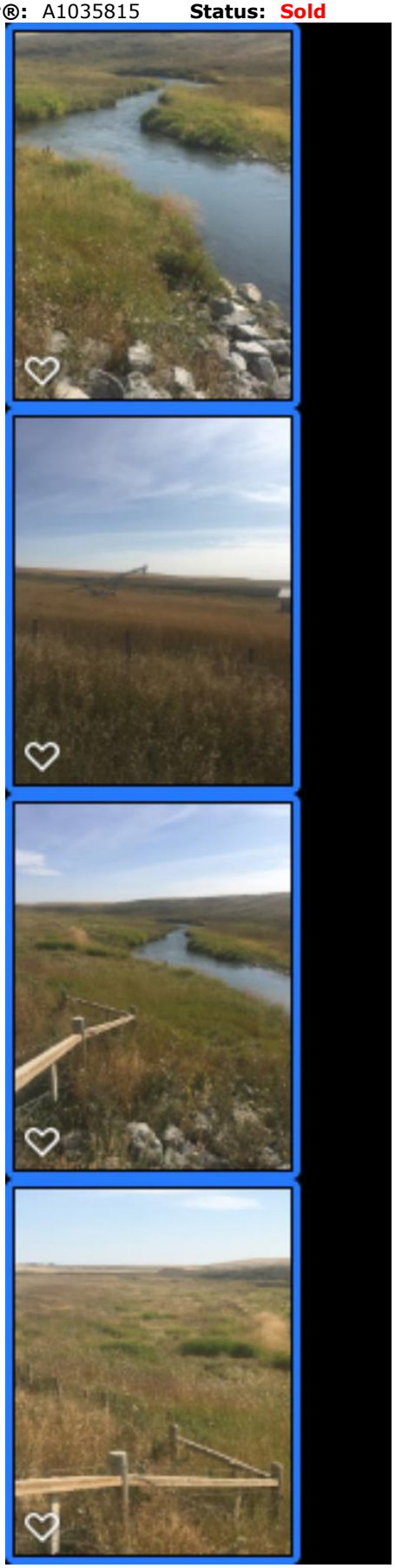
Directions: East of Highway 2 on 658 Ave for 16 kms, just past 264 St E. Parcel on the south side.

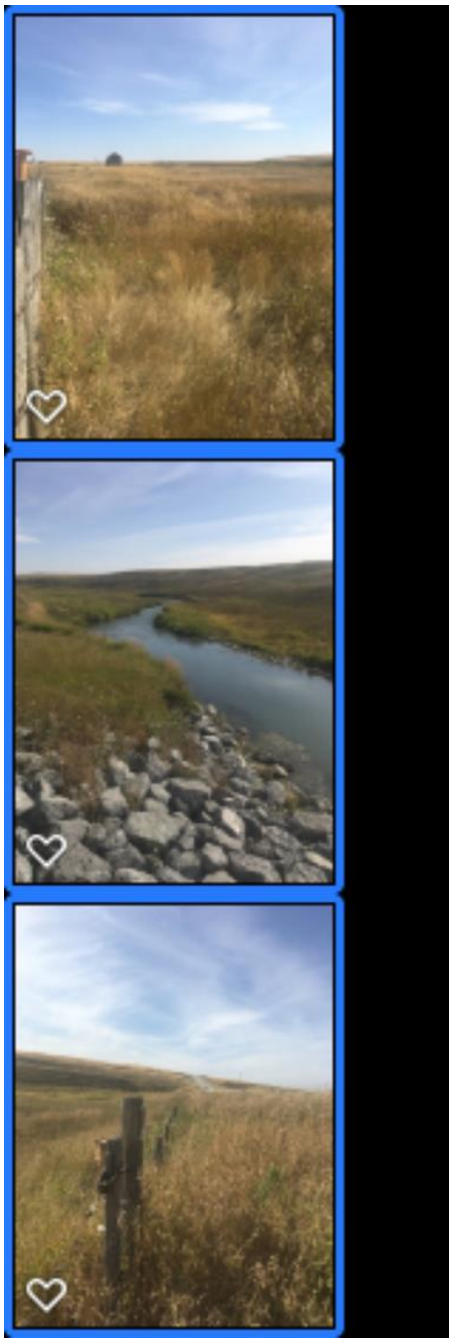
Property Information

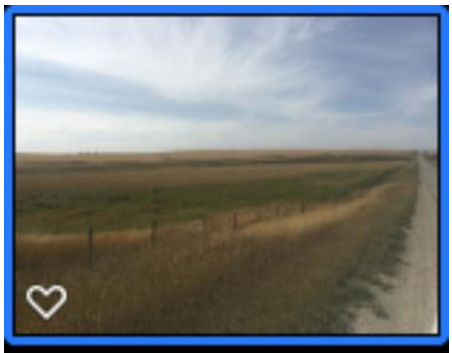
Fencing:	Fenced	**Water Supply:**	
911 Addr:	None	**# Parcels:**	
Dist to Trans:		**Dist to School:**	
Irrigation Eqp:		**Farm Eqp Inc:**	
Road Access:	Gravel	**Front Length:**	804.63M 2640`0"
Lot Dim:		**Lot Depth:**	0.00 M 0'
Front Exp:		**Local Imprv:**	
Water GPM:	0	**Acres Cleared:**	25.00
Depth of Well:	0	**Acres Irrigat:**	0.00
Reg Wtr Rgt:	No	**Acres Fenced:**	
Bus Service:		**Acres Cultivtd:**	0.00
Elem School:		**Acres Pasture:**	
Jr/Mid Schl:		**Acres Lsehld:**	0.00
High School:		**Acres Treed:**	0.00
Amenities:		**Total Acres:**	25.24
Exterior Feat:			
Utilities:	None		
Access Feat:			
Goods Include:	Land Only		
Goods Exclude:			

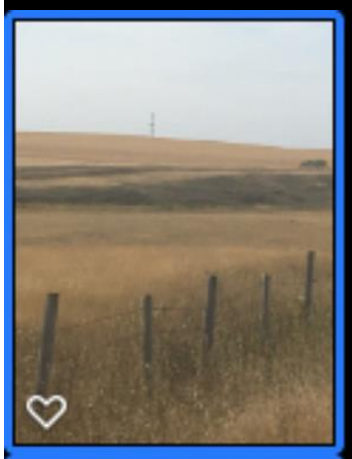
658 Avenue Rural Foothills County, AB T0L 0P0

MLS#®: A1035815 **Status:** Sold **List Price:** $199,900.00 **Sold Price:** $170,000.00









290196 240 Street W Rural Foothills County, AB T0L 1K0

Land W: 5 R: 3 T: 21 S: 15 Q: SW **DOM:** 35 **LP:** $750,000.00
Sold A1086746 **OP:** $750,000.00
SD: 04/30/2021 **SP:** $650,000.00

Class:	Land			**LP/Acre:**	$19,069.41
County:	Foothills County			**SP/Acre:**	$16,526.82
City:	Rural Foothills County			**Type:**	
Levels:				**District:**	
Subdivision:	NONE			**Tax Amt/Yr:**	$91.00/2020
Possession:	15 Days / Neg				
LINC#:	0026602821				
Outbuildings:					
Rd Frontage:					
Zoning:	A			**Lot Size:**	39.33 Ac
Legal Pln:	9512855	**Blk:**	3	**Lot:**	2
Title to Lnd:	Fee Simple			**Ownership:**	
Exclusion:	No			**SRR:**	No
Sewer/Septic:	None			**Condo:**	No
Disclosure:					
Reports:	Aerial Photos				
Restrictions:	None Known				

Public Remarks: Wow! This might be the most beautiful view of the rolling foothills and Rocky Mountains is right here on 39 acres West of Millarville. A nice mix of pasture, trees, and a 360 degree view at the top of the world, from the large hill in the center of the property. Water well near top of hill, power and gas on the road at 240th street. If you want privacy in the very desirable area this is the perfect building site for you country dream home and a walkout basement. 10 min to Kananaskis, 25 minutes to south Calgary and only 3 kms to the warm and friendly hamlet of Millarville, where you will find K-8 school, gas station, ATB banking, post office and grocery store. No building restrictions except for Municipal bylaws. Paved roads. Access is currently being developed on the pan handle on the north side of the property and will be completed in the next few weeks (just waiting for the frost to come out). Prepare to be Wowed. Purchase Price does not include GST. In the event that GST is payable and the Buyer is not a GST registrant, then the Buyer shall remit the applicable GST to the Seller's lawyer on or before Completion Day. The land in front of it are not owned by the same person. Please do not enter without permission.

Directions: From Hwy 22 turn West of Millarville on Hwy 549 turn north on 240 Street W drive 1.3 km. Property on East side of road.

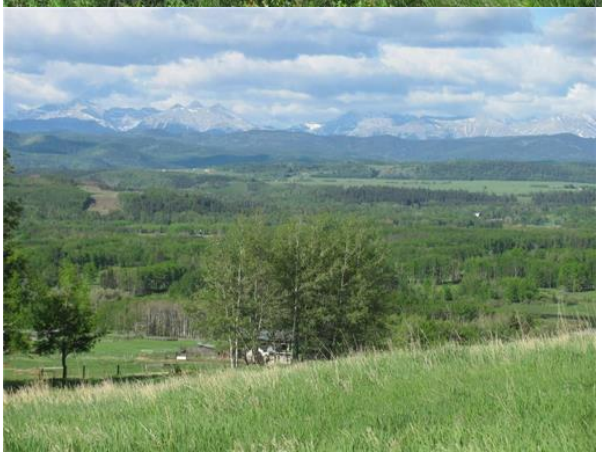
Property Information

Fencing:	Fenced	**Water Supply:**	None
911 Addr:		**# Parcels:**	
Dist to Trans:		**Dist to School:**	
Irrigation Eqp:		**Farm Eqp Inc:**	
Road Access:	No Road Access	**Front Length:**	
Lot Dim:		**Lot Depth:**	M '
Front Exp:		**Local Imprv:**	
Water GPM:		**Acres Cleared:**	
Depth of Well:	0	**Acres Irrigat:**	
Reg Wtr Rgt:		**Acres Fenced:**	
Bus Service:	No	**Acres Cultivtd:**	
Elem School:		**Acres Pasture:**	
Jr/Mid Schl:		**Acres Lsehld:**	
High School:		**Acres Treed:**	
Amenities:		**Total Acres:**	39.33
Exterior Feat:			
Utilities:	Electricity Not Available		
Access Feat:			
Goods Include:			
Goods Exclude:			

290196 240 Street W Rural Foothills County, AB T0L 1K0

MLS#®: A1086746 **Status:** Sold **List Price:** $750,000.00 **Sold Price:** $650,000.00





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INFORMATION HEREIN DEEMED RELIABLE BUT NOT GUARANTEED. AS OF 2017 MEASUREMENTS ARE PER RESIDENTIAL MEASUREMENT STANDARD

466 Avenue E Rural Foothills County, AB T1V 1N3

Land W: 4 R: 28 T: 19 S: 28 Q: SE **DOM:** 29 **LP:** $489,900.00
Sold A2065149 **OP:** $489,900.00
SD: 08/10/2023 **SP:** $442,000.00

Class:	Residential Land	**LP/Acre:**	$32,616.51
County:	Foothills County	**SP/Acre:**	$29,427.43
City:	Rural Foothills County	**Type:**	
Levels:		**District:**	
Subdivision:	Alder Heights	**Tax Amt/Yr:**	$100.00/2022
Possession:	15 Days / Neg/Negotiable		
LINC#:	0039371885		
Outbuildings:			
Rd Frontage:	Municipal Road		
Zoning:	CR	**Lot Size:**	15.02 Ac
Legal Pln:	**Blk:**	**Lot:**	
Title to Lnd:	Fee Simple	**Ownership:**	
Exclusion:	No	**SRR:**	No
Sewer/Septic:		**Condo:**	No
Disclosure:			
Reports:	Water Report		
Restrictions:	None Known		

Public Remarks: Welcome to this beautiful piece of land.. Newly (within a year +-) subdivided 15.02 +- acres , fully fenced with an amazing well, on PAVEMENT!! Located just off Hwy # 2, but enough topography between that lends to piece and quiet and country life. This 15.02+- acres will provide you many options to build!! Located across from Alder Heights Community park! Also located on paved cross roads to provide you with many building options. Currently in a nice hay mix the land is fertile and ready to provide you some income. Current owner had 59 round bales off of it last year. This year being dryer, not as many but still a few will be harvested. Beautiful community area here , mostly with the park across the road. Property is fully (new) fenced and ready to develop. Might I mention again the high volume well. Q20 full on test is provided in the documents. Great current info. Located just off the HWY 2 gives you a quick commute to the city , Okotoks or High River. Easy to drive by, but do not drive or walk on property with out appointment . These amounts of land are hard to find for this one will be a gem for what ever you want to do. Horses, huge garden (tons of water) trees, huge home with a great amount of out buildings if desired. These properties are hard to find.

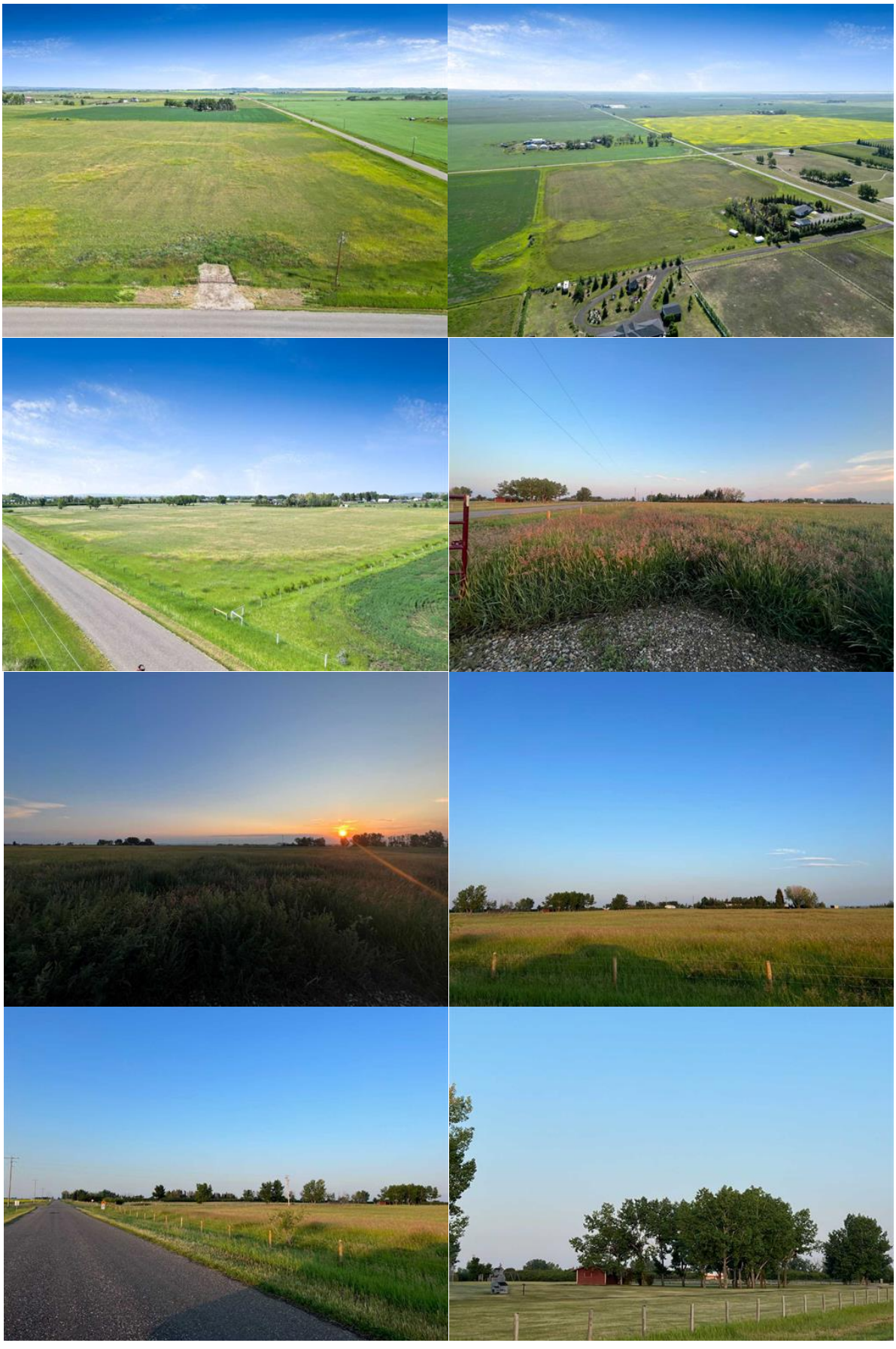
Directions: Heading south of Calgary come south of the Petro Can Overpass on # 547 for another 3 miles to 466th ave East. Go east for a mile , property on north side

Property Information

Fencing:	Fenced	**Water Supply:**	
911 Addr:		**# Parcels:**	
Dist to Trans:		**Dist to School:**	3-4 Miles
Irrigation Eqp:		**Farm Eqp Inc:**	
Road Access:	Paved	**Front Length:**	
Lot Dim:		**Lot Depth:**	M '
Front Exp:		**Local Imprv:**	
Water GPM:		**Acres Cleared:**	15.02
Depth of Well:		**Acres Irrigat:**	
Reg Wtr Rgt:		**Acres Fenced:**	
Bus Service:	Yes	**Acres Cultivtd:**	
Elem School:		**Acres Pasture:**	
Jr/Mid Schl:		**Acres Lsehld:**	
High School:		**Acres Treed:**	
Amenities:		**Total Acres:**	15.02
Exterior Feat:			
Utilities:			
Access Feat:			
Goods Include:	N/A		
Goods Exclude:	N/A		

466 Avenue E Rural Foothills County, AB T1V 1N3

MLS#®: A2065149 **Status:** Sold **List Price:** $489,900.00 **Sold Price:** $442,000.00

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INFORMATION HEREIN DEEMED RELIABLE BUT NOT GUARANTEED. AS OF 2017 MEASUREMENTS ARE PER RESIDENTIAL MEASUREMENT STANDARD

Appendix 3 - Respondent Disclosure

Composite Assessment Review Board Hearing

Roll: 2004257520

Legal Description: 288002 2338 Dr W, NE-25-40-4-W5

Appellant: La Societe Franco-Canadienne

Presented By: Devyn Murray AMAA

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Assessment Issues

The appellant has brought forward the following issues which will be discussed in this report.

1. The property should be exempt under Section 362 of the Municipal Government Act (MGA) and the Community & Organization Property Tax Exemption Regulation (COPTER)
2. The land is over-valued
3. The trailers on site are not assessable and are currently over-valued

Legislation and Assessment Background

Assessed values are prepared on an annual basis. To establish values, the Assessment Department is legislated to use up to 36 months worth of sales information. In this case 36 months (3 years) of data was used. The hard date cut offs of the legislation leads to information being used one year and not the next. When older information is no longer a part of the process and new information is introduced, it can result in larger assessment changes than the real estate market indicates year over year.

Assessments in the province of Alberta must reflect the following:

- The market conditions of July 1 of the assessment year. This is the valuation date.
- The property characteristics and physical condition on December 31 of the assessment year.

Assessments must be prepared using mass appraisal and be representative of market value. An assessment is deemed to be reasonable when it falls within five percent of market value indicators. This is established in the Matters Relating to Assessment and Taxation Regulation. For an assessment to be determined fair and equitable, it must be prepared using mass appraisal, represent the fee simple interest, be a fair representation of market value as of the valuation date and represent the physical condition of the property as of the condition date.

The following court case outlines how the appellant should use their evidence to establish doubt on the assessed value through the burden of proof. The Alberta Queens Bench in "**Calgary (City) v Alberta (Municipal Government Board), 2010, ABQB 719**", paragraph 161, outlines the burden of proof that must be followed.

The ultimate burden of proof or onus rests on the Appellant, at an assessment appeal, to convince the MGB their arguments, facts and evidence are more credible than that of the Respondent. However, if the Applicant leads sufficient evidence at the outset to establish a prima facie case, the evidentiary onus shifts to the Respondent. In order to establish a prima facie case, the Appellant must convince the MGB panel that there is merit to the appeal.

The Appellant must establish that it is more probable than not that the assessed value is incorrect or inequitable. Once the evidentiary onus shift occurs, then the validity of the assessment is in question. In

order to rebut the Appellants prima facie case, and in order to raise a legitimate inference that the assessment is correct, the Respondent must lead evidence to counter the Appellant's evidence. At the end of the hearing, the MGB considers all the evidence presented and determines which party has established their case on a preponderance of evidence. In theory this means the party with the strongest case should succeed.

As outlined in Matters Relating to Assessment Complaints (MRAC) both parties must present evidence in sufficient detail to allow the other party to respond to, or rebut, the presented evidence. This is also a requirement of any rebuttal evidence submitted by the complainant. MRAC details this in Section 9, clause 2, sub (c) states the complainant must disclose to the respondent and the review board all evidence they intend to disclose at the hearing in rebuttal…"(b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing." This section affords the respondent the opportunity to address any or all rebuttal information presented by the complainant at the hearing.

Additional and expanded legislation can be found in Appendix A: Legislation.

Description of Subject Property

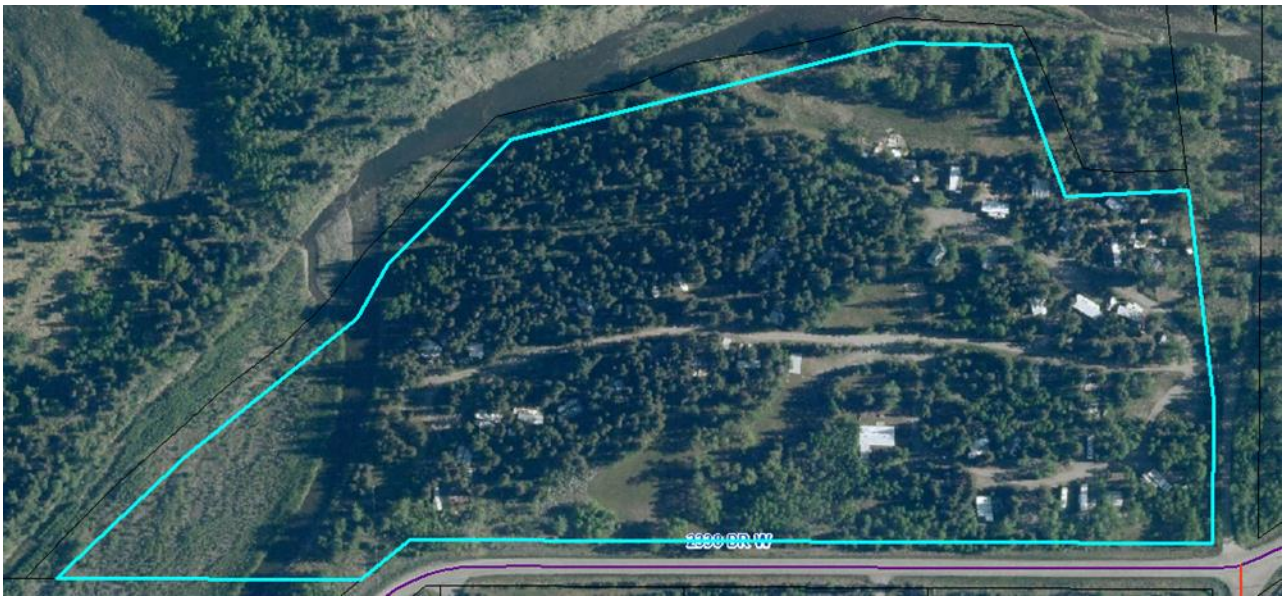


Image 1: Aerial Image of Subject Property

This parcel has a titled area of 18.66 acres. The north boundary of the parcel is adjacent to Threepoint Creek and access to the parcel is from the south side off 2338 Dr W. The parcel is located approximately 15 minutes south-west of the Hamlet of Millarville and approximately 30 mins from the Town of Diamond Valley. There is an assessed area of 17.66 acres at market value and an area of 1.00 acres which is considered unusable land. The parcel is located within a floodway area. An inspection occurred on October 18th, 2023, with an La Societe Franco-Canadienne de Calgary (SFCC) representative to confirm the details and characteristics of the parcel and improvements. Image 1 (above) shows an aerial view of the subject parcel. Image 2 (page 7) shows the location of the subject in relation to other centres.

The subject parcel was originally developed in the early 1970's and is currently developed and improved with 50 RV sites and 6 tent sites. The RV sites have an individual electrical meter and access to a septic system and water lines. The 6 tent sites only have access to electrical servicing. The RV sites are leased to members of the SFCC. The leases are considered seasonal, but they can be extended year over year. If a member expresses a desire to stay for an additional year, then they are able to leave their improvements on site, year-round. As of December 31st, 2023, there were 42 sites improved with a combination of travel trailers, decks, verandas and various forms of sheds.

The subject was rezoned to Recreation District, which included a site-specific amendment to bring development on the property into compliance under the County's Land Use Bylaw. This rezoning was

made official by Council as of November 15th, 2023. The application had the following approval description:

Upon completion of the below pre-release condition, this approval allows for the development and use of Ptn. NE 25-20-04 W5M; Plan 1306JK, Block A for:

1. Campground, Major, as per the site plan dated May 1, 2023 Project 2021-004, including:
    a. 50 seasonal campsites for La Societe Franco-Canadienne de Calgary members & their invited guests
    b. 3 weekend-only campsites for use by guests
    c. Occupancy for not more than 200 consecutive days per year between May 1st to October 31st
2. Private Amenity Space; Utility Services, Minor (Private):
    a. Pumphouse - 204 sq. ft. & Tool Sheds - 442 sq. ft. in total
    b. Common washroom(s) - 325 sq. ft.
    c. Water, wastewater, and electrical servicing
    d. Hall- 1,200 sq. ft.
    e. Recreation room(s) - having a cumulative total area of 434 sq. ft.
    f. Playground
3. The year-round storage of Recreation Vehicles and Accessory Buildings
4. Day use of the on-site Private Amenity Space(s) by local community groups to share the francophone culture- 3 times annually
4. Exceptions to the Minimum Yard Setback Requirements under the Recreation District

With this approval in effect, the parcel has been developed to its highest and best use.

The Land Use Bylaw lists residential development, either single family, moved on, or temporary dwellings as discretionary uses for this parcel. As a discretionary use in the bylaw, an application would have to be made to the County to allow for residential development. This is a common occurrence within Foothills County and an application for any additional uses or buildings would not be considered severely restricted by law.

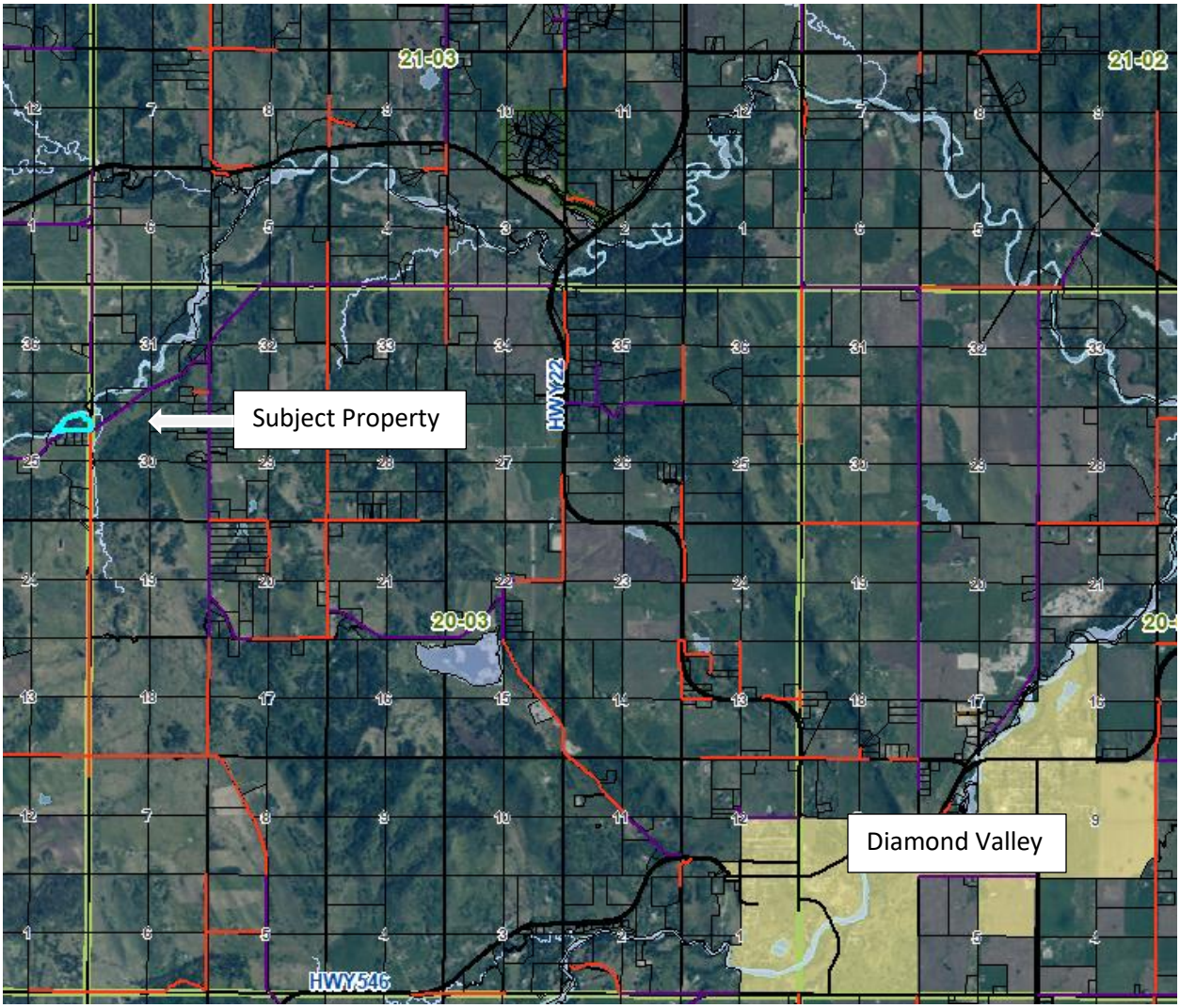


Image 2: Aerial Image of Subject Property to Nearby Centres

Assessment Recommendation

The assessed value on the property in complaint is $1,701,910. The Assessment Department conducted a review of the assessment which resulted in changes to the roll. The review of the parcel included an amended amount of land to be placed as unusable. This new area was measured with aerial photography and was determined to be 1.85 acres. The revised total amounts of land are 16.81 acres at market value and 1.85 acres as unusable with no value. Table 1 breaks down the revised assessment and assessment classes.

Table 1: Assessment Breakdown

Description	Assessment	Assessment Class
Land	$536,500	Non-Residential
Travel trailers/recreational vehicles, decks, verandas, storage sheds (Tenant Improvements)	$997,120	Residential
50 RV stalls, 6 tent sites, gathering hall, shower building & storage building (Campground Improvements)	$117,790	Residential
Total	**$1,651,410**	**-**

The Assessment department recommends a total amended value of $1,651,410.

Property Exemption Requirements and Determination

The appellant indicated the property should be exempt under Section 362 of the Municipal Government Act (MGA) and the Community Organization Property Tax Exemption Regulation (COPTER).

Provincial legislation: Municipal Government Act (MGA) and Community Organizations Property Tax Exemption Regulation (COPTER), set the criteria and classification for property tax exemptions. All the criteria need to be met in order to qualify.

As per section 362(1)(n)(iii) B of the MGA property that is used for a charitable or benevolent purpose for the benefit of the general public, and owned by a non-profit organization is exempt from taxation.

COPTER further interprets the following terminology as:

> (b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;
>
> (c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;

La Societe Franco Canadienne de Calgary (SFCC) is registered non-profit organization. The organization owns and operates the subject property.

In their submission, the Appellant indicated "the purpose of the Society is the advancement of education through French language programs and initiatives in Calgary and the surrounding areas… by allowing people who are learning or fluent in French to communicate in a recreational setting. When a space becomes available, the spot is available to the general public so long as the person is willing to speak French in the park. Membership to SFCC is also open to the general public, subject only basic French language skills". This indicates there are clear restrictions to use the parcel.

Furthermore, Schedule A (pages 6-8) submitted by the Appellant, the ARTICLES OF ASSOCIATION OF LA SOCIÉTÉ FRANCO-CANADIENNE DE CALGARY indicates that French language is the official language. As per the same Schedule A, it is indicated that in order to become a member of SFCC, the application needs to be submitted to the Directors for approval, along with the $5.00 fee, which is the value of one (1) share in the company. The same document specifies:

a) "To be eligible for membership in the Company, a person must:

> a. Be a Canadian citizen or permanent resident for at least twelve (12) months prior to submitting the application;
>
> b. Speak French;
>
> c. Be a resident of the City of Calgary or the surrounding area within a radius of fifty kilometers (50 km) outside its limits;
>
> d. Be 18 years of age or older;"

For property tax exemption, denying access because of age, race, religion, ability to pay and so on can be considered a restrictive factor, as it is specified in COPTER Part 1 7(1)(2). The only restriction imposed on the members may be requirement to fill out an application and pay a minor fee.

As indicated by the Appellant, the subject property is not used or maintained from October to May, as per the Land Use Bylaw. And there is no access to the property during that time.

Under provincial legislation, for property tax exemption, the property has to be open to the public, with no restrictions for 70% of the time that the property is in use. The Appellant did not provide a schedule indicating when the facility is being used by Society and at what times the facility is open to public during the open season. The Appellant's website does encourage the public to inquire about both the Society and the sites within the campground facility but does not specify when the parcel is available to the general public or community.

As per the provided legislation, considering restricted access to the property the organization (SFCC) does not qualify for tax exemption as per Municipal Government Act (MGA), section 362 and Community Organizations Property Tax Exemption Regulation (COPTER).

Legislation pertaining to tax exemption can be found in Appendix A: Legislation.

Sales (Land) Comparables

Assessments are representations of market value, which is determined by using sales of similar properties, that have been marketed and sold with no undue pressure between a willing buyer and a willing seller.

Market value represents an estimate of value using sales of similar properties, that have been marketed and sold with no undue pressure between a willing buyer and a willing seller. In accordance with legislation, all assessments must be an estimate of market value as of the valuation date. The valuation date for this assessment is July 1, 2023. All sales must have their sale prices adjusted to reflect trending market conditions to arrive at an estimated sale price of what the property would have sold for on July 1, 2023. Table 2 contains sales of similar properties that the Assessment Department has selected as representations of good market transactions.

Table 2: Sales Comparables

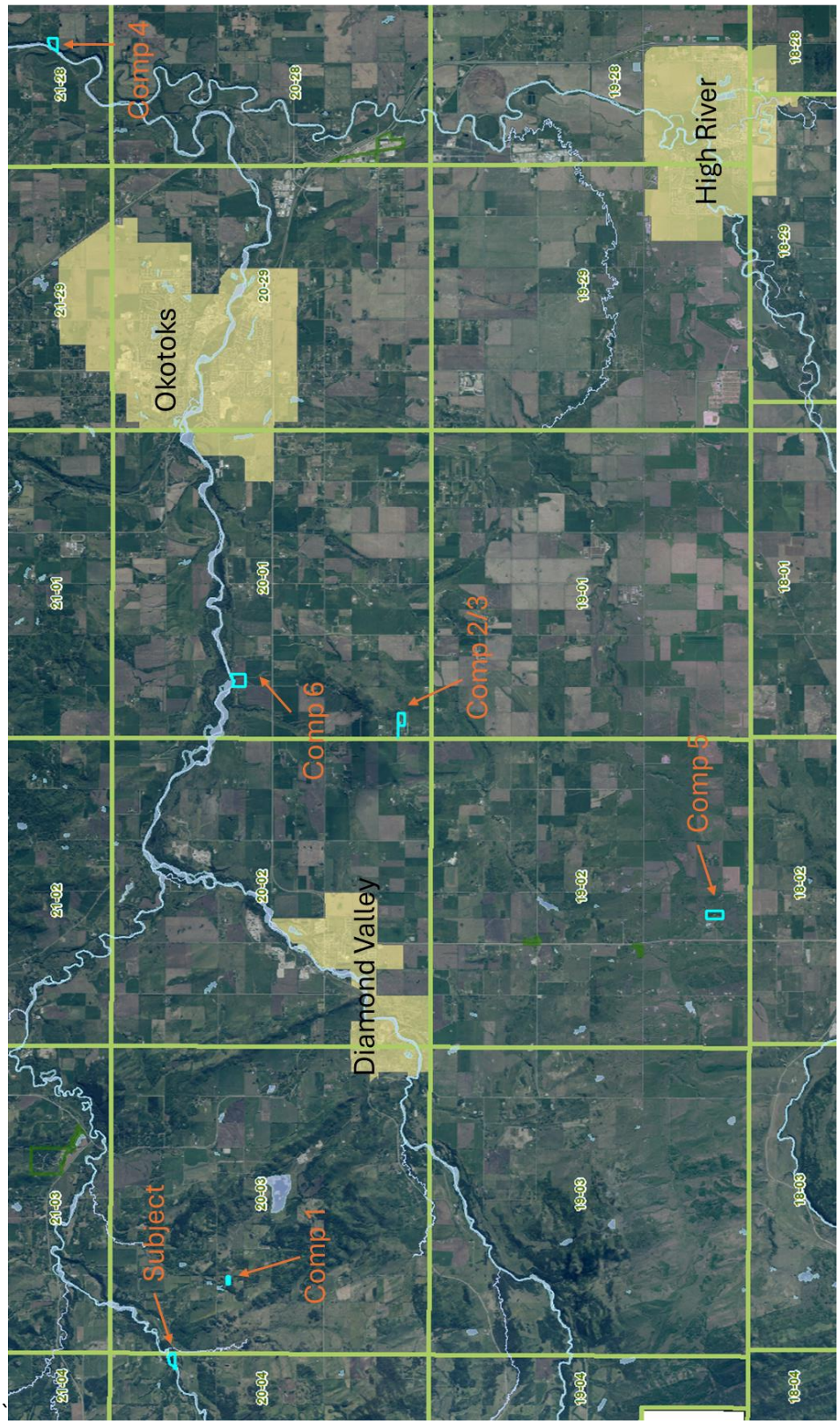
Property	Subject	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Comp 6
Address	**NE-25-20-4-W5**	NW-20-20-3-W5	NW-6-20-1-W5	NW-6-20-1-W5	SW-9-21-28-W4	NE-4-19-2-W5	NW-20-20-1-W5
Parcel Size (Acres)	**16.81 (market value)**	6.50	22.00	22.00	23.48	33.09	35.23
Sale Date	-	Mar-21	Aug-22	Mar-23	Sep-22	Jan-23	Jul-20
Sale Price	**$536,500 (revised)**	$332,500	$700,000	$758,000	$900,000	$470,000	$607,000
Time Adjusted Sale Price	-	$397,300	$747,800	$776,100	$955,400	$486,900	$768,000
Time Adjusted Sale Price/Acre	**$31,915**	$61,123	$33,991	$35,277	$40,690	$14,714	$21,800

Image 3 (page 12) shows where the comparables are located, in relation to the subject parcel.

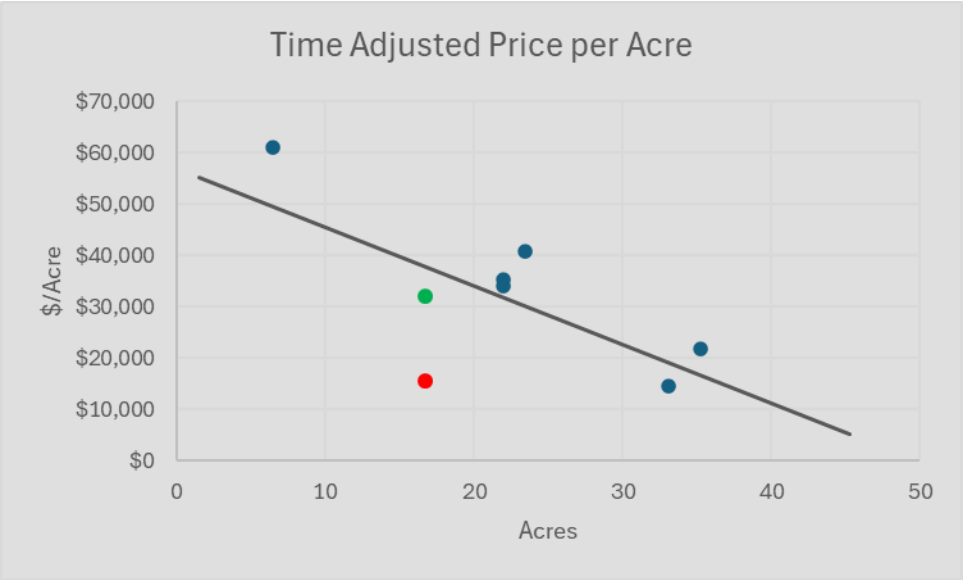
The sales provided cover a range of sizes and are within a reasonable distance to the subject property. The sales account for parcel sizes from 6.50 acres up to 35.23 acres. In general, parcels that are greater in size, will have higher sale prices, but also have a lower per unit cost. This is known as diminishing returns. The comparables in general reflect this principle.

Comparable 1 is the smallest parcel and is included to highlight the different per acre values and the potential diminishing returns of larger parcels. Comparable 2 & 3 are the same parcel, which has sold twice within the legislated time frame, and represent the best indicators of value. Comparable 4 provides more insight to a similar sized parcel and is located adjacent to the Highwood River. It's location would be considered superior to the subject parcel. Comparables 5 and 6 highlight the diminishing returns of larger parcels. Comparable 5 is located in an inferior location, and Comparable 6 is located adjacent to the Sheep River. Graph 1 (page 13) provides a visual representation of the subject parcel's revised assessment, the Appellant's requested value and the Comparables indicated value on a per acre basis.

Image 3: Sales Comparable Map



Graph 1: Time Adjusted Price per Acre of the Subject and the Comparables

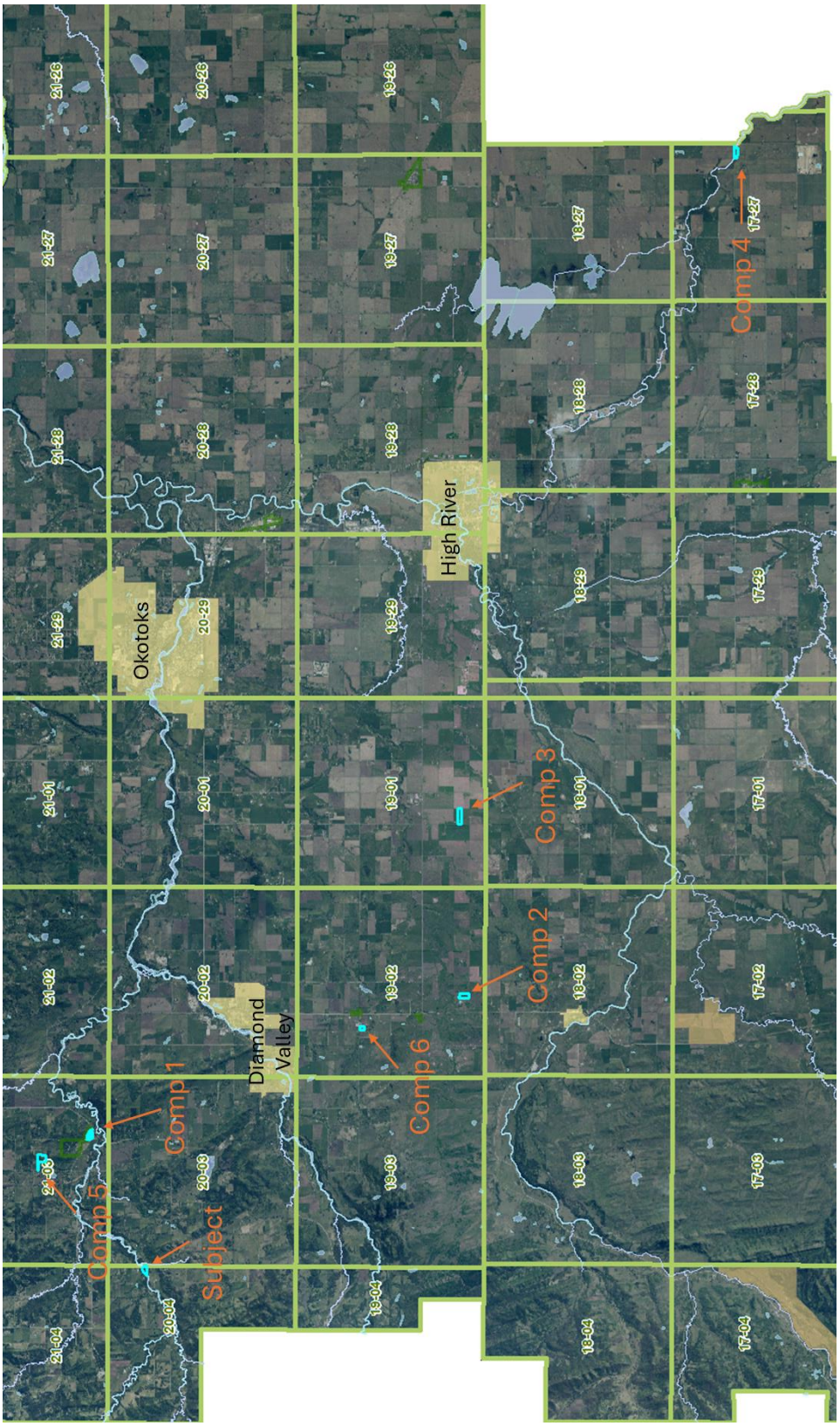


Graph 1 provides a visual representation of diminishing returns. Comparable 4 is located in a superior area, however, the price per acre is consistent within the diminishing returns. The inverse is demonstrated by Comparable 5 as it is an inferior location but is still consistent with the indicated diminishing returns trend.

The Appellant has brought forward sales of properties they believe to represent good market transactions. The Assessment Department agrees that the presented sales would be considered good market transactions. The transactions are missing necessary adjustments and considerations to arrive at an accurate estimate of market value. After reviewing the table provided in the Appellant's disclosure document named "Schedule C" on page 3, the following should have been accounted for:

- The subject parcel is 18.66 acres, which is 12.88 acres smaller than the median size of 31.54 acres. There should be consideration given to the diminishing returns of parcel size and there is none indicated.
- There is no consideration given to the factor of time. All assessments must be an estimate of market value as of the valuation date. The first comparable presented occurred after the valuation date of July 1. The remaining comparables have not been adjusted to reflect the market conditions of the valuation date.
- There is no consideration given to the location of the comparables in relation to the subject parcel. Image 4 (page 14) is a map showing the locations of the comparables and the subject. Comparables 1 & 5 would be considered similar, Comparables 2, 3 & 6 would be considered inferior and Comparable 4 would be considered grossly inferior.

Image 4: Appellant's Sales Comparable Map



Travel Trailer Assessment

Section 298(1) defines when travel trailers can be considered non-assessable, and what conditions can make them assessable. The excerpt is shown below.

Non-assessable property

298(1) No assessment is to be prepared for the following property:

(bb) travel trailers that are

(i) not connected to any utility services provided by a public utility, and

(ii) not attached or connected to any structure

The MGA defines "public utility" in Section 1(1)(y).

Interpretation

1(1) In this Act,

(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting,

and includes the thing that is provided for public consumption, benefit, convenience or use;

The "public utility" provided on site is (vii) electric power. Electricity is provided by a public utility company such as Fortis or ATCO. The power company bills SFCC and SFCC then bills the lots. Each RV Stall has an individual meter (an example is provided in image 5). The parcel is seasonal (closed in the winter), but the utilities are still there. The interpretation of '(i) not connected to any utility services provided by a public utility' is that the intent of the legislation was to make travel trailers non-assessable

if they do not have access to the described services. The power service is provided by the owner, to the stalls, through a public utility. There are no considerations in the MGA concerning the amount of time that the services must be provided to be valid.

Image 5: Example Individual Power Meter

The second condition that must be met for a travel trailer to be non-assessable is that the travel trailer can not be attached or connected to any structure. Many sites have a travel trailer that are either physically connected or connected in use to a structure. Examples are provided in images 6, 7 and 8.

Image 6: Travel Trailer on Site

Image 7: Travel Trailer Connected to a Structure

Image 8: Travel Trailer Connected in Use

Both described conditions must be met for the travel trailer itself to be considered non-assessable. Numerous sites are connected to a structure and all sites have a public utility. The Assessment Department considers the travel trailers to be assessable along with all other structures on the parcel.

The interpretation presented by the Assessment Department has been upheld by three past board decisions. The initial Assessment Review Board decision occurred on September 13, 2006 and was an appeal between Various Owners in a seasonal RV park and the Town of Sundre. The Board Order was issued, after an appeal was filed regarding the ARB decision, on August 27, 2007. The second decision is cited in **Board Order: MGB 109/07**. In this decision, the board considered issues including the following;

"*2. In order to be non assessable pursuant to section 298(1)(bb), do travel trailers need to be both not connected to a utility service provided by a public utility and not attached or connected to any structure?*

3. Are any or all of the subject units not connected to any utility services provided by a public utility pursuant to section 298(1)(bb)(i) of the Act? i. What is the correct interpretation of the word "connected" in section 298(1)(bb)(i)?"

The Board concluded that "*When all of the references to travel trailers in the Act are analyzed as to what is intended respecting the assessability of travel trailers, it becomes clear that conventional travel trailers as defined in section 284(1)(w.1) of the Act are not to be assessed unless they become so affixed to a*

specific location that they are either connected to a utility service provided by a public utility or attached or connected to any structure."

The Board further elaborated by stating "*Section 298(1) lists properties which are exempt from assessment, not properties which are to be assessed if the criteria enumerated in the Section are met. Travel trailers which meet only one of the criteria in section 298(1)(bb) are assessable. Accordingly, travel trailers that are connected to any utility service provided by a public utility but not connected or attached to a structure are assessable. Similarly, travel trailers that are connected or attached to a structure, but are not connected utility service provided by a public utility are also assessable."*

When addressing the issues of defining "connected" and connected to utility services provided by a public utility, the decision elaborated as follows;

"The MGB agrees with the Respondent that the ordinary meaning of the word "connected" must be applied when interpreting section 298(1)(bb). Where the legislature wished to create an exception and add to the ordinary meaning, they specifically included qualifying words to indicate their intent. In particular, section 298(1) includes the following examples of qualifying language:

(a)(b) … that is owned by the Crown…

(b.1) … and used primarily to provide a domestic water supply service;

(c) … but not including any residence or the land attributable to the residence;

(e)(iii) … but not for the generation of electric power;

(g)(h) … but not including any improvement designed and used for…

(i) … but not including a road right of way that is… (i.1) … but not including a street lighting system owned by a…

(j) … unless the property is located in…

(k) … but not including the following…

(l) … but not including any residence…

(r) … but not including gas conveyancing pipelines owned by rural gas co-operative associations,"… .

While the Legislature has included qualifying words elsewhere in section 298, there is nothing in either the section or the Act as a whole which indicates that the word "connected" should be interpreted to mean "permanently connected" or "connected throughout the year", as proposed by the Appellants.

The fact some of the units under appeal receive water and sewage utility services through a shallow utility connection does not alter the finding that that the trailers are connected to a public utility service as contemplated by section 298(1)(bb)(i) of the Act. The utility services available to the trailers under appeal have been specifically planned, designed and approved for the particular trailer that has been placed on the lot. Moreover, the testimony of the nine owners who testified is consistent with the finding

that the relationship between the utilities and the units under appeal does not change. All of the nine owners who testified before the MGB indicated that unless they have replaced the original unit with another trailer, their units have not been moved from their location in Sundre RV since their original placement on the lots.

Accordingly, the MGB is not convinced that there is any reason to depart from the ordinary meaning of word "connected." As emphasized by the Respondent, the ordinary meaning of the word "connected" is: joined in sequence, related or associated. Furthermore, "join" means to connect or bring together, physically or otherwise; to place in contiguity; to couple; to combine; to associate … to become connected."

"*Based on the evidence submitted by the parties, the MGB finds that all of the trailers under appeal are connected to utility services provided by a public utility for the purposes of section 298(1)(bb)(i). Specifically, the MGB finds that all of the trailers under appeal are connected to electricity services provided by a public utility.*

<u>Connected to electricity services provided by a public utility</u>

The Appellants argued that because the connection is made by placing a plug in an electrical outlet box, and because the 30 amp service is insufficient to run some household appliances, the trailers are not connected to electricity for the purposes of the Act.

Based on the Appellants' submissions, the MGB is not convinced that there is any reason to depart from the ordinary meaning of word "connected." The Act does not require the connection to be akin to that of an ordinary residential dwelling, nor does it specify that the connection should enable those occupying the trailers to power all appliances. Furthermore, rejecting the Appellants' interpretation and accepting that of the Respondent does not result in absurdity.

With respect, the fact that some of the units under appeal receive 30 amp service is of little relevance. The Act does not qualify that 30 amp electricity service is insufficient to be considered a utility service for the purposes of section 298(1)(bb)(i). The Act merely specifies that in order to be non assessable, the trailers cannot be connected to a utility service provided by a public utility. The MGB accepts the Respondent's evidence that each owner had their own account with EPCOR, and that EPCOR supplied the units with electricity throughout the year. Accordingly, the MGB finds that all of the trailers under appeal were connected to electricity.

The MGB does not accept that turning off the switch at the meter or unplugging the cable from the panel would result in the trailers being disconnected from electricity, where electricity is otherwise available. Such actions are analogous to turning off a switch or a breaker at an ordinary residential dwelling, and would not result in a disconnection for the purposes of section 298(1)(bb)(i) of the Act. Furthermore, the fact that the meter does not register any power consumption during the off season does not result in the termination of the connection for the purposes of the Act. It merely means that the electricity has not been accessed or used during the off season. There is no concept of seasonality in the Act.

Based on the finding that all units are connected to an electric public utility, all of the trailers under appeal are assessable pursuant to the Act."

The third decision was a Join Assessment Review Board decision, Order (0111) 010-2010, between Various Owners and The Municipal District of Foothills No. 31. It was agreed prior to the hearing that multiple complaints would be heard as one as they all had the same issues concerning their assessments. The decision dealt with the issue of the assessability of travel trailers. *"With regard to the* ***assessability of travel trailers,*** *the Board concurred with the Municipal Government Board decision 109/07 on a comparable RV park with similar issues, in that the recreational vehicle can be connected to utility services provided by a public utility as per section 298 (1)(bb)(i) of the Municipal Government Act because Country Lane RV Park is provided power through Fortis and then distributed to each lot in the park in the form of a power box, thus making all travel trailers assessable."*

The three board decisions were consistent with their interpretations of the legislation and definitions of key terms. All boards concluded that:

- Travel trailers are assessable unless both conditions with section 298(1)(bb) are met,
- That seasonality is not a factor to consider in determining the assessment,
- That "connected" is defined as joined in sequence, related or associated, and
- That simply unplugging the power cord from power results in the trailer being disconnected from electricity.

Concerning the Appellant's issue that the trailers are "privately owned, temporary chattel property", section 304(1) of the MGA outlines that if an assessment is to be prepared for an assessed property, then the assessed person will be the owner of the parcel of land. The section is shown below for reference.

Recording assessed persons

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

	Column 1 Assessed property		Column 2 Assessed person
(a)	a parcel of land, unless otherwise dealt with in this subsection;	(a)	the owner of the parcel of land;
(b)	a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;	(b)	the owner of the parcel of land;

The Appellant also brought an issue forward regarding the value placed on the travel trailers. There is no evidence that was disclosed which would transfer the burden of proof from the Appellant to the Respondent. Referencing "**Calgary (City) v Alberta (Municipal Government Board), 2010, ABQB 719**", the Appellant must prove the assessment is wrong. It is not up to the Assessment Department to prove themselves correct. All travel trailers were assessed fairly and equitably using the same methodology.

Summary

The Assessment Department has demonstrated that the assessment on the parcel under complaint is both fair and equitable. All applicable legislative standards have been followed and met which makes the assessment reasonable.

The Appellant has brought forward issues regarding the exempt status of the parcel, as well as the assessability of the land and travel trailers and their subsequent assessed values. The Assessment Department has addressed all issues within this report.

The subject parcel does not qualify for exemption due to the various restrictions

The Assessment Department requests the board to amend the assessment to $1,651,410, given the information that has been presented.

Appendix A: Legislation

s.284(1)(r) "**property**" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

MGA s.284(1)(r)

s.289(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

MGA s.289(2)

s.295(1) A person must provide, on request by the assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

MGA s.295(1)

s.1(g) "mass appraisal" means the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing;

MRAT s.1(g)

s.5 An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

MRAT s.5

s.6 Any assessment prepared in accordance with the Act must be an estimate of the value of the property on July 1 of the assessment year.

MRAT s.6

s.9(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

MRAT s.9

s.14(1) In this section, "property" does not include regulated property.

(2) In preparing an assessment for property, the assessor must have regard to the quality standards required by subsection (3) and must follow the procedures set out in the Alberta Assessment Quality Minister's Guidelines.

(3) For any stratum of the property type described in the following table, the quality standards set out in the table must be met in the preparation of assessments:

Property Type	Median Assessment Ratio	Coefficient of Dispersion
Property containing 1, 2 or 3 dwelling units	0.950 - 1.050	0 - 15.0
All other property	0.950 - 1.050	0 - 20.0

(4) The assessor must, in accordance with the procedures set out in the Alberta Assessment Quality Minister's Guidelines, declare annually that the requirements for assessments have been met.

MRAT s.14

s.9(1) In this section, "Complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board panel, the following rules apply with the respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) 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 sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(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 any 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.

MRAC s.9

MGA 362(1)(n)(iii) B

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division:

(a) any interest held by the Crown in right of Alberta or Canada in property other than property that is held by a Provincial corporation as defined in the *Financial Administration Act*;

(b) property held by a municipality, except the following:

(i) property from which the municipality earns revenue and which is not operated as a public benefit;

(ii) property that is operated as a public benefit but that has annual revenue that exceeds the annual operating costs;

(iii) an electric power system;

(iv) a telecommunications system;

(v) a natural gas or propane system located in a hamlet, village, summer village, town or city or in a school division that is authorized under the *Education Act* to impose taxes and has a population in excess of 500 people;

(c) property, other than a student dormitory, used in connection with school purposes and held by

(i) the board of trustees of a school division,

(i.1) the Francophone regional authority of a Francophone education region established under the *Education Act*,

(i.2) the operator of a charter school established under the *Education Act*, or

(ii) the person responsible for the operation of a private school registered under the *Education Act*;

(d) property, other than a student dormitory, used in connection with educational purposes and held by any of the following:

(i) the board of governors of a university, polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(ii) the governing body of an educational institution affiliated with a university under the *Post-secondary Learning Act*;

(iii) a students association or graduate students association of a university under the *Post-secondary Learning Act*;

(iv) a students association of a polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(v) the board of governors of the Banff Centre under the *Post-secondary Learning Act*;

(e) property, other than a student dormitory, used in connection with hospital purposes and held by a hospital board that receives financial assistance from the Crown;

(f) property held by a regional services commission;

(g) repealed by RSA 2000;

(g.1) property used in connection with health region purposes and held by a health region under the *Regional Health Authorities Act* that receives financial assistance from the Crown under any Act;

(h) property used in connection with nursing home purposes and held by a nursing home administered under the *Nursing Homes Act*;

(i) repealed 1998 c24 s29;

(j) property used in connection with library purposes and held by a library board established under the *Libraries Act*;

(k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

(l) property consisting of any of the following:

(i) a parcel of land, to a maximum of 10 hectares, that is used as a cemetery as defined in the *Cemeteries Act*;

(ii) any additional land that has been conveyed by the owner of the cemetery to individuals to be used as burial sites;

(iii) any improvement on land described in subclause (i) or (ii) that is used for burial purposes;

(m) property held by

(i) a foundation constituted under the *Senior Citizens Housing Act*, RSA 1980 cS-13, before July 1, 1994, or

(ii) a management body established under the *Alberta Housing Act*,

and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*;

(n) property that is

(i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

(A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization,

COPTER Interpretation 1(1) (b) (c)

Interpretation

1(1) In this Regulation,

(a) "Act" means the *Municipal Government Act*;

(b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;

(c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;

COPTER Part 1 4(1)

Primary use of property

4(1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the Act or Part 3 of this Regulation unless the property is primarily used for the purpose or use described in those provisions.

COPTER Part 1 7(1)(2)

Meaning of restricted

7(1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on

(a) race, culture, ethnic origin or religious belief,

(b) the ownership of property,

(c) the requirement to pay fees of any kind, other than minor entrance or service fees, or

(d) the requirement to become a member of an organization.

(2) The requirement to become a member of an organization does not make the use of the property restricted so long as

(a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and

(b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.

COPTER Part 2 10(1)(2)

Exemption under section 362(1)(n)(iii) of the Act

10(1) Property referred to in section 362(1)(n)(iii) of the Act is not exempt from taxation unless

(a) the charitable or benevolent purpose for which the property is primarily used is a purpose that benefits the general public in the municipality in which the property is located, and

(b) the resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent purpose for which the property is used.

(2) Property is not exempt from taxation under section 362(1)(n)(iii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

AR 281/98 s10;182/2008

Appendix 4 - Complainant Rebuttal

COMPOSSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe franco-canadienne de Calgary
Complainant

-and-
Foothill County Assessor
Respondent

Rebuttal Brief of the Complainant
La Societe franco-canadienne de Calgary
Roll Number: 2004257520
Hearing Date: November 5th, 2024

WILSON LAYCRAFT
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INTRODUCTION

1. This appeal arose when the Assessor, without notice or justification, increased the Property's assessment to nearly 200% from that of the 2022 assessment. The principal cause of this increase was the decision by the County to add over 40 privately owned travel trailers parked at the Property to the roll as improvements. The Property has been operated as a campground with travel trailers for over 50 years. It was only in the 2023 tax year that the County added travel trailers to the roll.

2. The Assessor's submissions fail to present a justified explanation for why these trailers are assessable. Furthermore, the Assessor fails to consider the severe land use constraints in the assessment of land value.

3. With respect to the SFCC's claim for a charitable exemption, the Assessor takes an excessively narrow approach to the interpretation of charitable exemption provisions found in the *MGA* and *COPTER.* For the reasons to follow, such an interpretation is contrary to judicial guidance and the purpose of the provisions. Instead, the evidence continues to show that the Property is used in connection with a purpose outlined in the MGA and COPTER and is not restricted in its access to the general public.

THE PROPERTY QUALIFIES FOR A CHARITABLE EXEMPTION

4. The crux of the Assessor's argument with respect to a charitable exemption is that the use of Property is restricted. The Assessor's interpretation is that "the only restriction imposed on the members may be requirement to fill out an application and pay a minor fee". The essence of the Assessor's position is that any restriction, no matter how reasonable, would preclude a non-profit from receiving tax relief under *COPTER*.

5. With respect, the Assessor's interpretation is unduly restrictive and contrary to the remedial purpose of *COPTER* and *MGA*. A purposive interpretation of this provision must consider section 7 in line with the purpose of the *MGA* and *COPTER* to provide tax exemptions to non-profit organizations who own and operate property which is used in connection with a charitable or benevolent purpose outlined in the *MGA* or *COPTER*. The requirement for a purposive approach was summarized by the Supreme Court of Canada *Rizzo*:

> ... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> ***Rizzo & Rizzo Shoes Ltd. (Re),* (1998] 1 SCR 27, 154 DLR (4th) 193, at para 21; [TAB 1 RBOA]**

An interpretation that takes into account the full context of legislation, its purpose and its possible consequences, along with any relevant interpretive aids, is superior to one that looks to a limited context and ignores, or purports to ignore, all other considerations.

Rizzo at para 27

6. The Supreme Court of Canada set the following approach to the interpretation of tax legislation:
    a. The interpretation of tax legislation should follow the ordinary rules of interpretation;
    b. A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent: this is the teleological approach;
    c. The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions;
    d. Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute;
    e. Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer.

***Quebec (Communaute urbaine) v Corp. Notre-Dame de Bon-Secours*, (1994] 3 SCR 3, at para 25; 171 NR 161 [TAB 2 RBOA]**

7. It is also a well-established principle of interpretation that a regulation such as *COPTER* is subservient to the enabling legislation. *COPTER* cannot be interpreted to defeat, undermine or act as an amendment to the provisions of the *MGA*. This principle was stated in the context of assessment regulations by the Alberta Court of Appeal in *Strathcona*:

"A regulation must remain within the confines of its statute; it cannot amend it…"
***Strathcona (County) v. Alberta Assessment Appeal Board*, 1995 ABCA 165 at para. 15**
[TAB 3 RBOA]

8. The formalistic approach to the question of an exemption employed by the Assessor is doing just that—it interprets *COPTER* in such a manner as to supersede the legislative purpose of *MGA* to provide tax relief for properties owned by non-profits who seek to use that property for a beneficial purpose for the general public, by suggesting that even reasonable restrictions on membership would preclude exemption on the basis of section 7.

9. Similar issues are found in the Assessor's interpretation of section 16(2), where the Assessor appears to suggest that the Property is restricted more than 30% of the time it is in use. The Assessor is not entirely clear how the Property is restricted in use.

10. In any event, the site is in use for members of the general public 100% of the time it is in use. Property serves no other purpose than to provide a community, recreational and gathering space for people to speak French in a community setting. The evidence clearly suggests as much. The rebuttal statement of John Fournet explains that members of the SFCC, guests, family, friends and acquaintances are able to access the site at their leisure. While the park remains private property and access is controlled accordingly for safety and liability reasons, the use of the Property is exclusively used by members of the general public.

11. The Court of King's Bench in *McDonald v Edmonton (City)*, 2023 ABKB 615 has provided further guidance on how this provision should be interpreted. In that case, Justice Fraser was considering a judicial review application of a decision of the CARB to refuse a charitable exemption application for social housing. In the CARB decision, the board found, in part, that the property did not comply with section 7 because individual leases meant tenants had exclusive use of the units and that the requirement to pay rent to be more than a minor fee, fell under the ambit of restricting people from "using the property on any basis."

12. Justice Fraser found the board's interpretation of restricting access on any basis to be unreasonable, noting that it was "too broad". Instead, Justice Fraser noted that there are "reasonable restrictions" over and above the narrow list of permitted restrictions found in Section 7. For example, Justice Fraser noted that non-profit daycares quite reasonably restrict access to the property, even though this would technically constitute restricting use. Justice Fraser reasoned that:

> In order for any property to operate effectively, there must be some restrictions on its use. Some areas may be required to have limited access for reasons other than safety or liability. A property may not want people from the next building coming into use the microwave, lunchroom and bathroom. This is certainly a reasonable restriction, but hard to categorize as one required for safety or liability reasons.
>
> […]
>
> It is difficult to imagine any building that provides individual housing units that does not also restrict access. It would be ridiculous to provide people an apartment, but then allow anyone access at any time. […]
>
> ***McDonald v Edmonton (City)*, 2023 ABKB 615 para. 17 to 20 [TAB 4 RBOA]**

13. As such, while the wording of section 7 states that individuals cannot be "restricted from using the property on any basis", this is not to be taken so literally that reasonable restrictions to access end up precluding a chartable exemption for an otherwise legitimate purpose. The same applies to membership. While section 7(2)(a) states that membership cannot be restricted "on any basis", an interpretation so broad as to reject reasonable restrictions on membership should be rejected as per the guidance of Justice Fraser.

14. For example, it would be absurd to suggest that the legislature intended that a society which required a criminal background check for membership would be precluded exemption from property tax under section 7 simply because a clean background check is a "restriction". In the case of SFCC, one of the main goals of the organization is the promotion of the French language along with other benevolent purposes. It is worth repeating that the definition of "linguistic organization" found in section 13(d) of *COPTER* is to mean "an organization formed for the purpose of promoting the use of English or French in Alberta." It stands to reason that English and French language ability is a reasonable restriction for membership

in a linguistic organization. A linguistic organization would struggle to promote either French or English in Alberta if its members were themselves unable to speak these languages.

15. This requirement is also no different than any other non-profit, or charitable organization which requires its members to speak English. The ability to communicate in an official language is a reasonable restriction on membership and is employed in a multitude of not-for profit organizations that require its members to be able to actively communicate its goals and objectives. As such, the Assessor's assertion that basic language ability is a clear restriction to the parcel does not bear scrutiny under a purposive interpretation of these provisions.

16. Furthermore, while some French language ability is required for membership to SFCC, it is not a requirement to access the Property, and there are many users of the site are not French speakers.

17. When read purposively, section 7 is intended to ensure that exemptions are applied only when the property is being used to promote a charitable and benevolent purpose where members of the public are able to benefit while precluding an exemption for nonprofits who use property, such as country clubs or winter clubs, where only a wealthy few can benefit from the property, something the legislature evidently wanted to avoid.

18. Justice Bielby's guidance in interpreting the phrase "general public" in *Ukrainian Youth* is also instructive on this question. There, a charitable exemption was refused by the City of Edmonton in part because people of Ukrainian ethnicity were the primary users of the property. On appeal to the MGB, the board accepted the City's argument that the general public was excluded from the property because it was primarily used by members of the Ukrainian community. The City attempted to argue that because the site was primarily used by members of "the same ethnic background", that it was not open to the general public.

19. Justice Bielby held that "general public" was not to be read so as to suggest that every member of the general public was required to benefit equally:

> The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any other for the exemption to apply; indeed the City did not try to defend such a definition.
>
> ***Ukrainian Youth* at para. 29 [TAB 3 BOA]**

20. Justice Bielby's reasoning can also apply to site restrictions, whereby simply because the Property is not a public property such as a public park, or that some users such as members of the SFCC use the site more than others, does not mean the site is restricted within the context of the meaning of general public.

21. With respect to the actual times the site is available to the public, the Complainant's evidence is clear that during the season in which the site is permitted to be used as per the bylaw, the site is available to the general public 100% of the time. General public in this case, includes members of SFCC, their friends, family acquaintances, and any other visitors to the park during the open season. It is certainly not akin to that of an elite winter club, where access is limited solely to members who pay high membership fees.

THE LAND VALUE REMAINS OVERASSESSED

22. The Assessor's submissions with respect to land value fail in its entirety to consider the restrictive land use, particularly with respect to the environmental, economic and legal restrictions imposed on the property. The land remains effectively scrub land, unable to be used for agriculture, residential or any other purpose due to being located in a flood plain. Such restrictions must be accounted for in the assessment. Please refer to the Rebuttal Report.

TRAVEL TRAILERS ARE IMPROPERALY ASSESSED AS IMPROVEMENTS

23. The Assessor justifies the assessment of the privately owner travel trailers on the Property on the basis that they have access to a power outlet. On this basis, all privately owned travel trailers on the Property were added to the assessment in 2023 and now constitute well over half of the assessed value at Property

24. The Assessor relies on some of the few reported decisions where assessment tribunals have interpreted section 298(1)(bb). In particular, the Assessor relies on a series of decisions by

the MGB over the joint appeals of bare land condominium units located at the Riverside RV park in Sundre. The Assessor suggests that these cases support a general proposition that merely connecting a travel trailer to an electric outlet at a property makes the trailer an assessable improvement under the *MGA.*

25. There are important distinctions between the facts at issue in these cases. First, the Riverside appeals involved travel trailers located on bare land condominium lots whereby the owners of the trailers also owned small bare land condominium parcels in the trailer park upon which the trailers were situated. These lots were all serviced by sewer, water, and electrical services where each owner had separate accounts with the utility provider. This is not the case with the Property, where SFCC does not own the travel trailers, and the owners of the trailers do not have separate service contracts with utility providers.

26. Second, in two of the three decisions, the MGB found that the analysis of whether a travel trailer was assessable as per the 298(1)(bb) involved an inquiry into whether the travel trailer was being used akin to mobile homes. In *Jaeger v Sundre* the board noted the underlying purpose of the MGA was to distinguish between temporary, recreational use of travel trailers, and those which are used akin to mobile homes:

> In interpreting the degree of connectedness required for the exemption to be lost, the MGB believes that one must again look at the purpose of the provision. Travel trailers (by definition and in reality) are used to provide accommodation for vacation use. […] <u>They may plug in the electrical cord from their trailer to an available receptacle to provide power for nighttime lighting. In the winter they may plug their block heater into a residential outlet to protect the motor from freezing. None of these temporary uses of utilities indicate a degree of connectedness of the type that would make the trailer in question sufficiently analogous to other types of mobile home for the purposes of municipal assessment.</u>
>
> ***Jaeger v Sundre (Town)*** **MGB 024/05 at para. 59 [TAB 5 RBOA]**

27. The next appeal involving the Riverside RV park was the *Taverner v Sundre* decision which involved the joint appeal of 67 bare land condo owners whose trailers had been assessed. As with the *Jaeger* decision, the MGB considered 298(1)(bb) within the purpose and rationale of the *MGA* whereby the legislature only intended travel trailers that "had become like residences" to be assessed. In considering the 298(1)(bb) in this context, the

board found that the utility connections were not sufficiently permanent to consider the trailer's connected to public utilities and were therefore not assessable.

Taverner v Sundre **MGB 123/05 [TAB 6 RBOA]**

28. The final decision was *Various Owners v Town of Sundre*, which was relied on by the Assessor in this case. In that case, the determinative fact noted by the board was the relationship between the utility provider and the owners of the lots:

> "The MGB accepts the Respondent's evidence that each owner had their own account with EPCOR, and that EPCOR supplied the units with electricity throughout the year. Accordingly, the MGB finds that all of the trailers under appeal were connected to electricity.
>
> ***Various Owners v Town of Sundre*** **MGB 109/07 [TAB 7 RBOA]**

29. Again, all of these appeals involved bare land condominiums. The sites were designed and built for the owners of the sites to park their trailers and remain at the lots for long periods of time. There was potable water, sewer connections, and they had independent electricity contracts. This can be contrasted with the subject property where all the travel trailers are independently owned, on temporary leases, and with electricity connection provided by the SFCC.

30. With respect to attached or connected to structures, the Assessor provides pictures of travel trailers parked next to structures and asserts that the travel trailers are therefore "attached or connected". The structures, while adjacent to the travel trailers, are not connected or attached. They are accessed by stepping from the trailer onto the structures through the trailer's door.

31. At paragraph 65 of the *Jaeger* MGB decision, the Board was satisfied by the oral evidence of the appellant that a veranda was two inches away from the trailer, "and therefore not attached or connected. The photographs presented by both parties identify a structure in very close proximity to the trailer but whether it is attached or not cannot be determined."

32. The facts are no different than the structures located near some of trailers at the Property. They are adjacent, but not attached to the structures.

THE ASSESSMENT IS INEQUITABLE

33. The Assessor asserts that mere connection to a public utility is sufficient to render a travel trailer assessable, with no consideration given to permanency, and even whether the trailers are owned by the property owner. This is the justification given for a close to 1 million dollar increase in the assessment of the Property. However, it is evident that in at least two other private RV/ campground sites in Foothills County, the Foothills Assessment Department does not assess travel trailers notwithstanding that these sites have access to public utilities for trailers parked at sites.

34. In the 2023 assessment notices for Nature's Hideaway and Riverbend Campground, no travel trailers were assessed. Both these campgrounds actively advertise that lots include full access to utilities, including electricity. It is also worth noting that no sheds, decks or verandas are included in the assessment of the Riverbend site even though these structures are present on the property and in many cases adjacent to the travel trailers.

35. In the context of taxation, it is an accepted principle of property taxation that taxing authorities must deal even-handedly with all taxpayers in a municipality and that all taxpayers within a class be treated in the same way.

***C & C Holdings Inc. v British Columbia (Assessor of Area No 4 - Nanaimo-Cowichan)*, 2003 BCSC 230, at para 17 [TAB 8 RBOA]**

See also: *Jonas v Gilbert (1881),* 5 SCR 356, at pp 6-7

36. The LPRT recently summarized as much in the recent *Fort Hills* decision in the context of Designated Industrial Properties, citing the Alberta Court of Appeal in *Strathcona, supra.*:

> …The requirement for equitable assessment generally implies that owners of similar properties are entitled to similar treatment. […] However, even in the regulated context, different treatment of similar properties must be supported by clear legislated direction.

***Fort Hills Energy Corp. v Provincial Assessor*, 2024 ABLPRT 149 at para. 53 [TAB 9 RBOA]**

37. While the Assessor identifies the basis upon which the County believes they were justified in adding privately owner travel trailers to the roll, such an approach is inequitable in

relation to other campgrounds. It is neither fair, nor equitable for SFCC to be subjected to significant tax liability, on trailers they do not even own, while privately owned travel trailers on nearly identical properties are not assessed. On this basis alone, the assessment of travel trailers on the Property should be reduced to $0.

CONCLUSION

38. In conclusion, SFCC repeats its position that the property is exempt from taxation under the charitable exemption provisions of the *MGA* and *COPTER.* The most applicable provision is that it is used in connection with a linguistic organization. In the alternative, the travel trailers are non-assessable and the land value remains over assessed.

COMPOSSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe franco-canadienne de Calgary

Complainant

-and-

Foothill County Assessor

Respondent

Rebuttal Report of John Fournet and Stella Bergeron

La Societe franco-canadienne de Calgary

WILSON LAYCRAFT
Barristers & Solicitors
#650, 211 – 11th Avenue SW
Calgary, AB T2R 0C6
Attn.: Gilbert J. Ludwig, K.C. and Jeffery D. Talbot

Stella Bergeron: The Assessor's explanation for assessing travel trailers

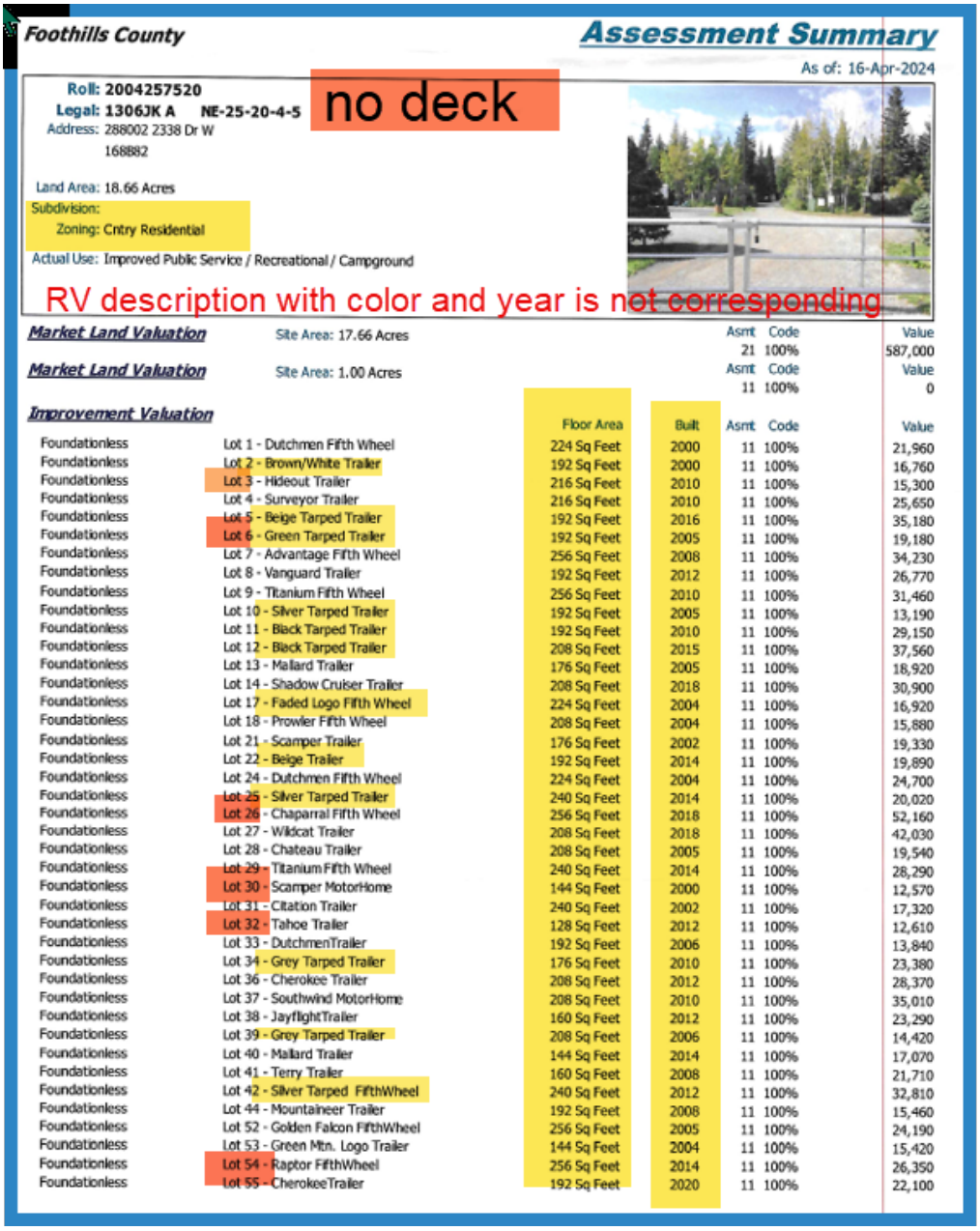
- With respect to the Assessor's comments about the travel trailers being connected to structures, none of the trailers are attached to structures. Because the bylaw restricts trailers to being non-permanent, and moveable within 48/hrs, the trailers are only parked *adjacent* to structures. There is no physical connection. Trailer owners move between the structures by opening the door of their trailer and stepping onto the structure.

- The tenants of Park Beauchemin own all the trailers subject to assessment. In my long career as an agent and landlord, I have never heard of a landlord being charged taxes for personal property of tenants such as travel trailers.

- Secondly, the travel trailers are vehicles and the SFCC and Foothills require that they can be moved within 48 hours as the Property is subject to rapid flooding. Tenants also use their trailers to visit friends or family during the summer, so they are rarely at the Park the whole season. They can be parked one day and gone the next. Trailer owners often moveout throughout the season and new trailers move in. The lease arrangement is only for 1-year. **See Schedule "A" for a copy of the lease.**

- I am not aware of which trailers are referred to in the assessment because there are generic descriptions for most of them, for example "Brown/white trailer". Other trailers are described by the color of the tarps covering them. We are even unable to tell whether the trailers remain at the Property with these limited descriptions. Many of the trailers do not have a deck or veranda. These are identified in orange below.

- Nearly all the trailers listed in the assessment contain imprecise descriptions and does not account for factors like:
    - model
    - year
    - size
    - condition



Foothills County

Assessment Summary

As of: 16-Apr-2024

Roll: 2004257520
Legal: 1306JK A NE-25-20-4-5
Address: 288002 2338 Dr W
168882

no deck

Land Area: 18.66 Acres
Subdivision:
Zoning: Cntry Residential
Actual Use: Improved Public Service / Recreational / Campground

RV description with color and year is not corresponding

Market Land Valuation	Site Area: 17.66 Acres				Asmt Code 21 100%	Value 587,000
Market Land Valuation	Site Area: 1.00 Acres				Asmt Code 11 100%	Value 0
Improvement Valuation		Floor Area	Built	Asmt	Code	Value
Foundationless	Lot 1 - Dutchmen Fifth Wheel	224 Sq Feet	2000	11	100%	21,960
Foundationless	Lot 2 - Brown/White Trailer	192 Sq Feet	2000	11	100%	16,760
Foundationless	Lot 3 - Hideout Trailer	216 Sq Feet	2010	11	100%	15,300
Foundationless	Lot 4 - Surveyor Trailer	216 Sq Feet	2010	11	100%	25,650
Foundationless	Lot 5 - Beige Tarped Trailer	192 Sq Feet	2016	11	100%	35,180
Foundationless	Lot 6 - Green Tarped Trailer	192 Sq Feet	2005	11	100%	19,180
Foundationless	Lot 7 - Advantage Fifth Wheel	256 Sq Feet	2008	11	100%	34,230
Foundationless	Lot 8 - Vanguard Trailer	192 Sq Feet	2012	11	100%	26,770
Foundationless	Lot 9 - Titanium Fifth Wheel	256 Sq Feet	2010	11	100%	31,460
Foundationless	Lot 10 - Silver Tarped Trailer	192 Sq Feet	2005	11	100%	13,190
Foundationless	Lot 11 - Black Tarped Trailer	192 Sq Feet	2010	11	100%	29,150
Foundationless	Lot 12 - Black Tarped Trailer	208 Sq Feet	2015	11	100%	37,560
Foundationless	Lot 13 - Mallard Trailer	176 Sq Feet	2005	11	100%	18,920
Foundationless	Lot 14 - Shadow Cruiser Trailer	208 Sq Feet	2018	11	100%	30,900
Foundationless	Lot 17 - Faded Logo Fifth Wheel	224 Sq Feet	2004	11	100%	16,920
Foundationless	Lot 18 - Prowler Fifth Wheel	208 Sq Feet	2004	11	100%	15,880
Foundationless	Lot 21 - Scamper Trailer	176 Sq Feet	2002	11	100%	19,330
Foundationless	Lot 22 - Beige Trailer	192 Sq Feet	2014	11	100%	19,890
Foundationless	Lot 24 - Dutchmen Fifth Wheel	224 Sq Feet	2004	11	100%	24,700
Foundationless	Lot 25 - Silver Tarped Trailer	240 Sq Feet	2014	11	100%	20,020
Foundationless	Lot 26 - Chaparral Fifth Wheel	256 Sq Feet	2018	11	100%	52,160
Foundationless	Lot 27 - Wildcat Trailer	208 Sq Feet	2018	11	100%	42,030
Foundationless	Lot 28 - Chateau Trailer	208 Sq Feet	2005	11	100%	19,540
Foundationless	Lot 29 - Titanium Fifth Wheel	240 Sq Feet	2014	11	100%	28,290
Foundationless	Lot 30 - Scamper MotorHome	144 Sq Feet	2000	11	100%	12,570
Foundationless	Lot 31 - Citation Trailer	240 Sq Feet	2002	11	100%	17,320
Foundationless	Lot 32 - Tahoe Trailer	128 Sq Feet	2012	11	100%	12,610
Foundationless	Lot 33 - DutchmenTrailer	192 Sq Feet	2006	11	100%	13,840
Foundationless	Lot 34 - Grey Tarped Trailer	176 Sq Feet	2010	11	100%	23,380
Foundationless	Lot 36 - Cherokee Trailer	208 Sq Feet	2012	11	100%	28,370
Foundationless	Lot 37 - Southwind MotorHome	208 Sq Feet	2010	11	100%	35,010
Foundationless	Lot 38 - JayflightTrailer	160 Sq Feet	2012	11	100%	23,290
Foundationless	Lot 39 - Grey Tarped Trailer	208 Sq Feet	2006	11	100%	14,420
Foundationless	Lot 40 - Mallard Trailer	144 Sq Feet	2014	11	100%	17,070
Foundationless	Lot 41 - Terry Trailer	160 Sq Feet	2008	11	100%	21,710
Foundationless	Lot 42 - Silver Tarped FifthWheel	240 Sq Feet	2012	11	100%	32,810
Foundationless	Lot 44 - Mountaineer Trailer	192 Sq Feet	2008	11	100%	15,460
Foundationless	Lot 52 - Golden Falcon FifthWheel	256 Sq Feet	2005	11	100%	24,190
Foundationless	Lot 53 - Green Mtn. Logo Trailer	144 Sq Feet	2004	11	100%	15,420
Foundationless	Lot 54 - Raptor FifthWheel	256 Sq Feet	2014	11	100%	26,350
Foundationless	Lot 55 - CherokeeTrailer	192 Sq Feet	2020	11	100%	22,100

Stella Bergeron: Trailers at other campgrounds are not assessed

- With respect to the Assessor's position beginning at page 15 that travel trailers are assessable if they are connected to electrical outlets, I would note that there are at least two private campgrounds in Foothills County where travel trailers are not assessed by the county which have access to publicly provided electricity.

- **NATURE'S HIDEAWAY** located at 144192 2253 Drive East does not have travel trailers assessed even though public utilities are provided to site users including electrical, sewage, and water.

Foothills County

Assessment Summary

Year of General Assessment: 2023

Roll: 2128262520
Legal: 0510893 1 1 S-26-21-28-4
Address: 144192 2253 Dr E
061256529

Land Area: 30.39 Acres
Subdivision:
Zoning: Cmpgrd NaturesHideSW26-21-28W4

Market Land Valuation

Site Area: 20.39 Acres

Asmt	Code	Value
21	80%	638,340
11	20%	159,590

Market Land Valuation

Site Area: 10.00 Acres

Asmt	Code	Value
11	100%	112,670

Improvement Valuation

		Floor Area	Built	Asmt	Code	Value
Foundationless	Mobile Home (Mgr Home)	784 Sq Feet	1982	11	100%	5,640
Foundationless	Manufactured Home - Single	1,280 Sq Feet	2011	11	100%	146,950

Marshall & Swift

		Area (Ft2)	Built	Asmt	Code	Value
Attached	garage attached to store	1,230 Sq Feet	1945	21	100%	3,040
Detached	Storage shed- Across from Park	240 Sq Feet	1980	21	100%	650
Detached	Storage Shed- Across from Park	240 Sq Feet	1980	21	100%	650
Hand Calculated	Fence/Gate		2001	21	100%	38,600
Detached	Small Shed- beside Store	80 Sq Feet	1980	21	100%	420
Detached	Small Shed- by site #130	80 Sq Feet	1980	21	100%	470
Detached	Small Shed- @ Corral site	80 Sq Feet	1980	21	100%	470
Detached	Small Shed- by site #58	80 Sq Feet	1980	21	100%	470
Detached	Small Shed- beside Trapper's Cabin	80 Sq Feet	1980	21	100%	470
Main Level Structure	Relocatable Office	352 Sq Feet	2013	21	100%	9,990
Detached	Gate House- Octagon	60 Sq Feet	1980	21	100%	1,290
Main Level Structure	Relocatable Office	560 Sq Feet	2013	21	100%	59,680
Hand Calculated	RV Sites		1984	21	100%	131,300
Detached	Washrooms/Laundromat (beside mgr trailer)	365 Sq Feet	1996	21	100%	53,780
Detached	Washrooms by store	624 Sq Feet	1979	21	100%	57,560
Detached	General Store	352 Sq Feet	1945	21	100%	1,970

Assessment Totals

Tax Status	Code	Description	Assessment
T	11	Residential	424,850
	21	Commercial - Rec.	999,150
		Totals For 2023 Taxable	**1,424,000**
		Grand Totals For 2023	**1,424,000**

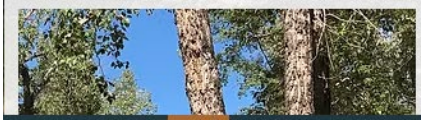
OUR HIDEAWAY

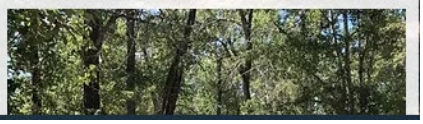
Nature's Hideaway is hidden in a valley and surrounded by the Highwood River. Our campground offers the perfect escape from the city. We are located just 15 minutes southest of Calgary and 15 minutes northeast of Okotoks. The campground offers many amenities and a range of different sites including fully serviced , water/ power and un-serviced sites. Our sites are 20amp. Each site is a different shape because of all of the trees. Each site has firepit and a picnic table. The campground offers flush toilets, showers, coin laundry, a small store, a playground, horse shoe pit, tons of beach area along the river including a sandy spot for little ones. We like to surprise our campers with different events on long weekends. Best of all- our staff are super friendly!

It is important to us that each family enjoy their stay.

Reservations are recommended, please locate the appropriate forms on the "Reservations & Rates" tab, print or download the forms and send them to nhc123@telus.net so that we can reserve a piece of nature for you!

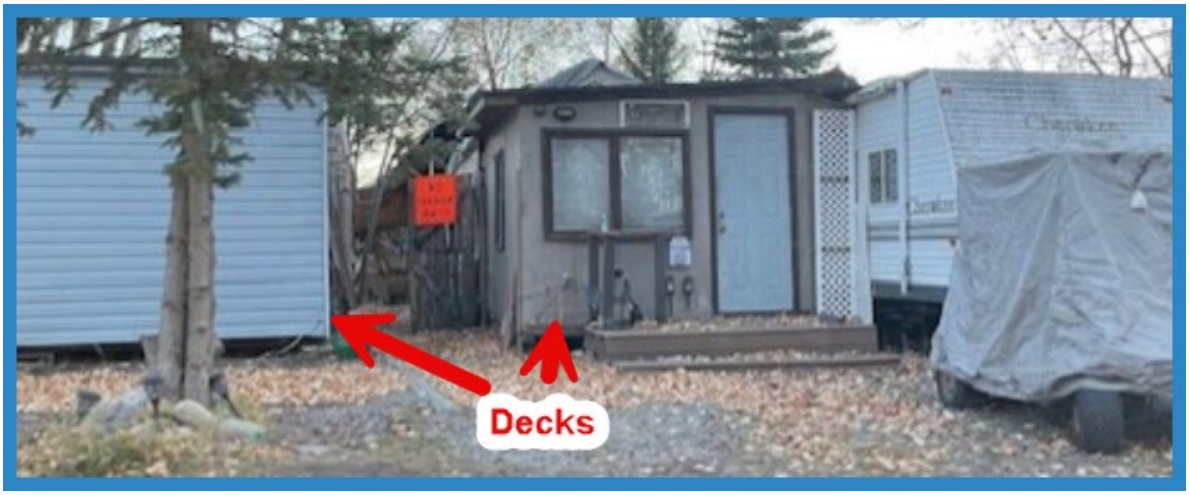




- The **RIVERBEND CAMPGROUND** located at 48065 370 Ave East is open during the winter (unlike Park Beauchemin) and is *fully* serviced by public utilities.
- Due to the high rental price in town, many RV customers live year-round and it is their main residence, and many of the sites include sheds, decks, verandas ext. This campground does not have travel trailers assessed. The sites have 200 pound propane tanks for heating during winter. The following pictures demonstrate how the Riverbend campground allows for far more permanent stays yet the trailers are not assessed:


Decks


Decks


deck
anterna for internet and or TV
Long term stay ?

Foothills County

Assessment Summary

Year of General Assessment: 2023

Roll: 2029235000
Legal: NW-23-20-29-4
Address: 48065 370 Ave E
971001305

Land Area: 156.07 Acres
Subdivision:
Zoning: Agricultural

		Asmt	Code	Value
Market Land Valuation	Site Area: 41.50 Acres	21	100%	0
Market Land Valuation	Site Area: 45.00 Acres	21	100%	861,710
Market Land Valuation	Site Area: 14.00 Acres	13	100%	160,390

Farmland Valuation — Agroclimatic Zone: 97 2H-S(C) — Asmt 1, Code 100%, Value 14,570

Soil Group	Area	Rating
2 Bk	55.50 Acres	75.0%
80 Pasture	0.00 Acres	19.0%
80 Pasture	0.00 Acres	71.0%
80 Pasture	0.00 Acres	26.0%

Total Area: **55.50 Acres**

Marshall & Swift

		Area (Ft2)	Built	Asmt	Code	Value
Main Level & Conc. Slab	Restaurant / Club House	4,200 Sq Feet	1990	21	100%	258,300
Main Level Structure	Concession-Centre Main	832 Sq Feet	1990	21	100%	31,520
Main Level Structure	Workshop/Maintenance Shed	640 Sq Feet	1990	21	100%	14,570
Hand Calculated	Ball Diamonds - Fencing - 4 fields		1990	21	100%	54,650
Hand Calculated	Ball Diamonds - Fencing - 3 fields		1990	21	100%	38,450
Detached	Concession 2 - Snack Bar	120 Sq Feet	1990	21	100%	5,860

Income Valuation

IncomeID	Location	Property Type	Asmt	Code	Value
133000217	Foothills County	Recreation	21	100%	1,463,680

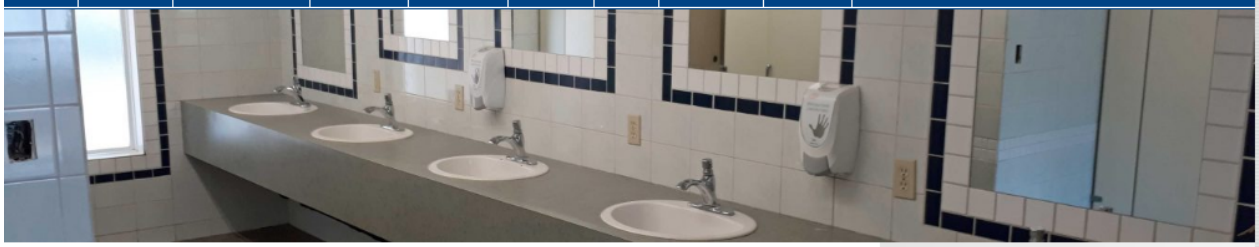
Assessment Totals

Tax Status		Code	Description	Assessment
T	a	1	Farmland	14,570
		13	Vacant Residential	160,390
		21	Commercial - Rec.	2,728,740
			Totals For 2023 Taxable	**2,903,700**
			Grand Totals For 2023	**2,903,700**

Riverbend Campground, Okotoks, Calgary, Alberta

Your Family Camping Destination

Home | Location | Camping Rates | Facilities | Activities | Gallery | Blog | Resources | Contact



Facilities

Modern and clean facilities

When choosing a family campground, consideration should be given to facilities and amenities. These are especially important if you are planning to stay for several days, or beyond. We would be very happy to have you book for an extended stay. We are proud of our facilities and the great job our staff do to keep things clean and in tip top shape.

- General store
- Clean modern washrooms (flush toilets & sinks)
- Hot showers
- Laundry
- On site propane sales
- Power, water, sewer (30/ 50 amp power)
- Fire pits
- Picnic tables
- Pet friendly
- Gazebo rental (hall & kitchen) for large groups
- WI-FI available daily weekly or monthly
- Playgrounds, mini golf, ~~paddle boats~~, peddle carts, bicycle rentals
- Nature trails (see activities)
- Wood for sale
- Online Reservations
- Natural lots with trees

Riverbend Campground

OPEN YEAR ROUND - Note November 1 - March 31 is monthly camping only. NOTE: No running water at sites from mid October to late April.

Location: 48033 370 Ave East,
Okotoks, Alberta
T1S-1B5

Contact us at
reservations@riverbendcampground.ca

Phone 866-938-2017

Local (403) 938-2017

Weather Station at Riverbend Campground

October 25, 2024, 1:07 pm

6.8 °C 6.8 °C -7.7 °C

Stella Bergeron: site accessibility

- With respect to the comment on page 10 of the Assessor's report that no schedule of when SFCC uses the facility and when the facility is open to the public, the facility is open to the public, including members of the SFCC 100% of the time during the open season. In other words, during the open season, it is accessible 24/hrs a day, 7 days a week.

- As this is a campground and recreational space, the Property does not have open hours like a business. It is no different than any other private campground where people are able to access the site as they wish, so long as they have prior permission.

- You do not need to be a member of SFCC to enjoy the Property nor do you need to lease a lot to enjoy the Property. At any given time, the Property is used by a mixture of members of SFCC, their friends, family, guests and other members of the public, including thoseare doing a trial run. The make-up of members/ non-members also varies depending on the day. The site is also available for recreational activities from other groups, including hosting local Scouts group. In all cases, people are free to come and go from the Property so long as they have permission.

- There is no caretaker or security on site. For safety reasons we need to know who is going to the campground ahead of time and guests must be invited by members or family/friends of members or receive permission in advance. The SFCC does not regulate who can be invited and how users behave in the Property. It is for members-volunteers to ensure all the guests are respecting the bylaws (from the SFCC and the MD Foothill).

- The sole purpose and use of the park is to provide a recreational space for people to speak French in a safe, fun, and accessible community setting which encourages both the use and teaching of French in Alberta. There are no restrictions based on race, ethnicity, culture, religion or any other basis. The Property is a space where people can exchange culture and language regardless of their background. The park is open to all visitors whatever their cultural background. It should be noted that on a total of 73 occupants last season, 53% have English as their primary language and 43% have French and 4% have Spanish as their primary language. There are also guests who do not speak French but are still able to use and enjoy the Property with the guidance of French speakers.

John Fournet: Foothill's description of Parc Beauchemin (page 5) and value of the land (page 8)

- The Assessor says that Parc Beauchemin has a legal area 18.66 acres and now has an assessed area of 16.81 acres. This is correct but Foothills has known since the flood of 2013 that the Three Point Creek had moved its bed eastward resulting in a loss of 0.75 hectares i.e.1.85 acres but has continued to charge taxes to the SFCC based on the inaccurate legal area.

- The assessed value of the land amounting to $536,500 or $31,915 is not supported by any of 6 comparable properties chosen by the Assessor on page 11 of the report. Parc Beauchemin is in a floodway and is subject to inundations and is likely to lose more land in future flooding. None of the 6 comparables are in a floodway but rather are part of residential subdivisions and have houses except one which can be considered as farmland but future residential. No permanent buildings with foundations or houses can be built in Parc Beauchemin.

- The Assessor is comparing Parc Beauchemin with properties with significant economic and residential value. The Assessor does not address that the main characteristic of Parc Beauchemin is that it is in a floodway; has restrictive zoning which was recently changed from Country Residential to Recreational and which severely impedes the market value of the property; and is effectively scrub land whereby no agriculture and grazing can occur given that it is heavily forested with spruce trees. The spruce needles render the soil unsuitable for agriculture.

- Secondly, the location of Parc Beauchemin is remote. It is far from any town or city. It is not located on any major highway. Therefore, the value is less than near Okotoks or High River or Calgary.

- According to the current assessment for 2024 the taxes for Parc Beauchemin will increase from $7,504.23 to $14,092.24 resulting in an increase of 187.80% while nothing has changed in the Parc for the past 52 years. This has created significant financial burden on a not-for profit that has been active in the community for decades, providing scholarships, housing, education, and a community for Albertans to speak and learn French in a community setting.

- However, the recent assessments have seen SFCC losing monies for the past year 2 years with Parc Beauchemin as follows:

	2022	**2023**
Loss	$14,121	$16,843

  We expect a record loss for 2024 due to the tax increases.

- Foothills has never provided any explanation for the tax increase other than to state in the Assessor's report that travel trailers are connected to electricity, something the County has known about for decades yet never felt the need to assess the trailers. It was not until reading the Assessor's report that any explanation was provided for the increase.

- If this Board determines that the Park is not charitably exempt, we request an adjustment to the assessment as follows:

Land owned by the SFCC:	$175,810
Travel Trailers, RV's, decks, verandas & shed owned by tenants:	$0.00 .
Buildings, infrastructures and various improvements	$117,790
Total	$293,600

Attached as Schedule "B" is a detailed analysis of the 6 comparables provided by Foothills County along with more appropriate comparables.

"*JOHN FOURNET*" Oct 28, 2024

John Fournet

Treasurer, SFCC

Stella Bergeron, Oct 28/2024

Stella Bergeron

President, SFCC

SCHEDULE "A"

FOOTHILLS COMPARABLE # C.1 NW 20-30 W5

Housing subdivision located southwest of Millarville

Legal description: Plan 0612921 Block 4 Lot 17

Purchased on March 10, 2021

Price : $332,500

Area: 6.50 acres more or less

Adjusted Price for inflation :$374,848

Price per acre: $57,669

Owners: Cory and Wanita Mahan

Comments: This is a housing lot, and the property is not in a floodplain or close to a river. This is not a comparable to Parc Beauchemin.

John Fournet, Treasurer SFCC

Enclosures:

FC .2 Location map

FC 3 Site plan

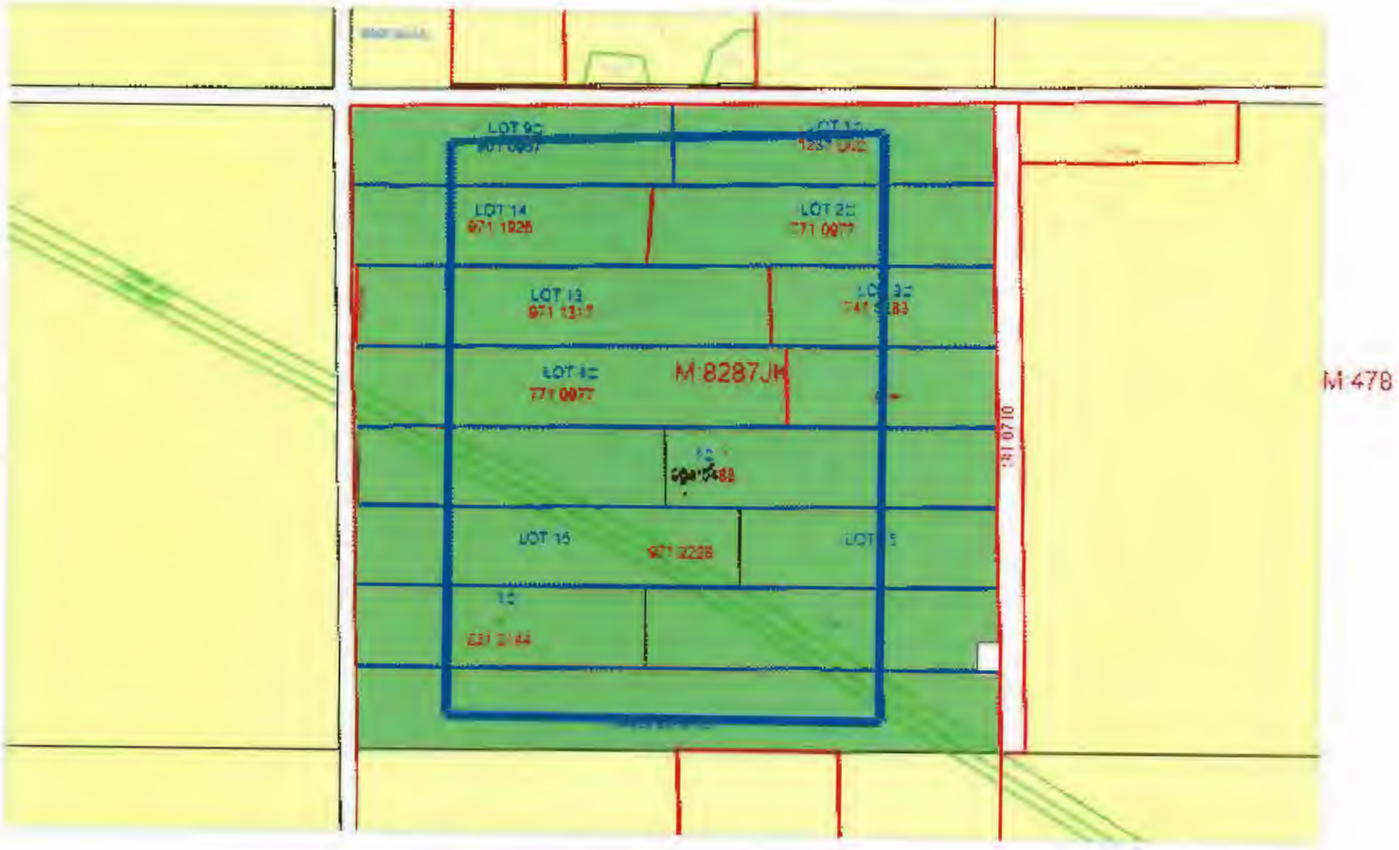
FC 4 to FC5 Title

FC 6 google map


FC 2
Brown - Lowery Provincial Park
Millarville
SUBJECT
21-04
21-03
21-02
20-04
20-03
20-02
DIAMOND VALLEY

FC 3

SE 29-20-3-W5



FC 4

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0031 857 279	0612921;4;17	211 052 241

LEGAL DESCRIPTION
PLAN 0612921
BLOCK 4
LOT 17
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.63 HECTARES (6.5 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;3;20;20;NW

MUNICIPALITY: FOOTHILLS COUNTY

REFERENCE NUMBER: 201 048 115

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
211 052 241	10/03/2021	TRANSFER OF LAND	$332,500	$332,500

OWNERS

CORY MAHAN

AND
WANITA MAHAN
BOTH OF:
[redacted]
AS JOINT TENANTS

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
751 083 923	08/08/1975	UTILITY RIGHT OF WAY GRANTEE - CANADIAN WESTERN NATURAL GAS COMPANY LIMITED.

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
771 090 206	06/07/1977	CAVEAT RE : DEFERRED RESERVE CAVEATOR - THE CALGARY REGIONAL PLANNING COMMISSION.
061 293 402	21/07/2006	CAVEAT RE : EASEMENT
061 341 238	22/08/2006	EASEMENT OVER AND FOR BENEFIT OF: SEE INSTRUMENT
161 288 931	05/12/2016	ORDER RE;EASEMENT - OVER AND FOR BENEFIT OF SEE ORDER.
211 052 242	10/03/2021	MORTGAGE MORTGAGEE - THE TORONTO DOMINION BANK. 500 EDMONTON CITY CENTRE EAST EDMONTON ALBERTA T5J5E8 ORIGINAL PRINCIPAL AMOUNT: $166,250
211 178 427	16/09/2021	DISCHARGE OF UTILITY RIGHT OF WAY 751083923 PARTIAL EXCEPT PLAN/PORTION: PORTION

TOTAL INSTRUMENTS: 007

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 25 DAY OF OCTOBER, 2024 AT 07:50 P.M.

ORDER NUMBER: S1995349

CUSTOMER FILE NUMBER:

REGISTRAR OF LAND TITLES

END OF CERTIFICATE

(CONTINUED)


SE 29-20-3-W5 (C1)
Write a description for your map.
Legend
Prairie Spirit Alpacas
Range Road 33
Google Earth
Image © 2024 Airbus
1000 ft
N

FOOTHILLS COMPARABLE NW 6-20-1-W5-

Housing subdivision located between Okotoks and Diamond Valley

a. Foothills comparable # 2 having an area of 22 acres sold at price of $700,000 on August 22, 2024 does not exist.

b. Foothills comparable # 3 does exist and is described below:

Legal description: Plan 0711765 Block 5 lot 1

Purchased on March 6, 2023

Price : $758,000

Adjusted Price for inflation :$770,734

Area: 22 acres more or less

Price per acre: $35,033

Owners: Kent & Krista Maurer

Comments: This is a housing lot, and the property is not in a floodplain or close to a river. This is not comparable to Parc Beauchemin.

John Fournet, Treasurer SFCC

Enclosures:

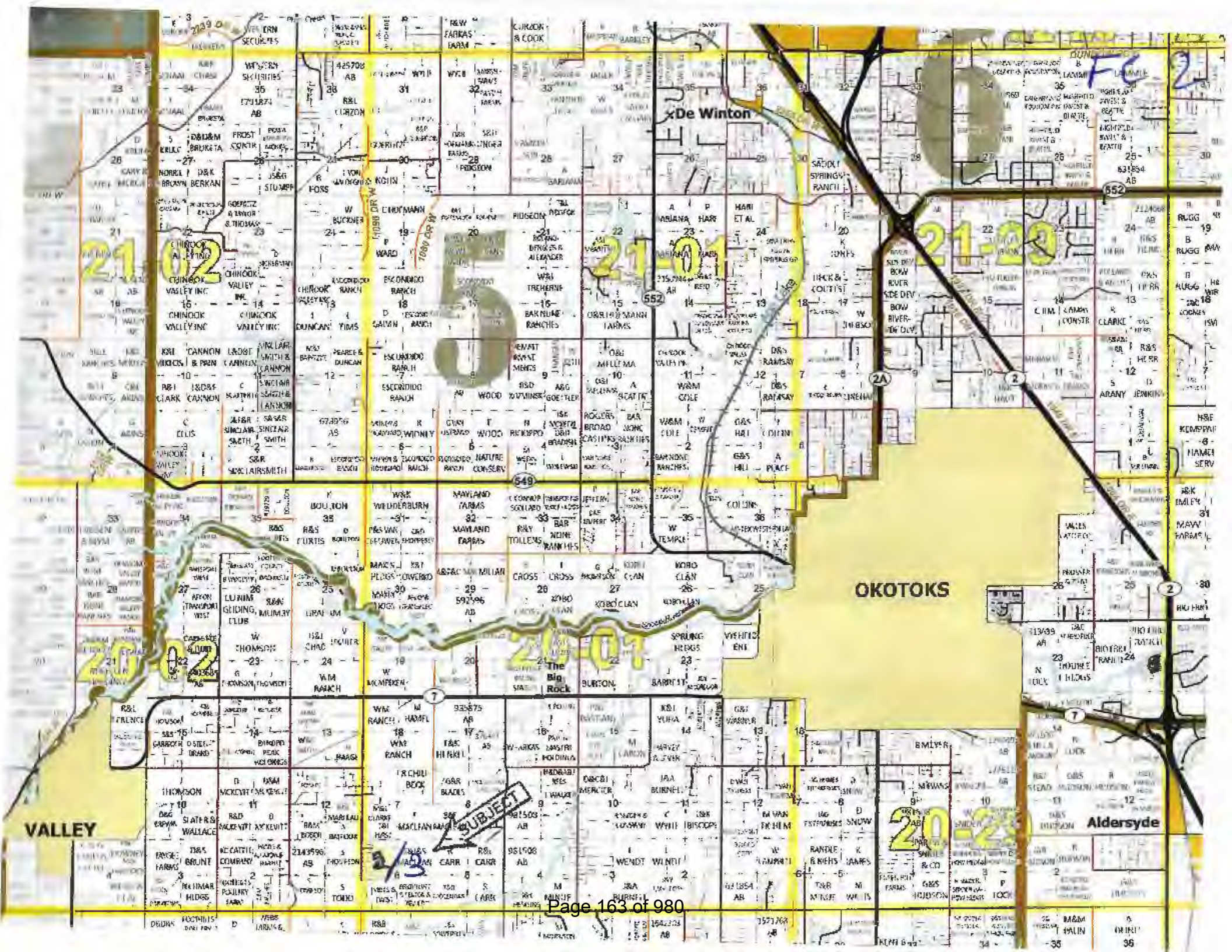
FC .2 Location map

FC 3 Site plan

FC 4 to FC5 Title

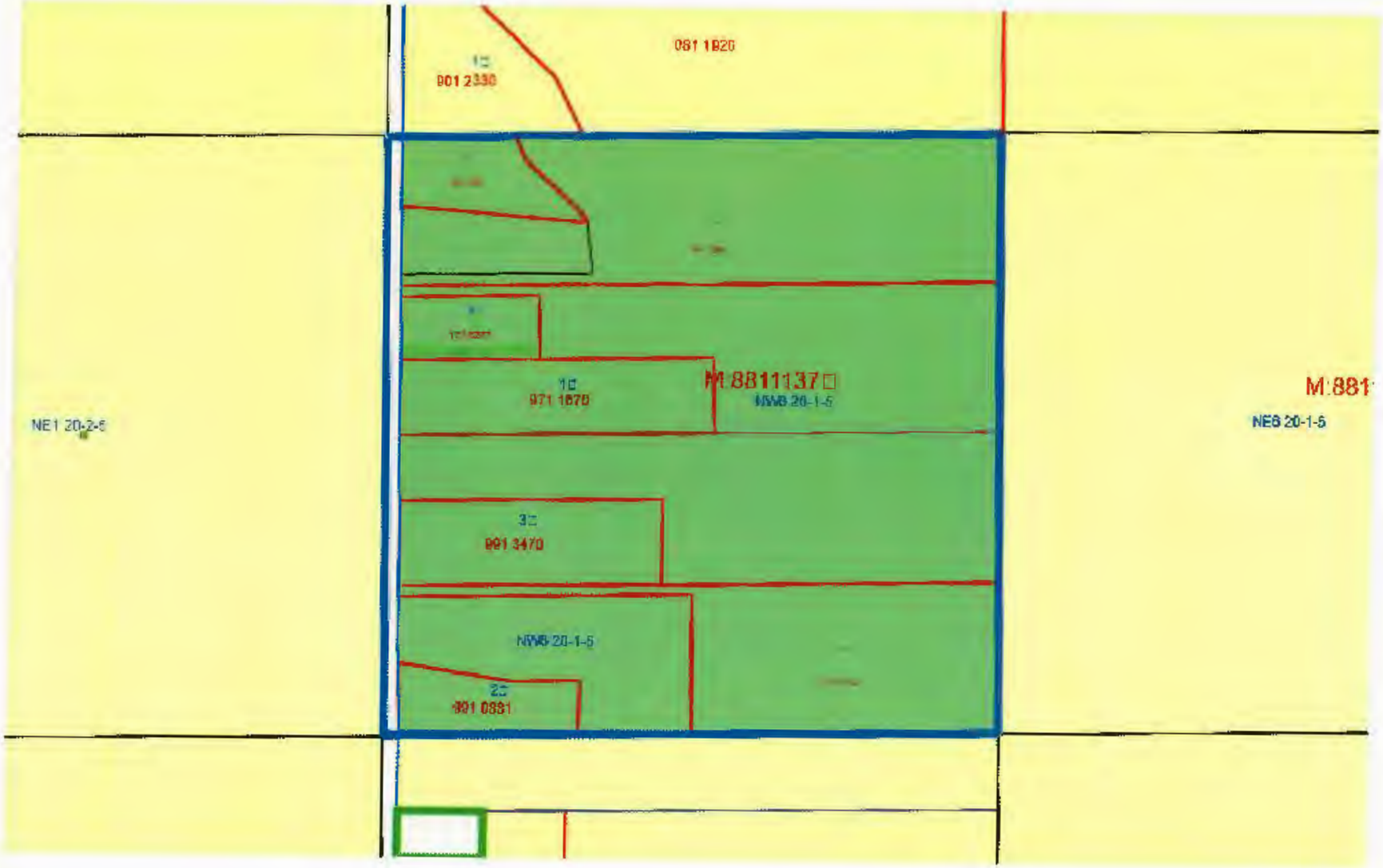
FC 6 google map of housing subdivision

FC 7 Google map of lot 1 (2023)


De Winton
OKOTOKS
VALLEY
Aldersyde
SUBJECT
21-02
21-01
20-02
20-23
552
549
2A
7

NW 6 - 20 - 1 - W5

FC3



FC4

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0032 346 950	0711765;5;1	231 068 687

LEGAL DESCRIPTION
PLAN 0711765
BLOCK 5
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 8.903 HECTARES (22 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;1;20;6;NW

MUNICIPALITY: FOOTHILLS COUNTY

REFERENCE NUMBER: 221 167 751

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
231 068 687	06/03/2023	TRANSFER OF LAND	$758,000	$758,000

OWNERS

KENT TERRY MAURER

AND
KRISTA MARIA MAURER
BOTH OF:
[redacted]
AS JOINT TENANTS
(DATA UPDATED BY: CHANGE OF ADDRESS 241223332)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
3873JO	10/06/1966	RESTRICTIVE COVENANT
991 029 145	02/02/1999	UTILITY RIGHT OF WAY

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		GRANTEE - CANADIAN WESTERN NATURAL GAS COMPANY LIMITED.
991 075 441	22/03/1999	CAVEAT RE : ROAD WIDENING CAVEATOR - THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31. BOX 5605 HIGH RIVER ALBERTA T1V1M7

TOTAL INSTRUMENTS: 003

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 25 DAY OF OCTOBER, 2024 AT 08:52 P.M.

ORDER NUMBER: 51995404

CUSTOMER FILE NUMBER:

END OF CERTIFICATE


NW6-20-1-W5 (C2,C3)
Write a description for your map.
Legend
FCG
Feature 1
Twin Valley Equestrian
Highland Contracting
ry Dog & Cat
Google Earth
Image © 2024 Airbus
4000 ft
N


FC # 3 418100 96 Street W Foothills
Write a description for your map.
Legend F7
418100 96 St W
418100 96 St W
Google Earth
Image © 2024 Airbus
N
1000 ft

FOOTHILLS COMPARABLE SW9-21-28-W4

Farmland located on the east side of the Highwood River between Okotoks and Calgary

Legal description: Plan 1211541 Block 1 Lot 2

Purchased on June 1, 2023

Price : $900,000

Adjusted Price for inflation :$914,763

Area: 23.48 acres more or less

Price per acre: $38,959

Owners: Jaeco Van Klei and Adriena Visser

Comments: Farmland located on the east side of the Highwood River. Only a small portion of this property is in the flood plain of the Highwood River and has already been dedicated to Foothills County as an Environmental Reserve Easement (#121 15423). .. This is not comparable to Parc Beauchemin.

John Fournet, Treasurer SFCC

Enclosures:

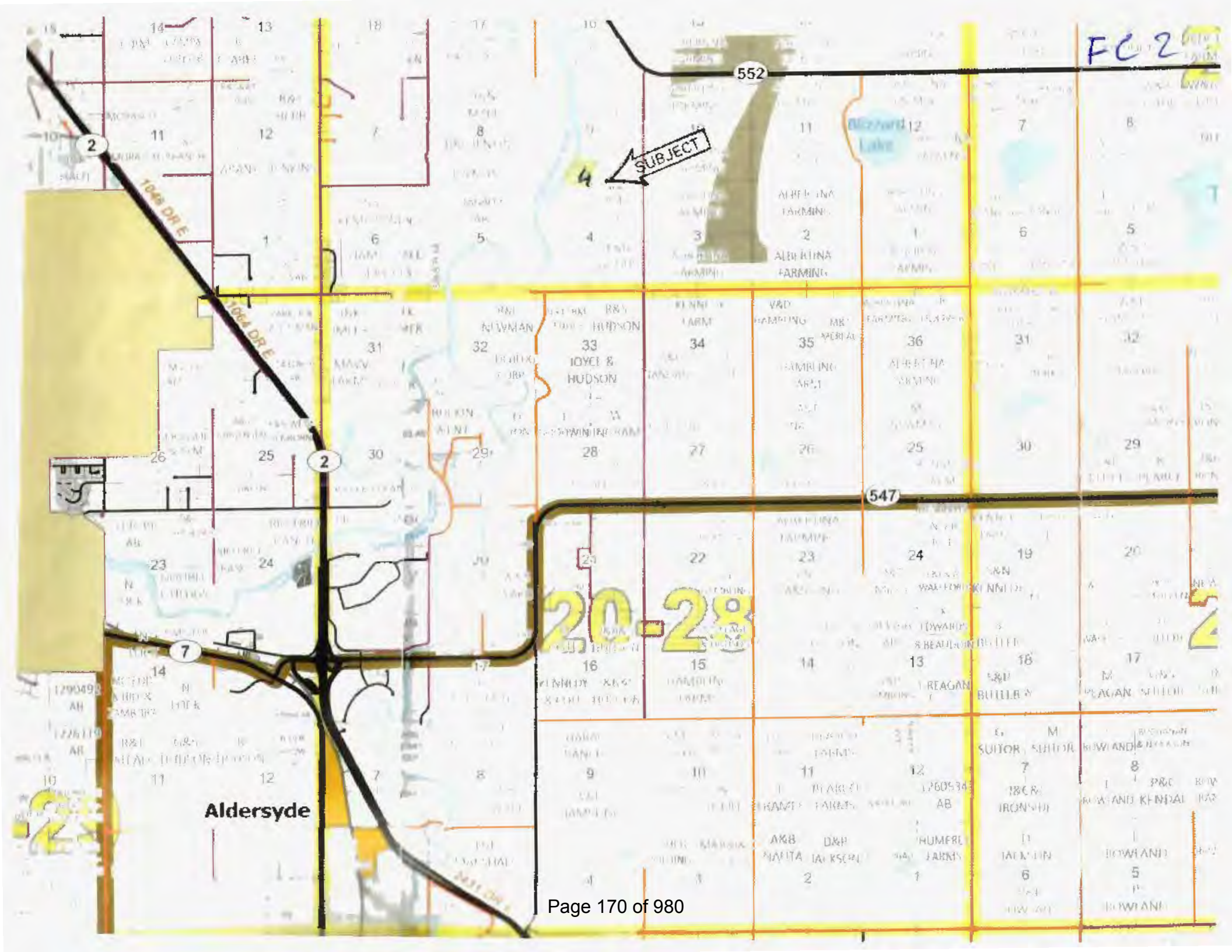
FC .2 Location map

FC 3 Site plan

FC 4 to FC 6 Title

FC Flood map FC7

FC 8 and FC 9 google maps 2024


FC 2
552
SUBJECT
4
2
1048 DR E
1064 DR E
547
20-28
7
Aldersyde

SW 9 - 21 - 28 - W 4
Plan 121 1541 Block 1 Lot 2

FC 3

FC 4

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0035 232 917	1211541;1;2	231 169 866

LEGAL DESCRIPTION
PLAN 1211541
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 9.5 HECTARES (23.48 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 4;28;21;9;SW

MUNICIPALITY: FOOTHILLS COUNTY

REFERENCE NUMBER: 221 197 912

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
231 169 866	01/06/2023	TRANSFER OF LAND	$900,000	$900,000

OWNERS

JAECO VAN KLEI

AND
ADRIENA DE VISSER
BOTH OF:
[redacted]
AS JOINT TENANTS

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
121 131 125	30/05/2012	CAVEAT RE : DEFERRED RESERVE CAVEATOR - THE MUNICIPAL DISTRICT OF FOOTHILLS NO.

(CONTINUED)

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		31. BOX 5605 HIGH RIVER ALBERTA T1V1M7
121 131 126	30/05/2012	EASEMENT OVER AND FOR BENEFIT OF: SEE INSTRUMENT AS TO PLAN: SEE INSTRUMENT
121 131 128	30/05/2012	EASEMENT OVER AND FOR BENEFIT OF: SEE INSTRUMENT AS TO PLAN: SEE INSTRUMENT
121 131 129	30/05/2012	ENVIRONMENTAL RESERVE EASEMENT GRANTEE - THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31. AS TO PORTION OR PLAN:1211542
231 169 867	01/06/2023	MORTGAGE MORTGAGEE - ROYAL BANK OF CANADA. 02763 SENIOR 10 YORK MILLS ROAD TORONTO ONTARIO M2P2G4 ORIGINAL PRINCIPAL AMOUNT: $1,500,000
231 206 039	06/07/2023	UTILITY RIGHT OF WAY GRANTEE - SUNSHINE GAS CO-OP LTD.
231 291 899	26/09/2023	EASEMENT AS TO PORTION OR PLAN:1211543 OVER AND FOR BENEFIT OF: SEE INSTRUMENT
231 291 903	26/09/2023	EASEMENT AS TO PORTION OR PLAN:1211541 OVER AND FOR BENEFIT OF: SEE INSTRUMENT

TOTAL INSTRUMENTS: 008

(CONTINUED)

FC6

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 23 DAY OF OCTOBER, 2024 AT 03:05 P.M.

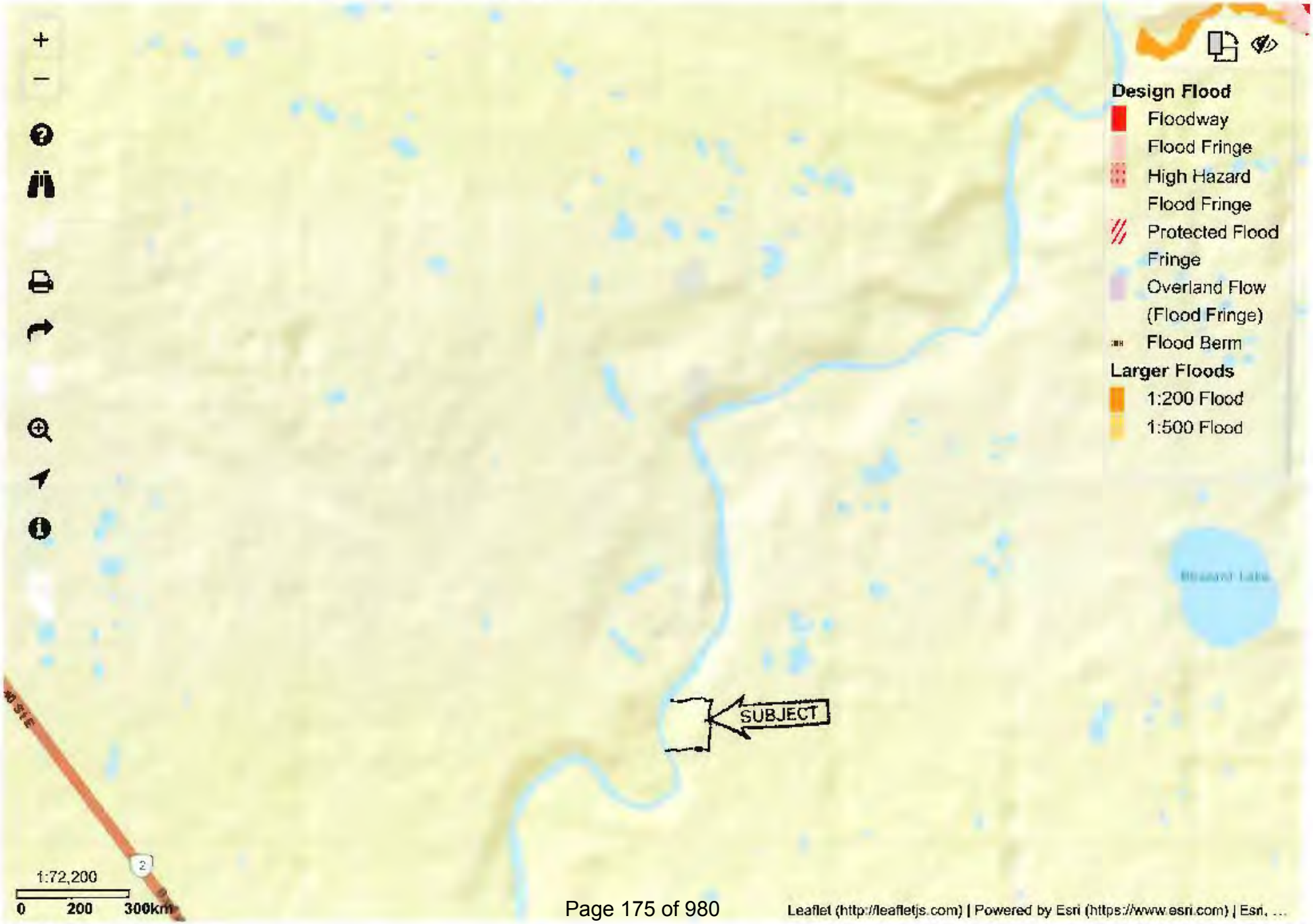
ORDER NUMBER: 51968569

CUSTOMER FILE NUMBER:

END OF CERTIFICATE

Fc 7

Flood Awareness Map Application




SW9-21-28-W4 (C4)
Write a description for your map.
Legend
FC8
Country Boyz Industries Inc
552
128 St E
Springhaven Ranches
128 St E
Google Earth
Image © 2024 Airbus
Image © 2024 Maxar Technologies
N
1 mi


Plan1211541 Nlock 1 Lot 2
Write a description for your map.
Legend
FC 9
Google Earth
Image © 2024 Airbus
Image © 2024 Maxar Technologies
2000 ft
N

FOOTHILLS COMPARABLE NE 4 -19-2-W5

Farmland located south of Hartell , east of Highway # 22. Adjoining properties have houses. There is a small creek north of the property (Tongue Creek), but it has no impact on the subject property

Legal description: Plan 5021GJ Block 3

Purchased on January 26, 2023

Price : $470,000

Adjusted Price for inflation :$470,710

Area: 33.09 acres more or less

Price per acre: $14,225

Owners: Michael and Marcie Redgwell

Comments: Farmland and adjoining properties have houses. It is very likely that the owners will build a house on this lot .This future residential land is not in the floodway of any river. This is not comparable to Parc Beauchemin.

John Fournet, Treasurer SFCC

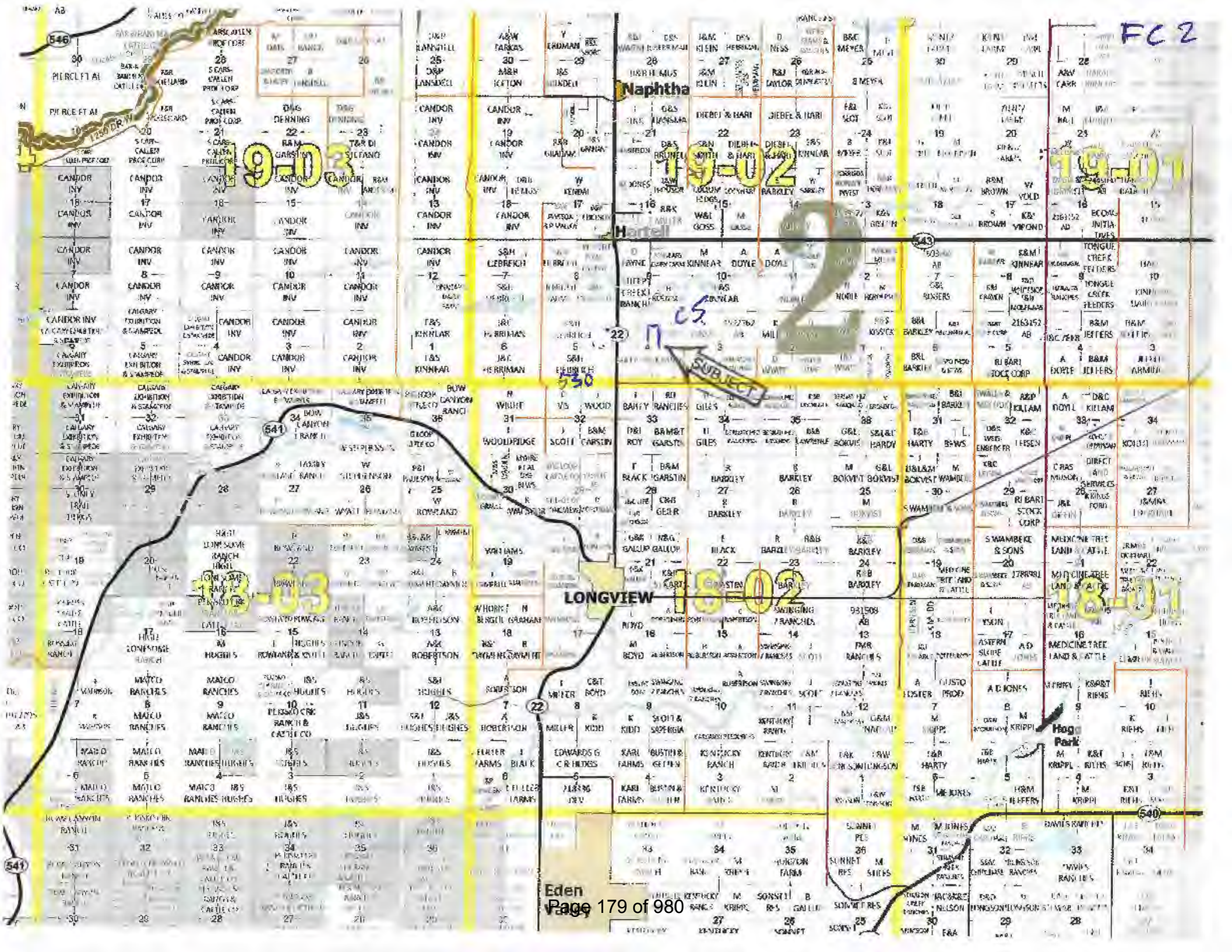
Enclosures:

FC .2 Location map

FC 3 Site plan

FC 4 to FC 6 Title

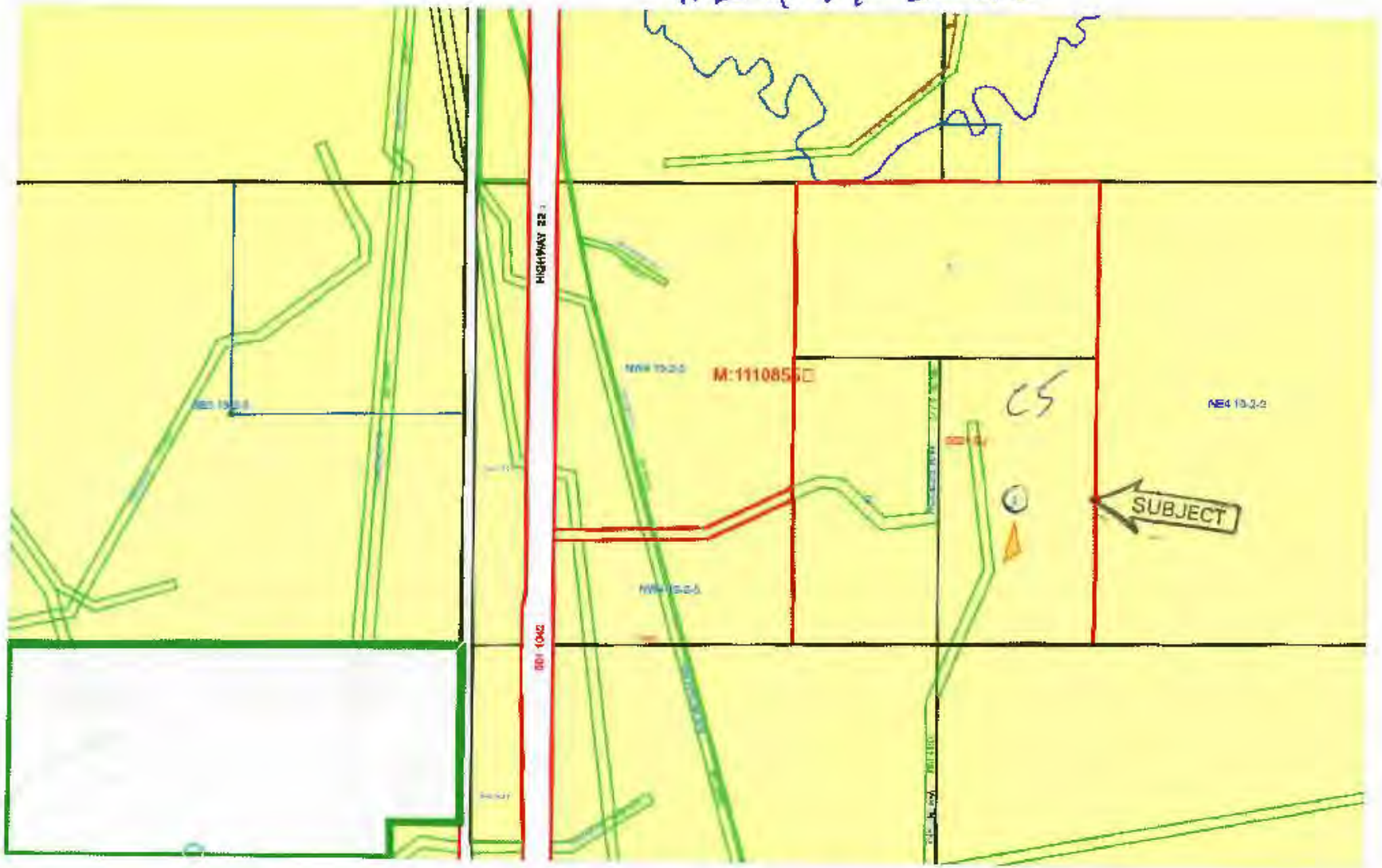
FC 7 and FC google maps 2024


FC 2
Naphtha
Hartell
LONGVIEW
Eden
Valley
Hoge Park
SUBJECT
530
19-03
19-02
19-01
18-03
18-02
18-01
546
541
543
540
22

Plan 5021 GJ Block 3

NE 4-19-2-W5

FC 3



F4-B

HISTORICAL LAND TITLE CERTIFICATE

TITLE CANCELLED ON NOVEMBER 17,2023

S

LINC	SHORT LEGAL	TITLE NUMBER
0018 240 721	5021GJ;3	231 026 516

LEGAL DESCRIPTION
PLAN 5021GJ
BLOCK 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME
AREA: 13.4 HECTARES (33.09 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;2;19;4;N

MUNICIPALITY: FOOTHILLS COUNTY

REFERENCE NUMBER: 231 026 515

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
231 026 516	26/01/2023	TRANSFER OF LAND	$470,000	CASH & MORTGAGE

OWNERS

MICHAEL GORDON REDGWELL

AND
MARCIE MICHELE REDGWELL
BOTH OF:
[redacted]
AS JOINT TENANTS

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
6917ED	14/10/1929	EASEMENT "W 1/2 OF LSD 10 IN SEC 4, 19, 2, 5, EXTENDED BY OVER THE N 20 FT OF LSD 9 AND THE N 20 FT OF E 1/2

(CONTINUED)


NE 4-19-2-W5 (C5)
Write a description for your map.
Legend
Feature 1
Hartell
Mackenzie Farm
Mackenzie Farm
22
Hartell Homestead
543
Hartell
Hartell
Foothills Truck Sales and Service Ltd
22
Google Earth
Image © 2024 Airbus
1 mi
N

RC 7

FCS

Google Maps Hartell Plan 5021 6J Block 3:

Imagery ©2024 Airbus, CNES / Airbus, Maxar Technologies, S. Alberta MD€31s and Counties, Map data ©2024 200 m

FOOTHILLS COMPARABLE NW 20-20-1-W5

Farmland located west of Okotoks , north of Highway # 7, immediately south of the Sheep River.

Legal description: Plan 1212741 Block 1 Lot 2

Purchased on July 28, 2020

Price : $470,000

Adjusted Price for inflation :$714,300

Area: 35.23 acres more or less

Price per acre: $20,275

Owners: Gregory and Tracy Gutek

Comments: Farmlands and adjoining properties have houses. It is very likely that the owners will build a house on this lot . Gregory Gutek is the main shareholder and CEO of Partners Development Group , a large developer and builder of homes in Okotoks and Calgary. The area subject to inundations along the south side of Sheep River has been dedicated to Foothills as environmental land (see title plan) and Foothills has an environmental reserve easement (3121246 719, see title). The rest of the land is not in the flood way. This is not comparable to Parc Beauchemin.

John Fournet, Treasurer SFCC

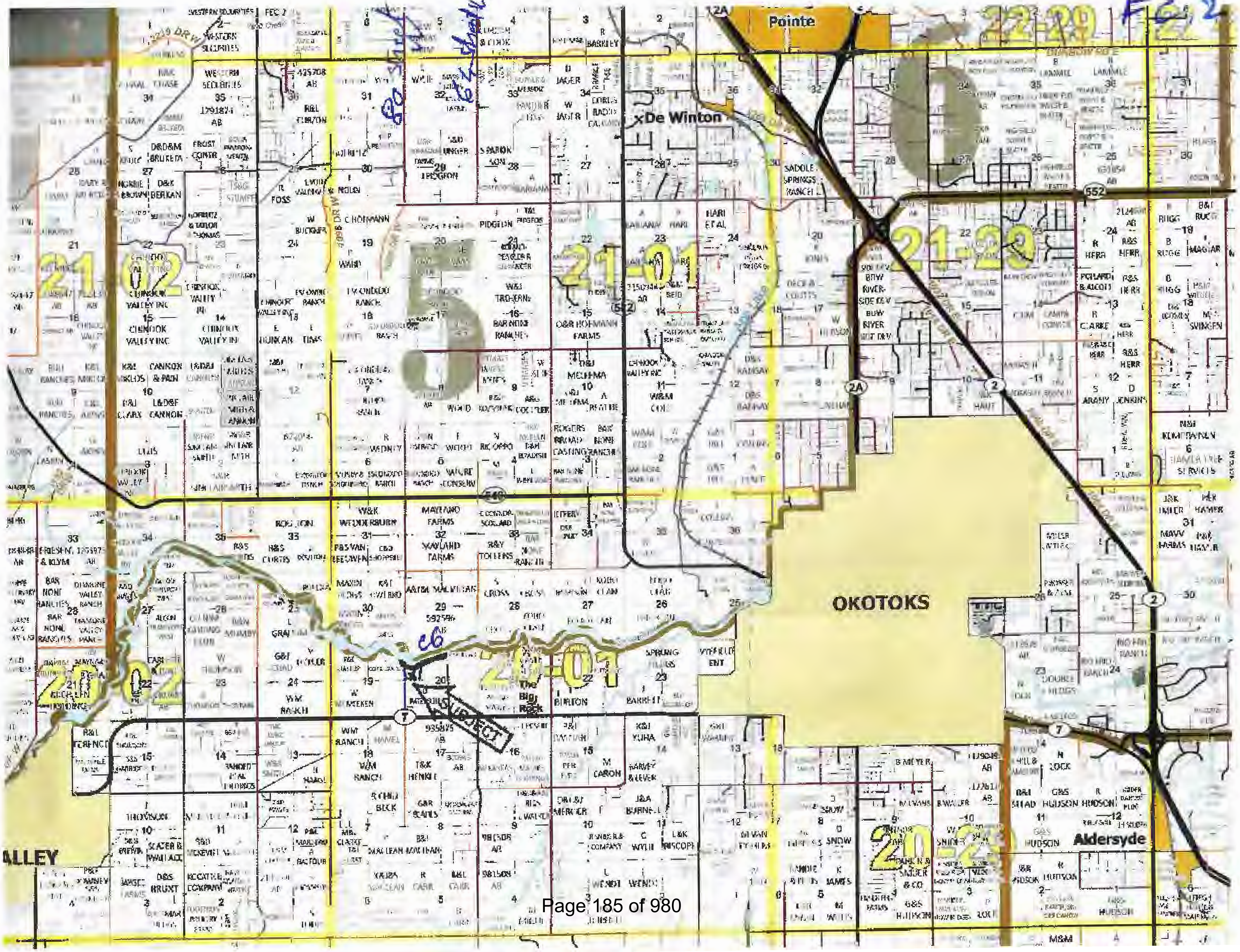
Enclosures:

FC .2 Location map

FC 3 Site plan

FC 4 to FC 5 Title

FC 6 and FC 7 google maps 2024


Pointe
22-29
De Winton
21-02
21-01
21-29
OKOTOKS
20-02
20-01
20-29
Aldersyde
SUBJECT
C6

FC3

NW 20-20-1-W5 (Lot 2, C6)

FC4

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0035 380 245	1212741;1;2	201 130 988

LEGAL DESCRIPTION
PLAN 1212741
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 14.258 HECTARES (35.23 ACRES) MORE OR LESS

ESTATE: FEE SIMPLE
ATS REFERENCE: 5;1;20;20;NW

MUNICIPALITY: FOOTHILLS COUNTY

REFERENCE NUMBER: 191 084 103

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
201 130 988	28/07/2020	TRANSFER OF LAND	$607,000	$607,000

OWNERS

GREGORY GUTEK

AND
TRACY GUTEK
BOTH OF:
[redacted]
AS JOINT TENANTS

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
071 232 519	12/05/2007	UTILITY RIGHT OF WAY GRANTEE - ATCO GAS AND PIPELINES LTD. " AFFECTS PART OF THIS TITLE "

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
121 246 715	20/09/2012	CAVEAT RE : ACQUISITION OF LAND CAVEATOR - THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31. BOX 5605 HIGH RIVER ALBERTA T1V1M7
121 246 719	20/09/2012	ENVIRONMENTAL RESERVE EASEMENT GRANTEE - THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31. AS TO PORTION OR PLAN:1212742
121 246 720	20/09/2012	CAVEAT RE : DEFERRED RESERVE CAVEATOR - THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31. BOX 5605 HIGH RIVER ALBERTA T1V1M7

TOTAL INSTRUMENTS: 004

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 23 DAY OF OCTOBER, 2024 AT 05:30 P.M.

ORDER NUMBER: 51970956

CUSTOMER FILE NUMBER:

END OF CERTIFICATE


NW20-20-1-W5 (6C)
Write a description for your map.
Legend
F & G Controls Inc
al Area
Sheep River
Sheep River
F & G Controls Inc
7
7
Google Earth
Image © 2024 Airbus
N
3000 ft

FCC


NW20-20-1-W5 (6C)
Write a description for your map.
Legend
F & G Controls Inc
EC7
Sheep River
Google Earth
Image © 2024 Airbus
N
500 ft

COMPARABLE # 1 HIGHWOOD RIVER SOUTH WEST OF HIGH RIVER

Transfer of Land between Her Majesty the Queen and Foothills County #201098246, dated April 23, 2020 (See attachments)

24 properties totalling and area of 130.66 acres were sold to the Province for $265,640 or $2,033 per acre . All these properties were in the floodplain of the Highwood River.

Inflation adjustment to adjust price to 2024 using Bank of Canada inflation calculator.

2024 value of $2,033 per acre

Adjustment for size 130.66 acres/ 16.85 acre, 200% =$2,033 x 200% =4,066 per acre.

Final value : $4,066

John Fournet, Treasurer SFCC

Enclosures:

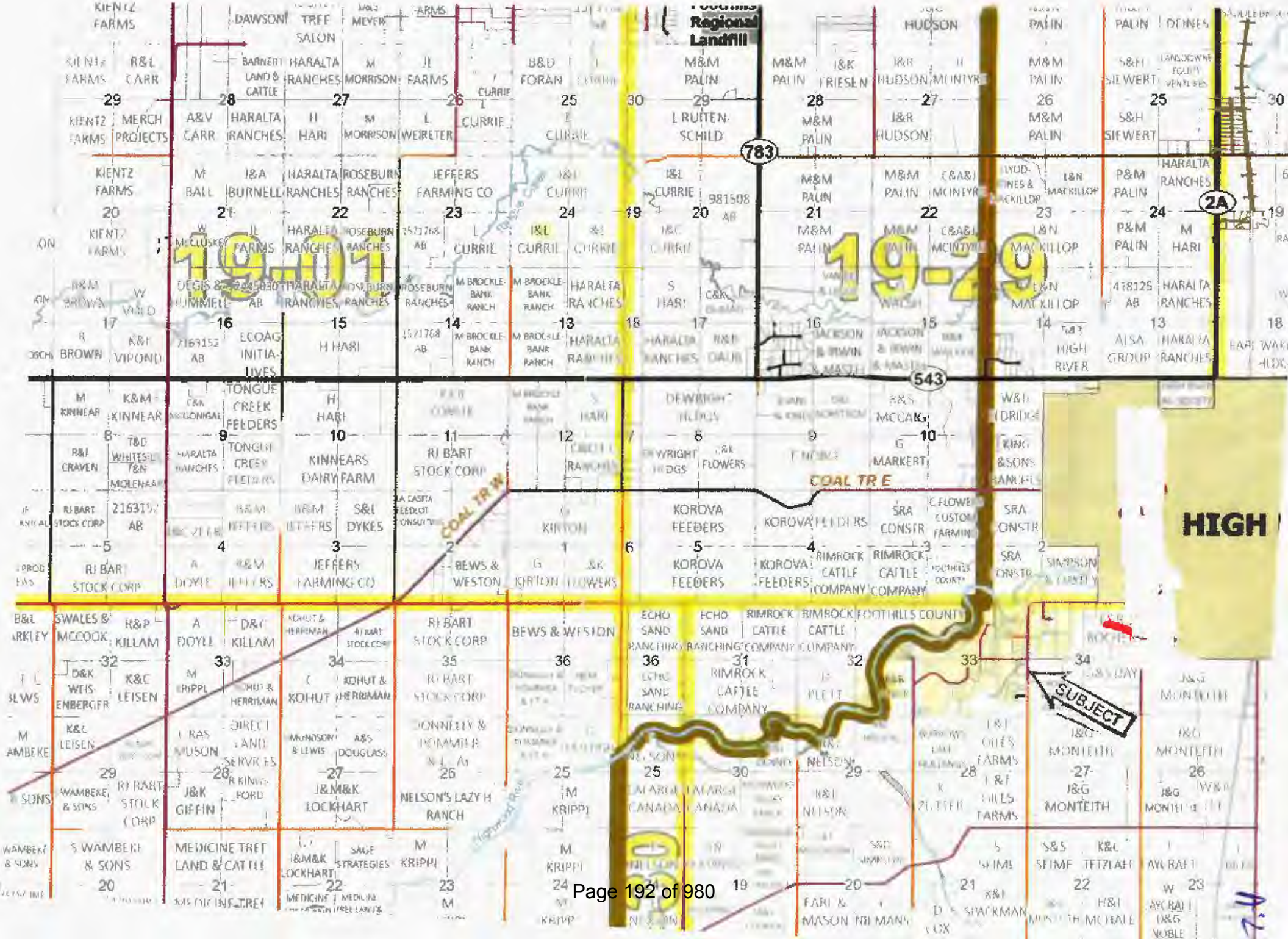
A 2 Location map

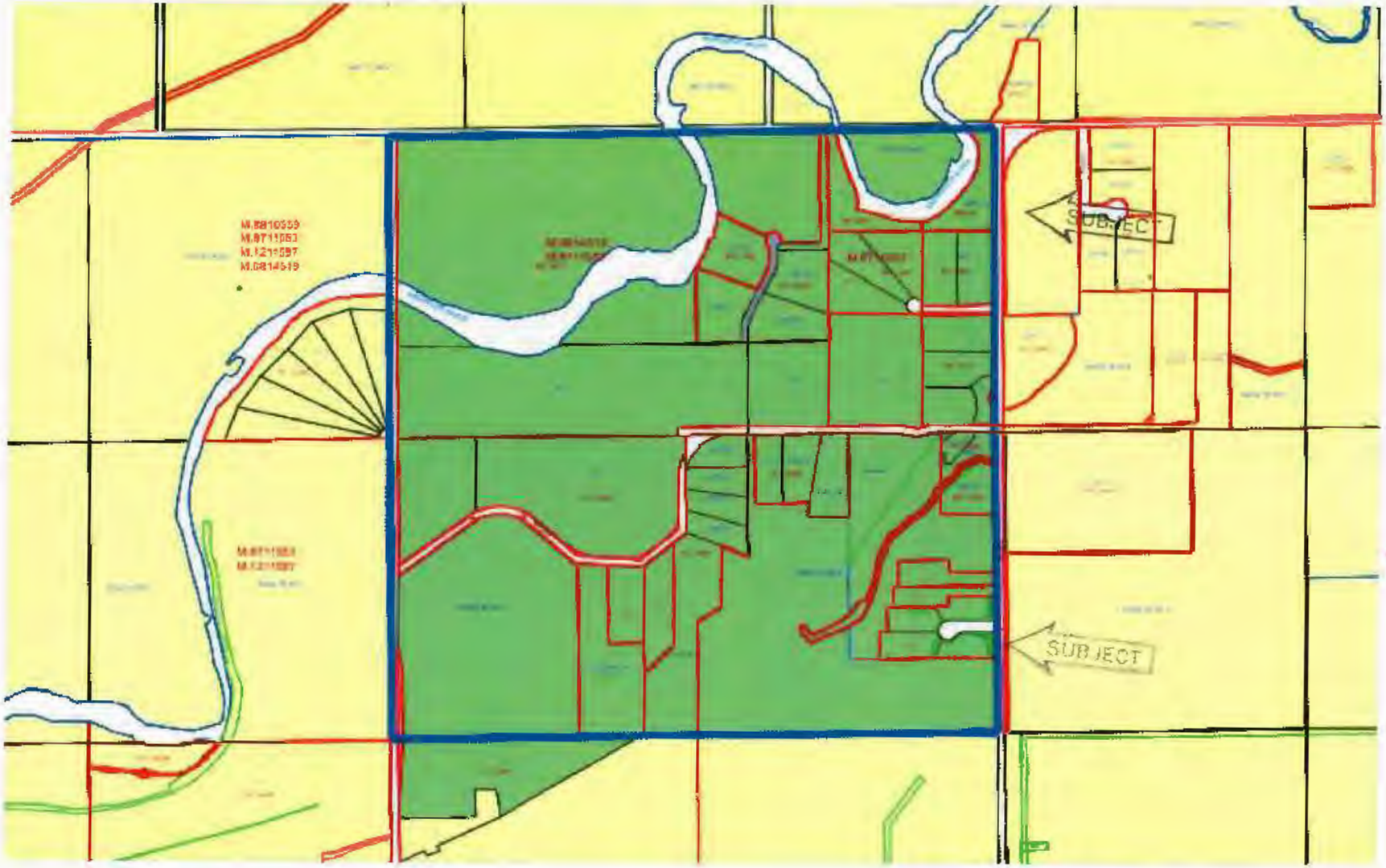
A 3 Site plan

A 4 to A 11 Transfer of Land -Land Title

A 12 Flood Plain map

A 13 to A.14 Inflation calculation


Foothills Regional Landfill
783
543
2A
19-01
19-29
COAL TR W
COAL TR E
HIGH
SUBJECT



SITE PLAN

A3

ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

201098246

ORDER NUMBER: 51975825

The Land Titles Act

TRANSFER OF LAND

HER MAJESTY THE QUEEN in right of Alberta, as represented by the Minister of Infrastructure, being registered owner of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten, in all that certain tract of land situate in the Province of Alberta, being composed of:

SEE ATTACHED SCHEDULE "A"

doth hereby in consideration of the sum of ONE DOLLAR ($1.00) paid to the Minister by the Purchaser, the receipt of which sum is hereby acknowledged, transfer to:

FOOTHILLS COUNTY
309 MacLeod Trail
Box 5605
High River, Alberta T1V 1M7

the estate and interest in the land legally described above.

IN WITNESS WHEREOF Gordon Lopatka, Director, Land Development and Sales, has hereunto subscribed his name, as a duly authorized representative of the Minister of Infrastructure, this 23 day of April, 2020.

G. Lopatka

GORDON LOPATKA
DIRECTOR, LAND DEVELOPMENT AND SALES

A6

CERTIFICATE

The undersigned Vendor certifies that it is not a non-resident of Canada for all purposes arising under the Income Tax Act of Canada including, but not limited to, Section 116(5) thereof.

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, AS REPRESENTED BY THE MINISTER OF INFRASTRUCTURE

Per:

G. Lopatka

GORDON LOPATKA
DIRECTOR, LAND DEVELOPMENT AND SALES

A7

Form 32, Section 164

AFFIDAVIT RE VALUE OF LAND

CANADA)
PROVINCE OF ALBERTA)
)

I, Harry Rivin Cambern
of Forthills County in the Province
of Alberta, MAKE OATH AND SAY THAT:

1. I am the agent of the transferee named in the within or annexed transfer and I know the land therein described.
2. I know the circumstances of the transfer and true consideration paid by me is as follows:

   CASH

3. The current value* of the land**, in my opinion, is $ 265,000 ^00

* "value" means the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer.

** "land" includes all buildings and all other improvements affixed to the land.

SWORN BEFORE ME
at the High River, in the Province of
Alberta, this 22 day of April, 2020.

A Commissioner for Oaths in and for Alberta

LESLIE ELIZABETH FITZGERALD
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires February 27, 2021

SCHEDULE "A"

Legal Description of the Lands

1. PLAN 0010661
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.02 HECTARES (4.99 ACRES) MORE OR LESS

NW 34-18-29-W4

2. PLAN 0010661
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.73 HECTARES (4.27 ACRES) MORE OR LESS

NW 34-18-22-W4

3. PLAN 0610168
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.03 HECTARES (5.02 ACRES) MORE OR LESS

SW 33-18-22-W4

4. PLAN 8810271
THAT PORTION OF BLOCK 1 WITHIN THE
NORTH WEST QUARTER OF SECTION 33
TOWNSHIP 18
RANGE 29
WEST OF THE 4TH MERIDIAN
WHICH LIES SOUTH AND EAST OF THE RIGHT
BANK OF THE HIGHWOOD RIVER AS SHOWN ON
PLAN 8711553
CONTAINING 5.06 HECTARES (12.52 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

NW 33-18-22-W4

✓

5. PLAN 8810271
THAT PORTION OF BLOCK 1 WITHIN THE
NORTH WEST QUARTER OF SECTION 33
TOWNSHIP 18
RANGE 29
WEST OF THE 4TH MERIDIAN
WHICH LIES SOUTH WEST OF THE RIGHT BANK
OF THE HIGHWOOD RIVER AS SHOWN ON PLAN
8711553
CONTAINING 1.345 HECTARES (3.32 ACRES)
MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

NW 33-18-22-W4

6. PLAN 8810271
BLOCK 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 4.83 HECTARES (11.94 ACRES) MORE OR LESS

NW 33-18-22-W4

7. PLAN 8911187
BLOCK 5
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.79 HECTARES (4.42 ACRES) MORE OR LESS

NE 33-18-22-W4

#9

8. PLAN 8911187
BLOCK 5
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.81 HECTARES (4.47 ACRES) MORE OR LESS

NE 33-18-29-W4

9. PLAN 8911187
BLOCK 5
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.8 HECTARES (4.45 ACRES) MORE OR LESS

NE 33-18-29-W4

10. PLAN 9011674
BLOCK 7
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.45 HECTARES (3.58 ACRES) MORE OR LESS

11. PLAN 9011995
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2 HECTARES (4.94 ACRES) MORE OR LESS

12. PLAN 9111129
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.82 HECTARES (4.5 ACRES) MORE OR LESS

NE 32-18-29-W4

13. PLAN 9111129
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.84 HECTARES (4.55 ACRES) MORE OR LESS

NE 32 18-29-W4

14. PLAN 9111129
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.85 HECTARES (4.57 ACRES) MORE OR LESS

NE 32-18-29-W4

15. PLAN 9111129
BLOCK 1
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.89 HECTARES (4.67 ACRES) MORE OR LESS

NE 32-18-29-W4

16. PLAN 9111129
BLOCK 1
LOT 6
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.94 HECTARES (4.79 ACRES) MORE OR LESS

NE 32 18-29-W4

17. PLAN 9111647
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 3.46 HECTARES (8.55 ACRES) MORE OR LESS

A 10

18. PLAN 9112235
LOT 9
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.149 HECTARES (2.84 ACRES) MORE OR LESS

19. PLAN 9310684
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.4 HECTARES (5.93 ACRES) MORE OR LESS

NE 33-18-29-W4

20. PLAN 9310684
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.16 HECTARES (5.34 ACRES) MORE OR LESS

NE 33-18-29-W4

21. PLAN 9310684
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.11 HECTARES (5.21 ACRES) MORE OR LESS

NE 33-18-29-W4

22. PLAN 9510093
BLOCK B
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.971 HECTARES (4.87 ACRES) MORE OR LESS

23. PLAN 9510093
BLOCK B
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.971 HECTARES (4.87 ACRES) MORE OR LESS

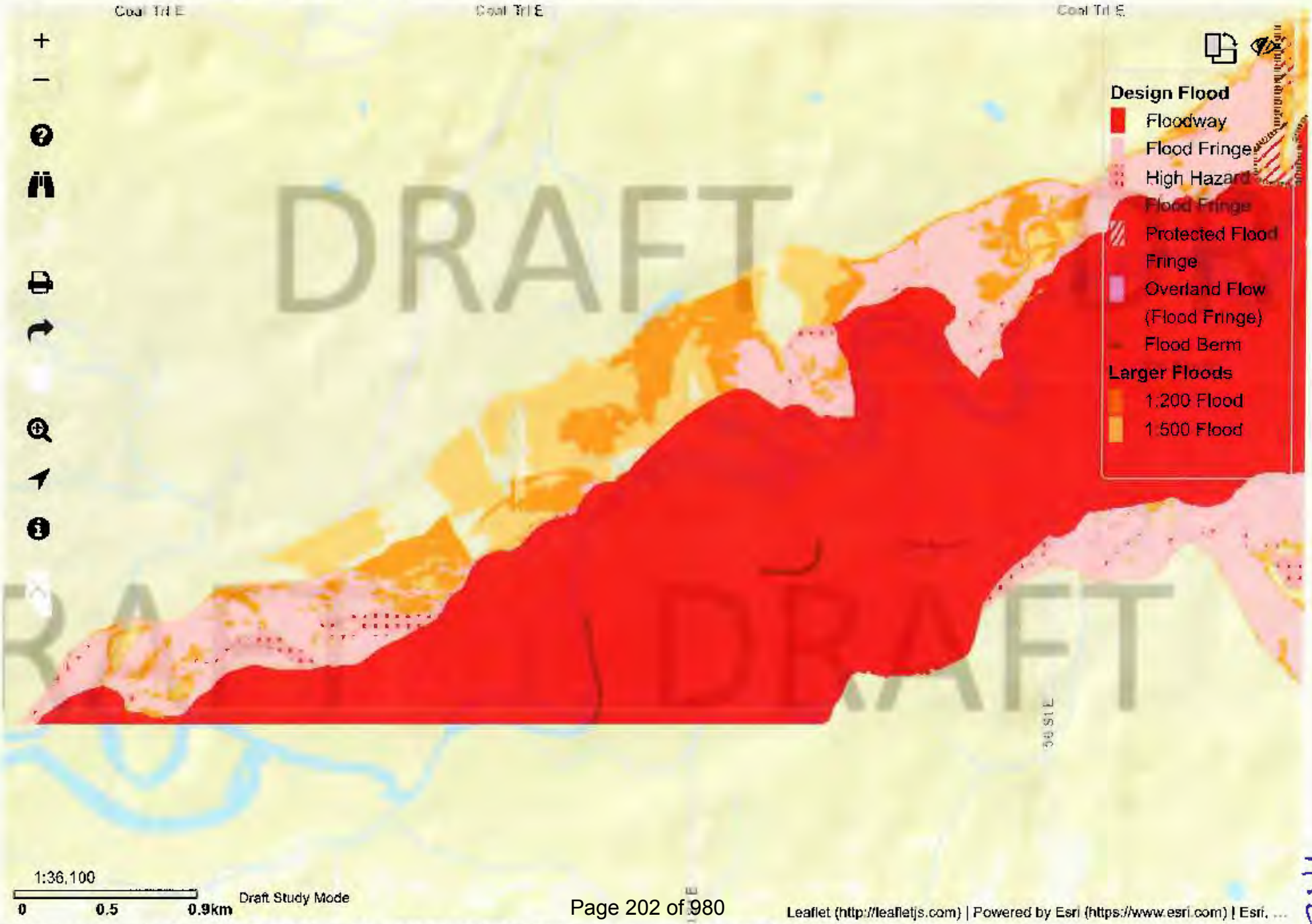
24. PLAN 9611394
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 2.45 HECTARES (6.05 ACRES) MORE OR LESS

Total = 130.66 Acres
Average Size 5.44 Acres
Declared value : $265,640
Price per Acre : $2,033
April 20, 2020
Projected value 2024 : $2,392.38

A 11

201098246 REGISTERED 2020 05 29
TFLA - TRANSFER OF LAND
DOC 1 OF 2 DRR#: B155936 ADR/CALMICHE
LINC/S: 0018517947 +

Flood Awareness Map Application



A12

A13

BANK OF CANADA
BANQUE DU CANADA

Inflation Calculator

Use this tool to compare costs over time.

About this calculator

Data available as: **CSV**, **JSON** and **XML**

This calculator uses monthly consumer price index (CPI) data from 1914 to the present to show changes in the cost of a fixed "basket" of consumer purchases. These include:

- food
- shelter
- furniture
- clothing
- transportation
- recreation

An increase in this cost is called inflation.

The results shown are based on the most recent month for which the CPI data are available. This will normally be about two months prior to the current month.

The equation to compute the current cost is as follows:

$$\$Cost_2 = \$Cost_1 * (\frac{CPI_2}{CPI_1})$$

The equation to compute the percentage change is as follows:

$$\%Change = (\frac{\$Cost_2 - \$Cost_1}{\$Cost_1}) * 100$$

To learn more about how inflation works, check out our explainers:

A 15

BANK OF CANADA
BANQUE DU CANADA

Inflation Calculator

Use this tool to compare costs over time.

About this calculator

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The equation to compute the percentage change is as follows:

$$\%Change = (\frac{\$Cost_2 - \$Cost_1}{\$Cost_1}) * 100$$

To learn more about how inflation works, check out our explainers:

A 14

- **Understanding inflation**
- **Understanding the consumer price index**

How to use this calculator

1. Enter any dollar amount. (Commas and spaces may be used.)
2. Enter the years you wish to compare between 1914 and the current year.
3. Click **Calculate**.

A "basket" of goods and services
...that cost:
$ 2,033.00 in 2020
...would cost:
$ 2,392.38 in 2024

Percent change:
17.68
Number of years:
4
Average annual rate of inflation (%) / Decline in the value of money:
4.15
CPI for first year:
(Sep 2020) 136.9
CPI for second year:
(Sep 2024) 161.1

2002 CPI = 100.0

Data source: **Statistics Canada**, Consumer Price Indexes for Canada, Monthly (V41690973 series)

To calculate the effects of inflation on investments and savings, see the **Investment Calculator**

SFCC COMPARABLE # C 3 BOW RIVER NEAR WYNDHAM -CARSELAND PROVINCIAL PARK (Wheatland County)

West of provincial park and the Bow river.

Legal description: Plan 9611058 Block 1

Purchased on December 23, 2011

Declared Value $200,000

Consideration ; Nil

Adjusted Price for inflation :$267,164

Area: 16.00 acres more or less

Price per acre: $16,698

Owners: Western Sky Land Trust

Comments: This land is almost the same size of Parc Beauchemin . The whole land is in the floodplain of the Bow River. This is a good comparable to Parc Beauchemin.

John Fournet, Treasurer SFCC

Enclosures:

C 4 Location map

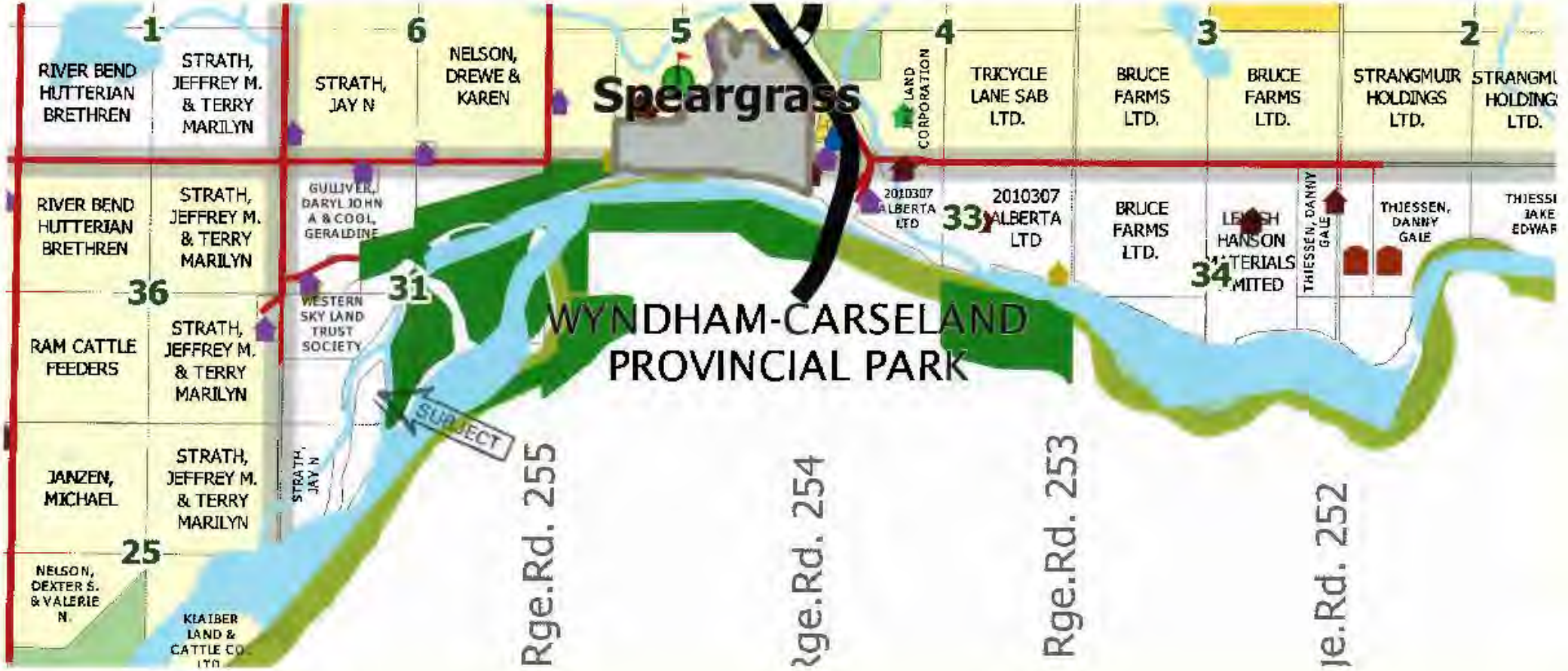
C.5 Site plan

C6 to C 7 Title

C 8 Flood map

B 8 Google map

C4


1
RIVER BEND HUTTERIAN BRETHREN
STRATH, JEFFREY M. & TERRY MARILYN
6
STRATH, JAY N
NELSON, DREWE & KAREN
5
Speargrass
4
LAND CORPORATION
TRICYCLE LANE SAB LTD.
3
BRUCE FARMS LTD.
BRUCE FARMS LTD.
2
STRANGMUIR HOLDINGS LTD.
STRANGMU HOLDING LTD.
RIVER BEND HUTTERIAN BRETHREN
STRATH, JEFFREY M. & TERRY MARILYN
GULLIVER, DARYL JOHN A & COOL, GERALDINE
2010307 ALBERTA LTD
33
2010307 ALBERTA LTD
BRUCE FARMS LTD.
LEHIGH HANSON MATERIALS LIMITED
34
THIESSEN, DANNY GALE
THIESSEN, DANNY GALE
THIESSI JAKE EDWAR
36
31
WESTERN SKY LAND TRUST SOCIETY
WYNDHAM-CARSELAND PROVINCIAL PARK
RAM CATTLE FEEDERS
STRATH, JEFFREY M. & TERRY MARILYN
SUBJECT
JANZEN, MICHAEL
STRATH, JEFFREY M. & TERRY MARILYN
STRATH, JAY N
25
NELSON, DEXTER S. & VALERIE N.
KLAIBER LAND & CATTLE CO. LTD
Rge.Rd. 255
Rge.Rd. 254
Rge.Rd. 253
Rge.Rd. 252

Portion of SW 31-21-25-W4

C5

CB

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0021 871 769	4;25;21;31;SW	111 335 248

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 25 TOWNSHIP 21
SECTION 31
THAT PORTION OF THE SOUTH WEST QUARTER
WHICH LIES BETWEEN THE 2 DRY WATER COURSES AS SHOWN ON THE
TOWNSHIP PLAN DATED 29 JANUARY 1886
COINTAINING 6.47 HECTARES (16 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

ESTATE: FEE SIMPLE

MUNICIPALITY: WHEATLAND COUNTY

REFERENCE NUMBER: 931 305 677 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
111 335 248	23/12/2011	TRANSFER OF LAND	$200,000	NIL

OWNERS

WESTERN SKY LAND TRUST SOCIETY.
OF PO BOX 2100,STN M,MAIL CODE 64
CALGARY
ALBERTA T2P 2M5
(DATA UPDATED BY: CHANGE OF ADDRESS 171236662)

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS

NO REGISTRATIONS

TOTAL INSTRUMENTS: 000

(CONTINUED)

E7

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 25 DAY OF OCTOBER, 2024 AT 10:50 A.M.

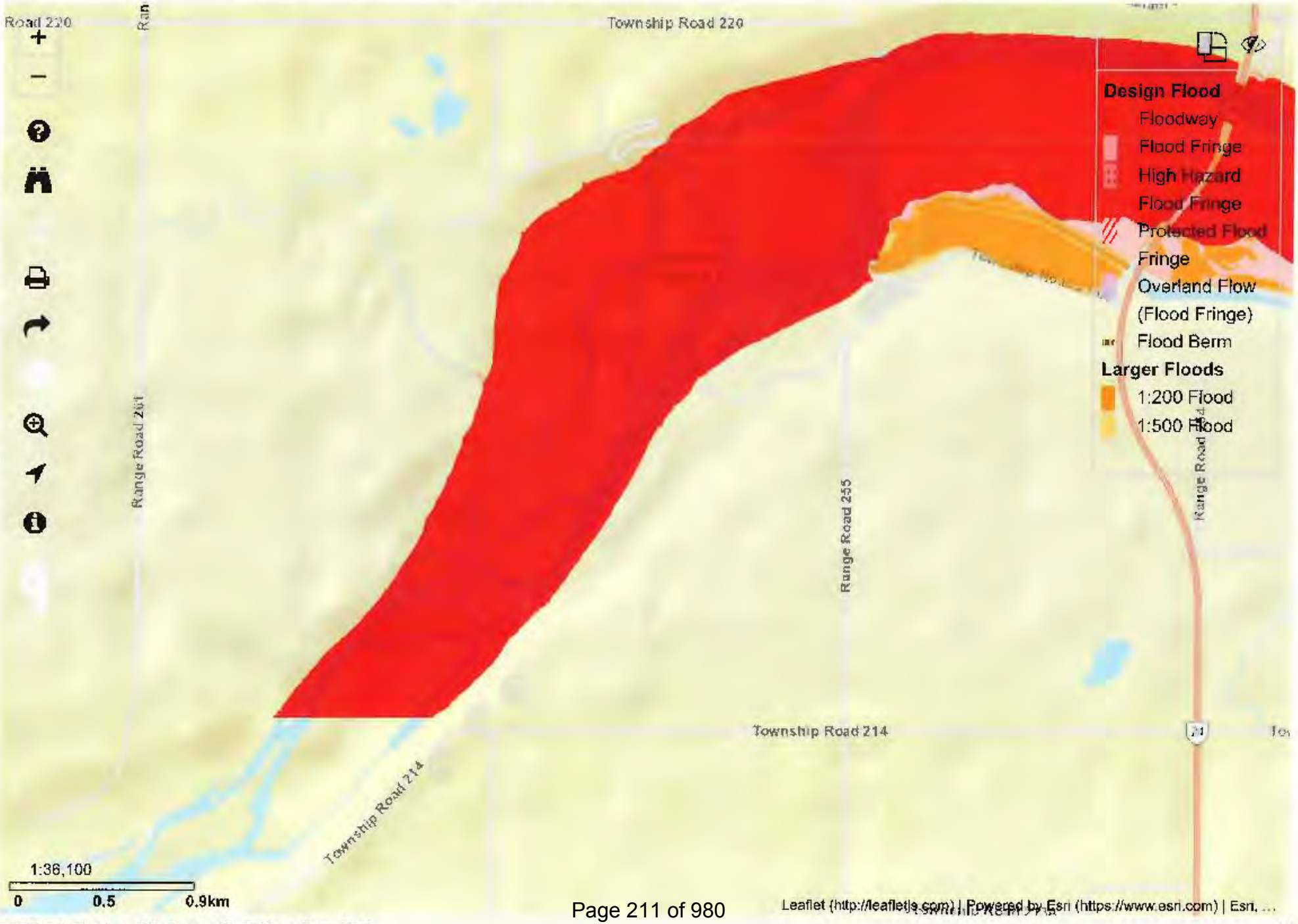
ORDER NUMBER: 51988373

CUSTOMER FILE NUMBER:

END OF CERTIFICATE

C8

Flood Awareness Map Application



RECONCILIATION AND CONCLUSION

	Final value /Price per acre
SFCC COMPARABLE # 1	$4,066
SFCC COMPARABLE # 2	$10,612
SFCC COMPARABLE # 3	$16,698
TOTAL	**$ 31,376**
Average value/price per acre	**$10,458.67**

Current value of Parc Beauchemin: $10,458.67 x 16.81 acres=**$175,810**

The assessment value of Foothills County of $536,500 is incorrect.

The Parc was given to the SFCC in 1971 by Doctor Beauchemin as he had little value since it was in the floodplain of ThreePoint Creek . He declared a value of $7,000 at the time of the transfer. The assessor of Foothills County has not provided any real comparables to Parc Beauchemin. Although, it is difficult to find comparable properties which are in a floodplain, it is not impossible as proven by the attached 3 comparables. .

John Fournet, Treasurer SFCC

SCHEDULE "B"

F8

La Société Franco-Canadienne de Calgary
102, 1909 – 5 Street SW, Calgary, Alberta, T2S 2A8 • Phone number (403) 228-5710

PARC BEAUCHEMIN LEASE 2024-2025

between la Société franco-canadienne de Calgary

(SFCC) and Parc Beauchemin Tenant

Name of SFCC Shareholder (Must be owner of recreation vehicle (RV)

Home Phone Number / Cell Number / Email Address

Home Address (No Postal Box)

(Apartment, Number, Street/Avenue/Blvd , City, Postal Code)

By this Lease, the SFCC leases to the shareholder, mentioned above, the camping lot # _____ of Parc Beauchemin located at 288002 2338 Dr W Foothills County, AB.

This Lease is valid for the period from **May 3rd 2024 to October 31st 2024**.

The rental amount of the Lot is 1 300$, including permission to park the RV during the Off-Season ending May 2 2025.

Before completing, signing this Lease and receiving the keys for the 2024 Summer Season, the following conditions must be met:

1. The Tenant will provide a copy of his insurance policy clearly including:
   a. The Parc Beauchemin legal address: 288002 2338 Dr W with the Lot number
   b. The recreational vehicle: the make, model and year, the extension if applicable,
   c. The heating (central hot air and wood stove if you have one)
   d. Liability insurance of at least **$2,000,000**.

2. The tenant will provide a copy of the RV registration.

3. The Tenant will pay a $1300 rental fee of upon signing the lease for the rental of the lot for the 2024 summer season.

4. A new tenant will pay a $1000 security deposit.

5. The security deposit for existing tenants remains at $1000

6. The administrative coordinator will provide the Tenant with a key for access to the Parc Beauchemin for the Summer Season when all documents and amounts have been submitted. The Tenant will pay $25 for the replacement of any lost key.

7. The tenant confirms that their RV is certified with the Canadian Standard Association (CSA), and that all services & parts are in good working order, safe and free of mold.

8. The Tenant complies with the environmental standards of the Municipal District of Foothills and the Government of Alberta.

9 The Tenant agrees to respect all regulations of the Parc Beauchemin and the Municipal District of Foothills and to comply with the standards of the Construction Code from the MD

10. The Tenant cannot use the Parc Beauchemin address as their main residence.

11. Turning the water on and off from the water well may vary depending on the temperature in spring and fall.

12. The Tenant is responsible for obtaining insurance for their personal belongings.

13. The SFCC has no obligation to re-offer a lease for the next Summer Season.

14. Tenant must sign the SFCC release of liability form.

15. The Tenant must provide the vehicle information for all vehicles entering the park.

F10

Véhicle #1

Make: _____

Model: _____

Colour : _____

License Plate _____

Véhicle #2

Make: _____

Model : _____

Colour : _____

License Plate : _____

The Beauchemin Park By-Laws are an integral part of this Lease. The Park By-Laws are subject to amendments in accordance with the Foothills Municipal District By-Laws which will be required when the reclassification file is completed with the Foothills Municipal District.

I confirm that I have read and understood the contents of this Lease, the code of ethics and the Regulations of Appendix "A" of Parc Beauchemin as well as, if applicable, the list of measures applied concerning contagious diseases including Covid and its variants, attached to this Lease.

Tenant Signature (Must be RV owner) _____

Tenant print name _____

Kevin Hacking
Director, Parc Beauchemin

_____

Stella Bergeron
President of the SFCC

_____

Lease signed in Calgary, _____ 2024.

All electronic payments (Lease and electricity) are sent to:
parc@sfcdecalgary.ca.

All documents (Insurance and WETT certificates) are sent to:
parc@sfcdecalgary.ca.

COMPOSSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe Franco Canadienne de Calgary

Complainant

-and-

Foothill County Assessor

Respondent

BOOK OF AUTHORITIES

Rebuttal Brief of the Complainant

La Societe Franco-Canadienne

Roll Number: 2004257520

Hearing Date: November 5th, 2024

WILSON LAYCRAFT
Barristers & Solicitors
#650, 211 – 11th Avenue SW
Calgary, AB T2R 0C6
Attn.: Gilbert J. Ludwig, K.C.

TAB 1

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited *Appellants*

v.

Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited *Respondent*

and

The Ministry of Labour for the Province of Ontario, Employment Standards Branch *Party*

INDEXED AS: RIZZO & RIZZO SHOES LTD. (RE)

File No.: 24711.

1997: October 16; 1998: January 22.

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the *Employment Standards Act* ("*ESA*") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to sever-

Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez et Lindy Wagner en leur propre nom et en celui des autres anciens employés de Rizzo & Rizzo Shoes Limited *Appelants*

c.

Zittrer, Siblin & Associates, Inc., syndic de faillite de Rizzo & Rizzo Shoes Limited *Intimée*

et

Le ministère du Travail de la province d'Ontario, Direction des normes d'emploi *Partie*

RÉPERTORIÉ: RIZZO & RIZZO SHOES LTD. (RE)

Nº du greffe: 24711.

1997: 16 octobre; 1998: 22 janvier.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Employeur et employé — Faillite — Indemnités de licenciement et de cessation d'emploi payables en cas de licenciement par l'employeur — Faillite peut-elle être assimilée au licenciement par l'employeur? — Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22, art. 2(3) — Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 121(1) — Loi d'interprétation, L.R.O. 1990, ch. I.11, art. 10, 17.

Les employés d'une entreprise en faillite ont perdu leur emploi lorsqu'une ordonnance de séquestre a été rendue à l'égard des biens de l'entreprise. Tous les salaires, les traitements, toutes les commissions et les paies de vacances ont été versés jusqu'à la date de l'ordonnance de séquestre. Le ministère du Travail de la province a vérifié les dossiers de l'entreprise pour déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi* (la «*LNE*») et il a remis une preuve de réclamation au syndic. Ce dernier a rejeté les réclamations pour le

ance, termination or vacation pay under the *ESA*. The Ministry successfully appealed to the Ontario Court (General Division) but the Ontario Court of Appeal overturned that court's ruling and restored the Trustee's decision. The Ministry sought leave to appeal from the Court of Appeal judgment but discontinued its application. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested and were granted an order granting them leave to appeal. At issue here is whether the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*.

Held: The appeal should be allowed.

At the heart of this conflict is an issue of statutory interpretation. Although the plain language of ss. 40 and 40*a* of the *ESA* suggests that termination pay and severance pay are payable only when the employer terminates the employment, statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Moreover, s. 10 of Ontario's *Interpretation Act* provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

The objects of the *ESA* and of the termination and severance pay provisions themselves are broadly premised upon the need to protect employees. Finding ss. 40 and 40*a* to be inapplicable in bankruptcy situations is incompatible with both the object of the *ESA* and the termination and severance pay provisions. The legislature does not intend to produce absurd consequences and such a consequence would result if employees dismissed before the bankruptcy were to be entitled to these benefits while those dismissed after a bankruptcy would not be so entitled. A distinction would be made between employees merely on the basis of the timing of their dismissal and such a result would arbi-

motif que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*. En appel, le ministère a eu gain de cause devant la Cour de l'Ontario (Division générale) mais la Cour d'appel de l'Ontario a infirmé ce jugement et a rétabli la décision du syndic. Le ministère a demandé l'autorisation d'interjeter appel de l'arrêt de la Cour d'appel mais il s'est désisté. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé et obtenu l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. En l'espèce, il s'agit de savoir si la cessation d'emploi résultant de la faillite de l'employeur donne naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*.

Arrêt: Le pourvoi est accueilli.

Une question d'interprétation législative est au centre du présent litige. Bien que le libellé clair des art. 40 et 40*a* de la *LNE* donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé, l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. Il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur. Au surplus, l'art. 10 de la *Loi d'interprétation* ontarienne dispose que les lois «sont réputées apporter une solution de droit» et qu'elles doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

L'objet de la *LNE* et des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. Conclure que les art. 40 et 40*a* sont inapplicables en cas de faillite est incompatible tant avec l'objet de la *LNE* qu'avec les dispositions relatives aux indemnités de licenciement et de cessation d'emploi. Le législateur ne peut avoir voulu des conséquences absurdes mais c'est le résultat auquel on arriverait si les employés congédiés avant la faillite avaient droit à ces avantages mais pas les employés congédiés après la faillite. Une distinction serait établie entre les employés sur la seule base de la date de leur

trarily deprive some of a means to cope with economic dislocation.

The use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise. Section 2(3) of the *Employment Standards Amendment Act, 1981* exempted from severance pay obligations employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent. Section 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. If this were not the case, no readily apparent purpose would be served by this transitional provision. Further, since the *ESA* is benefits-conferring legislation, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant.

When the express words of ss. 40 and 40*a* are examined in their entire context, the words "terminated by an employer" must be interpreted to include termination resulting from the bankruptcy of the employer. The impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Termination as a result of an employer's bankruptcy therefore does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *Bankruptcy Act* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. It was not necessary to address the applicability of s. 7(5) of the *ESA*.

Cases Cited

Distinguished: *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343; **referred to:** *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213;

congédiement et un tel résultat les priverait arbitrairement de certains des moyens dont ils disposent pour faire face à un bouleversement économique.

Le recours à l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié. En vertu du par. 2(3) de l'*Employment Standards Amendment Act, 1981*, étaient exemptés de l'obligation de verser des indemnités de cessation d'emploi, les employeurs qui avaient fait faillite et avaient perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale. Le paragraphe 2(3) implique nécessairement que les employeurs en faillite sont assujettis à l'obligation de verser une indemnité de cessation d'emploi. Si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin. En outre, comme la *LNE* est une loi conférant des avantages, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur.

Lorsque les mots exprès employés aux art. 40 et 40*a* sont examinés dans leur contexte global, les termes «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui sont licenciés pour quelque autre raison serait arbitraire et inéquitable. Une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. La cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. Il était inutile d'examiner la question de l'applicabilité du par. 7(5) de la *LNE*.

Jurisprudence

Distinction d'avec les arrêts: *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343; **arrêts mentionnés:** *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. c. Hydro-Québec*,

Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103; *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701; *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546; *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1; *R. v. Vasil*, [1981] 1 S.C.R. 469; *Paul v. The Queen*, [1982] 1 S.C.R. 621; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513; *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25; *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025.

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Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5) [rep. & sub. 1986, c. 51, s. 2], 40(1) [rep. & sub. 1987, c. 30, s. 4(1)], (7), 40*a*(1) [rep. & sub. *ibid*., s. 5(1)].
Employment Standards Act, 1974, S.O. 1974, c. 112, s. 40(7).
Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2.
Interpretation Act, R.S.O. 1980, c. 219 [now R.S.O. 1990, c. I.11], ss. 10, 17.
Labour Relations and Employment Statute Law Amendment Act, 1995, S.O. 1995, c. 1, ss. 74(1), 75(1).

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Loi d'interprétation, L.R.O. 1980, ch. 219 [maintenant L.R.O. 1990, ch. I-11], art. 10, 17.
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Loi sur la faillite, L.R.C. (1985), ch. B-3 [maintenant la *Loi sur la faillite et l'insolvabilité*], art. 121(1).
Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5) [abr. & rempl. 1986, ch. 51, art. 2], 40(1) [abr. & rempl. 1987, ch. 30, art. 4(1)], (7), 40*a*(1) [abr. & rempl. *ibid*., art. 5(1)].

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APPEAL from a judgment of the Ontario Court of Appeal (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. No. 586 (QL), reversing a judgment of the Ontario Court (General Division) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, ruling that the Ministry of Labour could prove claims on behalf of employees of the bankrupt. Appeal allowed.

Steven M. Barrett and *Kathleen Martin*, for the appellants.

Raymond M. Slattery, for the respondent.

David Vickers, for the Ministry of Labour for the Province of Ontario, Employment Standards Branch.

The judgment of the Court was delivered by

IACOBUCCI J. — This is an appeal by the former employees of a now bankrupt employer from an order disallowing their claims for termination pay (including vacation pay thereon) and severance pay. The case turns on an issue of statutory interpretation. Specifically, the appeal decides whether, under the relevant legislation in effect at the time of the bankruptcy, employees are entitled to claim termination and severance payments where their employment has been terminated by reason of their employer's bankruptcy.

1. Facts

Prior to its bankruptcy, Rizzo & Rizzo Shoes Limited ("Rizzo") owned and operated a chain of retail shoe stores across Canada. Approximately 65 percent of those stores were located in Ontario. On April 13, 1989, a petition in bankruptcy was filed against the chain. The following day, a receiving

Sullivan, Ruth. *Statutory Interpretation*. Concord, Ont.: Irwin Law, 1997.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. nº 586 (QL), qui a infirmé un jugement de la Cour de l'Ontario (Division générale) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, statuant que le ministère du Travail pouvait prouver des réclamations au nom des employés de l'entreprise en faillite. Pourvoi accueilli.

Steven M. Barrett et *Kathleen Martin*, pour les appelants.

Raymond M. Slattery, pour l'intimée.

David Vickers, pour le ministère du Travail de la province d'Ontario, Direction des normes d'emploi.

Version française du jugement de la Cour rendu par

LE JUGE IACOBUCCI — Il s'agit d'un pourvoi interjeté par les anciens employés d'un employeur maintenant en faillite contre une ordonnance qui a rejeté les réclamations qu'ils ont présentées en vue d'obtenir une indemnité de licenciement (y compris la paie de vacances) et une indemnité de cessation d'emploi. Le litige porte sur une question d'interprétation législative. Tout particulièrement, le pourvoi tranche la question de savoir si, en vertu des dispositions législatives pertinentes en vigueur à l'époque de la faillite, les employés ont le droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi lorsque la cessation d'emploi résulte de la faillite de leur employeur. 1

1. Les faits

Avant sa faillite, la société Rizzo & Rizzo Shoes Limited («Rizzo») possédait et exploitait au Canada une chaîne de magasins de vente au détail de chaussures. Environ 65 pour 100 de ces magasins étaient situés en Ontario. Le 13 avril 1989, une pétition en faillite a été présentée contre la 2

order was made on consent in respect of Rizzo's property. Upon the making of that order, the employment of Rizzo's employees came to an end.

chaîne de magasins. Le lendemain, une ordonnance de séquestre a été rendue sur consentement à l'égard des biens de Rizzo. Au prononcé de l'ordonnance, les employés de Rizzo ont perdu leur emploi.

3 Pursuant to the receiving order, the respondent, Zittrer, Siblin & Associates, Inc. (the "Trustee") was appointed as trustee in bankruptcy of Rizzo's estate. The Bank of Nova Scotia privately appointed Peat Marwick Limited ("PML") as receiver and manager. By the end of July 1989, PML had liquidated Rizzo's property and assets and closed the stores. PML paid all wages, salaries, commissions and vacation pay that had been earned by Rizzo's employees up to the date on which the receiving order was made.

Conformément à l'ordonnance de séquestre, l'intimée, Zittrer, Siblin & Associates, Inc. (le «syndic») a été nommée syndic de faillite de l'actif de Rizzo. La Banque de Nouvelle-Écosse a nommé Peat Marwick Limitée («PML») comme administrateur séquestre. Dès la fin de juillet 1989, PML avait liquidé les biens de Rizzo et fermé les magasins. PML a versé tous les salaires, les traitements, toutes les commissions et les paies de vacances qui avaient été gagnés par les employés de Rizzo jusqu'à la date à laquelle l'ordonnance de séquestre a été rendue.

4 In November 1989, the Ministry of Labour for the Province of Ontario, Employment Standards Branch (the "Ministry") audited Rizzo's records to determine if there was any outstanding termination or severance pay owing to former employees under the *Employment Standards Act*, R.S.O. 1980, c. 137, as amended (the "*ESA*"). On August 23, 1990, the Ministry delivered a proof of claim to the respondent Trustee on behalf of the former employees of Rizzo for termination pay and vacation pay thereon in the amount of approximately $2.6 million and for severance pay totalling $14,215. The Trustee disallowed the claims, issuing a Notice of Disallowance on January 28, 1991. For the purposes of this appeal, the relevant ground for disallowing the claim was the Trustee's opinion that the bankruptcy of an employer does not constitute a dismissal from employment and thus, no entitlement to severance, termination or vacation pay is created under the *ESA*.

En novembre 1989, le ministère du Travail de la province d'Ontario, Direction des normes d'emploi (le «ministère») a vérifié les dossiers de Rizzo afin de déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi*, L.R.O. 1980, ch. 137 et ses modifications (la «*LNE*»). Le 23 août 1990, au nom des anciens employés de Rizzo, le ministère a remis au syndic intimé une preuve de réclamation pour des indemnités de licenciement et des paies de vacances (environ 2,6 millions de dollars) et pour des indemnités de cessation d'emploi (14 215 $). Le syndic a rejeté les réclamations et a donné avis du rejet le 28 janvier 1991. Aux fins du présent pourvoi, les réclamations ont été rejetées parce que le syndic était d'avis que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*.

5 The Ministry appealed the Trustee's decision to the Ontario Court (General Division) which reversed the Trustee's disallowance and allowed the claims as unsecured claims provable in bankruptcy. On appeal, the Ontario Court of Appeal overturned the trial court's ruling and restored the decision of the Trustee. The Ministry sought leave

Le ministère a interjeté appel de la décision du syndic devant la Cour de l'Ontario (Division générale) laquelle a infirmé la décision du syndic et a admis les réclamations en tant que réclamations non garanties prouvables en matière de faillite. En appel, la Cour d'appel de l'Ontario a cassé le jugement de la cour de première instance et rétabli la

to appeal from the Court of Appeal judgment, but discontinued its application on August 30, 1993. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested an order granting them leave to appeal. This Court's order granting those applications was issued on December 5, 1996.

2. Relevant Statutory Provisions

The relevant versions of the *Bankruptcy Act* (now the *Bankruptcy and Insolvency Act*) and the *Employment Standards Act* for the purposes of this appeal are R.S.C., 1985, c. B-3 (the "*BA*"), and R.S.O. 1980, c. 137, as amended to April 14, 1989 (the "*ESA*") respectively.

Employment Standards Act, R.S.O. 1980, c. 137, as amended:

7. —

(5) Every contract of employment shall be deemed to include the following provision:

> All severance pay and termination pay become payable and shall be paid by the employer to the employee in two weekly instalments beginning with the first full week following termination of employment and shall be allocated to such weeks accordingly. This provision does not apply to severance pay if the employee has elected to maintain a right of recall as provided in subsection 40a (7) of the *Employment Standards Act.*

40. — (1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employee gives,

(a) one weeks notice in writing to the employee if his or her period of employment is less than one year;

(b) two weeks notice in writing to the employee if his or her period of employment is one year or more but less than three years;

décision du syndic. Le ministère a demandé l'autorisation d'en appeler de l'arrêt de la Cour d'appel, mais il s'est désisté le 30 août 1993. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. L'ordonnance de notre Cour faisant droit à ces demandes a été rendue le 5 décembre 1996.

2. Les dispositions législatives pertinentes

Aux fins du présent pourvoi, les versions pertinentes de la *Loi sur la faillite* (maintenant la *Loi sur la faillite et l'insolvabilité*) et de la *Loi sur les normes d'emploi* sont respectivement les suivantes: L.R.C. (1985), ch. B-3 (la *«LF»*) et L.R.O. 1980, ch. 137 et ses modifications au 14 avril 1989 (la *«LNE»*). 6

Loi sur les normes d'emploi, L.R.O. 1980, ch. 137 et ses modifications:

7 . . .

(5) Tout contrat de travail est réputé comprendre la disposition suivante:

> L'indemnité de cessation d'emploi et l'indemnité de licenciement deviennent exigibles et sont payées par l'employeur à l'employé en deux versements hebdomadaires à compter de la première semaine complète suivant la cessation d'emploi, et sont réparties sur ces semaines en conséquence. La présente disposition ne s'applique pas à l'indemnité de cessation d'emploi si l'employé a choisi de maintenir son droit d'être rappelé, comme le prévoit le paragraphe 40a (7) de la *Loi sur les normes d'emploi.*

40 (1) Aucun employeur ne doit licencier un employé qui travaille pour lui depuis trois mois ou plus à moins de lui donner:

a) un préavis écrit d'une semaine si sa période d'emploi est inférieure à un an;

b) un préavis écrit de deux semaines si sa période d'emploi est d'un an ou plus mais de moins de trois ans;

(c) three weeks notice in writing to the employee if his or her period of employment is three years or more but less than four years;

(d) four weeks notice in writing to the employee if his or her period of employment is four years or more but less than five years;

(e) five weeks notice in writing to the employee if his or her period of employment is five years or more but less than six years;

(f) six weeks notice in writing to the employee if his or her period of employment is six years or more but less than seven years;

(g) seven weeks notice in writing to the employee if his or her period of employment is seven years or more but less than eight years;

(h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more,

and such notice has expired.

. . .

(7) Where the employment of an employee is terminated contrary to this section,

(a) the employer shall pay termination pay in an amount equal to the wages that the employee would have been entitled to receive at his regular rate for a regular non-overtime work week for the period of notice prescribed by subsection (1) or (2), and any wages to which he is entitled;

. . .

40*a* . . .

(1a) Where**,**

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or

(b) one or more employees have their employment terminated by an employer with a payroll of $2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

c) un préavis écrit de trois semaines si sa période d'emploi est de trois ans ou plus mais de moins de quatre ans;

d) un préavis écrit de quatre semaines si sa période d'emploi est de quatre ans ou plus mais de moins de cinq ans;

e) un préavis écrit de cinq semaines si sa période d'emploi est de cinq ans ou plus mais de moins de six ans;

f) un préavis écrit de six semaines si sa période d'emploi est de six ans ou plus mais de moins de sept ans;

g) un préavis écrit de sept semaines si sa période d'emploi est de sept ans ou plus mais de moins de huit ans;

h) un préavis écrit de huit semaines si sa période d'emploi est de huit ans ou plus,

et avant le terme de la période de ce préavis.

. . .

(7) Si un employé est licencié contrairement au présent article:

a) l'employeur lui verse une indemnité de licenciement égale au salaire que l'employé aurait eu le droit de recevoir à son taux normal pour une semaine normale de travail sans heures supplémentaires pendant la période de préavis fixée par le paragraphe (1) ou (2), de même que tout salaire auquel il a droit;

. . .

40*a* . . .

[TRADUCTION] (1a) L'employeur verse une indemnité de cessation d'emploi à chaque employé licencié qui a travaillé pour lui pendant cinq ans ou plus si, selon le cas:

a) l'employeur licencie cinquante employés ou plus au cours d'une période de six mois ou moins et que les licenciements résultent de l'interruption permanente de l'ensemble ou d'une partie des activités de l'employeur à un établissement;

b) l'employeur dont la masse salariale est de 2,5 millions de dollars ou plus licencie un ou plusieurs employés.

Employment Standards Amendment Act, 1981, S.O. 1981, c. 22

2. — (1) Part XII of the said Act is amended by adding thereto the following section:

. . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

Bankruptcy Act, R.S.C., 1985, c. B-3

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy shall be deemed to be claims provable in proceedings under this Act.

Interpretation Act, R.S.O. 1990, c. I.11

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

. . .

17. The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law.

3. Judicial History

A. *Ontario Court (General Division)* (1991), 6 O.R. (3d) 441

Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22

[TRADUCTION]

2. (1) La partie XII de la loi est modifiée par adjonction de l'article suivant:

. . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

Loi sur la faillite, L.R.C. (1985), ch. B-3

121. (1) Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujetti à la date de la faillite, ou auxquels il peut devenir assujetti avant sa libération, en raison d'une obligation contractée antérieurement à la date de la faillite, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi.

Loi d'interprétation, L.R.O. 1990, ch. I.11

10 Les lois sont réputées apporter une solution de droit, qu'elles aient pour objet immédiat d'ordonner l'accomplissement d'un acte que la Législature estime être dans l'intérêt public ou d'empêcher ou de punir l'accomplissement d'un acte qui lui paraît contraire à l'intérêt public. Elles doivent par conséquent s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables.

. . .

17 L'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit.

3. L'historique judiciaire

A. *La Cour de l'Ontario (Division générale)* (1991), 6 O.R. (3d) 441

7 Having disposed of several issues which do not arise on this appeal, Farley J. turned to the question of whether termination pay and severance pay are provable claims under the *BA*. Relying on *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (Ont. S.C. in Bankruptcy), he found that it is clear that claims for termination and severance pay are provable in bankruptcy where the statutory obligation to provide such payments arose prior to the bankruptcy. Accordingly, he reasoned that the essential matter to be resolved in the case at bar was whether bankruptcy acted as a termination of employment thereby triggering the termination and severance pay provisions of the *ESA* such that liability for such payments would arise on bankruptcy as well.

Après avoir tranché plusieurs points non soulevés dans le présent pourvoi, le juge Farley est passé à la question de savoir si l'indemnité de licenciement et l'indemnité de cessation d'emploi sont des réclamations prouvables en application de la *LF*. S'appuyant sur la décision *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (C.S. Ont. en matière de faillite), il a conclu que manifestement, l'indemnité de licenciement et l'indemnité de cessation d'emploi sont prouvables en matière de faillite lorsque l'obligation légale d'effectuer ces versements a pris naissance avant la faillite. Par conséquent, il a estimé que le point essentiel à résoudre en l'espèce était de savoir si la faillite était assimilable au licenciement et entraînait l'application des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* de manière que l'obligation de verser ces indemnités prenne naissance également au moment de la faillite.

8 In addressing this question, Farley J. began by noting that the object and intent of the *ESA* is to provide minimum employment standards and to benefit and protect the interests of employees. Thus, he concluded that the *ESA* is remedial legislation and as such it should be interpreted in a fair, large and liberal manner to ensure that its object is attained according to its true meaning, spirit and intent.

Le juge Farley a abordé cette question en faisant remarquer que l'objet et l'intention de la *LNE* étaient d'établir des normes minimales d'emploi et de favoriser et protéger les intérêts des employés. Il a donc conclu que la *LNE* visait à apporter une solution de droit et devait dès lors être interprétée de manière équitable et large afin de garantir la réalisation de son objet selon ses sens, intention et esprit véritables.

9 Farley J. then held that denying employees in this case the right to claim termination and severance pay would lead to the arbitrary and unfair result that an employee whose employment is terminated just prior to a bankruptcy would be entitled to termination and severance pay, whereas one whose employment is terminated by the bankruptcy itself would not have that right. This result, he stated, would defeat the intended working of the *ESA*.

Le juge Farley a ensuite décidé que priver les employés en l'espèce du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi aurait pour conséquence injuste et arbitraire que l'employé licencié juste avant la faillite aurait droit à une indemnité de licenciement et à une indemnité de cessation d'emploi, alors que celui qui a perdu son emploi en raison de la faillite elle-même n'y aurait pas droit. Ce résultat, a-t-il dit, irait à l'encontre du but visé par la loi.

10 Farley J. saw no reason why the claims of the employees in the present case would not generally be contemplated as wages or other claims under the *BA*. He emphasized that the former employees in the case at bar had not alleged that termination pay and severance pay should receive a priority in

Le juge Farley ne voyait pas pourquoi les réclamations des employés en l'espèce ne seraient pas généralement considérées comme des réclamations concernant les salaires ou comme d'autres réclamations présentées en application de la *LF*. Il a souligné que les anciens employés en l'espèce

the distribution of the estate, but merely that they are provable (unsecured and unpreferred) claims in a bankruptcy. For this reason, he found it inappropriate to make reference to authorities whose focus was the interpretation of priority provisions in the *BA*.

Even if bankruptcy does not terminate the employment relationship so as to trigger the *ESA* termination and severance pay provisions, Farley J. was of the view that the employees in the instant case would nevertheless be entitled to such payments as these were liabilities incurred prior to the date of the bankruptcy by virtue of s. 7(5) of the *ESA*. He found that s. 7(5) deems every employment contract to include a provision to provide termination and severance pay following the termination of employment and concluded that a contingent obligation is thereby created for a bankrupt employer to make such payments from the outset of the relationship, long before the bankruptcy.

Farley J. also considered s. 2(3) of the *Employment Standards Amendment Act, 1981*, S.O. 1981, c. 22 (the "*ESAA*"), which is a transitional provision that exempted certain bankrupt employers from the newly introduced severance pay obligations until the amendments received royal assent. He was of the view that this provision would not have been necessary if the obligations of employers upon termination of employment had not been intended to apply to bankrupt employers under the *ESA*. Farley J. concluded that the claim by Rizzo's former employees for termination pay and severance pay could be provided as unsecured and unpreferred debts in a bankruptcy. Accordingly, he allowed the appeal from the decision of the Trustee.

n'avaient pas soutenu que les indemnités de licenciement et de cessation d'emploi devaient être prioritaires dans la distribution de l'actif, mais tout simplement qu'elles étaient des réclamations prouvables en matière de faillite (non garanties et non privilégiées). Pour ce motif, il a conclu qu'il ne convenait pas d'invoquer la jurisprudence et la doctrine portant sur l'interprétation des dispositions relatives à la priorité de la *LF*.

Même si la faillite ne met pas fin à la relation entre l'employeur et l'employé de façon à faire jouer les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNF*, le juge Farley était d'avis que les employés en l'espèce avaient néanmoins droit à ces indemnités, car il s'agissait d'engagements contractés avant la date de la faillite conformément au par. 7(5) de la *LNE*. Il a conclu d'une part qu'aux termes du par. 7(5), tout contrat de travail est réputé comprendre une disposition prévoyant le versement d'une indemnité de licenciement et d'une indemnité de cessation d'emploi au moment de la cessation d'emploi et d'autre part que l'employeur en faillite est assujetti à l'obligation conditionnelle de verser ces indemnités depuis le début de la relation entre l'employeur et l'employé, soit bien avant la faillite. 11

Le juge Farley a également examiné le par. 2(3) de l'*Employment Standards Amendment Act, 1981*, L.O. 1981, ch. 22 («l'*ESAA*»), qui est une disposition transitoire exemptant certains employeurs en faillite des nouvelles obligations relatives au paiement de l'indemnité de cessation d'emploi jusqu'à ce que les modifications aient reçu la sanction royale. Il était d'avis que cette disposition n'aurait pas été nécessaire si le législateur n'avait pas voulu que les obligations auxquelles sont tenus les employeurs au moment d'un licenciement s'appliquent aux employeurs en faillite en vertu de la *LNE*. Le juge Farley a conclu que la réclamation présentée par les anciens employés de Rizzo en vue d'obtenir des indemnités de licenciement et de cessation d'emploi pouvait être traitée comme une créance non garantie et non privilégiée dans une faillite. Par conséquent, il a accueilli l'appel formé contre la décision du syndic. 12

B. *Ontario Court of Appeal* (1995), 22 O.R. (3d) 385

13 Austin J.A., writing for a unanimous court, began his analysis of the principal issue in this appeal by focussing upon the language of the termination pay and severance pay provisions of the *ESA*. He noted, at p. 390, that the termination pay provisions use phrases such as "[n]o employer shall terminate the employment of an employee" (s. 40(1)), "the notice required by an employer to terminate the employment" (s. 40(2)), and "[a]n employer who has terminated or who proposes to terminate the employment of employees" (s. 40(5)). Turning to severance pay, he quoted s. 40*a*(1)(*a*) (at p. 391) which includes the phrase "employees have their employment terminated by an employer". Austin J.A. concluded that this language limits the obligation to provide termination and severance pay to situations in which the employer terminates the employment. The operation of the *ESA*, he stated, is not triggered by the termination of employment resulting from an act of law such as bankruptcy.

14 In support of his conclusion, Austin J.A. reviewed the leading cases in this area of law. He cited *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (S.C. in bankruptcy), wherein Houlden J. (as he then was) concluded that the *ESA* termination pay provisions were not designed to apply to a bankrupt employer. He also relied upon *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (Ont. S.C. in bankruptcy), for the proposition that the bankruptcy of a company at the instance of a creditor does not constitute dismissal. He concluded as follows at p. 395:

> The plain language of ss. 40 and 40*a* does not give rise to any liability to pay termination or severance pay except where the employment is terminated by the employer. In our case, the employment was terminated, not by the employer, but by the making of a receiving order against Rizzo on April 14, 1989, following a peti-

B. *La Cour d'appel de l'Ontario* (1995), 22 O.R. (3d) 385

Au nom d'une cour unanime, le juge Austin a commencé son analyse de la question principale du présent pourvoi en s'arrêtant sur le libellé des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE*. Il a noté, à la p. 390, que les dispositions relatives à l'indemnité de licenciement utilisent des expressions comme «[a]ucun employeur ne doit licencier un employé» (par. 40(1)), «le préavis qu'un employeur donne pour licencier» (par. 40(2)) et les «employés qu'un employeur a licenciés ou se propose de licencier» (par. 40(5)). Passant à l'indemnité de cessation d'emploi, il a cité l'al. 40*a*(1)*a*), à la p. 391, lequel contient l'expression «l'employeur licencie cinquante employés». Le juge Austin a conclu que ce libellé limite l'obligation d'accorder une indemnité de licenciement et une indemnité de cessation d'emploi aux cas où l'employeur licencie des employés. Selon lui, la cessation d'emploi résultant de l'effet de la loi, notamment de la faillite, n'entraîne pas l'application de la *LNE*.

À l'appui de sa conclusion, le juge Austin a examiné les arrêts de principe dans ce domaine du droit. Il a cité *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (C.S. en matière de faillite), dans lequel le juge Houlden (maintenant juge de la Cour d'appel) a statué que les dispositions relatives à l'indemnité de licenciement de la *LNE* n'étaient pas conçues pour s'appliquer à l'employeur en faillite. Il a également invoqué *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (C.S. Ont. en matière de faillite), à l'appui de la proposition selon laquelle la faillite d'une compagnie à la demande d'un créancier ne constitue pas un congédiement. Il a conclu ainsi, à la p. 395:

> [TRADUCTION] Le libellé clair des art. 40 et 40*a* ne crée une obligation de verser une indemnité de licenciement ou une indemnité de cessation d'emploi que si l'employeur licencie l'employé. En l'espèce, la cessation d'emploi n'est pas le fait de l'employeur, elle résulte d'une ordonnance de séquestre rendue à l'encontre de Rizzo le 14 avril 1989, à la suite d'une pétition présentée par l'un de ses créanciers. Le droit à une indemnité

tion by one of its creditors. No entitlement to either termination or severance pay ever arose.

Regarding s. 7(5) of the *ESA*, Austin J.A. rejected the trial judge's interpretation and found that the section does not create a liability. Rather, in his opinion, it merely states when a liability otherwise created is to be paid and therefore it was not considered relevant to the issue before the court. Similarly, Austin J.A. did not accept the lower court's view of s. 2(3), the transitional provision in the *ESAA*. He found that that section had no effect upon the intention of the Legislature as evidenced by the terminology used in ss. 40 and 40*a*.

Austin J.A. concluded that, because the employment of Rizzo's former employees was terminated by the order of bankruptcy and not by the act of the employer, no liability arose with respect to termination, severance or vacation pay. The order of the trial judge was set aside and the Trustee's disallowance of the claims was restored.

4. Issues

This appeal raises one issue: does the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*?

5. Analysis

The statutory obligation upon employers to provide both termination pay and severance pay is governed by ss. 40 and 40*a* of the *ESA*, respectively. The Court of Appeal noted that the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment. For example, the opening words of s. 40(1) are: "No employer shall terminate the employment of an employee. . . ." Similarly, s. 40*a*(1a) begins with

de licenciement ou à une indemnité de cessation d'emploi n'a jamais pris naissance.

15 En ce qui concerne le par. 7(5) de la *LNE*, le juge Austin a rejeté l'interprétation du juge de première instance et a estimé que cette disposition ne créait pas d'engagement. Selon lui, elle ne faisait que préciser quand l'engagement contracté par ailleurs devait être acquitté et ne se rapportait donc pas à la question dont la cour était saisie. Le juge Austin n'a pas accepté non plus l'opinion exprimée par le tribunal inférieur au sujet du par. 2(3), la disposition transitoire de l'*ESAA*. Il a jugé que cette disposition n'avait aucun effet quant à l'intention du législateur, comme l'attestait la terminologie employée aux art. 40 et 40*a*.

16 Le juge Austin a conclu que, comme la cessation d'emploi subie par les anciens employés de Rizzo résultait d'une ordonnance de faillite et n'était pas le fait de l'employeur, il n'existait aucun engagement en ce qui concerne l'indemnité de licenciement, l'indemnité de cessation d'emploi ni la paie de vacances. L'ordonnance du juge de première instance a été annulée et la décision du syndic de rejeter les réclamations a été rétablie.

4. Les questions en litige

17 Le présent pourvoi soulève une question: la cessation d'emploi résultant de la faillite de l'employeur donne-t-elle naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*?

5. Analyse

18 L'obligation légale faite aux employeurs de verser une indemnité de licenciement ainsi qu'une indemnité de cessation d'emploi est régie respectivement par les art. 40 et 40*a* de la *LNE*. La Cour d'appel a fait observer que le libellé clair de ces dispositions donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé. Par exemple, le par. 40(1) commence par les mots suivants: «Aucun employeur ne doit

the words, "Where . . . fifty or more employees have their employment terminated by an employer. . . ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

19 The Court of Appeal answered this question in the negative, holding that, where an employer is petitioned into bankruptcy by a creditor, the employment of its employees is not terminated "by an employer", but rather by operation of law. Thus, the Court of Appeal reasoned that, in the circumstances of the present case, the *ESA* termination pay and severance pay provisions were not applicable and no obligations arose. In answer, the appellants submit that the phrase "terminated by an employer" is best interpreted as reflecting a distinction between involuntary and voluntary termination of employment. It is their position that this language was intended to relieve employers of their obligation to pay termination and severance pay when employees leave their jobs voluntarily. However, the appellants maintain that where an employee's employment is involuntarily terminated by reason of their employer's bankruptcy, this constitutes termination "by an employer" for the purpose of triggering entitlement to termination and severance pay under the *ESA*.

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legisla-*

licencier un employé . . .» Le paragraphe 40*a*(1a) contient également les mots: «si [. . .] l'employeur licencie cinquante employés ou plus . . .» Par conséquent, la question dans le présent pourvoi est de savoir si l'on peut dire que l'employeur qui fait faillite a licencié ses employés.

La Cour d'appel a répondu à cette question par la négative, statuant que, lorsqu'un créancier présente une pétition en faillite contre un employeur, les employés ne sont pas licenciés par l'employeur mais par l'effet de la loi. La Cour d'appel a donc estimé que, dans les circonstances de l'espèce, les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNE* n'étaient pas applicables et qu'aucune obligation n'avait pris naissance. Les appelants répliquent que les mots «l'employeur licencie» doivent être interprétés comme établissant une distinction entre la cessation d'emploi volontaire et la cessation d'emploi forcée. Ils soutiennent que ce libellé visait à dégager l'employeur de son obligation de verser des indemnités de licenciement et de cessation d'emploi lorsque l'employé quittait son emploi volontairement. Cependant, les appelants prétendent que la cessation d'emploi forcée résultant de la faillite de l'employeur est assimilable au licenciement effectué par l'employeur pour l'exercice du droit à une indemnité de licenciement et à une indemnité de cessation d'emploi prévu par la *LNE*.

Une question d'interprétation législative est au centre du présent litige. Selon les conclusions de la Cour d'appel, le sens ordinaire des mots utilisés dans les dispositions en cause paraît limiter l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi aux employeurs qui ont effectivement licencié leurs employés. À première vue, la faillite ne semble pas cadrer très bien avec cette interprétation. Toutefois, en toute déférence, je crois que cette analyse est incomplète.

Bien que l'interprétation législative ait fait couler beaucoup d'encre (voir par ex. Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3e éd. 1994) (ci-après «*Construction of Statutes*»); Pierre-André Côté, *Interprétation des lois* (2e éd.

tion in Canada (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

In *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701). It was in this context that the majority in *Machtinger* described, at p. 1003, the object of the *ESA* as being the protection of "... the interests of employees by requiring employers to comply with

1990)), Elmer Driedger dans son ouvrage intitulé *Construction of Statutes* (2e éd. 1983) résume le mieux la méthode que je privilégie. Il reconnaît que l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. À la p. 87, il dit:

> [TRADUCTION] Aujourd'hui il n'y a qu'un seul principe ou solution: il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur.

Parmi les arrêts récents qui ont cité le passage ci-dessus en l'approuvant, mentionnons: *R. c. Hydro-Québec*, [1997] 1 R.C.S. 213; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411; *Verdun c. Banque Toronto-Dominion*, [1996] 3 R.C.S. 550; *Friesen c. Canada*, [1995] 3 R.C.S. 103.

22 Je m'appuie également sur l'art. 10 de la *Loi d'interprétation*, L.R.O. 1980, ch. 219, qui prévoit que les lois «sont réputées apporter une solution de droit» et doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

23 Bien que la Cour d'appel ait examiné le sens ordinaire des dispositions en question dans le présent pourvoi, en toute déférence, je crois que la cour n'a pas accordé suffisamment d'attention à l'économie de la *LNE*, à son objet ni à l'intention du législateur; le contexte des mots en cause n'a pas non plus été pris en compte adéquatement. Je passe maintenant à l'analyse de ces questions.

24 Dans l'arrêt *Machtinger c. HOJ Industries Ltd.*, [1992] 1 R.C.S. 986, à la p. 1002, notre Cour, à la majorité, a reconnu l'importance que notre société accorde à l'emploi et le rôle fondamental qu'il joue dans la vie de chaque individu. La manière de mettre fin à un emploi a été considérée comme étant tout aussi importante (voir également *Wallace c. United Grain Growers Ltd.*, [1997] 3 R.C.S. 701). C'est dans ce contexte que les juges majoritaires dans l'arrêt *Machtinger* ont défini, à la p. 1003, l'objet de la *LNE* comme étant la protection «. . . [d]es intérêts des employés en exigeant que

certain minimum standards, including minimum periods of notice of termination". Accordingly, the majority concluded, at p. 1003, that, ". . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not".

les employeurs respectent certaines normes minimales, notamment en ce qui concerne les périodes minimales de préavis de licenciement». Par conséquent, les juges majoritaires ont conclu, à la p. 1003, qu'«. . . une interprétation de la Loi qui encouragerait les employeurs à se conformer aux exigences minimales de celle-ci et qui ferait ainsi bénéficier de sa protection le plus grand nombre d'employés possible est à préférer à une interprétation qui n'a pas un tel effet».

25 The objects of the termination and severance pay provisions themselves are also broadly premised upon the need to protect employees. Section 40 of the *ESA* requires employers to give their employees reasonable notice of termination based upon length of service. One of the primary purposes of this notice period is to provide employees with an opportunity to take preparatory measures and seek alternative employment. It follows that s. 40(7)(a), which provides for termination pay in lieu of notice when an employer has failed to give the required statutory notice, is intended to "cushion" employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment. (Innis Christie, Geoffrey England and Brent Cotter, *Employment Law in Canada* (2nd ed. 1993), at pp. 572-81.)

L'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. L'article 40 de la *LNE* oblige les employeurs à donner à leurs employés un préavis de licenciement raisonnable en fonction des années de service. L'une des fins principales de ce préavis est de donner aux employés la possibilité de se préparer en cherchant un autre emploi. Il s'ensuit que l'al. 40(7)a), qui prévoit une indemnité de licenciement tenant lieu de préavis lorsqu'un employeur n'a pas donné le préavis requis par la loi, vise à protéger les employés des effets néfastes du bouleversement économique que l'absence d'une possibilité de chercher un autre emploi peut entraîner. (Innis Christie, Geoffrey England et Brent Cotter, *Employment Law in Canada* (2e éd. 1993), aux pp. 572 à 581.)

26 Similarly, s. 40*a*, which provides for severance pay, acts to compensate long-serving employees for their years of service and investment in the employer's business and for the special losses they suffer when their employment terminates. In *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, Robins J.A. quoted with approval at pp. 556-57 from the words of D. D. Carter in the course of an employment standards determination in *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), at p. 19, wherein he described the role of severance pay as follows:

De même, l'art. 40*a*, qui prévoit l'indemnité de cessation d'emploi, vient indemniser les employés ayant beaucoup d'années de service pour ces années investies dans l'entreprise de l'employeur et pour les pertes spéciales qu'ils subissent lorsqu'ils sont licenciés. Dans l'arrêt *R. c. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, le juge Robins a cité en les approuvant, aux pp. 556 et 557, les propos tenus par D. D. Carter dans le cadre d'une décision rendue en matière de normes d'emploi dans *Re Telegram Publishing Co. c. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), à la p. 19, où il a décrit ainsi le rôle de l'indemnité de cessation d'emploi:

Severance pay recognizes that an employee does make an investment in his employer's business — the extent of this investment being directly related to the length of

[TRADUCTION] L'indemnité de cessation d'emploi reconnaît qu'un employé fait un investissement dans l'entreprise de son employeur — l'importance de cet investis-

the employee's service. This investment is the seniority that the employee builds up during his years of service. . . . Upon termination of the employment relationship, this investment of years of service is lost, and the employee must start to rebuild seniority at another place of work. The severance pay, based on length of service, is some compensation for this loss of investment.

sement étant liée directement à la durée du service de l'employé. Cet investissement est l'ancienneté que l'employé acquiert durant ses années de service [. . .] À la fin de la relation entre l'employeur et l'employé, cet investissement est perdu et l'employé doit recommencer à acquérir de l'ancienneté dans un autre lieu de travail. L'indemnité de cessation d'emploi, fondée sur les années de service, compense en quelque sorte cet investissement perdu.

In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40*a* of the *ESA* are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

27 À mon avis, les conséquences ou effets qui résultent de l'interprétation que la Cour d'appel a donnée des art. 40 et 40*a* de la *LNE* ne sont compatibles ni avec l'objet de la Loi ni avec l'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes. Selon un principe bien établi en matière d'interprétation législative, le législateur ne peut avoir voulu des conséquences absurdes. D'après Côté, *op. cit.*, on qualifiera d'absurde une interprétation qui mène à des conséquences ridicules ou futiles, si elle est extrêmement déraisonnable ou inéquitable, si elle est illogique ou incohérente, ou si elle est incompatible avec d'autres dispositions ou avec l'objet du texte législatif (aux pp. 430 à 432). Sullivan partage cet avis en faisant remarquer qu'on peut qualifier d'absurdes les interprétations qui vont à l'encontre de la fin d'une loi ou en rendent un aspect inutile ou futile (Sullivan, *Construction of Statutes*, *op. cit.*, à la p. 88).

The trial judge properly noted that, if the *ESA* termination and severance pay provisions do not apply in circumstances of bankruptcy, those employees "fortunate" enough to have been dismissed the day before a bankruptcy would be entitled to such payments, but those terminated on the day the bankruptcy becomes final would not be so entitled. In my view, the absurdity of this consequence is particularly evident in a unionized workplace where seniority is a factor in determining the order of lay-off. The more senior the employee, the larger the investment he or she has made in the employer and the greater the entitlement to termination and severance pay. However, it is the more senior personnel who are likely to be employed up

28 Le juge de première instance a noté à juste titre que, si les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* ne s'appliquent pas en cas de faillite, les employés qui auraient eu la «chance» d'être congédiés la veille de la faillite auraient droit à ces indemnités, alors que ceux qui perdraient leur emploi le jour où la faillite devient définitive n'y auraient pas droit. À mon avis, l'absurdité de cette conséquence est particulièrement évidente dans les milieux syndiqués où les mises à pied se font selon l'ancienneté. Plus un employé a de l'ancienneté, plus il a investi dans l'entreprise de l'employeur et plus son droit à une indemnité de licenciement et à une indemnité de cessation d'emploi est fondé. Pourtant, c'est le personnel ayant le plus d'ancienneté qui risque de travailler

until the time of the bankruptcy and who would thereby lose their entitlements to these payments.

29 If the Court of Appeal's interpretation of the termination and severance pay provisions is correct, it would be acceptable to distinguish between employees merely on the basis of the timing of their dismissal. It seems to me that such a result would arbitrarily deprive some employees of a means to cope with the economic dislocation caused by unemployment. In this way the protections of the *ESA* would be limited rather than extended, thereby defeating the intended working of the legislation. In my opinion, this is an unreasonable result.

30 In addition to the termination and severance pay provisions, both the appellants and the respondent relied upon various other sections of the *ESA* to advance their arguments regarding the intention of the legislature. In my view, although the majority of these sections offer little interpretive assistance, one transitional provision is particularly instructive. In 1981, s. 2(1) of the *ESAA* introduced s. 40*a*, the severance pay provision, to the *ESA*. Section 2(2) deemed that provision to come into force on January 1, 1981. Section 2(3), the transitional provision in question provided as follows:

2. . . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

31 The Court of Appeal found that it was neither necessary nor appropriate to determine the intention of the legislature in enacting this provisional

jusqu'au moment de la faillite et de perdre ainsi le droit d'obtenir ces indemnités.

Si l'interprétation que la Cour d'appel a donnée des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi est correcte, il serait acceptable d'établir une distinction entre les employés en se fondant simplement sur la date de leur congédiement. Il me semble qu'un tel résultat priverait arbitrairement certains employés d'un moyen de faire face au bouleversement économique causé par le chômage. De cette façon, les protections de la *LNE* seraient limitées plutôt que d'être étendues, ce qui irait à l'encontre de l'objectif que voulait atteindre le législateur. À mon avis, c'est un résultat déraisonnable.

En plus des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi, tant les appelants que l'intimée ont invoqué divers autres articles de la *LNE* pour appuyer les arguments avancés au sujet de l'intention du législateur. Selon moi, bien que la plupart de ces dispositions ne soient d'aucune utilité en ce qui concerne l'interprétation, il est une disposition transitoire particulièrement révélatrice. En 1981, le par. 2(1) de l'*ESAA* a introduit l'art. 40*a*, la disposition relative à l'indemnité de cessation d'emploi. En application du par. 2(2), cette disposition entrait en vigueur le 1er janvier 1981. Le paragraphe 2(3), la disposition transitoire en question, était ainsi conçue:

[TRADUCTION]

2. . . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

La Cour d'appel a conclu qu'il n'était ni nécessaire ni approprié de déterminer l'intention qu'avait le législateur en adoptant ce paragraphe

subsection. Nevertheless, the court took the position that the intention of the legislature as evidenced by the introductory words of ss. 40 and 40*a* was clear, namely, that termination by reason of a bankruptcy will not trigger the severance and termination pay obligations of the *ESA*. The court held that this intention remained unchanged by the introduction of the transitional provision. With respect, I do not agree with either of these findings. Firstly, in my opinion, the use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise and one which has often been employed by this Court (see, e.g., *R. v. Vasil*, [1981] 1 S.C.R. 469, at p. 487; *Paul v. The Queen*, [1982] 1 S.C.R. 621, at pp. 635, 653 and 660). Secondly, I believe that the transitional provision indicates that the Legislature intended that termination and severance pay obligations should arise upon an employers' bankruptcy.

provisoire. Néanmoins, la cour a estimé que l'intention du législateur, telle qu'elle ressort des premiers mots des art. 40 et 40*a*, était claire, à savoir que la cessation d'emploi résultant de la faillite ne fera pas naître l'obligation de verser l'indemnité de cessation d'emploi et l'indemnité de licenciement qui est prévue par la *LNE*. La cour a jugé que cette intention restait inchangée à la suite de l'adoption de la disposition transitoire. Je ne puis souscrire ni à l'une ni à l'autre de ces conclusions. En premier lieu, à mon avis, l'examen de l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié et notre Cour y a eu souvent recours (voir, par ex., *R. c. Vasil*, [1981] 1 R.C.S. 469, à la p. 487; *Paul c. La Reine*, [1982] 1 R.C.S. 621, aux pp. 635, 653 et 660). En second lieu, je crois que la disposition transitoire indique que le législateur voulait que l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi prenne naissance lorsque l'employeur fait faillite.

In my view, by extending an exemption to employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent, s. 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. It seems to me that, if this were not the case, no readily apparent purpose would be served by this transitional provision.

32 À mon avis, en raison de l'exemption accordée au par. 2(3) aux employeurs qui ont fait faillite et ont perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale, il faut nécessairement que les employeurs faisant faillite soient de fait assujettis à l'obligation de verser une indemnité de cessation d'emploi. Selon moi, si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin.

I find support for my conclusion in the decision of Saunders J. in *Royal Dressed Meats Inc.*, *supra*. Having reviewed s. 2(3) of the *ESAA*, he commented as follows (at p. 89):

33 Je m'appuie sur la décision rendue par le juge Saunders dans l'affaire *Royal Dressed Meats Inc.*, précitée. Après avoir examiné le par. 2(3) de l'*ESAA*, il fait l'observation suivante (à la p. 89):

> . . . any doubt about the intention of the Ontario Legislature has been put to rest, in my opinion, by the transitional provision which introduced severance payments into the E.S.A. . . . it seems to me an inescapable inference that the legislature intended liability for severance payments to arise on a bankruptcy. That intention would, in my opinion, extend to termination payments which are similar in character.

> [TRADUCTION] . . . tout doute au sujet de l'intention du législateur ontarien est dissipé, à mon avis, par la disposition transitoire qui introduit les indemnités de cessation d'emploi dans la L.N.E. [. . .] Il me semble qu'il faut conclure que le législateur voulait que l'obligation de verser des indemnités de cessation d'emploi prenne naissance au moment de la faillite. Selon moi, cette intention s'étend aux indemnités de licenciement qui sont de nature analogue.

This interpretation is also consistent with statements made by the Minister of Labour at the time

34 Cette interprétation est également compatible avec les déclarations faites par le ministre du

he introduced the 1981 amendments to the *ESA*. With regard to the new severance pay provision he stated:

> The circumstances surrounding a closure will govern the applicability of the severance pay legislation in some defined situations. For example, a bankrupt or insolvent firm will still be required to pay severance pay to employees to the extent that assets are available to satisfy their claims.
>
> . . .
>
> . . . the proposed severance pay measures will, as I indicated earlier, be retroactive to January 1 of this year. That retroactive provision, however, will not apply in those cases of bankruptcy and insolvency where the assets have already been distributed or where an agreement on a proposal to creditors has already been reached.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 4, 1981, at pp. 1236-37.)

Moreover, in the legislative debates regarding the proposed amendments the Minister stated:

> For purposes of retroactivity, severance pay will not apply to bankruptcies under the Bankruptcy Act where assets have been distributed. However, once this act receives royal assent, employees in bankruptcy closures will be covered by the severance pay provisions.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 16, 1981, at p. 1699.)

35 Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, Sopinka J. stated:

> . . . until recently the courts have balked at admitting evidence of legislative debates and speeches. . . . The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legisla-

Travail au moment de l'introduction des modifications apportées à la *LNE* en 1981. Au sujet de la nouvelle disposition relative à l'indemnité de cessation d'emploi, il a dit ce qui suit:

> [TRADUCTION] Les circonstances entourant une fermeture régissent l'applicabilité de la législation en matière d'indemnité de cessation d'emploi dans certains cas précis. Par exemple, une société insolvable ou en faillite sera encore tenue de verser l'indemnité de cessation d'emploi aux employés dans la mesure où il y a des biens pour acquitter leurs réclamations.
>
> . . .
>
> . . . les mesures proposées en matière d'indemnité de cessation d'emploi seront, comme je l'ai mentionné précédemment, rétroactives au 1er janvier de cette année. Cette disposition rétroactive, toutefois, ne s'appliquera pas en matière de faillite et d'insolvabilité dans les cas où les biens ont déjà été distribués ou lorsqu'une entente est déjà intervenue au sujet de la proposition des créanciers.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 4 juin 1981, aux pp. 1236 et 1237.)

De plus, au cours des débats parlementaires sur les modifications proposées, le ministre a déclaré:

> [TRADUCTION] En ce qui a trait à la rétroactivité, l'indemnité de cessation d'emploi ne s'appliquera pas aux faillites régies par la Loi sur la faillite lorsque les biens ont été distribués. Cependant, lorsque la présente loi aura reçu la sanction royale, les employés visés par des fermetures entraînées par des faillites seront visés par les dispositions relatives à l'indemnité de cessation d'emploi.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 16 juin 1981, à la p. 1699.)

Malgré les nombreuses lacunes de la preuve des débats parlementaires, notre Cour a reconnu qu'elle peut jouer un rôle limité en matière d'interprétation législative. S'exprimant au nom de la Cour dans l'arrêt *R. c. Morgentaler*, [1993] 3 R.C.S. 463, à la p. 484, le juge Sopinka a dit:

> . . . jusqu'à récemment, les tribunaux ont hésité à admettre la preuve des débats et des discours devant le corps législatif. [. . .] La principale critique dont a été l'objet ce type de preuve a été qu'elle ne saurait représenter «l'intention» de la législature, personne morale, mais

tive history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

Finally, with regard to the scheme of the legislation, since the *ESA* is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant (see, e.g., *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, at p. 10; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 537). It seems to me that, by limiting its analysis to the plain meaning of ss. 40 and 40*a* of the *ESA*, the Court of Appeal adopted an overly restrictive approach that is inconsistent with the scheme of the Act.

The Court of Appeal's reasons relied heavily upon the decision in *Malone Lynch*, *supra*. In *Malone Lynch*, Houlden J. held that s. 13, the group termination provision of the former *ESA*, R.S.O. 1970, c. 147, and the predecessor to s. 40 at issue in the present case, was not applicable where termination resulted from the bankruptcy of the employer. Section 13(2) of the *ESA* then in force provided that, if an employer wishes to terminate the employment of 50 or more employees, the employer must give notice of termination for the period prescribed in the regulations, "and until the expiry of such notice the terminations shall not take effect". Houlden J. reasoned that termination of employment through bankruptcy could not trigger the termination payment provision, as employees in this situation had not received the written notice required by the statute, and therefore could not be said to have been terminated in accordance with the Act.

Two years after *Malone Lynch* was decided, the 1970 *ESA* termination pay provisions were

c'est aussi vrai pour d'autres formes de contexte d'adoption d'une loi. À la condition que le tribunal n'oublie pas que la fiabilité et le poids des débats parlementaires sont limités, il devrait les admettre comme étant pertinents quant au contexte et quant à l'objet du texte législatif.

36 Enfin, en ce qui concerne l'économie de la loi, puisque la *LNE* constitue un mécanisme prévoyant des normes et des avantages minimaux pour protéger les intérêts des employés, on peut la qualifier de loi conférant des avantages. À ce titre, conformément à plusieurs arrêts de notre Cour, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur (voir, par ex., *Abrahams c. Procureur général du Canada*, [1983] 1 R.C.S. 2, à la p. 10; *Hills c. Canada (Procureur général)*, [1988] 1 R.C.S. 513, à la p. 537). Il me semble que, en limitant cette analyse au sens ordinaire des art. 40 et 40*a* de la *LNE*, la Cour d'appel a adopté une méthode trop restrictive qui n'est pas compatible avec l'économie de la Loi.

37 La Cour d'appel s'est fortement appuyée sur la décision rendue dans *Malone Lynch*, précité. Dans cette affaire, le juge Houlden a conclu que l'art. 13, la disposition relative aux mesures de licenciement collectif de l'ancienne *ESA*, R.S.O. 1970, ch. 147, qui a été remplacée par l'art. 40 en cause dans le présent pourvoi, n'était pas applicable lorsque la cessation d'emploi résultait de la faillite de l'employeur. Le paragraphe 13(2) de l'*ESA* alors en vigueur prévoyait que, si un employeur voulait licencier 50 employés ou plus, il devait donner un préavis de licenciement dont la durée était prévue par règlement [TRADUCTION] «et les licenciements ne prenaient effet qu'à l'expiration de ce délai». Le juge Houlden a conclu que la cessation d'emploi résultant de la faillite ne pouvait entraîner l'application de la disposition relative à l'indemnité de licenciement car les employés placés dans cette situation n'avaient pas reçu le préavis écrit requis par la loi et ne pouvaient donc pas être considérés comme ayant été licenciés conformément à la Loi.

38 Deux ans après que la décision *Malone Lynch* eut été prononcée, les dispositions relatives à l'in-

amended by *The Employment Standards Act, 1974*, S.O. 1974, c. 112. As amended, s. 40(7) of the 1974 *ESA* eliminated the requirement that notice be given before termination can take effect. This provision makes it clear that termination pay is owing where an employer fails to give notice of termination and that employment terminates irrespective of whether or not proper notice has been given. Therefore, in my opinion it is clear that the *Malone Lynch* decision turned on statutory provisions which are materially different from those applicable in the instant case. It seems to me that Houlden J.'s holding goes no further than to say that the provisions of the 1970 *ESA* have no application to a bankrupt employer. For this reason, I do not accept the *Malone Lynch* decision as persuasive authority for the Court of Appeal's findings. I note that the courts in *Royal Dressed Meats*, *supra*, and *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (B.C.S.C.), declined to rely upon *Malone Lynch* based upon similar reasoning.

demnité de licenciement de l'*ESA* de 1970 ont été modifiées par *The Employment Standards Act, 1974*, S.O. 1974, ch. 112. Dans la version modifiée du par. 40(7) de l'*ESA* de 1974, il n'était plus nécessaire qu'un préavis soit donné avant que le licenciement puisse produire ses effets. Cette disposition vient préciser que l'indemnité de licenciement doit être versée lorsqu'un employeur omet de donner un préavis de licenciement et qu'il y a cessation d'emploi, indépendamment du fait qu'un préavis régulier ait été donné ou non. Il ne fait aucun doute selon moi que la décision *Malone Lynch* portait sur des dispositions législatives très différentes de celles qui sont applicables en l'espèce. Il me semble que la décision du juge Houlden a une portée limitée, soit que les dispositions de l'*ESA* de 1970 ne s'appliquent pas à un employeur en faillite. Pour cette raison, je ne reconnais à la décision *Malone Lynch* aucune valeur persuasive qui puisse étayer les conclusions de la Cour d'appel. Je souligne que les tribunaux dans *Royal Dressed Meats*, précité, et *British Columbia (Director of Employment Standards) c. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (C.S.C.-B.), ont refusé de se fonder sur *Malone Lynch* en invoquant des raisons similaires.

39 The Court of Appeal also relied upon *Re Kemp Products Ltd.*, *supra*, for the proposition that although the employment relationship will terminate upon an employer's bankruptcy, this does not constitute a "dismissal". I note that this case did not arise under the provisions of the *ESA*. Rather, it turned on the interpretation of the term "dismissal" in what the complainant alleged to be an employment contract. As such, I do not accept it as authoritative jurisprudence in the circumstances of this case. For the reasons discussed above, I also disagree with the Court of Appeal's reliance on *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), which cited the decision in *Malone Lynch*, *supra*, with approval.

La Cour d'appel a également invoqué *Re Kemp Products Ltd.*, précité, à l'appui de la proposition selon laquelle, bien que la relation entre l'employeur et l'employé se termine à la faillite de l'employeur, cela ne constitue pas un «congédiement». Je note que ce litige n'est pas fondé sur les dispositions de la *LNE*. Il portait plutôt sur l'interprétation du terme «congédiement» dans le cadre de ce que le plaignant alléguait être un contrat de travail. J'estime donc que cette décision ne fait pas autorité dans les circonstances de l'espèce. Pour les raisons exposées ci-dessus, je ne puis accepter non plus que la Cour d'appel se fonde sur l'arrêt *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), qui citait la décision *Malone Lynch*, précitée, et l'approuvait.

40 As I see the matter, when the express words of ss. 40 and 40*a* of the *ESA* are examined in their entire context, there is ample support for the con-

Selon moi, l'examen des termes exprès des art. 40 et 40*a* de la *LNE*, replacés dans leur contexte global, permet largement de conclure que les

clusion that the words "terminated by the employer" must be interpreted to include termination resulting from the bankruptcy of the employer. Using the broad and generous approach to interpretation appropriate for benefits-conferring legislation, I believe that these words can reasonably bear that construction (see *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025). I also note that the intention of the Legislature as evidenced in s. 2(3) of the *ESAA*, clearly favours this interpretation. Further, in my opinion, to deny employees the right to claim *ESA* termination and severance pay where their termination has resulted from their employer's bankruptcy, would be inconsistent with the purpose of the termination and severance pay provisions and would undermine the object of the *ESA*, namely, to protect the interests of as many employees as possible.

mots «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Adoptant l'interprétation libérale et généreuse qui convient aux lois conférant des avantages, j'estime que ces mots peuvent raisonnablement recevoir cette interprétation (voir *R. c. Z. (D.A.)*, [1992] 2 R.C.S. 1025). Je note également que l'intention du législateur, qui ressort du par. 2(3) de l'*ESAA*, favorise clairement cette interprétation. Au surplus, à mon avis, priver des employés du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi en application de la *LNE* lorsque la cessation d'emploi résulte de la faillite de leur employeur serait aller à l'encontre des fins visées par les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi et minerait l'objet de la *LNE*, à savoir protéger les intérêts du plus grand nombre d'employés possible.

In my view, the impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Further, I believe that such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Therefore, I conclude that termination as a result of an employer's bankruptcy does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *BA* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. Because of this conclusion, I do not find it necessary to address the alternative finding of the trial judge as to the applicability of s. 7(5) of the *ESA*.

41 À mon avis, les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui ont été licenciés pour quelque autre raison serait arbitraire et inéquitable. De plus, je pense qu'une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. Je conclus donc que la cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. En raison de cette conclusion, j'estime inutile d'examiner l'autre conclusion tirée par le juge de première instance quant à l'applicabilité du par. 7(5) de la *LNE*.

I note that subsequent to the Rizzo bankruptcy, the termination and severance pay provisions of the *ESA* underwent another amendment. Sections

42 Je fais remarquer qu'après la faillite de Rizzo, les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la

74(1) and 75(1) of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1, amend those provisions so that they now expressly provide that where employment is terminated by operation of law as a result of the bankruptcy of the employer, the employer will be deemed to have terminated the employment. However, s. 17 of the *Interpretation Act* directs that, "[t]he repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law". As a result, I note that the subsequent change in the legislation has played no role in determining the present appeal.

LNE ont été modifiées à nouveau. Les paragraphes 74(1) et 75(1) de la *Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1, ont apporté des modifications à ces dispositions qui prévoient maintenant expressément que, lorsque la cessation d'emploi résulte de l'effet de la loi à la suite de la faillite de l'employeur, ce dernier est réputé avoir licencié ses employés. Cependant, comme l'art. 17 de la *Loi d'interprétation* dispose que «[l]'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit», je précise que la modification apportée subséquemment à la loi n'a eu aucune incidence sur la solution apportée au présent pourvoi.

6. Disposition and Costs

43 I would allow the appeal and set aside paragraph 1 of the order of the Court of Appeal. In lieu thereof, I would substitute an order declaring that Rizzo's former employees are entitled to make claims for termination pay (including vacation pay due thereon) and severance pay as unsecured creditors. As to costs, the Ministry of Labour led no evidence regarding what effort it made in notifying or securing the consent of the Rizzo employees before it discontinued its application for leave to appeal to this Court on their behalf. In light of these circumstances, I would order that the costs in this Court be paid to the appellant by the Ministry on a party-and-party basis. I would not disturb the orders of the courts below with respect to costs.

6. Dispositif et dépens

Je suis d'avis d'accueillir le pourvoi et d'annuler le premier paragraphe de l'ordonnance de la Cour d'appel. Je suis d'avis d'y substituer une ordonnance déclarant que les anciens employés de Rizzo ont le droit de présenter des demandes d'indemnité de licenciement (y compris la paie de vacances due) et d'indemnité de cessation d'emploi en tant que créanciers ordinaires. Quant aux dépens, le ministère du Travail n'ayant produit aucun élément de preuve concernant les efforts qu'il a faits pour informer les employés de Rizzo ou obtenir leur consentement avant de se désister de sa demande d'autorisation de pourvoi auprès de notre Cour en leur nom, je suis d'avis d'ordonner que les dépens devant notre Cour soient payés aux appelants par le ministère sur la base des frais entre parties. Je suis d'avis de ne pas modifier les ordonnances des juridictions inférieures à l'égard des dépens.

Appeal allowed with costs.

Pourvoi accueilli avec dépens.

Solicitors for the appellants: Sack, Goldblatt, Mitchell, Toronto.

Procureurs des appelants: Sack, Goldblatt, Mitchell, Toronto.

Solicitors for the respondent: Minden, Gross, Grafstein & Greenstein, Toronto.

Procureurs de l'intimée: Minden, Gross, Grafstein & Greenstein, Toronto.

Solicitor for the Ministry of Labour for the Province of Ontario, Employment Standards Branch: The Attorney General for Ontario, Toronto.

Procureur du ministère du Travail de la province d'Ontario, Direction des normes d'emploi: Le procureur général de l'Ontario, Toronto.

TAB 2

Indexed as:

Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours

Corporation Notre-Dame de Bon-Secours, appellant;
v.
Communauté urbaine de Québec and
City of Québec, respondents,
and
Bureau de révision de l'évaluation foncière du Québec,
respondent, and
The Attorney General of Quebec, respondent.

[1994] 3 S.C.R. 3

[1994] 3 R.C.S. 3

[1994] S.C.J. No. 78

[1994] A.C.S. no 78

File No.: 23014.

Supreme Court of Canada

1994: May 25; 1994: September 30.

Present: La Forest, L'Heureux-Dubé, Sopinka, Gonthier,
Cory, McLachlin and Iacobucci JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Municipal law -- Real estate valuation -- Tax-exempt immovables -- Reception centres -- Whether appellant can qualify as reception centre and benefit from tax exemption -- Interpretation of tax legislation -- Act respecting Municipal Taxation, R.S.Q., c. F-2.1, s. 204(14) -- Act respecting Health Services and Social Services, R.S.Q., c. S-5, ss. 1(k), 12.

Taxation -- Legislation -- Rules for interpreting tax legislation.

The appellant is a non-profit corporation created in 1964 for the purpose of providing low rental housing to indigent elderly persons. There are over 450 residents at the appellant's facilities, which have been in operation since 1969. Of this total, 20 are located in the shelter section, for which the appellant holds a permit issued pursuant to the Act respecting Health Services and Social Services ("A.H.S.S.S."). This permit authorizes it to operate a private reception centre for 20 persons. The government pays part of their room

and board and exercises a measure of control to ensure that all the places in the shelter section are filled. The remainder of the facilities receive no government grant and are managed entirely by the appellant. The services offered are provided for all residents and the premises in general are designed to meet the special needs of the elderly. The criteria for admission are a minimum age of 60, a low income and physical and psychological autonomy. In 1982 an assessor found that 89 percent of the total area of the property was reserved for apartments and that the shelter section and the community services took up 11 percent. He therefore gave the appellant a real estate tax exemption for 1980 to 1984 of 11 percent. The appellant claimed the reception centre exemption provided for in s. 204(14) of the Act respecting Municipal Taxation ("A.M.T.") for all its facilities, in view of the nature of its mission, and filed a complaint with the Bureau de révision de l'évaluation foncière du Québec ("BREF"). The BREF allowed its complaint and found that the appellant's activities are those of a reception centre and exempted its facilities from all real estate taxes for 1980 to 1984. The Provincial Court affirmed that decision but the Court of Appeal reversed the judgment of the Provincial Court and held that the exemption did not apply to 89 percent of the appellant's surface area.

Held: The appeal should be allowed.

The principles that should guide the courts in interpreting tax legislation are as follows: (1) The interpretation of tax legislation is subject to the ordinary rules of interpretation; (2) A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent; (3) This teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions; (4) Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute; (5) Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer.

In light of these rules of interpretation, the appellant may benefit from the tax exemption provided for in s. 204(14) A.M.T. for all its facilities. First, on the facts found by the BREF the appellant's facilities can be classified in their entirety as a reception centre within the meaning of ss. 1(k) and 12(b) A.H.S.S.S. To be treated as a reception centre an establishment must first offer certain services; it must then place these services at the disposal of persons whose condition requires them. Lodging is a service sufficient in itself to meet the requirements of the "services" part of the definition in s. 1(k). It is not necessary to offer the full range of services enumerated in that paragraph. For the "need" part, age is sufficient as such to justify a need to be treated or kept in a protected residence, regardless of any physical, personality, psycho-social or family deficiency. The notion of care cannot be limited to a purely therapeutic aspect. As to the concept of a protected residence in s. 1(k), for which no definition is given in the A.H.S.S.S., it should not be given a narrower meaning than that of a residence providing a secure location adapted to the special physical and mental needs of the people for whom it was designed and whom it serves. Second, the appellant's entire facilities are used for the purposes provided by the A.H.S.S.S., as stipulated by s. 204(14). Just as the autonomy of elderly persons at the time of their admission cannot be the decisive test in determining the concept of need provided for in s. 1(k), it also cannot be used to determine whether the appellant's facilities are being used for the purposes provided by the A.H.S.S.S. The answer to that question will depend entirely on the finding that in fact these facilities are designed and adapted for accommodating the elderly with a real need, though that need may be variable in degree or immediacy. Here the BREF found that the services provided by the appellant, taken together with the needs of its residents, lead to the conclusion that it must be classified in its entirety as a reception centre for the purposes of the A.H.S.S.S. Though aware of the existence of s. 2 A.M.T., which allows the assessment unit to be divided, the BREF nevertheless considered that the appellant was operating facilities which as a whole met the two parts of the definition of a reception centre. The decision of the BREF, a specialized tribunal, discloses no error subject to review on appeal. Finally, a reception centre may be exempt from real estate taxes even if it does not hold a permit required by the A.H.S.S.S. Similarly, there is nothing to indicate that failure to observe the requirement provided for in s. 18.1 A.H.S.S.S. -- submission of admission criteria to the Conseil régional de la santé et des services sociaux or the Minister responsible, for approval -- will as such affect the status of an establishment as a reception centre. The decision of the BREF must therefore be restored.

Cases Cited

Distinguished: Services de santé et services sociaux -- 7, [1987] C.A.S. 579; referred to: Stubart Investments Ltd. v. The Queen, [1984] 1 S.C.R. 536; The Queen v. Golden, [1986] 1 S.C.R. 209; Ville de Montréal v. ILGWU Center Inc., [1974] S.C.R. 59; Johns-Manville Canada Inc. v. The Queen, [1985] 2 S.C.R. 46; The Queen v. Imperial General Properties Ltd., [1985] 2 S.C.R. 288; Bronfman Trust v. The Queen, [1987] 1 S.C.R. 32; Symes v. Canada, [1993] 4 S.C.R. 695; Ville de Québec v. Corp. Notre-Dame de Bon-Secours, Prov. Ct. Québec, No. 200-02-008522-793, November 27, 1980, unreported.

Statutes and Regulations Cited

Act respecting Health Services and Social Services, R.S.Q., c. S-5, ss. 1(a) [am. 1981, c. 22, s. 40], (b), (c), (k) [repl. 1979, c. 85, s. 82], 3, 9, 10 [am. 1981, c. 22, s. 41], 11, 12(a), (b), 18.1 [ad. idem, s. 43; am. 1983, c. 54, s. 72], 76, 82 [repl. 1981, c. 22, s. 63].
Act respecting Municipal Taxation, R.S.Q., c. F-2.1, ss. 2, 204(14) [repl. 1980, c. 34, s. 27], (15).
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Driedger, Elmer A. Construction of Statutes, 2nd ed. Toronto: Butterworths, 1983.
Morgan, Vivien. "Stubart: What the Courts Did Next" (1987), 35 Can. Tax J. 155.

APPEAL from a judgment of the Quebec Court of Appeal, [1993] R.L. 68, 47 Q.A.C. 47, reversing a judgment of the Provincial Court rendered on May 19, 1987, affirming a decision of the Bureau de révision de l'évaluation foncière du Québec, [1985] B.R.E.F. 130. Appeal allowed.

André Bois and André Lemay, for the appellant. Estelle Alain, for the respondents the Communauté urbaine de Québec and the City of Québec. No one appeared for the respondent the Bureau de révision de l'évaluation foncière du Québec. Alain Tanguay, for the respondent the Attorney General of Quebec.

Solicitors for the appellant: Tremblay Bois & Associés, Ste-Foy. Solicitors for the respondents the Communauté urbaine de Québec and the City of Québec: Alain, Tardif & Associés, Québec. Solicitors for the respondent the Attorney General of Quebec: Rochette Boucher & Gagnon, Québec.

English version of the judgment of the Court delivered by

1 GONTHIER J.:-- The issue in this case is whether the appellant, an institution devoted to the welfare of elderly persons living under the poverty line, may benefit from the tax exemption provided for in s. 204(14) of the Act respecting Municipal Taxation, R.S.Q., c. F-2.1 ("A.M.T.") for all its facilities. There are two main questions: (1) What are the principles that should guide the courts in interpreting tax legislation? (2) In light of these principles, can the appellant qualify as a reception centre within the meaning of s. 12 of the Act respecting Health Services and Social Services, R.S.Q., c. S-5 ("A.H.S.S.S."), referred to in s. 204(14) A.M.T.?

I - Facts

2 The appellant, the Corporation Notre-Dame de Bon-Secours, is a non-profit corporation created in 1964 for the purpose of providing low rental housing to indigent elderly persons. On June 16, 1967 the Soeurs de la Congrégration de Notre-Dame conveyed to the appellant for one dollar the land on which it would erect the facilities for use in carrying out its mission, facilities to be known as "La Champenoise" (which we will use to

refer to the appellant). Its construction began in 1968 and it was officially opened in November 1969.

3 There are 456 people at La Champenoise, with an average age of 83. The residents' annual income varies between $6,000 and $9,000 and 80 percent of the people at the establishment are women. Of the total number of residents, 20 are physically located in a single sector of the establishment known as the shelter section, for which La Champenoise holds a permit issued pursuant to the A.H.S.S.S. authorizing it to operate a private reception centre for 20 residents. The shelter section apartments are similar to those of other residents, except that they have no kitchenette. Part of the room and board of the residents of this section is borne by the government, which pays a per diem allowance. The government also exercises a measure of control to ensure that the 20 places are filled. The remainder of the facilities receive no government grant and are managed entirely by La Champenoise. Its administrators and managers work as volunteers.

4 In addition to the services of a resident priest, the chapel, an infirmary which is accessible 24 hours a day, the cafeteria and the social activities which La Champenoise provides for all residents, it should also be noted that the premises in general are physically designed to meet the special needs of the elderly. Thus, inter alia, there are ramps, there are no door sills, electrical outlets are 24 inches from the ground and bathrooms are equipped with support bars.

5 The criteria for admission to La Champenoise are a minimum age of 60, a low income and physical and psychological autonomy. The latter factor is not, however, a requirement for staying on in the establishment, since it appears that elderly persons may remain in the premises despite a subsequent deterioration in their health. In his testimony given in 1984 the director general of La Champenoise noted that places which became vacant were offered to applicants who had made their applications for admission in 1976: there was a considerable waiting list of 1,800 persons.

6 In 1982 an assessor from the Communauté urbaine de Québec visited La Champenoise to determine the proportion of the premises used as an apartment building and as a reception centre. He found that 89 percent of the total area of the property was reserved for apartments and that the shelter section and the community services took up 11 percent: he gave La Champenoise a real estate tax exemption for 1980 to 1984 only for this 11 percent. La Champenoise filed a complaint with the Bureau de révision de l'évaluation foncière du Québec ("BREF"), in which it claimed an exemption for all its facilities in view of the nature of its mission.

7 The real estate tax debt to date amounts to over $4.5 million and it goes without saying that the size of the amounts involved will have a determining effect on the viability of La Champenoise and the security of its 456 elderly residents.

II - The Courts Below

Bureau de révision de l'évaluation foncière du Québec, [1985] B.R.E.F. 130

8 According to the respondents the City of Québec and the Communauté urbaine de Québec, holding a permit to operate a reception centre is an essential condition for benefiting from the tax exemption. It follows that as La Champenoise only holds a permit for 20 residents its entire facilities cannot be regarded as a reception centre. After reviewing the testimony and the applicable provisions of the A.H.S.S.S., Mr. Barbe, of the BREF, found that the activities of La Champenoise are those of a reception centre and that it was not necessary for it to hold a permit in order to be treated as such. He accordingly exempted the appellant's property from all real estate taxes.

Provincial Court (District of Québec, No. 200-02-004152-858, May 19, 1987)

9 Aubé Prov. Ct. J. concurred in the findings of the BREF. He was of the view that the entire La Champenoise property constitutes a reception centre within the meaning of s. 1(k) A.H.S.S.S. and is used for the purposes provided by the Act. He took note of the parties' admission that the shelter section meets the conditions for the exemption provided for in s. 204(14) A.M.T. He also noted the presence of s. 2 A.M.T., which allows an assessment unit to be divided. In light of these observations, he nevertheless stated, at p.

12 of his reasons:

> [Translation] The evidence here is clear, however, that La Champenoise in fact forms a single well-integrated unit and that there is a direct, permanent and necessary connection between the shelter section and the rest of La Champenoise.
>
> In the presence of such a well-established and well-articulated overall reality, the court could not allow technical considerations to obscure the true nature of La Champenoise, namely that of a facility at which, for all practical purposes, all services are available to everyone.

The BREF's decision was upheld.

Quebec Court of Appeal (1992), 47 Q.A.C. 47

10 In the opinion of Bisson C.J.Q., the outcome of the case depended on the answer to two questions. First, the nature of La Champenoise had to be determined. After examining certain definitions included in the A.H.S.S.S., including that of a "reception centre", Bisson C.J.Q. finally concluded, at p. 55, that [Translation] "[t]he legal and factual existence of the respondent [La Champenoise] is far from establishing that it meets the definition of a reception centre, except with respect to the shelter section". He also noted that the solution of the matter had to be based on more fundamental questions than whether or not a permit was held, and so he did not consider it necessary to rule on the point.

11 The second question was to determine whether the property was used for the purposes provided by the A.H.S.S.S. To decide whether the La Champenoise facilities were used as a reception centre strictly speaking, Bisson C.J.Q. considered in particular the criteria for admission to the establishment. He noted that the evidence presented as to the La Champenoise admission criteria indicated that they did not meet the requirements of the definition of a reception centre. In the opinion of the Chief Justice, at p. 56, there had been an error in characterizing the facts:

> [Translation] Where the error was made was in making the availability of community services the test by which La Champenoise was regarded as a reception centre.
>
> The fact that these community services are available to all residents -- tenants and sheltered persons -- does not mean that the residents are all in a condition, "by reason of their age or their physical, personality, psycho-social or family deficiencies, . . . such that they must be treated, kept in protected residence or . . ." (s. 1(k)).
>
> I note that the evidence showed that in order to obtain an apartment at La Champenoise residents had to be autonomous physically as well as mentally and financially, though in the latter case with limited means.

12 Finally, since the issue is whether to apply an exemption to the principle of real estate taxation, Bisson C.J.Q. was in favour of adopting a restrictive interpretation. With this in mind, he concluded at p. 56:

> [Translation] It is true that the respondent [La Champenoise] is a non-profit corporation and engaged in an eminently praiseworthy undertaking, but this is not a basis for an interpretation that conflicts with the purpose contemplated by the legislature when it created the exemption.
>
> I therefore conclude that 89 percent of the surface area of the property occupied by La Champenoise . . . was not used for the purpose provided in the [A.H.S.S.S.], and

that proportion of it could not be regarded as a reception centre.

13 Bisson C.J.Q. accordingly applied s. 2 A.M.T., which allows a unit of assessment to be divided, and held that the exemption provided for in s. 204(14) of that Act did not apply to 89 percent of the surface area of La Champenoise.

III - Issues

14 To determine whether La Champenoise may benefit from the tax exemption provided for in s. 204(14) A.M.T. for all its facilities, the Court must answer the following two questions:

1. What are the principles that should guide the courts in interpreting tax legislation?
2. In light of these principles, can La Champenoise qualify as a reception centre within the meaning of s. 12 A.H.S.S.S., referred to in s. 204(14) A.M.T.?

IV - Relevant Legislation

15 At the relevant times the A.M.T. provided the following:

2. Unless otherwise indicated by the context, any provision of this act which contemplates an immoveable property, moveable property or unit of assessment is deemed to contemplate part of such an immoveable property, moveable property or unit of assessment, if only that part falls within the scope of the provision.

204. The following are exempt from all municipal or school real estate taxes:

. . .

(14) an immoveable belonging to a public establishment within the meaning of the Act respecting health services and social services (chapter S-5), including a reception centre contemplated in section 12 of that act, used for the purposes provided by that act, and an immoveable belonging to the holder of a day care centre permit or nursery school permit contemplated in paragraph 1 or 2 of section 4 or 5 of the Act respecting child day care (chapter S-4.1), used for the purposes provided by that act;

16 The A.H.S.S.S. provided:

1. In this Act and the regulations, unless the context indicates a different meaning, the following expressions and words mean:

(a) "establishment": a local community service centre, a hospital centre, a social service centre or a reception centre;

(b) "public establishment": an establishment contemplated in sections 10 and 11;

(c) "private establishment": an establishment contemplated in sections 12 and 13;

. . .

(k) "reception centre": facilities where in-patient, out-patient or home-care services are offered for the lodging, maintenance, keeping under observation, treatment or social rehabilitation, as the case may be, of persons whose condition, by reason of their age or their physical, personality, psycho-social or family deficiencies, is such that they must be treated, kept in protected residence or, if need be, for close treatment, or treated at home, including nurseries, but excepting day care establishments

contemplated in the Act respecting child day care (chapter S-4.1), foster families, vacation camps and other similar facilities and facilities maintained by a religious institution to receive its members or followers;

3. The Minister shall exercise the powers that this Act confers upon him in order to:

(a) improve the state of the health of the population, the state of the social environment in which they live and the social conditions of individuals, families and groups;

. . .

(c) encourage the population and the groups which compose it to participate in the founding, administration and development of establishments so as to ensure their vital growth and renewal;

9. Every establishment is public or private.
10. The following are public establishments:

(a) every establishment constituted under this Act or resulting from an amalgamation or conversion made under this Act;

(b) every hospital centre or social service centre maintained by a non-profit corporation;

(c) every establishment using for its object immovable assets which are the property of a non-profit corporation other than a corporation incorporated under this Act.

11. Every reception centre maintained by a non-profit corporation other than a corporation contemplated in section 10 is also a public establishment, subject to section 12.
12. However, a reception centre maintained by a non-profit corporation other than a corporation resulting from an amalgamation or conversion made under this Act is a private establishment:

(a) if it is arranged to receive not more than 20 persons at one time; or

(b) if it was already constituted on 1 January 1974 and if it operates without recourse to sums of money derived from the consolidated revenue fund or if such sums do not cover more than 80% of the net amounts it would receive for its current operating expenses, if it were a public establishment;

V - Analysis

A. Rules for interpreting tax legislation

17 In this Court the appellant argued that a provision creating a tax exemption should be interpreted by looking at the spirit and purpose of the legislation. In this connection it is worth looking briefly at the development of the rules for interpreting tax legislation in Canada and formulating certain principles. First,

there is the traditional rule that tax legislation must be strictly construed: this applied both to provisions imposing a tax obligation and to those creating tax exemptions. The rule was based on the fact that, like penal legislation, tax legislation imposes a burden on individuals and accordingly no one should be made subject to it unless the wording of the Act so provides in a clear and precise manner. The effect of such an interpretation was to favour the taxpayer in the case of provisions imposing a tax obligation, and the courts placed on the tax department the burden of showing that the taxpayer fell clearly within the letter of the law. Conversely, a taxpayer claiming to benefit from an exemption had "to establish that the competent legislative authority, in clear and unequivocal language, [had] unquestionably granted him the exemption claimed" (Fauteux C.J. in Ville de Montréal v. ILGWU Center Inc., [1974] S.C.R. 59, at p. 65). Any doubt was thus to be resolved in favour of the tax department. In view of this situation, it followed from the strict construction rule that in cases of doubt a presumption existed in the taxpayer's favour in taxing situations but against the taxpayer in those involving exemptions.

18 It should at once be noted that there is a risk of confusion between the rule that a taxing provision is to be strictly construed and the burden of proof resting upon the parties in an action between the government and a taxpayer. According to the general rule which provides that the burden of proof lies with the plaintiff, in any proceeding it is for the party claiming the benefit of a legislative provision to show that he is entitled to rely on it. The burden of proof thus rests with the tax department in the case of a provision imposing a tax obligation and with the taxpayer in the case of a provision creating a tax exemption. It will be noted that the presumptions mentioned earlier tend in more or less the same direction. This explains why these concepts have been at times superimposed to the point of being confused with each other. With respect, they are nevertheless two very different concepts. In any event, the rule of strict construction relates only to the clarity of the wording of the tax legislation: regardless of who bears the burden of proof, that person will have to persuade the court that the taxpayer is clearly covered by the wording of the legislative provision which it is sought to apply.

19 In Canada it was Stubart Investments Ltd. v. The Queen, [1984] 1 S.C.R. 536, which opened the first significant breach in the rule that tax legislation must be strictly construed. This Court there held, per Estey J., at p. 578, that the rule of strict construction had to be bypassed in favour of interpretation according to ordinary rules so as to give effect to the spirit of the Act and the aim of Parliament:

> . . . the role of the tax statute in the community changed, as we have seen, and the application of strict construction to it receded. Courts today apply to this statute the plain meaning rule, but in a substantive sense so that if a taxpayer is within the spirit of the charge, he may be held liable.

20 This turning point in the development of the rules for interpreting tax legislation in Canada was prompted by the realization that the purpose of tax legislation is no longer simply to raise funds with which to cover government expenditure. It was recognized that such legislation is also used for social and economic purposes. In The Queen v. Golden, [1986] 1 S.C.R. 209, at pp. 214-15, Estey J. for the majority explained Stubart as follows:

> In Stubart . . . the Court recognized that in the construction of taxation statutes the law is not confined to a literal and virtually meaningless interpretation of the Act where the words will support on a broader construction a conclusion which is workable and in harmony with the evident purposes of the Act in question. Strict construction in the historic sense no longer finds a place in the canons of interpretation applicable to taxation statutes in an era such as the present, where taxation serves many purposes in addition to the old and traditional object of raising the cost of government from a somewhat unenthusiastic public.

21 Such a rule also enabled the Court to direct its attention to the actual nature of the taxpayer's operations, and so to give substance precedence over form, when so doing in appropriate cases would make it possible to achieve the purposes of the legislation in question. (See Johns-Manville Canada Inc. v. The Queen, [1985] 2 S.C.R. 46, and The Queen v. Imperial General Properties Ltd., [1985] 2 S.C.R. 288.) It is important, however, not to conclude too hastily that this latter rule (giving substance precedence over form)

should be applied mechanically, as it only has real meaning if it is consistent with the analysis of legislative intent. As Dickson C.J. noted in Bronfman Trust v. The Queen, [1987] 1 S.C.R. 32, at pp. 52-53:

> I acknowledge, however, that just as there has been a recent trend away from strict construction of taxation statutes . . . so too has the recent trend in tax cases been towards attempting to ascertain the true commercial and practical nature of the taxpayer's transactions. There has been, in this country and elsewhere, a movement away from tests based on the form of transactions and towards tests based on what Lord Pearce has referred to as a "common sense appreciation of all the guiding features" of the events in question . . .
>
> This is, I believe, a laudable trend provided it is consistent with the text and purposes of the taxation statute. Assessment of taxpayers' transactions with an eye to commercial and economic realities, rather than juristic classification of form, may help to avoid the inequity of tax liability being dependent upon the taxpayer's sophistication at manipulating a sequence of events to achieve a patina of compliance with the apparent prerequisites for a tax deduction.
>
> This does not mean, however, that a deduction such as the interest deduction in s. 20(1)(c)(i), which by its very text is made available to the taxpayer in limited circumstances, is suddenly to lose all its strictures. [Emphasis added.]

22 In light of this passage there is no longer any doubt that the interpretation of tax legislation should be subject to the ordinary rules of construction. At page 87 of his text Construction of Statutes (2nd ed. 1983), Driedger fittingly summarizes the basic principles: ". . . the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament". The first consideration should therefore be to determine the purpose of the legislation, whether as a whole or as expressed in a particular provision. The following passage from Vivien Morgan's article "Stubart: What the Courts Did Next" (1987), 35 Can. Tax J. 155, at pp. 169-70, adequately summarizes my conclusion:

> There has been one distinct change [after Stubart], however, in the resolution of ambiguities. In the past, resort was often made to the maxims that an ambiguity in a taxing provision is resolved in the taxpayer's favour and that an ambiguity in an exempting provision is resolved in the Crown's favour. Now an ambiguity is usually resolved openly by reference to legislative intent. [Emphasis added.]

The teleological approach makes it clear that in tax matters it is no longer possible to reduce the rules of interpretation to presumptions in favour of or against the taxpayer or to well-defined categories known to require a liberal, strict or literal interpretation. I refer to the passage from Dickson C.J., supra, when he says that the effort to determine the purpose of the legislation does not mean that a specific provision loses all its strictures. In other words, it is the teleological interpretation that will be the means of identifying the purpose underlying a specific legislative provision and the Act as a whole; and it is the purpose in question which will dictate in each case whether a strict or a liberal interpretation is appropriate or whether it is the tax department or the taxpayer which will be favoured.

23 In light of the foregoing, I should like to stress that it is no longer possible to apply automatically the rule that any tax exemption should be strictly construed. It is not incorrect to say that when the legislature makes a general rule and lists certain exceptions, the latter must be regarded as exhaustive and so strictly construed. That does not mean, however, that this rule should be transposed to tax matters so as to make an absolute parallel between the concepts of exemption and exception. With respect, adhering to the principle that taxation is clearly the rule and exemption the exception no longer corresponds to the reality of present-day tax law. Such a way of looking at things was undoubtedly tenable at a time when the purpose of tax legislation was limited to raising funds to cover government expenses. In our time it has been recognized

that such legislation serves other purposes and functions as a tool of economic and social policy. By submitting tax legislation to a teleological interpretation it can be seen that there is nothing to prevent a general policy of raising funds from being subject to a secondary policy of exempting social works. Both are legitimate purposes which equally embody the legislative intent and it is thus hard to see why one should take precedence over the other.

24 One final aspect requires consideration. In Johns-Manville Canada, supra, this Court itself referred to a residual presumption in favour of the taxpayer, and were it not for certain qualifications that must be added, it would be difficult to justify maintaining this presumption in light of what was discussed earlier. Estey J. said the following at p. 72:

> . . . where the taxing statute is not explicit, reasonable uncertainty or factual ambiguity resulting from lack of explicitness in the statute should be resolved in favour of the taxpayer. This residual principle must be the more readily applicable in this appeal where otherwise annually recurring expenditures, completely connected to the daily business operation of the taxpayer, afford the taxpayer no credit against tax either by way of capital cost or depletion allowance with reference to a capital expenditure, or an expense deduction against revenue. [Emphasis added.]

25 Earlier, at p. 67, he said the following:

> On the other hand, if the interpretation of a taxation statute is unclear, and one reasonable interpretation leads to a deduction to the credit of a taxpayer and the other leaves the taxpayer with no relief from clearly bona fide expenditures in the course of his business activities, the general rules of interpretation of taxing statutes would direct the tribunal to the former interpretation.

Two comments should be made to give Estey J.'s observations their full meaning: first, recourse to the presumption in the taxpayer's favour is indicated when a court is compelled to choose between two valid interpretations, and second, this presumption is clearly residual and should play an exceptional part in the interpretation of tax legislation. In his text The Interpretation of Legislation in Canada (2nd ed. 1991), at p. 412, Professor Pierre-André Côté summarizes the point very well:

> If the taxpayer receives the benefit of the doubt, such a "doubt" must nevertheless be "reasonable". A taxation statute should be "reasonably clear". This criterion is not satisfied if the usual rules of interpretation have not already been applied in an attempt to clarify the problem. The meaning of the enactment must first be ascertained, and only where this proves impossible can that which is more favourable to the taxpayer be chosen.

The rules formulated in the preceding pages, some of which were relied on recently in Symes v. Canada, [1993] 4 S.C.R. 695, may be summarized as follows:

- The interpretation of tax legislation should follow the ordinary rules of interpretation;

- A legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent: this is the teleological approach;

- The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions;

- Substance should be given precedence over form to the extent that this is consistent

with the wording and objective of the statute;

- Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer.

B. Characterization of La Champenoise as a reception centre used for the purposes provided in the Act

26 Two reasons were given by Bisson C.J.Q. for allowing the respondents' appeal: first, the legal and factual existence of La Champenoise does not indicate that all its facilities can meet the definition of a reception centre; second, it is a mistake to conclude, as the courts below did, that the availability of the services offered means that the immovable is being used for the purposes provided by the A.H.S.S.S., as required by s. 204(14) A.M.T.

27 The first reason is based principally on analysis of s. 1(k) A.H.S.S.S. I reproduce it again here for the sake of convenience:

> (k) "reception centre": facilities where in-patient, out-patient or home-care services are offered for the lodging, maintenance, keeping under observation, treatment or social rehabilitation, as the case may be, of persons whose condition, by reason of their age or their physical, personality, psycho-social or family deficiencies, is such that they must be treated, kept in protected residence or, if need be, for close treatment, or treated at home, including nurseries, but excepting day care establishments contemplated in the Act respecting child day care (chapter S-4.1), foster families, vacation camps and other similar facilities and facilities maintained by a religious institution to receive its members or followers; [Emphasis added.]

Two parts of this definition may be considered: to be treated as a reception centre an establishment must first offer certain services; it must then place these services at the disposal of persons whose condition requires them. This is the part relating to need. It will be seen that for both parts the paragraph is worded disjunctively. For the "services" part, the words "or" and "as the case may be" clearly indicate that lodging is a service sufficient in itself to meet the requirements of the definition. There is no need to offer the full range of services mentioned in s. 1(k) A.H.S.S.S. in order to qualify as a reception centre; nonetheless, the evidence was that the La Champenoise population as a whole benefits from a large number of them. The paragraph is worded similarly for the "need" part, in that age is sufficient as such to justify a need to be treated or kept in a protected residence, regardless of any physical, personality, psycho-social or family deficiency. The notion of care in this sense cannot be limited to a purely therapeutic aspect. As to the concept of a protected residence, for which no statutory definition is given, it should not be given a narrower meaning than that of a residence providing a secure location adapted to the special physical and mental needs of the people for whom it was designed and whom it serves.

28 The fact that La Champenoise requires its residents to be physically and psychologically autonomous on admission is an entirely different matter, and that leads me to discuss the second reason. I note that Bisson C.J.Q. mentioned that the availability of services should not be a basis for assessing the need of residents and, indirectly, determining whether the La Champenoise property was being used for the purposes provided in the A.H.S.S.S. I share this view. With respect, however, I consider that the need of an elderly person also cannot be determined by his or her autonomy. It can certainly be concluded from the definition of a reception centre that the autonomy of those referred to in s. 1(k) may be affected in varying degrees. That does not mean we can conclude that an autonomous person is not in need of care and protection, a fortiori if as in the case at bar the autonomy is only determined at the stage of admission and will inevitably diminish thereafter. Nowhere is it stated that the individual's need must be immediate. There is no bar to its being foreseeable.

29 With respect, the autonomy of elderly persons at the time of their admission cannot be the decisive test

in determining the concept of need as provided for in s. 1(k) A.H.S.S.S. In the same way, it also cannot be used to determine whether La Champenoise's immovable is being used for the purposes provided by the Act, as prescribed in s. 204(14) A.M.T. The outcome of the latter analysis will depend entirely on the finding, whether satisfactory or otherwise, that in fact the institution is designed and adapted for accommodating the elderly with a real need, though that need may be variable in degree or immediacy.

30 Section 12(b) A.H.S.S.S., reproduced earlier and applicable to the situation of La Champenoise, might well have added to the previous test the requirement that the establishment be legally made a reception centre on January 1, 1974. The only date referred to by Mr. Barbe of the BREF in this matter is that of the incorporation of La Champenoise as a non-profit corporation. It is implicit from his reasons that 1964 is the year to be considered in fixing a starting-point for the activities of La Champenoise as a reception centre. He concludes, at p. 137 of the BREF's decision:

> [Translation] It appears from the evidence that these were "facilities where in-patient . . . services are offered for the lodging, maintenance, keeping under observation, treatment . . . of persons whose condition, by reason of their age . . . is such that they must be treated, kept in protected residence . . .". The establishment is accordingly one that meets the legislative definition of a "reception centre".

31 These reasons are in accord with the findings of fact made by Judge Larochelle of the Provincial Court in a judgment allowing an application for an earlier exemption, included in the case on appeal with supporting testimony. It states:

> [Translation] Over this four-year period, from 1972 to 1975 inclusive, [La Champenoise] as a non-profit corporation always pursued its stated purposes and objectives, namely lodging and sheltering at a low cost elderly persons who are in need, while at the same time providing them with medical care and giving them every assistance and moral support made necessary by their state and condition, and did so consistently.
>
> (Ville de Québec v. Corp. Notre-Dame de Bon-Secours, Prov. Ct. Québec, No. 200-02-008522-783, November 27, 1980, at p. 10.)

32 The respondents argued that the appellant could not have been established as a reception centre on January 1, 1974 since at that time it was still covered by the Public Charities Act, R.S.Q. 1964, c. 216. With respect, that does not call into question the implicit conclusion of the BREF, since there is nothing to prevent La Champenoise from having in fact been able to meet the requirements of both statutes. This conclusion is all the more compelling when we consider that historically the A.H.S.S.S. was adopted in order to update certain older legislation, including the Public Charities Act, while preserving the fundamental principles contained in that legislation. From this perspective, it necessarily follows that the test to be adopted in determining whether the property is being used for the purposes provided in the Act must be limited to an assessment of the reception centre de facto.

33 Here we have these positive findings by the BREF that the services provided by La Champenoise, taken together with the needs of its residents, lead to the conclusion that it must be classified in its entirety as a reception centre for the purposes of the Act. It was objected that the BREF had not applied s. 2 A.M.T. and divided the unit of assessment. With respect, it is clear from the reasons of Mr. Barbe that that section was not overlooked. This is especially apparent in his decision when he notes, referring to the assessor's work, [Translation] "[that the latter] established the percentage of the exemption but not the principle of an exempt part and a part subject to tax" (p. 134). Though aware of the existence of s. 2 A.M.T., the BREF nevertheless considered that La Champenoise was operating facilities which as a whole met the two parts of the definition of a reception centre. Moreover, it was in the best position to conclude, following a visit to the premises, that the undertaking was indivisible, and this conclusion was concurred in by Judge Aubé of the Provincial Court on appeal, as mentioned earlier. The primary area of expertise of this specialized tribunal is certainly not that of social services: I would note, however, that what was required here was to define a

reception centre for tax purposes. That being so, there is no need to question its findings.

34 In this Court the respondents the Communauté urbaine de Québec and the City of Québec cited the decision in Services de santé et services sociaux -- 7, [1987] C.A.S. 579, in support of their arguments that La Champenoise could not be classified as a reception centre in its entirety. That decision was clearly made by a tribunal specializing in social services. With respect, the fact remains that that case cannot apply here. The Commission des affaires sociales ("the Commission") was required to interpret the concept of a reception centre in connection with the power of the Minister of Health and Social Services to relocate two elderly residents living in a home which had no permit within the meaning of s. 136 A.H.S.S.S. In addition to accommodation, the home provided food and care to the two residents, whose respective conditions required regular attention, one having difficulty in moving about and the other being subject to periods of confusion. The Commission reversed the Minister's decision and found that the home in question was not a reception centre within the meaning of s. 1(k) A.H.S.S.S. In a passage which I shall reproduce at length for greater clarity, the Commission said the following, at p. 582:

> [Translation] The activities described in this definition of a reception centre are in fact very broad and capable of being carried on in various locations where individuals are lodged. Offering in-patient services for the lodging and maintenance of individuals is thus a task which in our society is far from being a function exclusive to reception centres. Even in the case of persons having certain problems or deficiencies, such centres do not have a monopoly.
>
> There are in fact many places providing lodging to elderly persons whose autonomy is more limited and who, though not needing constant care, simply must live in places where . . . certain maintenance services are provided for them. In such places they may find someone capable of providing a form of assistance and help if required, not to mention out-patient services which are provided to them in the same way as if they lived elsewhere.
>
> Formerly, such persons found this type of lodging within an extended family unit. Now, this resource is less available and they must have access to different places.
>
> In the Commission's opinion this is not the type of lodging contemplated by the relocation power conferred on the Minister by s. 182 [A.H.S.S.S.]. That power, which is special and exceptional, is an incidental measure for the purpose of penalizing a breach of the Act, namely the operation of an establishment without a permit (s. 136).
>
> The establishment is truly a facility whose activities must be so arranged that relatively constant special care can be provided to the persons living there who require it. It is not a place the primary activity of which is to lodge and maintain persons who may occasionally need certain care and for whom it provides reassuring and beneficial surroundings.
>
> The Minister's power of relocation should not be isolated but seen in its context. Otherwise it might be used to transfer one or more persons from locations where activities of the kind described in s. 1(k) are carried on and where care may be provided from time to time but which are not truly facilities for this purpose. Examples of this are families where an elderly or handicapped person lives. [Emphasis added; italics in original.]

35 There is no doubt that the factual background to that decision is completely different from the case at

bar; the same is true of the section of the Act relied on in support of these arguments. The first passage underlined in the extract nevertheless suggests that the rental portion of La Champenoise might not be classified as a reception centre. That does not prevent me from coming to the opposite conclusion. The type of lodging referred to by the Commission is inconsistent with the concept of an organized institution. This follows from the last phrase underlined above, when the Commission mentions facilities which are not created for the purposes of providing the services described in s. 1(k) A.H.S.S.S. In the present case La Champenoise is an organized institution which was specifically created for the purpose of catering to the special needs of the elderly.

36 Another argument put forward by the respondents to show that La Champenoise cannot be classified as a reception centre in its entirety relies on the reasons of Bisson C.J.Q., when he noted that the composition of the board of directors and the criteria for admission to La Champenoise are not in accordance with the respective requirements of ss. 82 and 18.1 A.H.S.S.S. With respect, reading ss. 82 and 76 A.H.S.S.S. together with the heading of the division covering them clearly shows that s. 82 applies only to public establishments. Clearly, therefore, it cannot be made to cover La Champenoise. As for s. 18.1 A.H.S.S.S., which obviously applies to public and private establishments, it provides for the submission of admission criteria to the Conseil régional de la santé et des services sociaux or the Minister, as the case may be. There is nothing to indicate, however, that failure to observe this requirement will as such affect the status of an establishment as a reception centre.

37 The respondents submitted, finally, that a reception centre is not exempt from real estate taxes if it does not hold a permit required by Division VI of the A.H.S.S.S. As La Champenoise holds a permit for 20 residents, the tax exemption could not be valid for its facilities in their entirety but should be limited to the shelter section only. In support of this argument the respondents relied on s. 204(14) A.M.T., which does not define a reception centre as such but rather proceeds by way of a reference to s. 12 A.H.S.S.S. Such a reference, they argued, is not limited to the definition of a reception centre but also takes in the provisions of the Act governing the activities of this type of establishment. I shall again reproduce the paragraph for the sake of convenience:

> 204. The following are exempt from all municipal or school real estate taxes:
>
> . . .
>
> (14) an immoveable belonging to a public establishment within the meaning of the Act respecting health services and social services (chapter S-5), including a reception centre contemplated in section 12 of that act, used for the purposes provided by that act, and an immoveable belonging to the holder of a day care centre permit or nursery school permit contemplated in paragraph 1 or 2 of section 4 or 5 of the Act respecting child day care (chapter S-4.1), used for the purposes provided by that act;

With respect, I cannot subscribe to the respondents' arguments. If the legislature had intended that the tax exemption of a reception centre should be subject to the existence of a permit issued by the proper authority, it would have said so expressly as it did for day-care centres. The same textual argument can be drawn from s. 204(15) A.M.T. with respect to educational institutions. Expressio unius est exclusio alterius. I accordingly share the findings of the BREF on this point.

VI - Conclusion

38 In light of the rules of interpretation formulated in the first part of this analysis, it appears that on the facts found by the BREF the facilities of La Champenoise can be classified in their entirety as a reception centre within the meaning of ss. 1(k) and 12(b) A.H.S.S.S. Similarly, it appears that its property as a whole is used for the purposes provided by that Act, as stipulated by s. 204(14) A.M.T. The decision of the BREF, a specialized tribunal, discloses no error subject to review on appeal. I would accordingly restore the decision of the BREF that the La Champenoise property should be declared exempt from real estate taxes in its entirety for the 1980 to 1984 fiscal years inclusive.

VII - Disposition

39 The appeal is allowed. The judgment of the Quebec Court of Appeal is set aside and the decision of the BREF is affirmed, the whole with costs before the BREF and in all courts.

TAB 3

Strathcona No. 20 (County) v. Alberta (Assessment Appeal Board)

Alberta Judgments

Alberta Court of Appeal

Edmonton Civil Appeals

Fraser C.J.A., Belzil and Conrad JJ.A.

Heard: January 16, 1995.

Judgment: filed April 20, 1995.

Appeal No. 9403-0085-AC

[1995] A.J. No. 369 | 165 A.R. 300 | 1995 ABCA 165 | 54 A.C.W.S. (3d) 834

Between The County of Strathcona No. 20, appellant, and The Alberta Assessment Appeal Board and Shell Canada Limited, respondents

(14 pp.)

On appeal from V. Smith J.

Case Summary

Statutes, Regulations and Rules Cited:

Assessment Appeal Board Act, s. 29. Municipalities Assessment and Equalization Act. Municipal Taxation Act, R.S.A. 1980, c. M-31, ss. 1(g), 1(h), 4(1), 6(1), 7(1), 7(2), 10(1), 11(1), 51, 60. Regulation 372/67. Regulation 505/81.

Real property tax — Assessment appeals — Provincially or municipally appointed tribunal or board — Jurisdiction — Duty of board to give reasons.

The County appealed from a decision dismissing its application to quash a decision of the Alberta Assessment Appeal Board with respect to the Board's assessment of a refinery of Shell Canada Ltd. The Board assessed the property using a particular method of calculation of depreciation. In doing so, it declined to follow the procedure outlined in the Assessors' Manual, adopted by Regulation, for the determination of depreciation.
HELD: The appeal was dismissed.

The court agreed entirely with the Board's conclusion that a mandated twenty five per cent depreciation had no bearing or relationship to market value. A regulation had to remain within the confines of its statute and one could not amend it, as it did in the present case, by adding a foreign factor to the definition of depreciation. In the event of a conflict between the regulation and the statute, the statute had to prevail. That was what the Board had properly recognized. The Board's treatment of mandated depreciation was consonant with the fair and equitable overriding principle expressed in the Act and the general law. The Board did not err in law, but acted within its broad jurisdiction to make assessments. It gave clear and adequate reasons for its decision.

Counsel

W.H. Hurlburt, Q.C. and S.C. McNaughtan, for the appellant. W. Nugent, C.W. Sanderson and E.S. Ruud, for the respondents.

MEMORANDUM OF JUDGMENT

The following judgment was delivered by

THE COURT

1 This appeal is from an order of Mr. Justice Smith of the Court of Queen's Bench dismissing an application by the appellant County of Strathcona for an order in the nature of certiorari quashing a decision of the Alberta Assessment Appeal Board with respect to its assessment of refinery property of the respondent Shell Canada Limited. The appeal raises two grounds, first, failure to assess according to law and lack of jurisdiction, and second, failure to give adequate reasons.

2 The appeal to the Board arose out of the 1985 and 1986 assessments of the styrene plant and the benzene plant which form part of Shell's refinery complex at Scotsford. By its last order which is now the subject matter of this application for judicial review, the Board determined the amount of the assessment for these plant improvements to be $669,707,570.00. The specific issue is whether the Board erred in its method of calculation of depreciation in arriving at fair actual value for assessment purposes.

3 In its detailed reasons, the Board identified the crux of the issue which it had to decide:

> "The fundamental issue facing the Board at this point remains the same as at the original hearing This plant, the Styrene portion, was only constructed at this location because of the perceived advantages of a 'made in Canada' price, under the provisions of the National Energy Program, for crude oil and natural gas. The advantage, in Shell's opinion, tended to offset the disadvantages of the location of this facility, which is many miles from tidewater and major markets. Other styrene plants are located on the Gulf Coast and in Saudi Arabia. There is only one other plant in Canada which is located at Sarnia, Ontario; however, it is very small by the subject's standards.
>
> After the repeal of the National Energy Program and the policy to allow crude oil and natural gas to seek its market level with world prices, Shell contends that this plant, with its locational disadvantages, is unable to compete in the world market and therefore suffers excessive and abnormal depreciation."

4 The course of the proceedings since the assessments is traced by the learned chambers judge:

> "The decision of the Board arises out of the 1985 and 1986 assessments of the styrene plant and the portion of the refinery which was dedicated to the production of benzene. Shell claimed that the styrene plant and a portion of the refinery were suffering from abnormal depreciation due to locational factors. Shell claimed that the location of the property in the County created an economic disadvantage as compared to Shell's competitors who are located on tidewater. Shell appealed the two assessments of the properties. The appeals were dismissed by the Court of Revision in the year they were taken and an appeal was taken to the Board. The Board, heard the appeal and dismissed it in January, 1990. Shell then brought an application for judicial review before Mr. Justice MacCallum. In June, 1991, he quashed the Board's decision and remitted the appeal to the Board for re-hearing. By agreement of the parties, the Board relied on the record it already had and heard the parties' arguments on the implications of the Court's decision for the outcome of the appeal. Based on those arguments, the Board rendered its decision in December, 1992. In June, 1993, the County applied for judicial review of the decision. Later in June, Shell filed a cross-application for judicial review."

5 These assessments were made pursuant to the Municipal Taxation Act c. M-31 R.S.A 1980 (hereafter referred to as the Ad). The relevant sections of the Act are the following:

> "1 In this Act,
>
> (b.1) 'assessor' means a person appointed under

(i) the Municipalities Assessment and Equalization Act, or

(ii) the Act governing the municipality, to make an assessment in a municipality;

(g) 'depreciation' means a loss in value attributable to any cause;

(h) 'fair actual value' means the fair actual value as determined in accordance with this Act or the regulations under Section 6, ...

4(1) Every year, each municipality shall prepare an assessment roll setting forth the assessed value of all assessable property within the municipality as established by the assessor in accordance with this Act

(6)(1) The Minister may make regulations prescribing

(a) standard and methods of assessment,

(b) levels of value to be used in determining what constitutes fair actual value for the purposes of assessment, and

(c) rules and forms,

for the use and guidance of assessors in making assessments in municipalities.

...

(7)(1) In determining value for assessment purposes, an assessor shall apply the standards and methods of assessment and levels of value prescribed pursuant to section 6 and shall assess in accordance with any rules made in relation to it.

(2) If standards and methods of assessment have not been prescribed in respect of an improvement, the assessor shall determine its fair actual value in a manner that is fair and equitable with the level of value prescribed for use in determining the fair actual value of other improvements.

...

10(1) An improvement of any class thereof on assessable land shall be assessed to the owner of the land apart from the land on which the improvement is situated at the prescribed percentage of its fair actual value.

11(1) An improvement described in section 1(n)(iii) shall be assessed at the percentage of its fair actual value prescribed in the regulations."

6 Section 51 deals with the power of the Court of Revision on complaints to it. It provides:

"51. When the value at which any specified land, improvement or business is assessed appears to be more or less than its fair value, the amount of the assessment of the land, improvement or business, as the case may be, shall nevertheless not be varied on complaint if

(a) the value at which the land is assessed is fair and just in proportion to the value at which all other land in the municipality is assessed,

(b) the value at which the improvement is assessed is fair and just in proportion to the value at which other like improvements in the municipality are assessed, or

(c) the business assessment is fair and just in proportion to the other business assessments in the municipality.

60 The Appeal Board in hearing appeals is governed by the provisions of this Act and the Assessment Appeal Board Act."

7 The jurisdiction of the Assessment Appeal Board is set out in s. 29 of the Assessment Appeal Board Act:

"29 The Board has jurisdiction to determine

(a) the amount of an assessment

(b) whether or not any property is or was assessable,

(c) whether or not the name of any person was properly entered on the assessment roll or whether or not any property or business is or was legally assessed or exempt from assessment, and

(d) whether or not any property was properly classified under section 96 of the Municipal Taxation Act."

8 The foregoing provisions of the Municipal Taxation Act reflect the two fundamental principles of municipal taxation in Canada, firstly, that property be assessed on the common basis of fair actual value so that the cost of municipal government will fairly be borne by taxpayers inter se in proportion to the relative values of their assessable properties and, secondly, that the assessor shall determine the fair actual value in a manner that is fair and equitable with the level of value prescribed for use in determining the fair actual value of other like improvements in the municipality. These fundamental principles of uniformity and impartiality in the imposition of municipal taxes have been accepted since the decision of the Supreme Court of Canada in Jonas v. Gilbert *(1881), 5 S.C.R. 356* (S.C.C.). They are discussed in depth in the recent decision of the British Columbia Court of Appeal in Assessor for Area 9 - Vancouver v. Bramalea Limited and T. Eaton Company *(1990), 52 B.C.L.R. (2d) 218* (C.A). What was said in that case about the British Columbia statute can equally be said about the Alberta Act in this case:

> "So the Act, read in light of the general law, requires, except where otherwise clearly stated, that assessments be both at 'actual value' and also equitable as between taxpayers. It contemplates the possibility that an assessment may be at 'actual value' and yet be inequitable."

9 In T. Eaton Realty Company Ltd. v. Alberta Assessment Appeal Board, et al, *(1992), 1 Alta L.R. (3d) 394* (C.A.) at 398, our Court said "that fair actual value must have relation to the underlying benchmark of market value".

10 In the present case, it is common ground that no standards and methods of assessment and levels of value had been prescribed under s. 6 of the Act, and that actual fair value had to be determined under s. 7(2) "in a manner that is fair and equitable with the level of value prescribed for use in determining the fair actual value of other improvements", to use the words of the section.

11 The submission of the appellant in this case is that the Board erred in law by failing to follow the procedure outlined in the Assessors' Manual adopted by Regulation 372/67 for the determination of depreciation in arriving at "fair actual value" for assessment purposes under the Act.

12 This regulation was first promulgated pursuant to the Municipalities Assessment and Equalization Act the obvious purpose of which, as its title implies, was to equalize assessments between municipalities within the province and not to govern the methods of assessment as between municipality and taxpayer. Regulation 372/67 was intended to achieve that purpose by prescribing uniform standards and methods of assessment to be followed by all assessors in all affected municipalities, and to that end adopted the 1967 Assessment Manual. That Manual prescribed a graduated and declining rate of depreciation for use by assessors in determining actual value for assessment under that Act. The standards, methods, rules and regulations stipulated in that regulation were then made to apply to assessments under the Municipal Taxation Act by Regulation 505/81 which provided:

"i) that in the case of improvements of the kind in question, the assessment should be calculated by

(1) ... adopting the standards, methods, rules and regulations for the guidance of assessors in making assessments prescribed by Appendix "A" and "B" of Alberta Regulation 372/67, and

(2) multiplying the amount so determined by a number that is not relevant to this appeal.

iii) Regulation 358/84 amended Regulation 372/67 by repealing the graduated and declining Depreciation Table in Appendix "C" and substituting a new Depreciation Table A, stated to be a guide to determine depreciation for improvements including the machinery and equipment involved in this appeal."

13 This new depreciation table provided an immediate depreciation allowance of 25% for new machinery and equipment. The 1984 Assessment Manual contained the following explanatory note in s. 1.200.110:

> "1.200.110 REMAINING LIFE: MACHINERY AND EQUIPMENT
>
> 1.200.111 The depreciation of machinery and equipment is, in large measure, influenced by provincial government taxation policies.. The standard remaining life tables for machinery and equipment (1.200.120) are based, essentially, on the declining balance premise of depreciation with the following major modifications:
>
> (1) an immediate depreciation allowance of 25% (75% remaining) is granted to all new machinery and equipment and the allowance remains at this level until the improvement attains an effective age that would have produced a 25% (75% remaining) allowance had the declining balance tables been applicable throughout the life of the improvement;
>
> (2) the declining balance tables are applicable with respect to determining subsequent depreciation allowances when the effective age of the improvement exceeds the age, on the declining balance tables, at which 25% depreciation (75% remaining) is attained;
>
> (3) the declining balance tables continue to be applicable until the improvement attains an effective age that results in a depreciation allowance of 60% (40% remaining) on the declining balance tables. Depreciation is capped at this level and the allowance remains at 60% (40% remaining) so long as the improvement remains in service.
>
> 1.200.112 Abnormal depreciation is not reflected in the standard remaining life tables and may be a potential additional loss in value to the improvement."
>
> [Emphasis added]

14 This 25% immediate depreciation allowance mandated by regulation is what the Board characterized as a "political gift". The Board found that it was not true depreciation within the definition of that term in the Act. It said in its reasons:

> "This brings the Board to the obvious question of the 25% 'political gift' (as it is sometimes called) and whether that should be deducted after the determination of any abnormal depreciation or whether that deduction should be part of the total depreciation even though every plant whether viable or not receives that deduction. It would seem unfair on a plant to plant comparison basis that viable plants receive the same depreciation as uneconomic plants up to 25%. However it is not fair that viable plants receive anything if they should not receive anything. It is an unfortunate use of the term to call this reduction depreciation where depreciation is defined in the Act and cannot mean anything more than what the Act contemplates. The Board will apply the 25% after any abnormal depreciation is determined believing the 25% to be in the nature of a political gift and not depreciation at all."

15 We agree entirely with the Board's conclusion. A mandated 25% depreciation has no bearing or relationship to market value which the appellant itself submits on the authority of Eaton v. Edmonton is the benchmark and lower limit of fair actual value. It does not represent a "loss in value from any cause" within the words of the definition of depreciation in s. 1(g) of the Act. It introduces an artificial factor which is incompatible with the accepted open market concept for the determination of fair value. Its application in the manner advocated by the appellant must inevitably produce a result which conflicts with the basic principle of fairness in municipal taxation reflected in the Act. A regulation must remain within the confines of its statute; it cannot amend it as it did in the present case by adding a foreign factor to the definition of depreciation. That foreign factor was first introduced by the prior declining and graduated depreciation table; increasing it to a flat 25% rate merely made its incompatibility with actual value more apparent. It goes without saying that in the event of a conflict between regulation and statute, the statute must prevail. This is what the Board properly recognized.

16 This depreciation schedule has the earmarks of a tax incentive under government taxation policy referred to in the cautionary note in s. 1.200.111 of the Manual which we have emphasized.

17 Following the hearing of this appeal, the Court requested and received from counsel further written submissions on whether the Board was bound at all by the regulations. In their submissions, both counsel agreed that it was bound by Appendices "A" and "B", but respondent's counsel did not agree that the Manual and Appendix "C' were ever made part of the regulations binding on the Board. In view of the conclusion reached here, this question must remain to be answered on another occasion.

18 The Board's treatment of mandated depreciation was consonant with the fair and equitable overriding principle expressed in the Act and the general law. The Board did not err in law but acted fully within its broad jurisdiction "to make assessments". It gave clear and adequate reasons for its decision.

19 While dismissing the application for judicial review on other grounds, the learned chambers judge in his reasons found that the Board had erred in law in falling to follow the regulation in its calculation of depreciation. While we do not agree with this finding, we otherwise fully agree with his disposition of the application.

20 The appeal is accordingly dismissed with costs. In view of this result, we were advised by counsel for the respondent that we do not have to address his cross-appeal.

FRASER C.J.A.
BELZIL J.A.
CONRAD J.A.

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TAB 4

Court of King's Bench of Alberta

Citation: McDonald v Edmonton (City), 2023 ABKB 615

Date: 20231101
Docket: 2103 18650
Registry: Edmonton

Between:

Cameron Fraser McDonald and
Right at Home Housing Society

Applicants

- and -

The City of Edmonton and
The City of Edmonton Composite Assessment Review Board

Respondents

Memorandum of Decision
of the
Honourable Justice G.R. Fraser

---

[1] This matter comes before me by way of Judicial Review. The applicants, Cameron Fraser McDonald and Right at Home Housing Society (Society) seek to overturn the finding of the City of Edmonton's Composite Assessment Review Board (Board) that a property was not tax-exempt. The Board's decision can be found at***: Cameron Fraser McDonald, Right at Home Housing Society v The City of Edmonton***, 2021 ABECARB 1331.

[2] The property in question is located in Edmonton's Belvedere neighbourhood. It is a 42 unit building that provides housing and support services to low-income individuals and families. The building also has an office, meeting rooms, and a large common area. Building management

uses a “housing first” method to try and assist homeless people. The building is run as a not-for-profit business collaboration between the Society and NiGiNan Housing Ventures (NiGiNan). NiGiNan is a registered charity that was formed to address the needs and requirements of Indigenous people in Edmonton.

[3] In order to construct the building, the partners received large grants from the City of Edmonton and the Alberta Social Housing Corporation. To receive the grants, the partners had to comply with various conditions.

[4] The building opened in September 2020. Shortly after it opened, an application was made to have it exempted from property taxes. That application was denied January 26, 2021. The denial was appealed to the Board. The appeal was heard in August 2021 and dismissed in a split decision dated September 21, 2021. It is the decision of the Board that is now subject to Judicial Review.

[5] The issues before the Board were as follows:

a. Is the property primarily used for a charitable or benevolent purpose (s 4)?

b. Is the property owned by a non-profit organization and not subject to a lease, license or permit (s 5a)?

c. Are individuals restricted from using the property more than 30% of the time that the property is in use, (s 10) on any basis, including race, culture, ethnic origin or religious belief or the requirement to pay fees of any kind, other than minor entrance or service fees (s 7)?

d. If the residential units are not exempt, should the fifth floor (which contained the office, meeting room, and common area) be exempt?

[6] The Board’s decision was based on the application of the *Community Organization Property Tax Exemption Regulation*, AR 281/98 (COPTER). The relevant sections for the purpose of the Board’s decision were as follows:

> 1 (1) In this Regulation,
>
> ...
>
> (b) “charitable or benevolent purpose” means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;
>
> 4 (1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the *Act* or Part 3 of this Regulation unless the property is primarily used for the purpose or use described in those provisions.
>
> (2) For the purposes of this Regulation, a property is primarily used for a purpose or use if the property is used for the specified purpose or use at least 60% of the time that the property is in use.

5 When section 362(1)(n)(i) to (v) of the *Act* or Part 3 of this Regulation requires property to be held by a non-profit organization, a society as defined in the Agricultural Societies Act or a community association for the property to be exempt from taxation, the property is not exempt unless

(a) the organization, society or association is the owner of the property and the property is not subject to a lease, licence or permit, or

(b) the organization, society or association holds the property under a lease, licence or permit.

7 (1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on

(a) race, culture, ethnic origin or religious belief,

(b) the ownership of property,

(c) the requirement to pay fees of any kind, other than minor entrance or service fees, or

...

(3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.

10 (1) Property referred to in section 362(1)(n)(iii) of the *Act* is not exempt from taxation unless

(a) the charitable or benevolent purpose for which the property is primarily used is a purpose that benefits the general public in the municipality in which the property is located, and

(b) the resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent purpose for which the property is used.

(2) Property is not exempt from taxation under section 362(1)(n)(iii) of the *Act* if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

[7] The Board denied the application on three grounds:

1. Under s 10(2) the use of the property was restricted more than 30% of the time. This was due to leases for individual units that granted the tenant exclusive use and control of the unit.

2. Under s 7(1)(c) the requirement to pay rent for a residential unit, even a below-market rent, was found to be more than a minor entrance or service fee.

3. Also under s 10 (2), the requirement that at least 50% of the lessees have an Indigenous background also restricted the property more than 30% of the time.

Standard of Review

[8] The leading case on standard of review in the context of judicial review is ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65. The Supreme Court was clear that reasonableness is the presumptive standard of review. In this case, all parties agree that the standard of review is reasonableness.

[9] The Board found that the property met the test under s 362(n)(iii) of the *Municipal Government Act* as it is used for a charitable and benevolent purpose that is for the benefit of the general public. There can be no doubt that the goals of the Society and NiGiGan are highly laudable. They are working very hard to address an urgent need in Edmonton. Homelessness has become a serious problem in Edmonton. One only has to look out the window of the Courthouse or walk a few blocks in any direction to see multiple people who are un-housed.

[10] The City of Edmonton's website states it is building an inclusive city where everyone can enjoy safety, stability, and the opportunity to build a life. That begins with ensuring there are housing options for all Edmontonians.

[11] The funding agreement between the City of Edmonton and the Society includes in the preamble that creating permanent supportive housing is the highest priority for investment in the eradication of homelessness.

[12] The Society and NiGiGan are trying to provide housing options for some of those who are most hard to house. They have other successful joint projects within the city. Successfully moving people away from homelessness saves every level of government a significant amount of money.

[13] However, laudable actions do not mean laws and regulations do not apply. Section 7 and s 10 of COPTER apply to the property.

[14] The majority of the Board found that the property did not comply with COPTER s 7(1)(c). It found that access to the property was restricted more than 30% of the time it was in use in three ways. First, the individual leases meant that tenants had exclusive use of the units. Second, it found the requirement to pay rent to be more than a minor fee. Thirdly, the NiGiGan Agreement requiring 50% Indigenous occupancy also provided a more than 30% restriction.

[15] COPTER does provide some permissible reasons for restricting access. Those reasons are contained in s 7(3). It reads:

> (3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.

[16] The majority decision took a broad interpretation of the phrase in s 7 of COPTER. "use of the property is restricted". It found that the property is restricted if individuals are restricted from using the property on any basis. I find this interpretation to be unreasonable. It is too broad.

[17] In order for any property to operate effectively, there must be some restrictions on its use. Some areas may be required to have limited access for reasons other than safety or liability. A property may not want people from the next building coming into use the microwave, lunchroom and bathroom. This is certainly a reasonable restriction, but hard to categorize as one required for safety or liability reasons.

[18] I note that other decisions of the Board have found that non-profit daycares can be eligible for exemption[1]. It is difficult to envision a daycare that does not in someway restrict public access to its facility.

[19] The Board has also found that a fenced storage and parking area could qualify for tax-exempt status.[2] Again, it is difficult to envision how a fenced storage area does not restrict public access to the property.

[20] It is difficult to imagine any building that provides individual housing units that does not also restrict access. It would be ridiculous to provide people an apartment, but then allow anyone access at any time. Even people living in a tent have some control over who enters the tent.

[21] The minority decision interprets s 7 in a narrower manner. It found that whether "individuals are restricted from using the property on any basis" should be interpreted as meaning restricted from participating in the program.

[22] I find that this is the proper interpretation of the section. The property does not restrict who can access the services offered at the property. Those services include providing accommodation, counselling, and other support services. Consequently, providing individual, exclusive access accommodation does not constitute a restriction of use under s 7.

[23] Using the same interpretation, I find that charging rent does not violate s 7. There are no fees to access the services offered at the property. There are fees associated with having dedicated accommodation at the property. In order to be eligible for accommodation at the property, the tenant must meet requirements under the Provincial Affordable Housing initiatives. Among other things, the tenant must have income below a certain threshold.

[24] I note that previous Board decisions have found that fees charged for space rental were not considered a restriction under COPTER s 7(1)(c) when the fees were similar to those charged by other non-profit organizations. I also note that a not-for-profit daycare was found to not violate the same section. Although not specifically stated, it seems that the daycare did not provide free childcare services. It likely charged subsidized user fees.

[25] I find that the minority decision was correct. Charging a fee for individual accommodation at the property does not constitute a restriction under COPTER s 7(1)(c).

[26] The third ground on which the Board based its decision concerned the requirement that 50% of the program participants self-identify as Indigenous. This requirement is contained in the

[1] See ***Arabian Muslim Association as represented by Canadian Valuation Group Ltd v The City of Edmonton,*** 2022 ABECARB 504; and

[2] ***Al Shamal Shriners Holding Association as represented by Powers & Associates Appraisal Services Inc v The City of Edmonton***, 2021 ABECARB 2206.

Articles of Agreement between Homeward Trust Edmonton and the Homeward Trust Foundation and NiGiGan Housing Ventures and the Society. Pursuant to the agreement, Homeward Trust Foundation would provide up to $684,500 to NiGiGan to provide services as the property. One of the conditions required to receive the funding was that "a minimum of 50% of the program participants (must) self identify as Indigenous".

[27] It is a sad fact that for various reasons Indigenous persons disproportionately suffer from homelessness. Again, the efforts of the Society and NiGiGan to try and address the overrepresentation of Indigenous persons within the homeless population are truly laudable. However, laudable goals do not mean that laws do not apply.

[28] The dissenting decision of the Board found that having a majority of Indigenous participants and creating programming responsive to their needs was not "a restriction based on … race, culture, ethnic origin or religious belief". Instead, it was simply recognizing the demographics of the population to be served.

[29] Although the restriction might be properly recognizing the demographics of the target population, I find that the specific requirement that a minimum of 50% of the program participants must self-identify as Indigenous to be a restriction based on race, culture, or ethnic origin. There is no other reasonable way to interpret this requirement. I can find nothing unreasonable in the majority decision of the Board on this point.

[30] The property does not qualify for a tax exemption.

[31] It is unfortunate that this written requirement in the funding contract results in a denial of tax-exempt status for the property. It is quite likely that given its mandate, the property would have more than 50% of its program participants self-identify as Indigenous regardless of the written requirement. Funds that would have been used to support programs at the property will now be used for property taxes. The City's website states "The City supports the work of Edmonton's homeless-serving sector, providing funding to social agencies for street outreach and activating the extreme weather response to support vulnerable people". At least some of that funding will come from the homeless-serving sector paying property taxes.

Heard on the 12th day of May, 2023.
Dated at the City of Edmonton, Alberta this 1st day of November, 2023.

G.R. Fraser
J.C.K.B.A.

Appearances:

Roger C. Stephens,
Stephens Mah Toogood
for the Applicants

Tanya Boutin,
The City of Edmonton
for the Respondent, The City of Edmonton

Kate L. Hurlburt, K.C.,
Emery Jamieson LLP
for the Respondent, The City of Edmonton Composite Assessment Review Board

TAB 5

Jaeger v. Sundre (Town)

Alberta Municipal Government Board Orders

Alberta Municipal Government Board

Edmonton, Alberta

R. Scotnicki (Presiding Officer) and D. Marchand, (Secretariat)

Heard: November 15, 2004.

Order: February 23, 2005.

Board Order: MGB 024/05

[2005] A.M.G.B.O. No. 40

IN THE MATTER OF the Municipal Government Act being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act) AND IN THE MATTER OF an appeal from a decision of the 2004 ***Assessment*** Review Board (ARB) of the Town of Sundre (Town) Between Wilfred and Sonya Jaeger and Norman and Phyllis Power, represented by Sonya Jaeger, appellant, and Town of Sundre, respondent

(75 paras.)

Appearances

Sonya Jaeger, Representative for the Appellant

Allan Shantz, Assessor for the Respondent

Stephen Washington, Assessor for the Respondent

D. SCOTNICKI, PRESIDING OFFICER

1 Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on November 15, 2004.

2 This is an appeal to the Municipal Government Board (MGB) from a decision of the 2004 ARB of the Town of Sundre with respect to property assessments entered in the 2004 ***assessment*** roll of the Respondent municipality as follows.

Roll No. Owner	Legal Description	Address	***Assessment***
2642.000 Power	Block 42 Plan 9612304 42, 200 4 Avenue SW		$41,610
2798.000 Jaeger	Block 198 Plan 9612536 198, 200 4 Avenue SW		$48,650

OVERVIEW

3 The properties under appeal are two serviced and improved bare land condominium units, each assessed as a parcel and the improvements to it, as required by the Act, situated within the 214 unit Riverside RV Village located in the Town. The fundamental issue to be decided relates to whether or not ***travel trailers*** situated on each of the units (lots) should be assessed and subject to property taxes. Neither the ***assessment*** placed on the lots nor any other improvements are at issue in these appeals.

4 The Appellant contends the ***travel trailers*** are not attached nor connected to any structure, nor are they connected to any utility services provided by a public utility during the off or winter season and therefore should not be assessed. The Respondent maintains the existence of water, sewer and electrical power to the lots means the properties are connected to a public utility and must therefore be assessed.

5 The parties agreed the appeals on both roll numbers should be conducted as a single hearing.

One Member Panel

6 Pursuant to section 487(1)(1.1) of the Act and section 13 of the ***Assessment*** Complaints and Appeals Regulation AR 238/2000, Mr. Scotnicki was assigned to hear and decide these appeals as a single member panel.

BACKGROUND

7 Riverside RV Village consists of 214 units registered in five phases as a bare land condominium. Units 1 through 12 have deep town water and sanitary sewer, natural gas and electrical power utility services. The balance of the units, including the properties under appeal, are serviced with electrical power and shallow town water and sanitary sewer. There is no disagreement that all are utility services provided by a public utility.

8 Because the water and sewer pipes are shallow in the ground, the condominium association shuts off access to these services to prevent freezing over the period mid September or October to mid May. The owners of the subject properties turn off power at the meter and unplug and store a surface power cord for the same annual period.

9 The RV Village is classified as a Recreation Vehicle Direct Control District (RV-DC) under the Town's Land Use Bylaw. The general purpose of this District is "To provide for and control the placement of seasonal recreational vehicles in areas of unique character or special environmental concern which, in the opinion of Council, requires specific regulations unavailable in other land use districts. The area is to be connected to municipal sewer and water systems".

10 The District does not have permitted uses but does allow for recreational vehicles and accessory structures as discretionary uses.

11 The condominium association apparently sets an upper limit of no more than 240 days of occupancy (presumably human habitation on a lot) in a year.

12 Improvements assessed against unit 42, being the Power property are in the amount of $16,600 for a 1994 model fifth wheel. Improvements on unit 198, being the Jaeger property, consist of an open veranda assessed at $2,700 and a 2001 recreational trailer assessed at $18,453 for a total improvement ***assessment*** of $21,150 (rounded).

13 The year 2002 is the first year ***travel trailers*** were assessed in the seven years the RV Park has been in operation.

LEGISLATIVE BACKGROUND

14 The Municipal Government Act directs a municipality to annually prepare an ***assessment***.

285 Each municipality must prepare annually an ***assessment*** for each property in the municipality, except linear property and the property listed in section 298.

15 Section 298 contains an exclusion for certain ***travel trailers***, the applicability of which is central to this case.

16 Property is a defined term.

284(1) In this Part and Parts 10, 11 and 12, (r) "property" means

(i) a parcel of land,

(ii) an improvement, or (iii) a parcel of land and the improvements to it; ... .

17 In these appeals the assessor assessed both the land and the improvements situated on those lands. The land components of the properties are each bare land condominiums whose scope is defined by section 290.1(1) to include their share of the common property. The land ***assessment*** is not in dispute in this case.

18 The Act directs the assessor to prepare an ***assessment*** that reflects the characteristics and physical condition of the property as of the previous December 31.

289(2) Each ***assessment*** must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, ...

19 Improvement is also a defined term.

284(1) In this Part and Parts 10, 11 and 12, (j) "improvement" means

(i) structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure, (iii) a designated manufactured home, and ... .

20 This is relevant because a travel trailer, itself a defined term, is a form of "designated manufactured home" and therefore is capable of being an improvement unless it is one of those ***travel trailers*** exempted from ***assessment***.

284(1) In this Part and Parts 10, 11 and 12,

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer; ... .

(w.1) "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road; ... .

21 The parties agree the assessed improvements in this case are ***travel trailers*** within this definition. Where they disagree is on whether they qualify for the following exemption from ***assessment***.

298(1) No ***assessment*** is to be prepared for the following

property:

(bb) ***travel trailers*** that are

(i) not connected to any utility services provided by a public utility, and (ii) not attached or connected to any structure.

ISSUES

22 In order to decide this matter, the MGB must resolve the following specific issue.

23 Are the subject improvements, defined as ***travel trailers***, assessable or non-assessable under section 298(1)(bb) of the Act?

(i) How should "connected" be interpreted for the purposes of section 298(1)(bb)(i) of the Act?

(ii) How should "attached or connected" be interpreted for the purposes of section 298(1)(bb)(ii)?

(iii) As of December 31, 2003, were the subject ***travel trailers*** connected to any utility services provided by a public utility?

(iv) As of December 31, 2003, was the Jaeger travel trailer attached or connected to any structure?

(v) What is the significance of December 31 in the ***assessment*** or non-***assessment*** of a travel trailer?

SUMMARY OF APPELLANT'S POSITION

24 Ms. Jaeger, representing the Power and Jaeger properties asserted that neither of the ***travel trailers*** should be assessed because the properties are void of utility services from mid September to mid May and the travel trailer on the Jaeger property is not attached or connected to the adjoining open veranda. This was supported by the following evidence and argument.

25 Because the condominium association shuts off the main valves, water and sewer services are only accessible, on average, from the May long weekend to mid September in any given year. Power is turned off at the meter, the trailer power cord retracted and stored and meter readings remain static from mid September to the May long weekend.

26 The ***travel trailers*** are only used sporadically on weekends and on the road for vacation purposes. Both are registered and licensed under the Highway Traffic Act. Neither is used as a residence. Two colour photographs were presented to support the oral evidence that the developed veranda on the Jaeger property was located two inches from the trailer and therefore not connected or attached to it.

27 It was also identified that the lattice skirting around the base of the trailer is not permanently attached but placed on hooks for each removal.

28 The Appellant referenced section 289(2)(a) of the Act and argued the characteristics and physical condition of the subject properties on December 31 of the ***assessment*** year was not properly considered by the assessor. On December 31, 2003 the ***travel trailers***, pursuant to section 298(1)(bb) were not connected to any utility services provided by a public utility nor were they attached or connected to any structure.

29 The Appellant questioned the Town's position that to qualify as a non-assessable travel trailer, the subject trailers would have to be removed from the RV Park prior to December 31 of every year. It was stated that such a section could not be found in the Act. The Appellant had never heard of a municipal taxing authority assessing ***travel trailers*** as residential households because they did not remove winterized, licensed vehicles off their property prior to December 31. It was argued the ***travel trailers*** are in storage on the subject lots on December 31 and the Act does not direct travel trailer owners to place their trailers in the back yard of their residences, or into storage.

30 The Appellant concluded by requesting that the valuation placed on the two trailers be removed from the ***assessment*** on Roll Nos. 2642.000 and 2798.000.

SUMMARY OF RESPONDENT'S POSITION

31 Mr. Allan Shantz, assisted by Mr. Stephen Washington, presented evidence and argument on behalf of the Respondent.

32 The Respondent stated that he sent the Riverside RV Village condominium executive a letter dated September 18, 2003 regarding an intention to review any assessable improvements in the Park. If owners did not wish improvements such as trailers assessed for 2004 taxation, they would have an opportunity to remove them prior to December 31, 2003. It was mentioned the letter was distributed at the fall condominium annual general meeting about the end of September.

33 All assessed improvements were initially inspected on October 14 and 15, 2003 and again on December 3 and 4, 2003 to review previously completed work and delete assessments on any trailer units that were removed from a lot. It was indicated and confirmed by the Appellant, that both trailers were on their respective lots as of December 31, 2003. The Respondent interpreted section 289(2)(a) of the Act to mean if there is no travel trailer on the lot on December 31, you cannot assess it. Notwithstanding an opinion regarding his defined status of other trailers in the RV Park as being immobile and therefore assessed as structures, the Appellant conceded that the subject trailers met the section 284(1)(w.i) definition of a travel trailer because "... they do occasionally leave their site".

34 The Respondent stated the intent of the definition of "travel trailer" was to have no ***assessment*** prepared for those trailers parked in your back yard, or in storage, that are typically towed to various locations for annual vacation. The intent was not to exempt trailers occupying recreational properties and used for recreational purposes. The intent was to allow for the ***assessment*** of ***travel trailers*** used in the same capacity as a summer cabin or cottage that have either deep, shallow or no utilities and still assessed as an improvement. In this regard, the Respondent indicated that the Act was amended to include a definition for a travel trailer and a new section 298(1)(bb) to specify the criteria required before a travel trailer would not be assessed.

> 298(1) No ***assessment*** is to be prepared for the following
>
> property:
>
> (bb) ***travel trailers*** that are
>
> (i) not connected to any utility services provided by a public utility, and (ii) not attached or connected to any structure.

35 The subject ***travel trailers*** are on lots with power and shallow utilities that are usable approximately mid May to mid October. All available services are used for the purpose for which they were intended, including the length of time connected.

36 Although each improvement is used for only five months a year, it remains assessable for the entire year. To winterize improvements is similar to a summer cabin with shallow utilities, and they are assessed. It was further indicated there is no legislation stating an improvement must be a primary residence in order to be assessed or that there is exception for a seasonally used residence. If that were the case, then any vacant residence or summer cabin would not pay taxes, which is not the case.

37 Colour photographs taken in the spring of 2004 were presented. They showed above ground water, sewer and power public utility hook-ups within each lot and adjacent to each travel trailer. The photographs identify electrical conduit emerging from the ground and terminating in a receptacle. The conduit and receptacle, as well as a water pipe and spigot, are attached to a four by four post at this point. The sanitary sewer also emerges from the ground at this point and rigid plastic pipe continues on the surface from beside the post to the underside of the trailer. A surface water hose exists between the spigot and trailer and a surface power cord exists between the receptacle and trailer. The Respondent asserted that the photographs demonstrate the subject trailers are connected to three public utilities. As a result, it is the Town's position that the subject ***travel trailers*** fail to meet the conditions of 298(1)(bb) and are assessable. They are connected to a public utility or the utility is available to the property line of the condominium and to each lot.

38 In reviewing previous legislation such as the Municipal Taxation Act and amendments to the original 1994 Municipal Government Act, the Respondent stated it was clear the intent of those amendments pertaining to ***travel trailers*** was to strengthen the legislation and allow for their ***assessment*** unless certain conditions were met.

39 The Respondent referred to a decision made by the Alberta ***Assessment*** Appeal Board (AAAB) under the Municipal Taxation Act, being Board Order 39/87; a decision made by the MGB under the Act, being Board Order 33/98; and a more recent MGB Notice of Decision dated January 20, 2000 for a trailer located in Red Deer County in support of argument that the trailers should be assessed. Copies of the two latter decisions were included in the written submission. It was indicated the January 12, 2000 decision upheld the ***assessment*** of a trailer located at Carefree Resort that was connected to shallow utilities and power as a public utility. The MGB determined the trailer was assessable because, pursuant to section 298(1)(bb) it was connected to utility services. The Respondent pointed out the trailer at Carefree Resort was only connected to power as a public utility whereas in these appeals the improvements are connected to three public utilities.

40 In response to questions posed by the Appellant the Respondent replied:

i) that s. 298(1)(bb)(i) regarding public utility services would apply to ***travel trailers*** in back yards;

ii) a commercial campground operator is the assessed person for all improvements on his land.

41 The Respondent requested the assessments be confirmed.

FINDINGS OF FACT

42 Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows.

1. For the purpose of section 298(1)(bb)(i) of the Act, "connected" means pipes, cables, or things within a travel trailer joined or linked together with pipes, cables or things supplying a public utility for the purpose of providing a utility service for the consumption, benefit, convenience or use of the occupants of a travel trailer.
2. For the purpose of section 298(1)(bb)(ii) of the Act, "attached or connected" means the union of a travel trailer to a structure in a way that both structures are fastened, tied, joined or linked together.
3. As of December 31, 2003, both ***travel trailers*** were connected to an electrical utility service provided by a public utility.
4. As of December 31, 2003, the Jaeger travel trailer was not attached or connected to any structure.
5. December 31 is the uniform statutory date in the province for the determination of the characteristics and physical condition of properties that must be assessed at market value as of July 1 of the ***assessment*** year.

43 In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

44 The appeals with respect to the two properties are denied and the assessments are upheld.

45 It is so ordered.

REASONS

46 The legislature has directed itself specifically to the ***assessment*** of ***travel trailers***. They are capable of being used much like an ordinary mobile home (which is subject to ***assessment*** and thus municipal property tax), but they are also capable of being used much like a vehicle and vehicles are not subject to such ***assessment***. This case is about the dividing line between those two uses.

47 Improvements to land are taxable. Whether something is an improvement, in a general sense, is determined by the degree of its connection to the land. This can be seen in the Part's special definitions of structure and improvement. Ordinary chattels are not usually assessable except to the extent they form part of the structure or are affixed to the improvement. The exclusion provision in respect to ***travel trailers*** appears to serve the same function which is to describe the level of connection to the assessable land that justifies the imposition of a municipal property tax.

48 The wording of the exclusion in section 298(1)(bb), with its double negatives, is not immediately obvious. However, read with its purpose in mind its meaning becomes clearer. The Appellant questions whether both criteria in section 298(1)(bb) have to be met for the exemption to apply. The MGB's interpretation of the section is that both criteria must be met or the exemption does not apply. That is, the MGB reads the section to be exempt from ***assessment***.

> "... ***travel trailers*** that are
>
> (i) not connected to any utility services provided by a public utility, and
>
> (ii) not attached or connected to any structure."

49 If either characteristic or physical condition exists, the travel trailer in question is assessable. The use of the term "and" to connect the two sub-clauses of 298(1) (bb) indicates that the conditions listed are both required as a prerequisite for the exemption. If the legislature had intended that meeting either condition would qualify a travel trailer for exemption from ***assessment***, then the term used would have been "or".

As to the Meaning of Connected, Attached

50 The parties differ in their interpretation of the words "connected" and "attached" in section 298(1)(bb), although neither party offered any specific definition to support their position. The words "connected" and "attached" are ordinary English words and for the purposes of the Act, should be given the meaning an ordinary person would attribute to them.

51 The Canadian Senior Dictionary, 1979 defines connect as "join (one thing to another); link (two things together); fasten together; unite". Connected is defined as "joined together" fastened together".

52 The Concise Oxford Dictionary, 7th Edition defines connect as "join (two things, one to another); join in sequence or order; cause to be joined ... practically ...". Connected is defined as "... joined in sequence ...". Attached is defined as "fasten (thing to another); join ... bind ...".

53 Webster's New Collegiate Dictionary, 1979 defines connect as "to join or fasten together usually by something intervening ... to become joined ...". Connected is defined as "joined or linked together ...". Attach is defined as "to bind; fasten; tie; connect".

54 Noting the high level of consistency within the definitions, the MGB is satisfied the ordinary meaning of the words connected and attached for the purposes of section 298(1)(bb) are intended to mean joined together, linked together, fastened or tied together.

55 However, these words need to be interpreted in the context in which they are used in each of Section 298(1)(bb)'s subsections.

As to a Connection to a Public Utility

56 Subsection (i) speaks of connection to utility services provided by a public utility. The term "any" as used in sub-clause (i) indicates that just one utility service connection is sufficient to disqualify the travel trailer from the exemption. Public utility is a defined term.

1(1) In this Act,

(y) "public utility" means a system or works used

to provide one or more of the following for

public consumption, benefit, convenience or

use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting,

and includes the thing that is provided for public

consumption, benefit, convenience or use; ....

57 The MGB is satisfied the word "connected" in section 298(1)(bb)(i) is intended to describe the relationship between a travel trailer and a utility service from a public utility, not the relationship between the parcel of land and the public utility. If the latter was the case, the legislature would have used language such as found in Regulation AR 289/99 Matters Relating to ***Assessment*** and Taxation (consolidated up to 330/2003), section 3(3)(d)(ii) which reads

3(3) Despite subsection (1)(b), the valuation standard

for the following property is market value:

(d) an area of 3 acres that

(ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

... .

58 If mere availability of a public utility at the property line was intended to be sufficient, then every travel trailer located on any serviced parcel, but not accessing the adjacent public utility, would be liable to be assessed.

59 In interpreting the degree of connectedness required for the exemption to be lost, the MGB believes that one must again look at the purpose of the provision. ***Travel trailers*** (by definition and in reality) are used to provide accommodation for vacation use. When they are used in this way they frequently make transient use of utility services. They may flush their grey waste through a pipe to a gas station or vacation park's storage pit. They may plug in the electrical cord from their trailer to an available receptacle to provide power for nighttime lighting. In the winter they may plug their block heater into a residential outlet to protect the motor from freezing. None of these temporary uses of utilities indicate a degree of connectedness of the type that would make the trailer in question sufficiently analogous to other types of mobile home for the purposes of municipal ***assessment***.

60 For a travel trailer to be excluded because of its connection to utility services provided by a public utility, the MGB believes that connection must be a dedicated connection for that trailer of the type that would allow the trailer

to be used as a mobile home in a way that would distinguish it from a travel trailer being used for the purposes described in the Act's definition.

61 This does not mean, however, that the utility service must be constantly on. The owners, by voluntarily unplugging the power from the outdoor receptacle and turning off the switch at the meter, do not disconnect themselves from a utility service that is otherwise available. The electrical power supply in this case was switched off from mid September to mid May, and more importantly, on December 31, 2003. However, the evidence suggests that the power from the public utility could be simply accessed by switching on the power at the meter panel or switch box and plugging in the trailer's power cord to the receptacle on the lot. Indeed, the actions of the subject travel trailer owners is really no different from that of a person in a dwelling turning off a switch or breaker at the electrical panel. To conclude that the ***travel trailers*** are not connected to an electrical power utility service is fundamentally unreasonable because such a decision would condone acts of mischief by persons attempting to avoid property taxation. The oral evidence that the meter does not register any power consumption for up to eight months in a year does not mean the trailer is not connected to a utility service provided by a public utility. It only means that the power source has not been accessed or not used. Accordingly, the MGB is satisfied the travel trailer is assessable because it is connected to a utility service provided by a public utility.

As to Water and Sewer Utility Services

62 The MGB agrees with the Appellant that on December 31, 2003 the travel trailer was not connected to the water and sanitary sewer utility services provided by a public utility. On that mid-winter date, it is a certainty that the public utilities could not be accessed or used no matter what attempts might have been made to connect hoses or pipes from the trailer to pipes leading to the public utility services.

63 In the opinion of the MGB, the fact that water and sewer pipes are shallow and not deep provides convincing evidence that the pipes cannot be accessed or used for drawing water or discharging sanitary sewage. If the pipes providing the two utility services were deep, this would signal that water could flow and sewage could be discharged provided the pipes within the lot and to the trailer were also deep or set up as not to freeze.

64 The MGB concludes that connection includes a functional aspect and the fact that pipes are connected is not sufficient for the disqualification if they are incapable of fulfilling their purpose.

As to Being Attached or Connected to a Structure

65 Notwithstanding the Respondent's generic description of numerous structures in the RV Park attached to ***travel trailers*** or attached to other structures not meeting the test of a travel trailer, there was little evidence presented to support a contention in the written submission that inferred the Jaeger travel trailer was attached to an adjacent deck with open veranda. The MGB accepts the Appellant's oral evidence that the deck and open veranda is two inches away from the travel trailer and therefore not attached or connected to it. The photographs presented by both parties identify a structure in very close proximity to the trailer but whether it is attached or not cannot be determined.

As to Prior Legislation and Decisions

66 The reference to a 1987 Alberta ***Assessment*** Appeal Board decision under the rescinded Municipal Taxation Act and the 1998 MGB Board Order 33/98 are both of limited value to this appeal because of changed legislation. Amendments to the Act pertaining to ***travel trailers*** came into effect in April of 1999. The definition of a travel trailer as in 284(1)(w.1) was introduced for the first time, as was totally new criteria for determining whether a travel trailer was assessable or not under a new section 298(1)(bb).

67 The January 12, 2000 MGB decision letter regarding a Carefree Resort appeal in Red Deer County is of no value to this appeal because of the absence of findings and facts.

As to the Significance of December 31

68 The significance of December 31 in section 289(2) of the Act requires comment. The MGB's position is that the uniform statutory last day of the year is there to ensure the characteristics and physical condition of every property required to be valued at market value are fully captured in the ***assessment*** to be employed for the purposes of taxation, effective the immediate following date, once the local council passes a tax rate bylaw.

69 It must be pointed out that the assessor has a duty to determine the assessments of a given property based on its characteristics and physical condition on December 31, but valued as of July 1 of the ***assessment*** year. Having determined that ***assessment***, the assessor does not have authority to reduce an ***assessment*** in the event a property's characteristics or physical condition changes or is rendered all or partially uninhabitable during the taxation year as would be the case through fire or demolition. Pursuant to section 330(1) of the Act, the assessor only has authority to change an ***assessment*** in the tax year if it is discovered there is an error or omission in the information relating to the characteristics and physical condition of the property as of December 31 of the immediately prior ***assessment*** year.

70 The only recourse to a ratepayer for changes that have occurred to a structure's characteristic or physical condition in a tax year is to the municipal council pursuant to the following section of the Act.

> 347(1) If a council considers it equitable to do so, it
>
> may, generally or with respect to a particular taxable
>
> property or business or a class of taxable property or
>
> business, do one or more of the following, with or
>
> without conditions:
>
> (a) cancel or reduce tax arrears;
>
> (b) cancel or refund all or part of a tax;
>
> (c) defer the collection of a tax.

As to Campgrounds and ***Travel Trailers*** in Backyards

71 The debate between the parties regarding the assessability of ***travel trailers*** located in campgrounds and residential backyards requires comment.

72 It should be understood the legislation requires that any and all improvements situated on a campground as of December 31, with some exceptions, are assessable to the owner of the campground. One such exception would be a travel trailer owned by a vacationing traveller situated on a pad and plugged into electrical power within the campground on December 31. The campground owner is in the business of renting pads to itinerant travellers for short-term stay. He also derives income by offering other services, such as electrical power hook up, for a fee. Given the purpose and intent of the legislation, it would be unreasonable to conclude that such temporary arrangement would constitute a connection to electrical power provided by a public utility and therefore make the licensed and mobile travel trailer, owned or rented by a traveller, assessable to the owner of the campground.

73 Finally, it is common knowledge that the utility services provided by a public utility to a typical residential property are installed under an approved permit for the principle benefit of the residential dwelling unit on the parcel. That dwelling unit is then connected to such utility services. An ***assessment*** based on the characteristics and physical condition of the entire property as of December 31, would be conducted and taxation would typically occur in the usual manner. Again, it would be unreasonable to suggest that a travel trailer stored in the backyard of the dwelling unit, but plugged into a live electrical receptacle on December 31 should be assessable. The travel trailer in such circumstances is only connected to the public utility in the most indirect of ways. The owner of the residential property already pays property taxes on the improved property and should not be expected to be

assessed and pay tax on the travel trailer because it is simply plugged into electrical power unless it is so connected and set up to be used for seasonal or permanent habitation. If in fact it was determined the travel trailer was being used for other than infrequent habitation, there is little doubt that it would be quickly discontinued because such use would be in violation of the municipal land use bylaw. This situation is clearly quite different to that of ***travel trailers*** legally located and used or intended to be used within an approved and purpose designed Recreation Vehicle Park in which the ***travel trailers*** are the principle structure and all recreational vehicles and accessory structures are discretionary uses that would require a development permit.

CONCLUSION

74 Throughout the hearing, the Respondent emphasized that the purpose of the legislation affecting ***travel trailers*** is an attempt to create a fair and equitable municipal property tax regime between ***travel trailers*** regularly situated on parcels and occupied or intended to be occupied by persons on a more than infrequent basis, and other improvements such as vacation homes and summer cottages. The MGB concurs with this understanding. The criteria for assessability of ***travel trailers*** hinges on characteristics that connote a degree of permanency, such as being connected to at least one utility service provided by a public utility or attached or connected to a structure. If either of these conditions exist as of the last date of an ***assessment*** year, the assessor is duty bound to assess the travel trailer at a market value standard. In the case of the subject ***travel trailers***, the evidence presented plainly indicates that the power utility service was temporarily discontinued between the switch box and travel trailer through the voluntary actions of the owners. There was no evidence presented to indicate that electrical power was unavailable had the owners desired the service.

75 No costs to either party.

D. SCOTNICKI, PRESIDING OFFICER

* * * * *

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Sonya Jaeger Allan Shantz Stephen Washington	Representative for the Appellant Assessor for the Respondent Assessor for the Respondent

* * * * *

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM

Exhibit 1A Exhibit 2A Exhibit 3R Exhibit 4R	Submission of the Appellant, Jaeger Property Submission of the Appellant, Power Property Submission of the Respondent, ***Assessment*** Brief Submission of the Respondent, Image Report

End of Document

TAB 6

Taverner v. Sundre (Town)

Alberta Municipal Government Board Orders

Alberta Municipal Government Board

Edmonton, Alberta

N. Dennis (Presiding Officer), R. Scotnicki and W. Morgan (Members) and D. Marchand (Secretariat)

Heard: March 29, 2005.

Order: July 18, 2005.

Board Order: MGB 064/05

Amending Board Order: MGB 123/05

[2005] A.M.G.B.O. No. 155

IN THE MATTER OF the Municipal Government Act being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act) AND IN THE MATTER OF an appeal from a decision of the 2004 ***Assessment*** Review Board (ARB) of the Town of Sundre Between Robert C. Taverner, et. al, represented by ***Assessment*** Advisory Group, appellant, and Town of Sundre, respondent

(65 paras.)

Appearances

A. Shantz, Assessor for the Respondent

S. Washington, Assessor for the Respondent

S. Cobb, Agent for the Appellant

[Editor's note: An Amending Board Order was released December 12, 2005; the corrections have been made to the text and the amendment is appended to this document.]

W. MORGAN, MEMBER

1 Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on March 29, 2005.

2 This is an appeal to the Municipal Government Board (MGB) from a decision of the 2004 ARB of the Town of Sundre with respect to property assessments entered in the ***assessment*** roll of the Respondent municipality as follows.

Roll No.	Owner Legal Description ***Assessment*** Robert C. Taverner Blk 8 Pl 9612304 $46,970 Gordon
2608.000	& Joanne Halvorsen Lt 10 Pl 9612304 $45,860 Bruce M. Douglas, Joan P. Eldridge Lt 13 Pl
2610.000	9612304 $65,840 Jeffrey Allan and Sherry Ann Nickel Lt 16 Pl 9612304 $45,320 Marlene &
2613.000	Wayne Gilbert Lt 17 Pl 9612304 $40,880 Dennis and Bonnie Boyle Lt 18 Pl 9612304 $43,190
2616.000	Jane MacFarlane, Ann Marie McIntyre Lt 22 Pl 9612304 $35,400 Ruth Elizabeth Hunter Lt 23

Pl 9612304 $36,920 Ruth Elizabeth Hunter Lt 24 Pl 9612304 $48,730 Michael & Lynn Halket Lt 25 Pl 9612304 $48,790 William Leroy Browne Lt 27 Pl 9612304 $49,970 Carolyn Galley Lt 34 Pl 9612304 $30,640 Good Plumbing & Heating Lt 36 Pl 9612304 $39,730 Jay Murray & Margaret Linda Lt 38 Pl 9612304 $42,480 Hallworth

Earl Little, Kathy L. Bentley Lt 43 Pl 9612304 $31,170 Colleen Waters Lt 44 Pl 9612304 $34,590 Terry Drummond, Helene Marie Lt 48 Pl 9612304 $41,100 McGregor

James G. & Marilyn G Hannay Lt 50 Pl 9612304 $45,420 Raymond C. & Margaret W. Kromm Lt 51 Pl 9612304 $47,480 Ges Homes Ltd., Janet & Al Berdahl Lt 52 Pl 9612304 $25,000 Andy & Patty McLiesh Lt 54 Pl 9612304 $39,280 Gordon & Maryann Storey Lt 55 Pl 9612304 $40,350 Peter R. & Dimphena C. Vaughan Lt 58 Pl 9612304 $41,280 Daniel & Norma Goldring Lt 61 Pl 9612304 $56,470 Robert Sinclair Lt 62 Pl 9612304 $45,410 Paul M. & Myrna L. Schuck Lt 63 Pl 9612304 $44,740 Charles H. Blakey Lt 64 Pl 9612304 $45,410 Glen & Debra Mohan Lt 65 Pl 9612304 $46,580 Robert & Elizabeth Skippen Lt 67 Pl 9612304 $57,890 Benoit P. & Martha Mae Cyr Lt 69 Pl 9711313 $38,350 Ray & Sophie Shiels Lt 70 Pl 9711313 $41,160 Gerald & Myrna Isaac Lt 71 Pl 9711313 $31,670 Vernon L. & Rose C. Burlock Lt 77 Pl 9711313 $44,610 Mick, Lloyd & Valene Perdue Lt 81 Pl 9711313 $50,590 David & Beita Dalton Lt 82 Pl 9711313 $43,580 Glenn & Wendy Wyrostok Lt 83 Pl 9711313 $43,950 Daphne Werenka Lt 84 Pl 9711313 $38,160 Edward Allen Lt 87 Pl 9711313 $43,510 John & Joanne Wildfong Lt 89 Pl 9711313 $41,420 Marvin & Judy Peperkorn Lt 93 Pl 9711313 $46,240 Envirologic Systems Inc. Lt 95 Pl 9711313 $50,660 John & Katherine Kovacik Lt 97 Pl 9711313 $36,540 Karen Bentley, Jeffrey C. Neufeld Lt 98 Pl 9711313 $41,950 Merna Rasmussen Lt 101 Pl 9711313 $45,350 Claudia & Bryan Luck Lt 102 Pl 9711313 $37,420 Todd & Sharon Berling Lt 105 Pl 9711313 $41,050 Kevin and Sharon Lukeman Lt 106 Pl 9711313 $47,660 Lina Runquist, Scot & Deborah Lt 107 Pl 9711313 $51,210 McKinnon

John & Irene Thiessen Lt 115 Pl 9711313 $38,710 Beverly-Ann Bandura Lt 116 Pl 9711313 $41,460 Cliff and Alexa Nernberg Lt 121 Pl 9812180 $41,630 Patrick and Marion Coupland Lt 122 Pl 9812180 $39,950 Allan R. & Sheila M. Friesen Lt 124 Pl 9812180 $45,210 Robert & Elizabeth McKenzie Lt 128 Pl 9812180 $46,380 Frederick & Pauline Fisk Lt 136 Pl 9812180 $49,770 Dwight & Lori McKague Lt 138 Pl 9812180 $62,070 Ronn & Jewel Nielsen Lt 140 Pl 9812180 $46,920 John & Maureen Kingsbury Lt 157 Pl 9812180 $45,480 Eroca Rosenar Lt 166 Pl 9812525 $37,400 Robert & Janice Campbell Lt 174 Pl 9812525 $43,560 Jim and Florence Garside Lt 186 Pl 9812536 $44,560 Harold & Hilda Ager Lt 199 Pl 9812536 $47,590 Patricia & Vince Ryan Lt 202 Pl 9812536 $52,240 Vickie & Darrel Koester Lt 205 Pl 9812536 $56,960 Brian D. & Marjorie A. Jeannotte Lt 206 Pl 9812536 $44,510 Richard & Roseanne Adams Lt 208 Pl 9812536 $44,620 Max & Patricia Rudneu Lt 212 Pl 9812536 $46,200 Helmut & Beverley Deisinger Lt 214 Pl 9812536 $44,880

2808.000
2812.000
2814.000

PRELIMINARY MATTERS

3 The following two properties were included in the original appeal application, however the owners withdrew from this group appeal. Neither the Respondent nor the Appellant had any objection to these properties being dropped from the group appeal.

Roll No.	Owner	Legal Description	***Assessment***
2745.000	Earl & Edith Ohlhauser	Lt 145 Pl 9812180	44,070
2760.000	Ken and Grace Jesse	Lt 160 Pl 9812733	42,630

4 The parties agreed that the appeals on all roll numbers should be conducted as a single hearing. Further, all parties agreed that, given the number of owners present at the hearing, any factual clarifications required could be provided as direct evidence from the owners.

OVERVIEW

5 This is an ***assessment*** appeal as to whether or not the 67 subject ***travel trailers*** situated on individual condominium lots are assessable. The sole issue is whether or not the trailers should be, pursuant to section 298(1)(bb)(i) of the Act, considered "connected to any utility services provided by a public utility" and therefore no longer satisfy the requirements to be non-assessable property. All parties concede that the subject trailers satisfy the other requirements needed to be non-assessable property as outlined in the legislation. Similarly, the ***assessment*** of the land and other improvements is not at issue.

6 The Appellant submitted that the ***travel trailers*** are not assessable for six reasons. First, the Appellant noted that the nature of the subject trailers satisfied the intent behind the trailer exemption legislation; they are temporary mobile vacation units and not analogous to permanent residences. The by-law restrictions in operation for the RV park that require the trailers to be mobile and equipped for travel were reviewed to provide this context. Second, the seasonal access each trailer has to power, water and sewer does not mean the trailer is "connected" to a public utility and therefore the exemption in section 298(1)(bb) of the Act applies. Third, in the alternative, the exemption applies as the access to water, power and sewer is though Condominium Association (Association) and therefore the utilities in question are private, not public. Fourth, the trailers could not access the utilities on December 31, 2003, which is the condition date set by the Act for a 2004 ***assessment***. Fifth, the Town of Sundre (Town) is estopped from assessing the trailers as it stated in a letter to the developer in 1997 that the trailers were not assessable. Sixth, the assessor's direction that owners who temporarily moved their trailers on December 31, 2003 would not be assessed is unfair and inequitable. The appropriate remedy is that all the similar trailers should not be assessed, regardless if they were absent on one set day or not.

7 The Respondent maintains that the properties are connected to a public utility and must therefore be assessed. The Respondent cited the recently released Board Order MGB 024/05, which held that two other trailers within the RV Park were assessable, for support.

BACKGROUND

8 Riverside RV Village consists of 214 units registered in five phases as bare land condominiums. Improved sites generally have a travel trailer and may have adjoining open verandas, living areas or bedrooms. Units 1 through 12 have deep town water and sanitary sewer, natural gas and electrical power utility services. The remaining units,

including all the properties under appeal, are serviced with electrical power and shallow fresh water and sanitary sewer.

9 Water is obtained through a hose attachment. Trailers also have the ability to access a seasonal sewer system that is owned and operated by the Association by way of an outlet on each lot provided by the Association. The trailers are not charged for water and sewer based on individual usage, but the overall cost is included in the condo fee. The Association also shuts off access to these services to prevent freezing over from mid-September or October to mid-May, as the water and sewer pipes are shallow in the ground.

10 Electricity is available by plugging a three-prong plug into an electrical box. This use is metered and property owners are individually charged. Neither disconnect nor reconnect fees are charged by the public utilities when the property owners start or discontinue usage as the utility lines remain electrified year-round. From approximately mid-September or October to mid-May, the owners generally and voluntarily turn off power at the meter panel, which is not on the lot but within the RV Village common property. The underground conduit that protects the wires that run from the meter panel to the individual lots is not energized when the power is turned off at the panel. Typically owners unplug and store their surface power cords when not in use. Owners who desire access to electrical power during the winter months remain free to do so, provided annual property occupancy does not exceed 240 days. Access to the panel as well as the individual lots may be a problem during the winter months.

11 The RV Village is classified as a Recreation Vehicle Direct Control District (RV-DC) under the Town's Land Use Bylaw. The general purpose of this District is "To provide for and control the placement of seasonal recreational vehicles in areas of unique character or special environmental concern which, in the opinion of Council, requires specific regulations unavailable in other land use districts. The area is to be connected to municipal sewer and water systems".

12 The trailers are subject to a number of restrictions from the Association and the Town. The Association limits occupancy by owner or other tenant to a total of 240 days per year. Further, the trailers must be licensed, have wheels and a hitch and remain capable of relocation. Concrete foundations or other permanent structures are prohibited. The Town by-laws similarly provide that the trailers must remain licensed and travel ready, including maintaining wheels and a hitch.

13 In light of the above by-laws and restrictions, as well as documentary and oral evidence provided at the hearing which supported that the trailers complied with the restrictions, it was agreed that all the trailers were, for the purposes of this hearing, licensed and equipped to travel on a road. It was further conceded that, while some trailers have adjoining structures there is a gap between the structures and their respective trailers. As a result, it is agreed that the trailers are not attached to any structure.

14 In their February 27, 1997 letter the Town of Sundre addressed the issue of Recreation Vehicle Taxation to the Condo Association. The assessor's position at that time, based on legislation that has since changed, was "Vacation trailers are not assessable, however a park model would be assessable as an improvement and is taxable. Each lot is also assessable and taxable". No ***assessment*** was placed on the ***travel trailers*** until ***assessment*** year 2003.

15 The Association executive was advised via a letter from the assessor dated September 18, 2003 of their intent to "review any assessable improvements and if owners did not wish improvements (trailers) assessed for taxation purposes for 2004 they would have the opportunity to remove them prior to December 31, 2003". The letter was distributed at the fall Association general meeting at the end of September 2003. According to the assessor there were two to four instances where trailers were removed and one to two were added. The assessor also agreed that in some cases trailers are taken off the lots for vacation and then returned for the balance of the season, including December 31.

16 As of December 31, 2003 all ***travel trailers***, if on their lot, were assessed.

MGB 024/05

17 On February 23, 2005 the MGB rendered Board Order MGB 024/05. This order held that two trailers in the same RV Park as in the current appeal were assessable, as they did not meet the exemption criteria in section 298(1)(bb) of the Act. Specifically, the MGB held that while the trailers were not attached to any other structures, they were connected to a public utility: power. The MGB stated that the year-round availability and owner accessibility to a dedicated electrical power supply, regardless of whether or not owners used the power year round, satisfied the requirement of connectedness. The MGB found that the trailers were not, however, connected to water and sewer for the purposes of section 298(1)(bb). The MGB distinguished the water and sewage connections, because of the nature of the shallow connections, they could not be used during cold weather.

ISSUES

1. Are the subject improvements, defined as ***travel trailers***, assessable or non-assessable under section 298(1)(bb) of the Act?

   (i) How should "connected" be interpreted as stated in section 298(1)(bb)(i)?

   (ii) As of December 31, 2003 were the subject ***travel trailers*** connected to any utility services provided by a public utility?

   (iii) Is the Town estopped from assessing the trailers because of its 1997 position?

LEGISLATIVE BACKGROUND

18 The Municipal Government Act directs a municipality to annually prepare an ***assessment*** for property contained in the municipality. The ***assessment*** is to reflect the characteristics and physical condition of the property as of the previous 31st of December.

> 285 Each municipality must prepare annually an ***assessment*** for each property in the municipality, except linear property and the property listed in section 298.
>
> 289(2) Each ***assessment*** must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, ...

19 Property for the purposes of ***assessment*** is defined in the Act to include land and improvements. Improvements are further defined to include, among other structures, designated manufactured homes. ***Travel trailers***, namely trailers intended to provide accommodation for vacation use and which are licensed and equipped to travel on a road, are included in the definition of designated manufactured homes. As ***travel trailers*** are property as defined in the Act, they are prima facie assessable. ***Travel trailers*** that meet both the definition of travel trailer and the exemption criteria set out in section 298, however, are not assessable. To meet this exemption criteria, the subject trailer can neither be connected to any utility services provided by a public utility nor be attached or connected to any structure.

> 284(1) In this Part and Parts 10, 11 and 12, (r) "property" means
>
> (i) a parcel of land,
>
> (ii) an improvement, or (iii) a parcel of land and the improvements to it; ... .
>
> 284(1) In this Part and Parts 10, 11 and 12, (j) "improvement" means
>
> (i) structure,
>
> (ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure, (iii) a designated manufactured home, and ... .
>
> 284(1) In this Part and Parts 10, 11 and 12, (f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer; ... . (w.1) "travel trailer" means a

trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road; ... .

298(1) No ***assessment*** is to be prepared for the following

property:

(bb) ***travel trailers*** that are

(i) not connected to any utility services provided by a public utility, and (ii) not attached or connected to any structure.

20 Public utilities are defined as:

1(1)(y) "public utility" means a system or works used

to provide one or more of the following for

public consumption, benefit, convenience or

use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting, and includes the thing that is provided for public consumption, benefit, convenience or use; ... .

SUMMARY OF APPELLANT'S POSITION

Legislative Intent

21 The Appellant submitted that the temporary nature of the subject trailers satisfied the legislative intent behind the exemption in section 298(1)(bb). The Appellant noted that the RV Village is located on water-saturated land on a flood plain. As a result, the Association and the Town have enacted restriction on the trailers ensuring they remain non-permanent in nature. The general effect of the Town and the Association by-laws is to ensure that the trailers are only available for seasonal usage and are at all times capable of mobility and equipped and licensed for road travel.

22 The intent of the statute is to ensure that a "mobile home" type of permanent residence does not escape being taxed as an improvement to the real property on which it sits. The intent of the legislation is not to include ***travel trailers*** that cannot be used as a permanent residence, are or can be easily moved from time to time, and do not have the services normally attached to a permanent residence. The occupancy limit imposed by the Association further distinguishes these trailers from other assessable residences.

"Connection" to a utility

23 The Appellant submitted that the utility hook-ups were temporary in nature and indicated that a purposive

interpretation of the phrase "not connected to any utility services provided by a public utility" contemplated a much more permanent structure and arrangement than the situation under appeal. Specifically, the access to water, sewer and power is seasonal and the connections are temporary: a garden hose, an unattached sewer outlet and a plug-in respectively. The fact that during periods of the year the owners of the trailers have some access to water, sewer and power does not mean that they are connected to a utility service provided by a public utility in the same sense as any normal residence.

24 The exemption outlined by section 298(1)(bb) clearly reveals a legislative intent that only some ***travel trailers*** should be assessable. The Appellant suggested that the intent is to assess those ***travel trailers*** that have transformed from chattels to realty. This interpretation is consistent with the general division between realty and personal property for ***assessment*** purposes in the Act. Trailers become realty when they are incorporated by way of attachment to permanent structures or through permanent connections to public utilities. The intent of the Act is to capture those dwellings, which, while purportedly ***travel trailers***, have actually become permanent residences. The intent is not to capture true ***travel trailers*** maintained for seasonal recreational usage.

Condition Date

25 The valuation of the subject properties is, per section 289(2) of the Act, based on the characteristics and physical condition of the properties on December 31, 2003. The trailers are, every year, disconnected from all utilities and unoccupied for the winter. Therefore, the condition of the trailers as of the condition date qualifies them for the exemption.

"Public" utility

26 The Appellant submitted that the power, water and sewage are not provided by a public utility and therefore the exemption set out in section 298(1)(bb) operates to make the trailers not assessable. The power, water and sewer at issue do not go directly to the property owners from the Town. Instead, the Association operates and maintains the individual access for trailer owners to these services. The argument is that the Association is the provider of these services and that takes these services out of the definition found for public utilities in the Act.

Estoppel

27 The Appellant relied on the February 1997 letter from the Town to the RV park developer for an estoppel argument. The letter stated, "***travel trailers*** are not assessable" and did not clarify that this position was either temporary or contingent on legislation staying the same. The purchasers of the subject properties have relied on this promise ever since. The MGB, as a tribunal charged with fairness and equity, must therefore hold the Town to its promise and prohibit the enforcement of the new ***assessment***.

Fairness and Equity

28 The Appellant submitted that the letter from the Town to the travel trailer owners dated September 18, 2003, which indicated that those trailers that were moved from their lots on December 31, 2003 would not be assessed, created an inequity. The inequity arises as the assessor is treating substantively similar properties differently because of an irrelevant difference, namely being absent from the park for one specified date. The Appellant submitted the appropriate remedy was to treat all the trailers as if they were non-assessable.

SUMMARY OF RESPONDENT'S POSITION

Introduction

29 The Respondent submitted that the issues and facts under appeal were the same as in MGB Board Order 024/05. The trailers currently under appeal are non-distinguishable from the previous trailers: they are similarly set-up in the same RV Park with the same conditions and restrictions. What was applicable to those two trailers should

apply in this appeal. Therefore, this order confirms the Town's position that the ***travel trailers*** are attached to a public utility by virtue of the year-round availability of electricity and are assessable and taxable. It would be incorrect and inappropriate for the MGB to now treat these trailers differently than the way it treated the previous trailers.

30 The Respondent similarly conceded the findings in the above order that are adverse to the Town's position. As a result, the Respondent did not advance arguments that the trailers were connected to structures or were otherwise not ***travel trailers*** for the purposes of section 298(1)(bb).

Intent of Legislation

31 The subject trailers fall under the definition of an improvement under section 284(1)(j) and are either a structure or a manufacture home. They do not, however, satisfy the requirement for the subset of ***travel trailers*** as outlined in section 298(1)(bb) and therefore cannot qualify for non-assessable status.

32 First, the assessor clarified that flooding or water-saturation of the land was not relevant as only a small portion of the common property was affected by 1:100 year flood-plain. As the actual trailer sites remain unaffected by the flood plain and the type of restrictions normally found for flood-plains do not apply, the issue raised the Appellant should have no impact on the decision.

33 The subject trailers do not satisfy the legislative intent behind the provision for non-assessable ***travel trailers***. Regardless of whether or not the units are equipped with wheels and technically remain mobile, the majority of them are stationary, built into their respective sites permanently and there is no intention for vacation or road travel use. This is further evidenced by the number of improved sites with adjoining, although not technically attached, open verandas, living areas, bedrooms and separate detached sleeping quarters. To qualify as a travel trailer, the subject trailers would have to be removed prior to December 31st of every year.

34 The intent of the travel trailer exemption is to exempt trailers parked in back yards or kept in storage and then towed to various locations for annual vacation. The intent is not to exempt those recreational properties which are limited to recreational, as opposed to vacation, use. These ***travel trailers*** are used in the same capacity as a summer cabin or cottage and should likewise be assessed as an improvement. Additionally, many seasonal vacation properties are, by necessity, shut down for the winter; this does not change the fact that they constitute an improvement and are assessable. Finally, this intent is consistent with the progressive tightening of ***assessment*** legislation relating to ***travel trailers***.

35 In particular, the Respondent reviewed MGB 33/98, which dealt with the assessibility of a number of ***travel trailers*** located in the Carefree Resort RV Park. The Act at that time did not have the current s. 298(1)(bb) requirements regarding attachment to a structure and connection to a utility. Instead, the Act only required that mobile units be "intended for vacation use and licensed and equipped to travel on a public highway". The decision in MGB 33/98 was that 18 trailers were assessable as they did not establish that they were licensed; 3 were assessable because, at 12 feet wide, they were not equipped to travel without extensive preparation and 1 was assessable as it did not provide evidence on its characteristics. The remaining 19 trailers, however, were not assessable. The Respondent in that case argued that attachments to structures and seasonal connections to utilities should make all the trailers assessable, even though there were no explicit provisions to that effect in the Act. The Respondent here, then, suggests that the addition of the these explicit provisions in the Act was intended to capture trailers like the ones in MGB 33/98 and like the ones currently under appeal - namely, mobile unites that are established upon recreational lots that are connected to utilities, in the same fashion as cabins and cottages.

36 The Respondent also provided a copy of a Notice of Decision issued by the MGB on January 12, 2000 confirming an oral decision of the MGB regarding the assessibility of a travel trailer in Red Deer County. This decision, under the same legislative provisions as are relevant to this appeal, held that "The Board is satisfied that the travel trailer does not meet the condition set out in section 298(1)(bb) of the Municipal Government Act in that

the trailer was connected to utility services" and that the travel trailer was assessable. This Notice of Decision only contained brief reasons confirming the oral decision and did not contain background factual information.

37 As a result of re-examining the legislation and the subject properties, the assessor distributed a letter on September 18, 2003 notifying owners of the intention to assess all trailers present on December 31, 2003; the Town requests a confirmation of the subsequent assessments.

"Connection" to a utility

38 The Respondent submitted that a plain language approach to section 298(1)(bb) is appropriate. The term "connected", therefore, simple means physically joined, or attached. There is nothing to indicate that a plain reading of the term "connected" is repugnant to the intent of the legislation. The subject properties are clearly joined to water, sewer and power and therefore do not qualify for the exemption. While the connections at issue may neither be year-round or permanent, these are not requirements expressly found in the Act and it is inappropriate for the MGB to read them in. The Respondent reviewed a number of photographs for the trailers under appeal to demonstrate that they are in fact physically connected to the utilities in question.

39 The Town's interpretation is supported by MGB Board Order 024/05. This Board Order was rendered regarding two other ***travel trailers*** from the same RV Park; what is applicable to these two trailers is applicable to the properties currently under appeal. This Order confirms the Town's position that the ***travel trailers*** are attached to a public utility and are assessable and taxable.

Condition Date

40 The Respondent submitted that the condition date provided in section 289 of the Act, namely December 31, 2003, was the relevant date to use to determine if the subject properties were assessable. This is consistent with the assessor's direction by way of letter to the property owners advising that trailers not present on December 31 would not be assessed.

"Public" utility

41 The Respondent maintained that the water, sewage and power provided were from a public utility as the original source was clearly a public utility. This is not negated merely by the Association operating and maintaining individual access for each lot.

Estoppel

42 The Town's position in 1997 is neither binding nor relevant to a 2004 ***assessment*** that is based on different legislation. Additionally, the advance notice given to the property owners of the Town's intent to re-evaluate the trailers' assessibility adequately addressed any implied promise.

Fairness and Equity

43 As the Respondent maintained that December 31 was the legislated condition date for determining the applicability of section 298, no inequity arises by consistently applying the condition date to all trailers, even if different outcomes result.

FINDINGS

44 Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB makes the following findings.

1. Determining assessibility pursuant to section 298 is not limited to the condition of the property on December 31 of the year prior to the taxation year.
2. Connection to a utility for the purposes of section 298(1)(bb) requires a degree of permanency.
3. For the purposes of section 298(1)(bb), the subject trailers are not connected to any utility services.
4. The Town is not estopped from assessing the trailers because it indicated the trailers were non-assessable in 1997.
5. The water, power and sewer provided to the trailers are public utilities.

45 In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

46 The appeals in respect to the 67 properties are allowed and the ***travel trailers*** under appeal are non-assessable pursuant to section 298(1)(bb) of the Act.

47 The revised assessments, reflecting the value of the land and other improvements, are shown below.

Roll No.	Owner Legal Description	***Assessment***
2608.000	Robert C. Taverner Blk 8 Pl 9612304	$34,520
2610.000	Gordon & Joanne Halvorsen Lt 10 Pl 9612304	$30,290
2613.000	Bruce M. Douglas, Joan P. Eldridge Lt 13 Pl 9612304	$39,940
2616.000	Jeffrey Allan and Sherry Ann Nickel Lt 16 Pl 9612304	$25,000
2617.000	Marlene & Wayne Gilbert Lt 17 Pl 9612304	$25,000
2618.000	Dennis and Bonnie Boyle Lt 18 Pl 9612304	$25,000
2622.000	Jane MacFarlane, Ann Marie McIntyre Lt 22 Pl 9612304	$25,000
2623.000	Ruth Elizabeth Hunter Lt 23 Pl 9612304	$25,000
2624.000	Ruth Elizabeth Hunter Lt 24 Pl 9612304	$30,650
2625.000	Michael & Lynn Halket Lt 25 Pl 9612304	$32,390
2627.000	William Leroy Browne Lt 27 Pl 9612304	$36,070
2634.000	Carolyn Galley Lt 34 Pl 9612304	$27,800
2636.000	Good Plumbing & Heating Lt 36 Pl 9612304	$28,370
2638.000	Jay Murray & Margaret Linda Lt 38 Pl 9612304 Hallworth	$30,760
2643.000	Earl Little, Kathy L. Bentley Lt 43 Pl 9612304	$26,530
2644.000	Colleen Waters Lt 44 Pl 9612304	$25,000
2648.000	Terry Drummond, Helene Marie Lt 48 Pl 9612304 McGregor	$29,960
2650.000	James G. & Marilyn G Hannay Lt 50 Pl 9612304	$34,030
2651.000	Raymond C. & Margaret W. Kromm Lt 51 Pl 9612304	$33,740
2652.000	Ges Homes Ltd., Janet & Al Berdahl Lt 52 Pl 9612304	$25,000
2654.000	Andy & Patty McLiesh Lt 54 Pl 9612304	$30,200

2655.000	Gordon & Maryann Storey Lt 55 Pl 9612304	$29,620
2658.000	Peter R. & Dimphena C. Vaughan Lt 58 Pl 9612304	$25,000
2661.000	Daniel & Norma Goldring Lt 61 Pl 9612304	$34,320
2662.000	Robert Sinclair Lt 62 Pl 9612304	$29,210
2663.000	Paul M. & Myrna L. Schuck Lt 63 Pl 9612304	$31,070
2664.000	Charles H. Blakey Lt 64 Pl 9612304	$32,470
2665.000	Glen & Debra Mohan Lt 65 Pl 9612304	$30,960
2667.000	Robert & Elizabeth Skippen Lt 67 Pl 9612304	$41,160
2669.000	Benoit P. & Martha Mae Cyr Lt 69 Pl 9711313	$25,000
2670.000	Ray & Sophie Shiels Lt 70 Pl 9711313	$25,000
2671.000	Gerald & Myrna Isaac Lt 71 Pl 9711313	$26,890
2677.000	Vernon L. & Rose C. Burlock Lt 77 Pl 9711313	$27,340
2681.000	Mick, Lloyd & Valene Perdue Lt 81 Pl 9711313	$30,410
2682.000	David & Beita Dalton Lt 82 Pl 9711313	$27,060
2683.000	Glenn & Wendy Wyrostok Lt 83 Pl 9711313	$27,800
2684.000	Daphne Werenka Lt 84 Pl 9711313	$24,530
2687.000	Edward Allen Lt 87 Pl 9711313	$31,120
2689.000	John & Joanne Wildfong Lt 89 Pl 9711313	$28,770
2693.000	Marvin & Judy Peperkorn Lt 93 Pl 9711313	$33,370
2695.000	Envirologic Systems Inc. Lt 95 Pl 9711313	$28,890
2697.000	John & Katherine Kovacik Lt 97 Pl 9711313	$25,000
2698.000	Karen Bentley, Jeffrey C. Neufeld Lt 98 Pl 9711313	$25,000
2701.000	Merna Rasmussen Lt 101 Pl 9711313	$30,850
2702.000	Claudia & Bryan Luck Lt 102 Pl 9711313	$25,000
2705.000	Todd & Sharon Berling Lt 105 Pl 9711313	$25,000
2706.000	Kevin and Sharon Lukeman Lt 106 Pl 9711313	$36,350
2707.000	Lina Runquist, Scot & Deborah Lt 107 Pl 9711313 McKinnon	$27,660
2715.000	John & Irene Thiessen Lt 115 Pl 9711313	$25,000
2716.000	Beverly-Ann Bandura Lt 116 Pl 9711313	$27,740
2721.000	Cliff and Alexa Nernberg Lt 121 Pl 9812180	$29,060
2722.000	Patrick and Marion Coupland Lt 122 Pl 9812180	$25,000
2724.000	Allan R. & Sheila M. Friesen Lt 124 Pl 9812180	$28,900
2728.000	Robert & Elizabeth McKenzie Lt 128 Pl 9812180	$27,680
2736.000	Frederick & Pauline Fisk Lt 136 Pl 9812180	$34,530
2738.000	Dwight & Lori McKague Lt 138 Pl 9812180	$35,480
2740.000	Ronn & Jewel Nielsen Lt 140 Pl 9812180	$29,730
2757.000	John & Maureen Kingsbury Lt 157 Pl 9812180	$25,000
2766.000	Eroca Rosenar Lt 166 Pl 9812525	$27,670
2774.000	Robert & Janice Campbell Lt 174 Pl 9812525	$27,680
2786.000	Jim and Florence Garside Lt 186 Pl 9812536	$27,500
2799.000	Harold & Hilda Ager Lt 199 Pl 9812536	$27,500
2802.000	Patricia & Vince Ryan Lt 202 Pl 9812536	$38,210

2805.000	Vickie & Darrel Koester Lt 205 Pl 9812536	$37,650
2806.000	Brian D. & Marjorie A. Jeannotte Lt 206 Pl 9812536	$27,500
2808.000	Richard & Roseanne Adams Lt 208 Pl 9812536	$27,500
2812.000	Max & Patricia Rudneu Lt 212 Pl 9812536	$27,500
2814.000	Helmut & Beverley Deisinger Lt 214 Pl 9812536	$27,500

48 It is so ordered.

REASONS

49 The MGB is satisfied that the ***travel trailers*** under appeal satisfy the requirements for non-assessable property set out in section 298(1)(bb). While the trailers possess some qualities akin to assessable property, express provisions in the Act, not analogies, govern their assessibility. Of concern in this appeal is the provision that trailers are assessable if they are connected to a public utility. The MGB finds that the temporary, seasonal access the subject trailers have to water, power and sewer do not constitute a connection pursuant to section 298(1)(bb).

Condition Date

50 Determining that a property is non-assessable under section 298 of the Act is separate from the provision in section 289 that states that assessments must reflect the characteristics and physical condition of the property on December 31 of the year prior to the taxation year. In other words, the date of December 31 has no special significance in whether or not a property is non-assessable pursuant to section 298.

51 This interpretation is consistent with a straightforward reading of the two sections. Section 298(1) states that no ***assessment*** is to be prepared for the properties listed in that section. Therefore the direction that assessments must reflect the condition date in section 289 does not apply for those properties as no ***assessment*** is prepared for them. The section 298 determination must take place first and is independent of the condition date.

52 This interpretation also is consistent with the legislative presumption that interpretation avoids creating absurdities. If solely a one-day snapshot determines the application of section 298, an absurd result would follow. ***Travel trailers***, for instance, that were otherwise connected to public utilities or to structures, could, for this one day un-attach and move off their lot, thereby becoming non-assessable for the entire year. This creates a number of problems. One, fairness and equity suffer as substantively similar ***travel trailers*** are treated differently - one is assessable because it travelled on the road in, for example, June, while the other travelled for the same amount of time but including December 31 is not assessable. Two, property owners would be encouraged to expend effort to move their trailers solely to benefit from a formal distinction that does not substantively change the nature of the trailers. This is an undesirable result.

Application of section 298(1)(bb)

53 The central question of this appeal is whether or not the trailers are connected to any utilities, specifically power, water and sewer. The term "connected" is undefined in the Act and in interpreting it the MGB considered its ordinary meaning within the context of the legislative intent of the section. The term "connected" is capable of grammatically sustaining a spectrum of meanings in a plain language approach. Connected could, for instance, mean any physical connection, no matter how fleeting. Alternately, the section could be read so as to require constant permanent connection to the utilities in question.

54 In interpreting the term "connected", the MGB therefore adopted a purposive approach, and considered the intent of the section as well as its plain meaning. All parties agreed that a starting point for the intent behind section 298(1)(bb) was that the legislature did not intend all ***travel trailers*** to be assessable. Further, it was agreed that the legislature did not intend ***travel trailers*** become assessable if they only briefly accessed a utility. For example, both parties agreed that ***travel trailers*** stopping briefly in campgrounds during their owners' annual two-week vacation

were not intended to be assessable - whether or not they plugged into an electrical outlet during that time. From this common starting point, the MGB was presented with two different suggestions.

55 The Respondent suggested that the intent was to distinguish between trailers used for "vacation use" and those used for "recreation use". The difference between these two uses was travel. The Respondent invoked the analogy of motor homes as "vacation use" property that was not assessable and summer cottages that were "recreation use" property and assessable.

56 Alternately, the Appellant suggested that the intent was to ensure that those ***travel trailers*** that had become like residences were assessed. Namely, the two requirements in s. 298(1)(bb), connection to a utility and attachment to a structure, were two legislated objective criteria to determine if a travel trailer was sufficiently permanently situated to be assessed.

57 The MGB prefers this second interpretation. The Act does not mention the phrase "recreation use" and the MGB does not accept that vacation uses precludes vacationing in the same spot annually. Further, the mobility requirements implied by the Respondent in this distinction are much more clearly and directly dealt with in the definition of ***travel trailers*** in section 1 of the Act. In other words, the Act clearly indicates that the capacity to be mobile, not actual mobility, is what distinguishes ***travel trailers***. The MGB therefore accepts that the Act, through section 298(1)(bb) intends for trailers to be assessable if they, by way of connection to a utility or attachment to a structure, have become effectively fixed in their position.

58 The question before the MGB then, is if the connections at issue are sufficiently permanent to consider the trailer effectively attached its location. The MGB considered the permanency of the connection, the ease of disconnecting and the length of time the connection was in place during the ***assessment*** year in answering this question. The MGB further acknowledges that determining where a connection factually fits in the spectrum is difficult. In the end, however, the MGB has determined the connections at issue are similar to other vacation use connections and therefore should not make the trailers assessable. The nature of the connections seen here are no different than the water, power or sewage connections available to trailers passing through campsites on a transitory basis. The connections are also, on the evidence, generally seasonal. Despite the fact that electricity is available year-round, the evidence shows that the trailers generally do not avail themselves of this opportunity in the winter months. In any event, the most the trailers can be used for is 240 days a year. Moreover, the connections are extremely easy to disconnect. Unplugging a plug or unscrewing a hose is all that is required to disconnect them. No permanent damage or change to the physical structure of the trailers results from the disconnection. As a result, the MGB concludes the trailers are not connected to power, water or sewer for the purposes of s. 298(1)(bb).

59 The MGB placed no weight on the Appellant's argument that the water saturation and flooding problems faced in the area should be relevant to a determination of assessibility. In particular, the MGB accepts the Respondent's clarification that the individual trailer lots are not affected by the flood-plain restrictions.

"Public" utility

60 The definition of a public utility in section 1(1)(y) of the act is quite broad and includes the utilities in question. First, the water, power and sewer certainly come from a system designed to provide these utilities for public consumption. Simply because the Association, arguably a private entity, acts as an intermediary does not mean that these utilities are no longer public. Second, the definition of "public utility" includes the "thing that is provided for public consumption, benefit, convenience or use". Therefore, even if the actual system of water, sewer and power were not part of a public utility, the actual water and electricity provided to the Association and distributed to the trailers remain a public utility, as does the access to the municipal sewer system.

Estoppel

61 The MGB rejects the argument that the Town is estopped from assessing the trailers. ***Assessment***, as set out in the Act, is an annual process. No municipality is bound to continue a particular treatment of a property merely by

past treatment or by past statement of practice. Further, even if the legislative scheme for ***assessment*** in Alberta permitted the use of the equitable doctrine of estoppel based on past assessments, the 1997 letter falls far short of the necessary requirements for promissory estoppel. The Appellant has submitted that the letter should be read to imply a promise that the Town would never assess the trailers, regardless of changes in legislation. The far more reasonable interpretation of the letter is that the assessor was stating the current position of the Town. Further, it is insufficient to merely demonstrate that there has been a benefit to the property owners. Instead, detrimental reliance must be shown; namely, the property owners must have been induced to buy the subject trailers because of the letter and have been damaged as a result. Finally, the fairness and equity this board is charged with requires first and foremost that all assessable property be similarly assessed at market value.

Fairness and Equity

62 There was no evidence presented that any trailers actually "escaped" ***assessment*** as a result of moving them off the lot for December 31, 2003. The position of an assessor is insufficient to lay a claim of fairness and equity; instead, inequity must be shown relative to an actual similar property - not merely a hypothetical one. As a result, the MGB did not give credence to this argument of the Appellant.

MGB 024/05

63 The MGB carefully considered this previous Board Order and acknowledges that this decision departs from the result arrived at in Board Order MGB 024/05. In rendering a different decision on apparently similar facts, the MGB considered both the importance of consistency as a tribunal and the MGB's mandate to hear and decide each appeal on its own merits, bound only by decisions of higher courts. As stated by Macaulay and Sprague in Practice and Procedure Before Administrative Tribunals (updated May, 2005), "Decisions of administrative agencies do not create precedents for anyone, including the agency. They are, at best, persuasive. While agencies should strive for consistency they are not bound by a mechanistic application of earlier administrative decisions. Rigid adherence to consistency can discredit an agency's ability to improvise or adapt." (p. 6-6 to 6-7)

64 Therefore, while MGB 024/05 was persuasive, this decision departs in two key ways. First, this decision clarifies that the application of section 298 is not dependant on a property's characteristics solely as of December 31 of the year prior to which the tax is imposed. Second, this decision makes a different factual finding on the trailers' connection to power. While both Orders agree that a degree of permanency is required in order to find that a trailer is connected to a utility, this Order finds that the year-round availability of electrical power, which can be accessed for any 240 days of a year at the discretion of the owner, as well as the presence of an electrical outlet on a lot is not a sufficiently permanent connection to a trailer to satisfy the requirement in section 298(1)(bb).

65 No costs to either party.

W. MORGAN, MEMBER

* * * * *

APPENDIX "A"

APPEARANCES

NAME	CAPACITY

A. Shantz	Assessor for the Respondent
S. Washington	Assessor for the Respondent
S. Cobb	Agent for the Appellant

* * * * *

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
Exhibit 1A Exhibit 2A Exhibit 3R Exhibit 4R Exhibit 5R	Submissions of the Appellant Map of Town of Sundre Photos of the Subject Properties Submissions of the Respondent Photos of the Subject Properties and MGB 33/98

* * * * *

AMENDING BOARD ORDER

Board Order MGB 123/05

Released: December 12, 2005

WHEREAS it has come to the Municipal Government Board's attention that Board Order MGB 064/05, dated July 18, 2005 was missing a roll number.

THEREFORE Municipal Government Board Order MGB 064/05 is hereby amended by:

Deleting "Glenn & Wendy Wyrostok" for Roll No. 2689.000 on pages 2 and 14 of 19 and

Inserting in the listing of ***assessment*** appeals on page 2 of 19 the following:

"Roll No. 2683.000	Glenn & Wendy Wyrostok
Lt 83 Pl 9711313	$43,950

and in the Decision on page 14 of 19 inserting between Roll Nos. 2682.000 and 2684.000 the following:

"Roll No. 2683.000	Glenn & Wendy Wyrostok
Lt 83 Pl 9711313	$27,800"

And further this Board Order shall be read in conjunction with Board Order MGB 064/05.

End of Document

TAB 7

BOARD ORDER: MGB 109/07

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL from a decision of the 2006 Assessment Review MGB (ARB) of the Town of Sundre.

BETWEEN:

Various Owners, represented by Charles Blakey, Agent - Appellants

- a n d -

Town of Sundre, represented by Reynolds Mirth Richards & Farmer LLP - Respondent

BEFORE:

Members:

P. Petry, Presiding Officer
J. Fleming, Member
L. Patrick, Member

D. Marchand, Case Manager
A. Turcza-Karhut, Case Manager

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on March 6 and 7, 2007.

This is an appeal to the Municipal Government Board (MGB) from the decisions of the Assessment Review Board (ARB) of the Town of Sundre dated September 13, 2006 with respect to 62 property assessments. In this Order, the property owners are referred to as the "Appellants", as they have appealed the decisions of the ARB where the assessments were upheld. It must be noted that although the Town of Sundre is referred to as the "Respondent", the Town of Sundre has appealed the ARB decisions where the assessment value was reduced.

The Appellants have appealed the decisions of the ARB with respect to the assessments entered in the assessment roll of the Respondent municipality as follows.

Assessments appealed to the MGB by the Appellants

Roll Numbers	Lot	Owners	Assessment Under Appeal
2604.000	4	L. Gaglardi	$69,320
2606.000	6	K. & L. Friesen	$60,320
2610.000	10	J. & E. Scheper	$48,430
2613.000	13	B. Douglas & J. Eldridge	$65,950
2617.000	17	M. & W. Gilbert	$43,120
2621.000	21	S. & R. Maarasco	$59,790
2623.000	23	K. & C. Chaloner	$41,520
2625.000	25	M. & L. Halket	$49,860
2627.000	27	E. Lundman	$51,540
2633.000	33	C. Galley	$63,950
2639.000	39	D. Brown	$44,420
2640.000	40	D. & W. Teare	$44,210
2650.000	20	J. & M. Hannay	$47,020
2651.000	51	B. & P. Squires	$45,880
2653.000	53	B. & L. Mcallister	$51,570
2660.000	60	J. Pedersen	$47,890
2662.000	62	R. & B. Turner	$54,710
2664.000	64	C. Blakey	$47,340
2667.000	67	R. & E. Kippen	$57,910
2676.000	76	L. Runquist	$51,720
2681.000	81	M., L. & V. Purdue	$47,780
2682.000	82	D. & B. Dalton	$45,620
2705.000	105	T. & S. Berling	$43,400
2706.000	106	J. & J. Bayko	$49,210
2708.000	108	L. Murphy & C. Burgess	$39,820
2709.000	109	S. MacLeod	$48,020
2726.000	126	J. & L. Mugleston	$51,490
2736.000	136	F. & P. Fisk	$50,540
2737.000	137	R. & L. Haskell	$42,470
2738.000	138	D. & L. McKaque	$62,430
2739.000	139	D. & M. Fisk	$35,920
2749.000	149	R. & D. Gerber	$46,840
2787.000	187	P. & R. Grossi	$42,310
2792.000	192	P. & G. Tallerico	$65,960
2802.000	202	D. Fraser	$51,720
2805.000	205	V. & D. Koester	$63,150
2809.000	209	D. & P. Grose	$48,030
2812.000	212	M. & P. Rudneu	$47,840

The Respondent has appealed the decisions of the ARB with respect to the assessments entered in the assessment roll as follows.

Assessments Appealed to the MGB by the Respondent

Roll Numbers	Lot	Owners	Assessment Under Appeal
2615.000	15	B. Howe	$29,000
2624.000	24	R. Hunter	$34,330
2629.000	29	C. Pichette	$34,990
2634.000	34	C. Galley	$31,690
2638.000	38	J. Murray	$34,130
2654.000	54	A. & P. Mcliesh	$31,580
2677.000	77	V. & R. Burlock	$31,160
2697.000	97	J. & K. Kovacik	$30,370
2707.000	107	L. Runquist	$33,880
2710.000	110	P. Axsel	$29,000
2721.000	121	C. & A. Nernberg	$33,240
2722.000	122	P. & M. Coupland	$29,000
2724.000	124	A. & S. Friesen	$33,030
2725.000	125	G. & S. Van Tornhout	$30,710
2728.000	128	R. & E. Mckenzie	$31,600
2743.000	143	M. & B. Hildebrand	$30,930
2762.000	162	N. & L. Boychuk	$29,000
2774.000	174	R. & J. Campbell	$32,830
2777.000	177	M. & K Stewart	$29,000
2786.000	186	J. & F. Garside	$29,000
2799.000	199	H. H. Ager	$29,000
2810.000	210	N. Hogg	$29,000
2813.000	213	M. & J. Dubois	$29,000
2814.000	214	B. H. Deisigner	$29,000

OVERVIEW

The main issue in these appeals is whether or not the trailers situated on each of the units (lots) should be subject to assessment. Pursuant to the Act, trailers are non assessable if they meet the definition of travel trailers in section 284(1)(w.1) and the conditions enumerated in section 298(1)(bb). The assessment placed on the land is not at issue in these appeals.

It was the Appellants' position that the intent of the Act is to ensure that travel trailers which are required to remain mobile, cannot be used as permanent residences, and which do not have access to services normally available to permanent residences are non assessable. The Appellants argued that the subject trailers meet the definition of travel trailers in section 284(1)(w.1) of the

Act. Furthermore, the Appellants submitted that the subject trailers are not connected to any utility services provided by a public utility and are not attached or connected to any structures. Accordingly, it was the Appellants' position that the subject trailers are non assessable.

The Respondent, who has also appealed the ARB decisions where the assessment value was reduced, submitted that some of the subject trailers did not meet the definition of travel trailers found in the Act, and that all of the trailers under appeal were connected to utility service provided by a public utility. Moreover, the Respondent argued that many of the trailers under appeal were attached or connected to a structure. Consequently, it was the Respondent's position that all of the subject trailers are assessable pursuant to the Act.

The parties agreed that the appeals for all of the roll numbers should be heard as a single hearing.

BACKGROUND

This is an appeal with respect to the assessment of 62 trailers located in Riverside RV Village (Riverside RV), 200 4th Avenue SW, Sundre, Alberta. Riverside RV consists of 214 units registered in five phases as bare land condominiums. Improved sites generally have travel trailers and may have adjacent accessory structures, including open verandas, living areas or bedrooms. Units 1 through 12 have access to utilities, including water, sewer, power and gas. Water and sewage services for units 1 through 12 are available year round. The remaining units, with shallow services, have access to water, sewer and power seasonally. The water and sewer services for the remaining units are shut off by the Condominium Association during the off season. Accordingly, the remaining units do not have access to water and sewage services from mid September or October to mid-May.

All units in Riverside RV have individually metered power service, provided by EPCOR Utilities Inc. Electricity is available to all units throughout the year by plugging a three-prong plug into an electrical box. If a property owner wishes to discontinue the service, he must make the necessary arrangements with EPCOR, in which case a connection fee will be charged upon reconnection.

Pursuant to the Town bylaws and the bylaws of the Condominium Association, the travel trailers are subject to a number of regulations. The Condominium Association limits occupancy to a total of 240 days per year. In addition, the trailers must have wheels and a hitch, and retain their travel availability. The Town bylaws also provide that the trailers must retain their travel ability, including maintaining wheels and a hitch.

MGB 024/05 and 064/05

In 2005, the MGB issued Orders 024/05 and 064/05. At issue in both appeals was whether trailers in Riverside RV were non assessable.

In Board Order MGB 024/05, the MGB held that the two trailers under appeal were assessable, as they did not meet the criteria set out in section 298(1)(bb) of the Act. The MGB found that the two trailers were connected to power, a public utility provided by EPCOR Utilities Inc. Electricity could be accessed year round by simply switching on the power at the meter panel or switch box and plugging in the trailer's power cord to the receptacle on the lot. The MGB found that the owners, through voluntarily unplugging the power from the outdoor receptacle and turning off the switch at the meter, did not disconnect themselves from a utility service that was otherwise available. The MGB concluded that if either of the conditions in section 298(1)(bb) exists as of the last date of the assessment year, the travel trailer is assessable at a market value standard.

Subsequently, in Board Order 064/05, the MGB held that 67 travel trailers in Riverside RV were exempt from assessment pursuant to section 298(1)(bb). In that case, both parties agreed that the travel trailers were not attached or connected to any structure. Accordingly, as both parties agreed that the criteria set out in section 298(1)(bb)(ii) was met, the main issue before the MGB was whether the travel trailers were connected to any utility services provided by a public utility.

The MGB found that year round availability of electrical power, which could be accessed for any 240 days of the year at the discretion of the owner, as well as the presence of an electrical outlet on a lot did not constitute a sufficiently permanent connection. Accordingly, the MGB held that the condition set out in section 298(1)(bb)(i), which requires that a travel trailer not be connected to any utility services provided by a public utility, has been met, and therefore the travel trailers were non assessable. The MGB noted that the connection at issue was similar to other vacation use connections and that the nature of the connection was not different from connections available to trailers passing through campsites on a transitory basis. Furthermore, the MGB found that the connection was seasonal, used for a maximum of 240 days a year, and extremely easy to disconnect.

In Board Order 064/05, the MGB was asked to determine how section 298(1)(bb) of the Act should be interpreted in light of subsection 289(2) of the Act. Pursuant to section 289(2), each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10. In its decision, the MGB held that the date of December 31 is irrelevant when determining whether a property is non assessable pursuant to section 298(1) of the Act. Section 298(1) states that no assessment is to be prepared for the properties listed in that subsection. Accordingly, the direction that assessments must reflect the condition date in section 289(2) does not apply for those properties, as no assessment is prepared for them. The MGB found that the determination under section 298(1) must take place first, and is independent of the condition date set out in section 289(2) of the Act.

In determining the outcome of this appeal, the MBG has considered the Board Orders 024/05 and 064/05.

ISSUES

1. Are the units under appeal “travel trailers”, as defined in section 284(1)(w.1) of the Act?

2. In order to be non assessable pursuant to section 298(1)(bb), do travel trailers need to be both not connected to a utility service provided by a public utility and not attached or connected to any structure?

3. Are any or all of the subject units not connected to any utility services provided by a public utility pursuant to section 298(1)(bb)(i) of the Act?

    i. What is the correct interpretation of the word “connected” in section 298(1)(bb)(i)?

4. Are any or all of the subject units not attached or not connected to any structure pursuant to section 298(1)(bb)(ii) of the Act?

5. How does section 289(2) of the Act, which requires that assessments reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed, effect the determination of whether a travel trailer is assessable?

LEGISLATIVE BACKGROUND

The *Municipal Government Act* directs each municipality to annually prepare an assessment for property contained in the municipality, except property listed in section 298.

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

Pursuant to the Act, property for the purposes of assessment is defined to include land and improvements. Improvements are further defined to include, among other structures, designated manufactured homes. The definition of designated manufactured homes includes travel trailers. Accordingly, as travel trailers are property as defined in the Act, they are *prima facie* assessable.

However, travel trailers that meet the definition of travel trailers in section 284 of the Act, and the exemption criteria set out in section 298 of the Act are non assessable. To meet the exemption criteria set out in section 298, the subject travel trailer must not be connected to any utility service provided by a public utility, and must not be attached or connected to any structure. Only if the travel trailer meets both of the exemption criteria set out in section 298(1)(bb) of the Act, and is therefore both not connected to any utility service provided by a public utility and not attached or connected to any structure, will it be non assessable under the Act.

284(1) In this Part and Parts 10, 11, and 12,

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it; … .

284(1) In this Part and Parts 10, 11, and 12,

(j) "improvement" means

(i) structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home, and … .

(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land; … .

284(1) In This Part and Parts 10, 11, and 12,

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer; … .

(w.1) "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road; … .

298(1) No assessment is to be prepared for the following property:

(bb) travel trailers that are

(i) not connected to any utility services provided by a public utility, and

(ii) not attached or connected to any structure.

Public utilities are defined as:

1(1)(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste;

(x) residential and commercial street lighting

and includes the thing that is provided for public consumption, benefit, convenience or use; … .

The Act directs that each assessment must reflect the characteristics and physical condition of the property on December 31 of the previous year.

289(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax imposed under Part 10 in respect of the property, … .

SUMMARY OF THE APPELLANTS' POSITION

"Travel trailers" as defined in s. 284(1)(w.1) of the Act

Pursuant to section 284(1)(w.1) of the Act, a "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road. The Appellants submitted that based on the definition of "travel trailer" in the Act, all of the trailers under appeal are travel trailers, as they are intended to provide accommodation for vacation use and are licensed and equipped to travel on a road.

The nine owners that testified at the MGB hearing indicated that they owned the trailers for vacation purposes, and that they occupied the trailers for at total of 14 to 40 days per year. Of the nine owners that testified before the MGB, eight gave evidence that their trailers were licensed, and one indicated that he obtained a license from the previous owner of the trailer.

The agent for the Appellants stated that the trailers were licensed by the Province, with no requirement of renewal. It was submitted that all of the subject trailers in the RV Village are capable of being licensed, and that the MGB should make the reasonable assumption that all of the subject trailers were licensed when they travelled to the RV Village.

Furthermore, the Appellants argued that the onus to ask for proof of licensing should be placed on the assessor. In the present matter, the assessor did not make any inquiries as to whether the trailers were licensed, and he did not advise the owners that they should display their license plates. Although Mr. Dalton advised the MGB that some of the owners remove the licence plates to prevent their theft while the trailers are parked in the RV Village, the Appellants submitted that it cannot be assumed that trailers which did not display license plates when the assessor was inspecting the RV Village were not licensed.

The Appellants submitted that as a result of the owners' compliance with the bylaws of the Town of Sundre and the Condominium Association, all of the trailers are capable of travelling on a road. Pursuant to the bylaws of the Town of Sundre and the bylaws of the Condominium Association, the subject trailers must maintain their wheels and hitches, and cannot be placed on concrete foundations. In this case, the assessor has been unable to show that hitches or wheels have been removed from any of the subject trailers, and could not state whether the subject

trailers were mobile at any time during the assessment year. Therefore, the Appellants submitted that the units under appeal are "travel trailers", as defined in section 284(1)(w.1) of the Act.

Connected to a utility service provided by a public utility and attached or connected to any structure

The Appellants submitted that section 298(1)(bb) of the Act should be interpreted to read that assessments should be prepared for travel trailers that are connected to a utility service provided by a public utility and attached or connected to any structure. The Appellants noted that the letter from Mr. Cust, who assisted with the drafting of the Act, supports their position that travel trailers are assessable only if both criteria enumerated in section 298(1)(bb) are met. Accordingly, travel trailers which are connected to a utility service provided by a public utility, but not attached or connected to any structure are non assessable. Moreover, travel trailers which are attached or connected to any structure but are connected to a utility service provided by a public are also non assessable.

The Appellants stated that the intent of section 298(1)(bb) of the Act was to ensure that travel trailers which are utilized as permanent residences do not escape assessment. Furthermore, it was argued that it was not the intent of the Legislature to allow municipalities to assess travel trailers which are required to remain mobile, cannot be used as a permanent residence, and do not have access to services normally available to permanent residences. The Appellants expressed the opinion that based on the actual use and the restrictions on the use of the travels trailers in the RV Village, it is the Legislature's intent that such trailers be non assessable.

Connected to any utility services provided by a public utility

The Appellants submitted that the travel trailers under appeal are not connected to any utilities provided by a public utility, and therefore, the subject trailers are non assessable.

The Appellants brought the MGB's attention to the fact that all services in the RV Village are owned by the Condominium Association. Based on the evidence of Mr. Dalton, the water and waste water system is operated and maintained by the Condominium Association, not a public utility as contemplated by the Act.

Although the Appellants conceded that Lots 1 through 12 have access to the water and waste water system throughout the year, it was argued that pursuant to the Appellants' interpretation of the word "connected", the travel trailers on the aforementioned lots are not permanently connected to utilities, as they are required by the Town and Condominium bylaws to remain mobile.

The Appellants supported their argument by citing the decision of the MGB in Board Order 064/05, where the MGB held that the connections connecting the travel trailers to public utilities were similar to other vacation use connections and therefore should not make the travel trailers

assessable. The MGB found that the connections were seasonal, and akin to campsite connections available to trailers on a transitory basis. Furthermore, the MGB noted that it was easy to disconnect the trailers from the utilities without permanent damage or change to physical structure. The Appellants submitted that based on the decision of the MGB in Board Order 064/05, the MGB should find that the travel trailers presently under appeal are not connected to any utility services provided by a public utility, as contemplated by section 298(1)(bb)(i) of the Act.

Interpretation of the word "connected" in Section 298(1)(bb)(i)

The Appellants argued that to meet the criteria of section 298(1)(bb)(i) of the Act, a travel trailer must have a permanent connection to a utility service provided by a public utility. Since the trailers under appeal are not permanently connected to utility services provided by a public utility, there is no connection as contemplated by section 298(1)(bb)(i) of the Act. The MGB was asked to find that simply using utility services provided by a public utility does not make a travel trailer assessable. Furthermore, the Appellants asserted that if the Respondent's interpretation of section 298(1)(bb)(i) is accepted by the MGB, any travel trailer that plugs its power plug into an electrical source would be assessable pursuant to the Act. According to the Appellants, the Respondent's interpretation of the word "connected" would lead to an absurdity.

The Appellants submitted that the Act fails to provide any guidance with respect to the interpretation of the word "connected" in section 298(1)(bb)(i). Therefore, the Appellants asserted that the MGB should take a purposeful approach when interpreting the section 298(1)(bb)(i), and interpret the word "connected" to mean permanently connected. More specifically, in determining whether a travel trailer was connected pursuant to section 298(1)(bb)(i), the MGB should consider whether the travel trailers were connected through a fulltime connection and whether the availability of the services provided by a utility was unrestricted.

Gas

Both parties agreed that Units 1 through 12 have access to gas. The Appellants submitted evidence that trailers parked on Unit 6 and Unit 10 were not actually connected to gas. Furthermore, the owners that appeared before the MGB stated that a permanent connection of gas to a trailer would in their opinion violate the Town and Condominium bylaws which require the trailers to remain mobile while parked in the RV Village. The Appellants argued that the fact that gas is available to the trailers parked on Units 1 through 12 does not mean that those trailers are connected to a utility as contemplated by section 298(1)(bb)(i) of the Act.

Water and waste water system

Witnesses for the Appellants submitted evidence that the trailers obtain water through a temporary garden hose attachment. The Appellants argued a temporary garden hose cannot be

held to constitute a connection pursuant to section 298(1)(bb)(i) of the Act. It was emphasized that this form of connection can be distinguished from water connections to mobile homes, as mobile homes do not utilize garden hoses, and do not expose their water connections to the elements. Furthermore, the Appellants expressed the opinion that unlike mobile homes, the subject trailers cannot be occupied during the winter months.

The waste water system in the RV Village is operated and maintained by the Condominium Association on a restricted seasonal basis. It was the Appellants' position that the trailers are not connected to the waste water system for the purposes of section 298(1)(bb)(i), based on the fact that the service is unavailable during a significant portion of each calendar year.

The Appellants relied on MBG Board Orders 024/05 and 064/05, where the MBG found that trailers in the RV Village were not connected to water and waste water services, to further support their position that the subject trailers were not connected to utility services provided by a public utility for the purposes of section 298(1)(bb)(i) of the Act.

Electricity

Witnesses for the Appellants testified that the owners of each unit can elect to obtain electricity services from EPCOR Utilities Inc (EPCOR). Electricity is available to the trailers through plugging a three prong plug into an electrical box, however the Appellants asked the MGB to consider that the electricity available to the trailers is insufficient to power many appliances. Furthermore, the owners of the trailers testified that although it would be possible to cancel the electrical services provided by EPCOR each winter, it would be uneconomical to do so, based on the resulting reconnection fee.

The Appellants submitted that non permanent and limited access to electricity should not be interpreted as a connection to a public utility for the purposes of section 298(1)(bb)(i) of the Act. Placing a plug in an electrical outlet box is only a temporary arrangement, as the owners of the trailers can at any time choose to pull the plug, and disconnect their trailer from electricity. Moreover, the electrician's report submitted by the Appellants indicates that the electrical connections to the trailers can be distinguished from electrical connections to residential dwellings. The Canadian Electrical Code requires that travel trailers be wired to allow for temporary power by means of a plug that can be disconnected by each individual owner, whereas all residential dwellings must be permanently wired. Additionally, although the Appellants conceded that electricity is available to each lot, they asked the MGB to consider that the assessor did not present any evidence indicating that each unit was in fact connected to electricity services.

The Appellants relied on the MGB's decision in Board Order 064/05 to further support their argument that the trailers are not connected to electricity for the purposes of section 298(1)(bb)(i) of the Act. In particular, the Appellants noted that in Board Order 064/05 the MGB found that the although electricity is available year round, the trailers do not avail themselves of electricity

in the winter months and that the connections are extremely easy to disconnect without permanent damage or change to the physical structure of the trailers.

Attached or connected to any structure

The Appellants argued that all of the units under appeal are not attached or connected to any structure for the purposes of section 298(1)(bb)(ii) of the Act. Furthermore, the Appellants submitted that the Respondent's focus on accessory structures is misplaced, as it is the mobility of the trailers that is at issue in the present appeal. While the owners who testified at the hearing indicated that they keep their trailers mobile, the assessor acknowledged that he did not know whether any or all of the units have moved since the time he inspected the site.

Pursuant to the bylaws of the Town of Sundre, the trailers are required to maintain their mobility, and as such, cannot be connected or attached to a structure. The Appellants contended that if there is a breach of Town bylaws, it should be the bylaw officer and not the assessor who takes action. Additionally, while there may exist a temporary seal between the trailers and adjacent structures made from sponge rubber, foam, tape or vinyl trim material, such a seal does not connect or attach the trailers to the accessory structures, as contemplated by section 298(1)(bb)(ii) of the Act as it is not permanent.

The Appellants argued that the circumstances of adjacent structures in the RV Village are unique, and can be distinguished from circumstances were a trailer is permanently incorporated into a building. Moreover, witnesses for the Appellants gave evidence that connecting trailers to structures would result in physical damage to the trailers, as the ground on which the trailers are parked has the propensity to shift.

Lastly, the Appellants asserted that there is evidence that nearby recreational vehicle parks operate under similar circumstances as the RV Village, and that trailers in those parks are not assessed as improvements by the Town of Sundre.

<u>The subject trailers were in a state of storage on December 31, 2005</u>

Pursuant to section 289(2), each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10. The Appellants asserted that on December 31, 2005 the subject trailers were unused, had their wheels and hitches intact and in state of storage, and therefore were non assessable pursuant to section 298(1)(bb) of the Act. Furthermore, the Appellants suggested that in the case of travel trailers, an inspection by the assessor on one day of year does not reflect the condition of the travel trailers during the remainder of the year.

SUMMARY OF THE RESPONDENT'S POSITION

It was the Respondent's position that all of the trailers under appeal are assessable, as all of the trailers are connected to utility services provided by a public utility. Furthermore, the Respondent submitted that many of the subject trailers are also attached or connected to a structure, and are therefore assessable for that reason.

"Travel trailers", as defined in Section 284(1)(w.1) of the Act

The Respondent submitted that many of the subject trailers are assessable, as they do not meet the criteria of "travel trailers" enumerated in section 284(1)(w.1) of the Act. Pursuant to section 284(1)(w.1) of the Act, a "travel trailer" is a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road. Accordingly, if a trailer is not licensed to travel on a road, it does not qualify as a travel trailer for the purposes of the Act.

It was the Respondent's position that 28 of the units under appeal were not licensed, and therefore did not meet the definition of travel trailers in section 284(1)(w.1) of the Act. The assessor submitted evidence that 28 of the units under appeal did not display their licenses. Although the Appellants submitted evidence that the aforementioned travel trailers were in fact licensed, the Respondent argued that their evidence should be rejected by the MGB as the licenses were not purchased until after the assessment year. Moreover, it was submitted that there is no duty or onus upon the assessor to confirm with each owner that their trailer is in fact licensed. If the owners of a property which has been assessed wish to challenge the assessment, they have the burden of proving that the assessment was incorrect. If the Appellants cannot meet that burden, the MGB should presume that the assessment is correct.

Additionally, pursuant to section 284(1)(w.1) of the Act, the Respondent submitted that a travel trailer must be equipped to travel on a road. The Respondent brought the MGB's attention to MGB Board Order 33/98, where the MGB held that travel trailers which have become more or less permanent fixtures are not equipped to travel on the road. The Respondent submitted that 53 of the trailers under appeal, including Park Models, as well as other models which are not capable of being moved without significant effort, for example without the use of a bobcat, are not equipped to travel on a road, and are therefore assessable.

Not connected to a utility service provided by a public utility and not attached or connected to a structure

The Respondent submitted that in order to be exempt from assessment, trailers must both fit the definition of a travel trailer in section 284(1)(w.1), and meet the criteria enumerated in section 298(1)(bb) of the Act. Pursuant to section 298(1)(bb), a travel trailer is not assessable if it is not connected to any utility service and is not attached or connected to any structure. If either of the criteria in s. 298(1)(bb) are met, the trailers are assessable. It is only in the event that a trailer is

not connected to any utility service and not attached or connected to any structure, that the trailers will not be assessable.

The Respondent relied on legislative history to support its interpretation of section 298(1)(bb) of the Act. It submitted that when the Legislature transitioned from the *Municipal Taxation Act* (MTA) to the current *Municipal Government Act* (Act) and utilized "plain language drafting", the revision resulted in the unintended exemption from assessment of a significant amount of mobile units which were previously assessable. The Respondent argued that this result was unforeseen by the Legislature, and that the Act was further amended to ensure that mobile units or travel trailers would be assessable if they were not being used strictly for vacation travel.

The Respondent submitted that the Legislature, in making the amendment, was responding to the previous MGB decisions with the intent that the provision related to the assessment of travel trailers be read inclusively, rather than exclusively. In other words, the amendment was remedial in nature and was intended to make travel trailers assessable, unless the exemption was clearly applicable.

Connected to any utility services provided by a public utility

The Respondent submitted that all of the subject travel trailers are connected to utility services provided by a public utility. Accordingly, it was submitted that all of the subject trailers are assessable. The Respondent noted that all of the owners who testified provided evidence that they had utility services placed on their unit specifically for the use with their trailers. Moreover, the assessor provided the MGB with evidence that each owner had their own account with EPCOR Utilities Inc. (EPCOR), who provided the units with electricity throughout the year. There was no indication that any of the owners had terminated the electricity services provided by EPCOR at any time during the assessment year.

<u>Interpretation of the word "connected" in Section 298(1)(bb)(i)</u>

It was the Respondent's position that MGB Board Order 064/05, where the MGB held that travel trailers, while connected to electricity, were not connected enough to be considered assessable, was decided incorrectly. The Respondent submitted that the MGB "read in" a term to the effect that the travel trailer must be "substantially" or "permanently" connected to a utility.

The Respondent submitted that words must be interpreted in their natural and ordinary meaning, unless the statute indicates to the contrary. The "golden rule" of statutory interpretation is that the grammatical, natural and ordinary meaning of the statute must be utilized unless that interpretation creates an absurdity, repugnancy, or inconsistency with the rest of the enactment. Accordingly, when interpreting legislation, the MGB should only add or subtract words if there is absurdity or repugnance or inconsistency with the rest of the enactment, and in those cases, only to the extent of avoiding absurdity, repugnance or inconsistency.

Counsel for the Town of Sundre argued that the Appellants have not suggested that the plain language interpretation of section 298(1)(bb) results in absurdity, repugnancy, or inconsistency with the enactment. Instead, the Appellants have put forward hypothetical consequences based upon their interpretation of what the legislative intention actually was. The Respondent directed the MGB's attention to the decision of Re Regional Assessment Commissioner, Region No. 3 et al. and Graham et al [1993] 106 D.L.R. (4th) 577 (O.N.C.A.), where the Ontario Court of Appeal stated that merely suggesting different consequences which could result is insufficient to justify an interpretation which is contrary to the plain language of the statute.

Furthermore, the Respondent argued that if the Legislature had intended that travel trailers be exempt from assessment if they were only connected to a utility service for a short period of time, or were to be assessed only in the event that the connection was of a more permanent, or fixed nature, the Legislature would have said so, as they have elsewhere in the Act. The Respondent noted that similar types of qualifying words are used elsewhere in section 298. It was submitted that where the Legislature had wished to create an exception, they specifically included words of limitation to indicate their intent.

Accordingly, the word "connected" in section 298(1)(bb) should be interpreted in its natural and ordinary meaning.

Attached or connected to any structure

It was the Respondent's position that some of the trailers in question are attached or connected to other structures for the purposes of section 298(1)(bb)(ii). It was noted that the trailers are connected or attached by various means including foam sealants, rubber seals, weather stripping flaps, roofs, and siding. Furthermore, the Respondent submitted that based on the photographic evidence, and the testimony of the owners, the majority of the adjacent structures function with the trailer as one unit. With the exception of Mr. Purdue, all of the owners who testified before the MGB confirmed that there is no access to the trailer except through the door in the adjacent structure. Additionally, if the trailer is removed, the adjacent structure is open to the elements and subject to water damage.

Although the owners of the trailers testified that in their view, adjacent structures were not attached or connected for the purposes of section 298(1)(bb)(ii) of the Act, as they were not attached to the trailer using screws and nails, the Respondent submitted that the MGB should consider the plain meaning of the words "connected" and "attached". The word "attached" means to fasten affix or join. The word "connected" means joined in sequence, related or associated. Furthermore, the Respondent asked the MGB to consider the definition of the word "join", which means to connect or bring together, physically or otherwise; to place in contiguity; … to become connected. Based on the aforementioned definitions, it was the Respondent's position that some of the trailers under appeal are attached or connected to other structures, and therefore assessable.

The condition date of December 31 in section 289(2)

Pursuant to section 289(2), each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10. It was the Respondent's position that the condition date of December 31 does not determine assessability. Furthermore, it was submitted that owners of trailers cannot move their trailer off the property for one day in order to avoid assessment.

FINDINGS

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B, the MGB makes the a number of findings which are found below. These findings have been applied to each trailer under appeal individually in Appendix C.

1. Thirty-one trailers under appeal, as itemized in Appendix C, do not meet the definition of a travel trailer found in section 284(1)(w.1) of Act. Trailers which do not meet the definition of a travel trailer in section 284(1)(w.1) are assessable pursuant to the Act.

2. In order to be non assessable pursuant to section 298(1)(bb) of the Act, travel trailers need to be both not connected to a utility service provided by a public utility and not attached or connected to any structure.

3. All of the travel trailers under appeal, as itemized in Appendix C, are connected to utility services provided by a public utility and therefore not exempt from assessment pursuant to section 298(1)(bb)(i) of the Act.

4. The correct interpretation of the word "connected" in section 298(1)(bb)(i) of the Act its ordinary meaning.

5. Based on the MGB's findings with respect to Issues 2 and 3 above, it is not necessary to determine whether the trailers under appeal are attached or connected to a structure.

6. Section 289(2) of the Act must be considered when determining whether or not travel trailers are assessable.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

Appendix C to this order details the MGB's decision with respect to whether each unit under appeal meets the definition of a travel trailer in section 284(1)(w.1) of the Act and the exemption criteria enumerated in section 298(1)(bb) of the Act.

The appeals by the Appellants are denied and the assessments are set as follows.

Roll Numbers	Lot	Owner	Assessment
2604.000	4	L. Gaglardi	$69,320
2606.000	6	K. & L. Friesen	$60,320
2610.000	10	J. & E. Scheper	$48,430
2613.000	13	B. Douglas & J. Eldridge	$65,950
2617.000	17	M. & W. Gilbert	$43,120
2621.000	21	S. & R. Maarasco	$59,790
2623.000	23	K. & C. Chaloner	$41,520
2625.000	25	M. & L. Halket	$49,860
2627.000	27	E. Lundman	$51,540
2633.000	33	C. Galley	$63,950
2639.000	39	D. Brown	$44,420
2640.000	40	D. & W. Teare	$44,210
2650.000	20	J. & M. Hannay	$47,020
2651.000	51	B. & P. Squires	$45,880
2653.000	53	B. & L. Mcallister	$51,570
2660.000	60	J. Pedersen	$47,890
2662.000	62	R. & B. Turner	$54,710
2664.000	64	C. Blakey	$47,340
2667.000	67	R. & E. Kippen	$57,910
2676.000	76	L. Runquist	$51,720
2681.000	81	M., L. & V. Purdue	$47,780
2682.000	82	D. & B. Dalton	$45,620
2705.000	105	T. & S. Berling	$43,400
2706.000	106	J. & J. Bayko	$49,210
2708.000	108	L. Murphy & C. Burgess	$39,820
2709.000	109	S. MacLeod	$48,020
2726.000	126	J. & L. Mugleston	$51,490
2736.000	136	F. & P. Fisk	$50,540
2737.000	137	R. & L. Haskell	$42,470
2738.000	138	D. & L. McKaque	$62,430
2739.000	139	D. & M. Fisk	$35,920
2749.000	149	R. & D. Gerber	$46,840
2787.000	187	P. & R. Grossi	$42,310
2792.000	192	P. & G. Tallerico	$65,960

2802.000	202	D. Fraser	$51,720
2805.000	205	V. & D. Koester	$63,150
2809.000	209	D. & P. Grose	$48,030
2812.000	212	M. & P. Rudneu	$47,840

The appeals by the Respondent, Town of Sundre are allowed, and the assessments are set as follows.

Roll Numbers	**Lot**	**Owners**	**Assessment**
2615.000	15	B. Howe	$42,700
2624.000	24	R. Hunter	$50,440
2629.000	29	C. Pichette	$48,980
2634.000	34	C. Galley	$40,800
2638.000	38	J. Murray	$44,510
2654.000	54	A. & P. Mcliesh	$49,730
2677.000	77	V. & R. Burlock	$46,540
2697.000	97	J. & K. Kovacik	$40,610
2707.000	107	L. Runquist	$55,030
2710.000	110	P. Axsel	$43,690
2721.000	121	C. & A. Nernberg	$52,150
2722.000	122	P. & M. Coupland	$42,160
2724.000	124	A. & S. Friesen	$52,330
2725.000	125	G. & S. Van Tornhout	$48,770
2728.000	128	R. & E. Mckenzie	$48,230
2743.000	143	M. & B. Hildebrand	$44,480
2762.000	162	N. & L. Boychuk	$39,770
2774.000	174	R. & J. Campbell	$47,050
2777.000	177	M. & K Stewart	$50,980
2786.000	186	J. & F. Garside	$44,060
2799.000	199	H. H. Ager	$47,850
2810.000	210	N. Hogg	$36,110
2813.000	213	M. & J. Dubois	$53,740
2814.000	214	B. H. Deisigner	$47,080

It is so ordered.

REASONS

Interpretation of the Relevant Provisions of the Act

In order to determine the outcome of this appeal, the MGB considered the parties submissions regarding the correct interpretation of the relevant provisions of the Act.

As per section 285, each municipality must annually prepare an assessment for each property in the municipality unless the property is non-assessable pursuant to section 298(1). The definition of property in the Act includes land and improvements. Improvements are further defined to include, among other structures, designated manufactured homes. The definition of designated manufactured homes includes travel trailers. Accordingly, as travel trailers are property as defined in the Act, the MGB finds that they are *prima facie* assessable. In other words, travel trailers are assessable unless there is a specific provision in the Act which says differently. In this case section 298(1) specifically directs the manner in which travel trailers are to be treated.

Section 298(1)(bb) provides that "no assessment is to be prepared" for certain properties, including travel trailers that are (i) not connected to any utility services provided by a public utility, and (ii) not attached or connected to any structure. As “travel trailer” is a defined term for the purposes of Part 9 of the Act, in order to determine whether a particular trailer is non assessable as per section 298(1), it must first be determined whether the subject trailer meets the definition of a “travel trailer” found in section 284(1)(w.1). Accordingly, to be exempt from assessment, a trailer must be intended to provide accommodation for vacation use and licensed and equipped travel on a road. This definition appears to capture the essence of the typical holiday or vacation trailer commonly seen traveling on Alberta highways or parked in campgrounds or on private property throughout the province.

Furthermore, to be exempt from assessment, pursuant to section 298(1)(bb) of the Act, the subject travel trailer must not be connected to any utility service provided by a public utility, and must not be attached or connected to any structure. Only if the travel trailer meets both of the exemption criteria set out in section 298(1)(bb) of the Act, and is therefore both not connected to any utility service provided by a public utility and not attached or connected to any structure, will it be non assessable under the Act. On the other hand, where either one of the exemption criteria set out in section 298(1)(bb) do not apply to a travel trailer, then an annual assessment must be prepared.

When all of the references to travel trailers in the Act are analyzed as to what is intended respecting the assessability of travel trailers, it becomes clear that conventional travel trailers as defined in section 284(1)(w.1) of the Act are not to be assessed unless they become so affixed to a specific location that they are either connected to a utility service provided by a public utility or attached or connected to any structure.

The Appellants argued that section 298(1)(bb) of the Act should be interpreted to read that assessments should be prepared only for travel trailers that are connected to a utility service provided by a public utility and attached or connected to any structure. The MGB finds this interpretation to be flawed. Section 298(1) lists properties which are exempt from assessment, not properties which are to be assessed if the criteria enumerated in the Section are met. Travel trailers which meet only one of the criteria in section 298(1)(bb) are assessable. Accordingly, travel trailers that are connected to any utility service provided by a public utility but not connected or attached to a structure are assessable. Similarly, travel trailers that are connected or

attached to a structure, but are not connected utility service provided by a public utility are also assessable.

Therefore, the MGB concludes that a travel trailer must meet all of the tests or criteria enumerated in section 284(1)(w.1) and both of the exemption criteria enumerated in section 298(1)(bb) of the Act in order to be non assessable pursuant to the Act.

"Travel trailers", as defined in Section 284(1)(w.1) of the Act

In order to be exempt from assessment, the subject trailers must meet the threshold test based on the definition of a "travel trailer" found in the Act. Pursuant to section 284(1)(w.1) of the Act, a "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road. It was not disputed that the subject trailers are intended to provide accommodation for vacation use, therefore the MGB concluded that the parties agreed that all of the units under appeal were intended for vacation use.

To meet the definition of a travel trailer pursuant to section 284(1)(w.1) of the Act, the subject trailer must be licensed during the assessment year. Accordingly, the evidence of the Appellants that some of the aforementioned trailers were in fact licensed is rejected, as the licenses for those units were not obtained until after the assessment year. Furthermore, the argument of the Appellants that all of the units under appeal are capable of being licensed is of little relevance, as the Act defines travel trailers as trailers that are licensed, not trailers simply capable of being licensed.

Based on the evidence presented at the hearing, the MGB finds that 28 of the units under appeal were not licensed during the assessment year. These 28 units do not meet the definition of a travel trailer in section 284(1)(w.1) of the Act. Accordingly, these 28 units cannot be exempt from assessment.

Lastly, the definition of a travel trailer requires the trailers to be equipped to travel on a road. In other words, to be defined as a travel trailer, a trailer must possess whatever equipment is necessary to travel on a road while complying with Alberta law. The Respondent suggested that 53 of the units under appeal were not equipped to travel on a road, as they were not capable of being moved without significant effort, or, alternatively, have become more or less permanent fixtures. Although whether significant effort is required to move a trailer may support a finding that the trailer does not very often travel on a road, the MGB finds that the amount of effort required to move a trailer away from the objects that surround it should be given little or no weight in determining whether a trailer possesses the necessary equipment to enable it to travel on a road.

The Appellants submitted that as a result of the owners' compliance with the bylaws of the Town of Sundre and the Condominium Association, all of the trailers are capable of travelling on a road. Pursuant to the bylaws of the Town of Sundre and the bylaws of the Condominium

Association, the subject trailers must maintain their wheels and hitches, and cannot be placed on concrete foundations. It was the Appellants' position that in this case, the assessor did not show that hitches or wheels have been removed from any of the subject trailers, and could not state whether the subject trailers were mobile at any time during the assessment year. Therefore, the Appellants submitted that the units under appeal are equipped to travel on a road, as required by section 284(1)(w.1) of the Act.

The MGB finds that there is insufficient evidence to alter the ARB finding that 11 of the units under appeal, as itemized in Appendix C, were not equipped to travel on a road, as required by section 284(1)(w.1) of the Act. The onus is on the Appellants to provide the MGB with sufficient evidence to show the assessment is incorrect, and therefore, to show that these specific units were equipped to travel on the road. The MGB does not accept that the requirements of the Town's bylaws determine whether or not the subject units are equipped to travel on a road. This determination must be based on physical evidence related to the characteristics of each unit. On a balance of probabilities there is no conclusive evidence for the MGB to conclude that the 12 units were equipped to travel on a road. Accordingly, the Appellants have not discharged the onus of proof to show the assessment was wrong, and the MGB cannot disturb the ARB's finding.

With respect to the remaining units, which the ARB found are equipped to travel on road, the MGB finds that on a balance of probabilities there is insufficient evidence to alter the finding of the ARB. Accordingly, the Respondent, who in this case was appealing the decision of the ARB has not discharged the onus of proof to show that the ARB's finding was incorrect, and the MGB finds that the ARB finding that the remaining units are equipped to travel on a road cannot be disturbed.

<u>The meaning of the word "connected" in Section 298(1)(bb)(i)</u>

The MGB agrees with the Respondent that the ordinary meaning of the word "connected" must be applied when interpreting section 298(1)(bb). Where the legislature wished to create an exception and add to the ordinary meaning, they specifically included qualifying words to indicate their intent. In particular, section 298(1) includes the following examples of qualifying language:

(a)(b) *… that is owned by the Crown…*
(b.1) *… and used primarily to provide a domestic water supply service;*
(c) *… but not including any residence or the land attributable to the residence;*
(e)(iii) *… but not for the generation of electric power;*
(g)(h) *… but not including any improvement designed and used for…*
(i) *… but not including a road right of way that is…*
(i.1) *… but not including a street lighting system owned by a…*
(j) *… unless the property is located in…*
(k) *… but not including the following…*

(l) *… but not including any residence…*
(r) *… but not including gas conveyancing pipelines owned by rural gas co-operative associations,"… .*

While the Legislature has included qualifying words elsewhere in section 298, there is nothing in either the section or the Act as a whole which indicates that the word "connected" should be interpreted to mean "permanently connected" or "connected throughout the year", as proposed by the Appellants.

The fact some of the units under appeal receive water and sewage utility services through a shallow utility connection does not alter the finding that that the trailers are connected to a public utility service as contemplated by section 298(1)(bb)(i) of the Act. The utility services available to the trailers under appeal have been specifically planned, designed and approved for the particular trailer that has been placed on the lot. Moreover, the testimony of the nine owners who testified is consistent with the finding that the relationship between the utilities and the units under appeal does not change. All of the nine owners who testified before the MGB indicated that unless they have replaced the original unit with another trailer, their units have not been moved from their location in Sundre RV since their original placement on the lots.

Accordingly, the MGB is not convinced that there is any reason to depart from the ordinary meaning of word "connected." As emphasized by the Respondent, the ordinary meaning of the word "connected" is: joined in sequence, related or associated. Furthermore, "join" means to connect or bring together, physically or otherwise; to place in contiguity; to couple; to combine; to associate … to become connected.

Connected to utility services provided by a public utility

Based on the evidence submitted by the parties, the MGB finds that all of the trailers under appeal are connected to utility services provided by a public utility for the purposes of section 298(1)(bb)(i). Specifically, the MGB finds that all of the trailers under appeal are connected to electricity services provided by a public utility.

<u>Connected to electricity services provided by a public utility</u>

The Appellants argued that because the connection is made by placing a plug in an electrical outlet box, and because the 30 amp service is insufficient to run some household appliances, the trailers are not connected to electricity for the purposes of the Act.

Based on the Appellants' submissions, the MGB is not convinced that there is any reason to depart from the ordinary meaning of word "connected." The Act does not require the connection to be akin to that of an ordinary residential dwelling, nor does it specify that the connection should enable those occupying the trailers to power all appliances. Furthermore, rejecting the Appellants' interpretation and accepting that of the Respondent does not result in absurdity.

With respect, the fact that some of the units under appeal receive 30 amp service is of little relevance. The Act does not qualify that 30 amp electricity service is insufficient to be considered a utility service for the purposes of section 298(1)(bb)(i). The Act merely specifies that in order to be non assessable, the trailers cannot be connected to a utility service provided by a public utility. The MGB accepts the Respondent's evidence that each owner had their own account with EPCOR, and that EPCOR supplied the units with electricity throughout the year. Accordingly, the MGB finds that all of the trailers under appeal were connected to electricity.

The MGB does not accept that turning off the switch at the meter or unplugging the cable from the panel would result in the trailers being disconnected from electricity, where electricity is otherwise available. Such actions are analogous to turning off a switch or a breaker at an ordinary residential dwelling, and would not result in a disconnection for the purposes of section 298(1)(bb)(i) of the Act. Furthermore, the fact that the meter does not register any power consumption during the off season does not result in the termination of the connection for the purposes of the Act. It merely means that the electricity has not been accessed or used during the off season. There is no concept of seasonality in the Act.

Based on the finding that all units are connected to an electric public utility, all of the trailers under appeal are assessable pursuant to the Act.

Connected to water and sewage services provided by a public utility

Although the MGB based its decision on the finding that all of the units under appeal are connected to the electricity services provided by a public utility, the MGB notes that based on the ordinary meaning of the word "connected", all of the units under appeal are connected to water and sewage, utility services provided by a public utility. Additionally, the MGB notes that the trailers placed on Units 1-12 are connected to gas, a utility service provided by a public utility.

Attached or connected to any structure for the purposes of section 298(1)(bb)(ii)

Based on the MGB's finding that only if a travel trailer is both not connected to any utility service provided by a public utility and not attached or connected to any structure, will it be non assessable under the Act, and on the finding that all of the trailers under appeal are connected to electricity services provided by a public utility, the MGB finds that it is not necessary to determine whether each unit under appeal is attached or connected to a structure.

Effect of section 289(2) on the assessment of travel trailers

It was the Appellants' position that because the trailers under appeal were unoccupied as at December 31, pursuant to section 289(2) of the Act, the trailers were exempt from assessment. Section 289(2) states that each assessment must reflect the characteristics and physical condition

of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10.

With respect, the MGB does not agree. The fact that the trailers were not being used on December 31 does not affect the determination of whether they are assessable.

Although the fact that the trailers are not being used or occupied on December 31 does not effect the determination of whether they are assessable, section 289(2) dictates that each assessment must reflect the characteristics and physical condition of the property on December 31. The conditions that are found in section 298(1)(bb) of the Act, "not connected to a utility service provided by a public utility", and "not attached or connected to any structure", are aspects of the physical conditions and characteristics referred to in Section 289(2).

SUMMARY

The MGB concludes that pursuant to the Act, a travel trailer must meet all of the tests or criteria enumerated in Section 284(1)(w.1) and both of the exemption criteria enumerated in section 298(1)(bb) of the Act in order to be non assessable.

As detailed in Appendix C to this order, the MGB finds that some of the units under appeal are not licensed. Furthermore, the MGB finds that there was insufficient evidence to disturb the ARB's decision that certain units under appeal, as identified in Appendix C of this order, were equipped to travel on a road. As the units which are not licensed and the units which are not equipped to travel on a road do not meet the definition of a travel trailer found in section 284(1)(w.1) of the Act, pursuant to the Act, these units are assessable.

The MGB finds that all of the units under appeal are connected to utility services provided by a public utility for the purposes of section 298(1)(bb)(i). Specifically, the MGB finds that all of the trailers under appeal are connected to electricity services provided by a public utility. Accordingly, pursuant to the Act, all of the trailers under appeal are assessable.

Based on the MGB's finding that pursuant to the Act, a travel trailer must meet all of the tests or criteria enumerated in section 284(1)(w.1) and both of the exemption criteria enumerated in section 298(1)(bb) of the Act in order to be non assessable, and on the finding that all of the trailers under appeal are connected to electricity services provided by a public utility, the MGB finds that it is not necessary to determine whether each unit under appeal is attached or connected to a structure.

The details of the MGB's decision as to whether each unit under appeal met the definition of a travel trailer in section 284(1)(w.1) of the Act, and the exemption criteria enumerated in section 298(1)(bb) of the Act are found in Appendix C to this order.

BOARD ORDER: MGB 109/07

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 27th day of August 2007.

MUNICIPAL GOVERNMENT BOARD

(SGD.) J. Fleming, Member

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
C. Blakey	Agent for the Appellants
D. Dalton	Witness for the Appellants
C. Galley	Witness for the Appellants
B. Brown	Witness for the Appellants
M. Purdue	Witness for the Appellants
D. Grose	Witness for the Appellants
M. Rudneu	Witness for the Appellants
H. Ager	Witness for the Appellants
J. Garside	Witness for the Appellants
C. Burgess	Witness for the Appellants
S. Galley	Observer for the Appellants
H. Ager	Observer for the Appellants
B. Dalton	Observer for the Appellants
W. Barclay	Legal counsel for the Respondent
A. Shantz	Assessor for the Respondent
S. Washington	Observer for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
Exhibit A-1	Hearing Brief of the Appellants
Exhibit A-2	Appellants' table listing trailers appealed by the Respondents displaying licenses
Exhibit A-3	Appellants' table listing trailers appealed by the Appellants displaying licenses
Exhibit A-R1	Rebuttal Submissions of the Appellants
Exhibit A-S1	Closing Submissions of the Appellants
Exhibit R-4	Submissions of the Respondent
Exhibit R-5	Assessment Brief of the Respondent
Exhibit R-R1	Rebuttal Submissions of the Respondent
Exhibit R-S1	Closing Submissions of the Respondent
Exhibit R-S2	Respondent's table listing the assessment amount attributable to the travel trailer component of each property under appeal

BOARD ORDER: MGB 109/07

APPENDIX "C"

MGB'S DECISION AS TO WHETHER EACH UNIT UNDER APPEAL MET THE DEFINITION OF A TRAVEL TRAILER IN SECTION 284(1)(W.1) OF THE ACT AND THE EXEMPTION CRITERIA ENUMERATED IN SECTION 298(1)(BB) OF THE ACT.

			284(1)(w.1) "Travel Trailer"			**298(1)(bb)(i)**	
Roll. Number	**Lot**	**Assm't under appeal**	**Not** intended for Vacation Use	**Not** Licensed	**Not** Equipped to travel on a road	**Connected** to a utility service provided by a Public Utility	**MGB Decision**
2604.000	4	$ 69,320		X	N/A	N/A	**Confirm**
2606.000	6	$ 60,320				X	**Confirm**
2610.000	10	$ 48,430				X	**Confirm**
2613.000	13	$ 65,950		X	N/A	N/A	**Confirm**
2615.000	15	$ 29,000				X	**Set at $ 42,700**
2617.000	17	$ 43,120				X	**Confirm**
2621.000	21	$ 59,790		X	N/A	N/A	**Confirm**
2623.000	23	$ 41,520		X		N/A	**Confirm**
2624.000	24	$ 34,330		X		N/A	**Set at $ 50,440**
2625.000	25	$ 49,860				X	**Confirm**
2627.000	27	$ 51,540				X	**Confirm**
2629.000	29	$ 34,990				X	**Set at $ 48,980**
2633.000	33	$ 63,950			N/A	N/A	**Confirm**
2634.000	34	$ 31,690				X	**Set at $ 40,800**
2638.000	38	$ 34,130				X	**Set at $ 44,510**
2639.000	39	$ 44,420		X		N/A	**Confirm**
2640.000	40	$ 44,210		X		N/A	**Confirm**
2650.000	50	$ 47,020		X		N/A	**Confirm**
2651.000	51	$ 45,880		X		N/A	**Confirm**
2653.000	53	$ 51,570				X	**Confirm**
2654.000	54	$ 31,580				X	**Set at $ 49,730**
2660.000	60	$ 47,890				X	**Confirm**
2662.000	62	$ 54,710		X		N/A	**Confirm**
2664.000	64	$ 47,340				X	**Confirm**
2667.000	67	$ 57,910				X	**Confirm**
2676.000	76	$ 51,720		X	N/A	N/A	**Confirm**
2677.000	77	$ 31,160				X	**Set at $ 46,540**
2681.000	81	$ 47,780		X		X	**Confirm**
2682.000	82	$ 45,620				X	**Confirm**
2697.000	97	$ 30,370		X		N/A	**Set at $ 40,610**
2705.000	105	$ 43,400		X		N/A	**Confirm**
2706.000	106	$ 49,210				X	**Confirm**
2707.000	107	$ 33,880		X		N/A	**Set at $ 55,030**

BOARD ORDER: MGB 109/07

2708.000	108	$ 39,820			X	**Confirm**
2709.000	109	$ 48,020			X	**Confirm**
2710.000	110	$ 29,000	X		N/A	**Set at $ 43,690**
2721.000	121	$ 33,240	X		N/A	**Set at $ 52,150**
2722.000	122	$ 29,000			X	**Set at $ 42,160**
2724.000	124	$ 33,030	X		N/A	**Set at $ 52,330**
2725.000	125	$ 30,710			X	**Set at $ 48,770**
2726.000	126	$ 51,490			X	**Confirm**
2728.000	128	$ 31,600			X	**Set at $ 48,230**
2736.000	136	$ 50,540	X	N/A	N/A	**Confirm**
2737.000	137	$ 42,470	X		N/A	**Confirm**
2738.000	138	$ 62,430		N/A	N/A	**Confirm**
2739.000	139	$ 35,920	X	N/A	N/A	**Confirm**
2743.000	143	$ 30,930	X		N/A	**Set at $ 44,480**
2749.000	149	$ 46,840			X	**Confirm**
2762.000	162	$ 29,000	X		N/A	**Set at $ 39,770**
2774.000	174	$ 32,830			X	**Set at $ 47,050**
2777.000	177	$ 29,000			X	**Set at $ 50,980**
2786.000	186	$ 29,000			X	**Set at $ 44,060**
2787.000	187	$ 42,310	X	N/A	N/A	**Confirm**
2792.000	192	$ 65,960	X	N/A	N/A	**Confirm**
2799.000	199	$ 29,000			X	**Set at $ 47,850**
2802.000	202	$ 51,720	X		X	**Confirm**
2805.000	205	$ 63,150		N/A	N/A	**Confirm**
2809.000	209	$ 48,030			X	**Confirm**
2810.000	210	$ 29,000	X		N/A	**Set at $ 36,110**
2812.000	212	$ 47,840			X	**Confirm**
2813.000	213	$ 29,000	X		N/A	**Set at $ 53,740**
2814.000	214	$ 29,000			X	**Set at $ 47,080**

TAB 8

Citation: C&C Holdings v. Assessor Area #04-Nanaimo-Cowichan
2003 BCSC 230

Date: 20030211
Docket: L022486
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

C & C HOLDINGS INC.
DUKE POINT REMAN LTD. AND
MID-ISLAND REMAN INC.

APPELLANTS

AND:

ASSESSOR OF AREA #04 - NANAIMO-COWICHAN

RESPONDENT

AND IN THE MATTER OF THE DECISION OF THE BOARD DATED THE 3RD DAY OF JULY, 2002, IN SUCH APPEAL

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE PITFIELD

Counsel for the Appellants: Brian J. Wallace, Q.C.
James D. Fraser

Counsel for the Respondents: John E.D. Savage

Date and Place of Hearing: December 10, 2002
Vancouver, B.C.

INTRODUCTION

[1] This is an appeal by stated case under s. 65 of the *Assessment Act*, R.S.B.C. 1996, c. 20 from a decision of the Property Assessment Appeal Board regarding the classification of certain lumber manufacturing facilities for property taxation purposes. The appellants say that the principle of equitable assessment applicable to properties within the same taxing jurisdiction should be extended to properties in different taxing jurisdictions.

[2] The Board states the question of law as follows:

> Did the Board err in law by misinterpreting or misapplying s. 9 of the *Assessment Authority Act*, R.S.B.C. 1996, c. 21; the *Assessment Act*, and in particular, s. 57(1)(a); the *Prescribed Classes of Property Regulation,* B.C. Regulation 438/81; and the *Exemption from Industrial Improvements Regulation,* BC Regulation 97/88, in finding that the Board cannot ensure the equitable assessment, and in particular the equitable classification, of the property that is the subject of the appeal, relative to properties outside of the municipality or rural area where the property is located?

[3] The background to this appeal is the following.

[4] Duke Point Reman Ltd. and Mid-Island Reman Inc. operate lumber remanufacturing plants in the City of Nanaimo. Other companies that are not parties to this appeal carry on lumber remanufacturing businesses in the adjacent District of North

Cowichan. The City and the District are separate taxing jurisdictions for property tax purposes.

[5] In 1999, the Area Assessor classified the Duke Point and Mid-Island plants as property in Class 4 (major industry), as opposed to Class 5 (light industry). Both plants were assessed as Class 4 properties in 2000 and 2001.

[6] Mid-Island successfully appealed its 1999 assessment to a Property Assessment Review Panel resulting in the reclassification of its plant as property in Class 5 in that year.

[7] Duke Point appealed its 1999 property tax assessment on the basis that there were inequities in the classification of its plant and that of Mid-Island. Duke Point and Mid-Island both appealed their 2000 and 2001 assessments on the basis that similar remanufacturing plants located in the District of North Cowichan had been classified as properties in Class 5. Although they are separate taxing jurisdictions, Nanaimo and the District of North Cowichan are part of the same assessment area described as Area #04 - Nanaimo-Cowichan.

[8] The Board concluded that there must be consistency in the assessment of the Duke Point and Mid-Island plants because both were situated in the City of Nanaimo. The Board was

powerless to alter the 1999 Mid-Island assessment because it was not under appeal. To ensure equitable assessment, the Board reclassified the Duke Point plant as property in Class 5 for 1999. The Board affirmed the Assessor's classification of each plant in Class 4 for 2000 and 2001, stating that it could only be concerned with equitable assessment within a particular municipal district or rural area, but not as between municipal districts and rural areas, even those included in the same assessment area. Duke Point and Mid-Island complain that the Board erred in law and this stated case, is the result.

[9] The Board reached its decision for 1999, 2000 and 2001 on the following basis. Each of the Duke Point and Mid-Island plants were "industrial improvements" within the meaning of s. 20(1)(f) of the *Assessment Act*. As such, the plants were properties in Class 4 (major industry) unless exempt from that classification in accordance with the *Exemption from Industrial Improvements Regulation*, B.C. Reg. 97/88, in which case, they would be included in Class 5 (light industry).

[10] The *Regulation* describes the exemption applicable to plants of the kind operated by Duke Point and Mid-Island as follows:

Plant	Capacity
Remanufacturing plants, not part of a sawmill, which manufacture lumber or other wood products for rough lumber or cants, but not raw logs	24 million fbm [foot board measure] per year based on 480 shifts a year of 8 hours each shift

[11] The Board held that the term “capacity” in the *Regulation* means design capability or that which a plant is capable of producing, not that which a plant actually produces, and that production potential should be measured by reference to input rather than output. The determination of input potential must reflect operating anomalies such as a requirement that some raw material be processed through a part of the plant more than once, thereby reducing overall plant capacity.

[12] Having interpreted the *Regulation* in a manner that is unobjectionable, the Board concluded that the capacity of the Duke Point and Mid-Island plants was greater than the specified minimum in 1999, 2000 and 2001. That finding resulted in an inequity in 1999 that had to be cured.

[13] The Board was advised that there were five lumber remanufacturing plants in the District of North Cowichan, three of which were assessed as properties in Class 4 and two as Class 5. The Board was advised that the Area Assessor was investigating the classification of one of the Class 5 plants

with a view to reclassification to Class 4. Having decided that assessments in other jurisdictions were irrelevant, the Board declined to consider the question whether either of the Class 5 properties in the District of North Cowichan was entitled to exclusion from Class 4 because of the *Regulation*.

THE SIGNIFICANCE OF CLASSIFICATION

[14] The classification of property is material in the assessment of property tax. Separate municipalities levy different rates of tax on different classes of property. The provincial government prescribes the rate of school tax payable under the *School Act*, R.S.B.C. 1996, c. 412 by properties in each class. The provincial government also prescribes and collects an assessment levy payable on each class of property. The rates of school tax and assessment levy vary in amount by class, but apply uniformly to all properties of the same class wherever situated in the province.

[15] Generally, the rates of school tax and assessment levy are greater for properties in Class 4 than for those in Class 5. The evidence in this case established that approximately 25% of the total tax bill paid by Duke Point and Mid-Island represented school tax and the assessment levy collected by the provincial government.

[16] It follows that if the Area Assessor has not treated the remanufacturing plants in the District of North Cowichan and the City of Nanaimo in the same manner resulting in the different classification of plants with capacity in excess of the minimum specified by the *Regulation*, the operators in the City of Nanaimo will pay a greater school tax and assessment levy tax than their competitors in the neighbouring district, resulting in a significant competitive disadvantage. A similar result arises if the *Regulation* is applied differently by different area assessors in other parts of the province.

[17] It is an accepted principle of property taxation that taxing authorities must deal even-handedly with all taxpayers in a municipality or rural area and that all taxpayers within a class be treated in the same way: *Assessor of Area 09 – Vancouver v. Bramalea Ltd.* (1990), 52 B.C.L.R. (2d) 218 at 253, applied in *Assessor of Area 09 – Vancouver v. Lount*, [1994] B.C.J. No. 1332 (S.C.), aff'd (1995), 10 B.C.L.R. (3d) 92 (C.A.). The issue is whether taxpayers in different taxing jurisdictions, but within the same class, must be treated in the same way.

RELEVANT LEGISLATION

[18] The following provisions of the *Assessment Authority Act* and the *Assessment Act* are relevant to the determination.

Assessment Authority Act, R.S.B.C. 1996, c. 21

Purpose of the authority

9 The purpose of the authority is to establish and maintain assessments that are uniform in the whole of British Columbia in accordance with the *Assessment Act*.

Assessment Act, R.S.B.C. 1996, c. 20

2 Before October 31 of each year, the commissioner must supply to each municipality

(a) an estimate of the total assessed value of each property class in the municipality, and

(b) for each property class specified for the purpose of this section by regulation of the Lieutenant Governor in Council, estimates of the distribution of value changes that have occurred in the property class in the municipality since the authentication of the previous assessment roll and the completion of any supplementary roll.

3(1) On or before December 31 of each year, the assessor must

(a) complete a new assessment roll containing a list of each property that is in a municipality or rural area and that is liable to assessment, and

(b) mail a notice of assessment to each person named in the assessment roll.

19(1)In this section:

"actual value" means the market value of the fee simple interest in land and improvements;

31(1)The minister must appoint property assessment review panels to review and consider the annual

assessments of land and improvements in British Columbia.

32(1)Subject to the requirements in section 33, a person may make a complaint against an individual entry in an assessment roll on any of the following grounds:

(a) there is an error or omission respecting the name of a person in the assessment roll;

(b) there is an error or omission respecting land or improvements, or both land and improvements, in the assessment roll;

(c) land or improvements, or both land and improvements, are not assessed at actual value;

(d) land or improvements, or both land and improvements, have been improperly classified;

(e) an exemption has been improperly allowed or disallowed.

38(1)A review panel may review and consider the assessment roll and the individual entries made in it to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area.

(2)For the purpose of subsection (1), a review panel

(a) may investigate the assessment roll and the individual entries made in it, whether or not the investigation is based on a complaint or an assessor recommendation,

(b) must adjudicate the matters set for its consideration under section 36,

(c) when considering whether land or improvements are assessed at actual value,

must consider the total assessed value of the land and improvements together, and

(d) may direct amendments to be made to the assessment roll, subject to the requirements of subsections (4) to (6).

50(1)Subject to the requirements of subsections (2) to (4), a person may appeal to the board if the person is dissatisfied

(a) with a decision of a review panel, or

(b) with an omission or refusal of the review panel to adjudicate a complaint made under section 33(1).

(2)The appeal must be based on one or more of the grounds referred to in section 32(1).

57(1)In an appeal under this Part, the board

(a) may reopen the whole question of the property's assessment to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area, and

(b) when considering whether land or improvements are assessed at actual value, must consider the total assessed value of the land and improvements together.

(2)Nothing in subsection (1)(a) empowers the board to determine an assessment of a property other than the property that is the subject of the appeal, except to the extent permitted under subsection (3).

[19] When considering the meaning and effect of the legislation to which I have referred, I must respect the fundamental modern rule of statutory interpretation framed by

E.A. Driedger in his text, *The Construction of Statutes* (Toronto: Butterworths, 1974) at 67, as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

The Supreme Court of Canada declared the modern rule to be the preferred rule in *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at 41.

[20] Duke Point and Mid-Island say that uniformity in assessment is the objective of the *Assessment Act* and say further that equity in classification, a fundamental common law assessment principle, is not confined to properties within a taxing jurisdiction, but must be achieved province-wide.

[21] Section 9 of the *Assessment Authority Act* contemplates uniformity of assessment, but specifies that uniformity is to be achieved in accordance with the *Assessment Act*. The Board reasoned as follows in relation to the question of its capacity to ensure equitable assessments as between municipalities or rural districts:

> [65] In *Brewers 2000* the Board held that the phrase "applied in a consistent manner" applies to both "accuracy", which includes classification, and to "actual value". The phrase "in the municipality or rural area", must also modify

> both "accuracy" and "actual value" thereby requiring the consistent application and valuation principles within the municipality or rural area, but not necessarily outside the municipality or rural area.
>
> [66] That consistency is required within a municipality or rural area is reinforced by other sections of the *Assessment Act*. An assessment roll is made for a municipality or rural area (section 3). The Assessor must provide a copy of the assessment roll to the appropriate taxing jurisdiction (section 7). A local government may make a complaint against all or part of the completed assessment roll relating to property within its taxing jurisdiction (section 32(3)). The review panel may review and consider the assessment roll and the individual entries made in it to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area (section 38(1)). The completed assessment roll as confirmed and authenticated by a review panel is, unless changed under another provision of the *Act*, the assessment roll of the municipality or rural area as the case may be, until a new roll is revised, confirmed and authenticated by the review panel (section 11).

[22] With respect, I do not agree with the Board's conclusion that the phrase "in the municipality or rural area" modifies the word "accuracy" in s. 57(1) which permits the Board to "reopen the whole question of the property's assessment to ensure accuracy and that assessments are at actual value applied in a consistent manner in the municipality or rural area".

[23] The text of s. 57(1) is not precise. One part of the direction is to "ensure accuracy". Another part is to "ensure… that assessments are at actual value applied in a consistent manner". It is difficult to identify the text to which the word "applied" relates but it appears to be a reference to the words "actual value" although actual value is determined rather than applied. The intent must have been to permit the Board to ensure that actual value was *determined* in a consistent manner. Construed in that manner, the direction is to ensure consistency of determination of actual value in a municipality or rural area. In my opinion, it strains the wording of the section to suggest that the phrase "in the municipality or rural area" also modifies the word "accuracy".

[24] It follows that if the Board's decision is to prevail, it must be justified by reference to the purpose and scheme of the *Act*.

THE PURPOSE AND SCHEME OF THE ACT

[25] The Board is a creature of statute. As such, it may only make a decision of a kind specifically authorized by the statute. Section 57(1), directed to assessments and actual value, does not directly permit the Board to interfere with the classification of property. At the same time, s. 50 of the *Act* specifies that a taxpayer who is dissatisfied with a

review panel's decision in relation to a matter appealed to the review panel, may appeal to the Board. Section 32 provides that one of the issues that may be appealed to a review panel is the classification of property.

[26] To give effect to the scheme of the *Assessment Act*, the question of accuracy must encompass the classification of property because classification is a factor in the determination of value. That result follows from the fact that s. 19(3)(f) requires the assessor to give consideration to the selling price of comparable land and improvements in the determination of actual value. Comparable land and improvements must be those of the same class. I would also remark that s.20 of the *Act* provides specific rules for the determination of the actual value of Class 4 properties. Those rules are different from the general rules in s. 19 applicable to Class 5 properties.

[27] Since classification affects the determination of actual value and, therefore the amount of the assessment which is defined as the valuation of property for taxation purposes, s. 57 must be construed to require the Board to ensure consistency of classification within a municipality or rural area. That being the statutory direction, any common law requirement that could be said to require consistency as

between municipalities and rural areas has been expressly overruled or constrained by statute. In that regard, one must not lose sight of the fact that the root of the consistency and fair treatment principle is found in *Jonas v. Gilbert* (1881), 5 S.C.R. 356 in which the Supreme Court of Canada observed that the requirement of equality and fairness as between classes of taxpayers was subject to legislative override. It is also noteworthy that in *Jonas*, the Court applied the statement of general principle to taxpayers within a single taxing jurisdiction.

[28] The conclusion that the common law principles of equity and consistency in classification are to be considered within a municipality or rural area and not across boundaries is consistent with the scheme of the *Assessment Act* and its purpose, quite apart from statutory interpretation. In that regard, I adopt the reasoning of the Board in para. [66] of its reasons, *supra*, to which I would add the following.

[29] The appellants claim that there should be consistency as between adjacent taxing jurisdictions within the same assessment area because of the principle of uniformity in s. 5 of the *Assessment Authority Act*. Were their position to prevail, there is no reason why a taxpayer should be denied the opportunity to appeal an assessment on the basis of inter-

jurisdictional inconsistency, however geographically remote the location of the inconsistently classified property might be. Entitlement of that kind would be inconsistent with the scheme of the *Assessment Act* which recognizes the individuality of municipal or rural area taxing jurisdictions and would create an unacceptably burdensome review and appeal process.

[30] In this case, the thrust of the appellants' concern, which is competitive disadvantage because of errors in classification, can be cured through appeals by the owners of Class 4 plants in the adjacent rural district directed at ensuring consistency of classification in their district just as Duke Point appealed its assessment and obtained consistency, relative to Mid-Island, for the 1999 taxation year.

[31] For the foregoing reasons, the answer to the question stated by the Board is "No". The respondent is entitled to costs.

"I.H. Pitfield, J."
The Honourable Mr. Justice I.H. Pitfield

February 17, 2003 – ***Corrigendum to the Reasons for Judgment*** issued by Mr. Justice I.H. Pitfield advising that the word "against" should be deleted from paragraph [3].

Paragraph [10] should read as follows:

> [10] The *Regulation* describes the exemption applicable to plants of the kind operated by Duke Point and Mid-Island as follows:
>
> | Plant | Capacity |
> |---|---|
> | Remanufacturing plants, not part of a sawmill, which manufacture lumber or other wood products for rough lumber or cants, but not raw logs | 24 million fbm [foot board measure] per year based on 480 shifts a year of 8 hours each shift |

The reference to paragraph [11] should be deleted.

Former paragraph [12] will be renumbered [11] and the paragraph numbering changed thereafter consecutively.

Paragraph [23] formerly [24] should read:

> … The intent must have been to permit the Board … in a consistent manner …

TAB 9

LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Fort Hills Energy Corp. v Provincial Assessor, 2024 ABLPRT 149

Date: 2024-03-21
File No. DIP19/FORT/WILS-01; DIP20/FORT/WILS-01; DIP21/FORT/WILS-01
Decision No. LPRT2024/MG0149

In the matter of 2019/2020/2021 Designated Industrial Property Assessment Complaints filed by Wilson Laycraft on behalf of Fort Hills Energy Corp.

BETWEEN:

Fort Hills Energy Corp.
(as represented by Wilson Laycraft LLP)

Complainant,

-and-

The Provincial Assessor
(as represented by Brownlee LLP)

Respondent,

- and -

The Regional Municipality of Wood Buffalo
(as represented by Harper Lee Law)

Intervenor.

BEFORE: H. Williams, Presiding Officer
W. Johnston,
D. Mullen,
D. Roberts,
L. Yakimchuk
(the "Panel")

Attending: D. Graham, Case Manager

APPEARANCES AND WRITTEN SUBMISSIONS

For the Complainant:	Counsel, Wilson Laycraft LLP G. Ludwig, KC B. Findlater A. Louie B. Dell
For the Respondent:	Counsel, Brownlee LLP A. Kozak G. Plester
For the Intervenor:	Counsel, Harper Lee Law A.P. Frank H.L. Overli, KC

ORGANIZATION OF THIS DECISION

This decision is organized as follows:

SECTION 1 – Procedural Background

SECTION 2 – Complaint Background and Requested Assessment

SECTION 3 – Issues

SECTION 4 – Decision and analysis for issues.

SECTION 5 – Summary of Witness testimony provided by the Complainant

SECTION 6 – Summary of Witness testimony provided by the Respondent

SECTION 7 – Interim decision and direction to the parties.

SECTION 1 - PROCEDURAL BACKGROUND

[1] The hearing occurred using virtual technology, on the following dates:

July 18 - July 21, 2023
July 24 – August 4, 2023
August 7 – August 24, 2023
September 12 – September 15, 2023
October 4 – October 6, 2023
November 7 – November 10, 2023

[2] A number of Preliminary and Procedural matters were raised by the Complainant, Respondent, and Intervenor prior to the commencement of the merit hearing. The disposition of those matters occurred based on a letter to the participants with reasons to follow or were contained within a decision on those matters. A table outlining those matters is as follows:

Hearing Date	Issue(s)	Date Parties Advised of Decision	Written Decision Date	Decision Number
22-Feb-22	Postponement request and disclosure schedule	25-Feb-22	25-Feb-22	LPRT2022/MG0350
12-Apr-22	Role of the Intervenor, confidentiality protocols, merit hearing location, and merit hearing schedule.	29-Apr-22	29-Apr-22	LPRT2022/MG0583
21-Jun-22	Presiding officer, clarification of reference term, role of the Intervenor, and confidentiality protocols.	24-Jun-22	24-Jun-22	LPRT2022/MG0912
21-Jun-22	Presiding officer, clarification of reference term, role of the Intervenor, and confidentiality protocols. - Decision with reasons.	24-Jun-22	04-Oct-22	LPRT2022/MG1333
11-Jul-22	Request for postponement	14-Jul-22	24-Oct-22	LPRT2022/MG1333
23-25 May-23, 9-Jun-23, 12-Jun-23	Respondent request to compel settlement agreements, Respondent request to exclude Complainant's rebuttal disclosure, Intervenor request to make submissions, Parties' proposed scope of expert witnesses	07-Jun-23 20-Jun-23	17-Jul-23	LPRT2023/MG0389
06-Jul-23	Panel direction on PCNs and hearing schedule.	06-Jul-23	17-Jul-23	LPRT2023/MG390
14-Jul-23	Sur-sur-rebuttal	31-Aug-23		Inc. in Merit Decision

[3] The July 14, 2023 decision was delivered by a letter dated August 31, 2023. The reasons for this decision are included in this decision in Appendix "A".

[4] Other preliminary or procedural matters raised during the merit hearing are also included in Appendix "A", including the decision, reasons for decision, and findings of the Panel.

SECTION 2 – COMPLAINT BACKGROUND AND REQUESTED ASSESSMENT

Background

[5] Fort Hills Energy Corp. ("Fort Hills", "FHEC", or the "Complainant") is the owner of the subject property, (the "Fort Hills Project"). The Provincial Assessor ("PA" or Respondent") is the assessor and the Regional Municipality of Wood Buffalo ("RMWB" or the "Intervenor") is the taxation authority to whom property taxes are paid by Fort Hills.

[6] The Fort Hills Project is a mine-based oil sands extraction and processing project, designed to produce 194,000 barrels/day of bitumen. The project, in its current configuration, was originally contemplated in the late 1990s, and was restarted in 2010 with a new Design Basis Memorandum ("DBM"). The project continued into Front End Execution and Design ("FEED") in 2011 and the project was fully sanctioned by the partners in 2013. Construction commenced in mid-2013 and the first oil for sale was achieved in 2018.

[7] The subject property includes land, buildings and structures ("B&S"), and machinery and equipment ("M&E"). There is no disagreement between the parties with respect to the land value. Additionally, the differences with respect to buildings and structures have been agreed to. The sole area of disagreement lies with machinery and equipment.

[8] In the property assessment scheme in Alberta, certain properties have been categorized as Designated Industrial Property ("DIP"). These properties are some of the largest assessed properties in the Province. Effective January 1, 2018, the *Municipal Government Act* was amended and DIPs were delegated to the PA to conduct the assessment, unlike other properties where the local municipal assessor would conduct the assessment. Prior to 2018, the RMWB prepared the assessment of Fort Hills.

[9] The manner in which M&E is assessed is not based on a market value approach, rather it is a regulated assessment. In order to conduct the assessment of M&E, the following assessment legislation and regulations are considered:

i. The *Municipal Government Act* ("*MGA*"),
ii. The *Matters Relating to Assessment and Taxation Regulation* ("MRAT"),
iii. The *Alberta Machinery & Equipment Assessment Minister's Guidelines* ("*Minister's Guidelines*"), and
iv. The *Alberta 2005 Alberta Construction Cost Reporting Guide* ("CCRG").

[10] The *MGA* provides the overall direction, rules, and definitions regarding preparing a property assessment. *MGA* section 292(2) provides that the assessment must reflect:

(a) the valuation standard set out in the regulations; and
(b) the specifications and characteristics of the property as specified in the regulations.

[11] *MRAT* provides the valuation standard for M&E. *MRAT* section 12(1) states "the valuation standard for machinery and equipment is that calculated in accordance with the applicable procedures set out in the Alberta Machinery and Equipment Assessment *Minister's Guidelines*." *MRAT* section 12(2) states "in preparing an assessment for machinery and equipment, the Assessor must follow the applicable procedures referred to in subsection (1)". A final factor in the regulated M&E assessment is the statutory level of 77%. *MRAT* section 12(3) states the M&E assessment "must reflect 77% of its value", which results in a regulated 23% reduction for all regulated M&E assessments. This 23% reduction is not used for other property types and is unique to M&E assessments.

[12] The steps taken by the assessor include the calculation of the components of the assessment:

Assessed Value = "Schedule A" X "Schedule B" X "Schedule C" X "Schedule D" X 77%

Where:

"Schedule A" is the base cost ascribed to the asset. The base cost includes the actual costs and excludes certain costs allowed for in the *CCRG*;

"Schedule B" is the assessment year modifier which measures the asset from 2005 to the current year;

"Schedule C" is the regulated depreciation factor. The regulated depreciation factors are truncated by starting at 75% (25% immediate deprecation) and ending at 40% to reflect Government of Alberta policy;

"Schedule D" is the additional depreciation for values not captured in the Schedule "C" depreciation factors; and

77% is the regulated reduction identified above.

The calculation is depicted as follows:

[13] Fort Hills and the PA (the "Parties") submitted that they agree on the methodology to calculate the M&E assessment. They also agree that Schedule "A" is the prescribed base cost. The disagreement between the Parties lies in determining the base cost.

[14] The legislation provides that the property owner is responsible for providing the actual cost of construction to the assessor. The legislation allows the property owner to claim certain excluded costs which reduces the prescribed base cost (Schedule "A"). In this matter, Fort Hills has proposed a number of costs it contends should be excluded as abnormal costs. On some of those costs the PA has agreed, and on others, the PA does not accept the proposed exclusion. The refusal of certain of Fort Hills proposed exclusions is the subject of this complaint.

Requested Assessment

[15] The complaints which are the subject of this appeal relate to the assessments for tax years 2019, 2020, and 2021, or assessment years 2018, 2019, and 2020. For ease of reference in this decision any reference to the year will refer to the tax year. Although all three (3) years are under complaint, this decision deals primarily with 2019, as that will determine the prescribed base cost for the property. Both 2020 and 2021 will then use the same prescribed base cost with any applicable addition or deletions considered.

[16] During the hearing there were various iterations of what the requested assessment should be. Towards the conclusion of the hearing, the Panel requested the Parties provide their respective requested assessments for each category of property. The following depicts the Parties' positions at the conclusion of the hearing:

2019 TY	**Original Assessment**	**Complainant Initial Request**	**Complainant Revised Request**	**Respondent Requested Assessment**
	$	**$**	**$**	**$**
Land	25,520,930	25,520,930	25,520,930	25,520,930
Building & Structures	782,705,610	787,966,483	784,209,633	784,209,633
Machinery & Equipment	4,534,840,680	3,254,396,787	3,129,490,990	5,139,383,533
Total	**5,343,067,220**	**4,067,884,200**	**3,939,221,553**	**5,949,114,096**

[17] As noted previously, the differences between the Parties relate to certain abnormal cost exclusions included in the prescribed base cost. The following is a summary of the total costs, excluded or agreed to costs, and the respective Parties' positions on the disputed costs (Complainant Exhibit 70-C and Respondent Exhibit 67-R):

2019TY M&E Project Cost $13,110,200,455	Complainant Revised Project Cost $	Respondent Revised Project Cost $
Machinery & Equipment comprised of	13,110,200,455	13,110,200,445
Joint Recommendations	3,969,442,416	3,969,442,416
Linear Portion	73,272,724	73,272,724
Proposed Assessable	5,403,053,051	8,904,394,507
	9.445,768,191	12,947,109,647
Proposed Exclusions	3,664,432,264	163,090,808

[18] The table above represents values that are described as follows:

M&E Project costs – the value of total construction costs provided by Fort Hills

Joint Recommendations – the amount that the Parties have mutually agreed on as proposed exclusions in an agreement finalized in March 2022

Linear Portion – assessed separately and agreed to by the Parties

Proposed Assessable – the value ascribed by each Party as to what is assessable

Proposed Exclusions – the value ascribed by each Party as to what should be an excluded cost

[19] As identified above, the Complainant considers $3.664 billion in excluded costs, whereas the Respondent proposes $163 million. The calculation referred to in paragraph 12 would then be applied to the Proposed Assessable cost to arrive at the assessed value for M&E.

SECTION 3 - ISSUES

[20] Initially, it was contemplated by the Parties that the hearing would determine whether specific Project Change Notices ("PCNs") might be accepted or rejected as abnormal costs. The Parties were able to propose a joint recommendation on a few of these; however, the remaining volume of proposed PCNs was significant and it would be impossible or at least highly impractical for the Panel to provide specific direction on each individual PCN.

[21] As a practical solution, the Panel found it would be most beneficial to focus on the broad areas of significant disagreement, to provide an interim decision focusing on those issues, and to provide direction to the Parties to facilitate agreement on the remaining PCNs.

[22] The Panel identified three issues based on the material and submissions before it.

Issue #1 – Should the Panel accept the Joint Recommendation where the Parties had agreed on the determination of several PCNs?

Issue #2 – Should all abnormal construction costs be adjusted by allowing the benchmarking of abnormal construction costs ("adjustment") in order to create a balanced market for all properties in Alberta? The adjustment is referred to as the Edmonton Area Adjustment ("EAA").

Issue #3 – What should the actual construction costs be compared to in order to determine abnormal costs?

[23] The Panel is aware that the Parties had discussions before the hearing on grouping PCNs by category; however, they were unable to reach consensus. The Panel observes that discussion is a necessary and extremely important part of the assessment process. Fort Hills has a duty to provide information; however, there is a duty by the PA to explain what information it needs when it determines the information provided is inadequate. The Complainant submits (Exhibit 40-C, page 5, para 8(e)-Response):

> The Complainant has satisfied its evidentiary onus and otherwise made any and all relevant information available to the Assessor. The Assessor must not lie in the weeds or be silent on what the Assessor believes is missing, then complain later at the eleventh hour that it has not been provided what it requires. A meaningful opportunity must be afforded to the Complainant to remedy any information problem and defend itself. The Assessor had the Complainant's initial filings, which contained much of the information which the Complainant refiled in May of 2022, as early as 2018. The Assessor cannot neglect its duty to review such information, or review such information, identify a deficiency, and provide no comment for approximately 4 years and then use such as a way to deny the legitimate filing position of the Complainant.

The Complainant based its submission on an Alberta Court of Appeal decision, ***Boardwalk REIT LLP v Edmonton City, 2008 ABCA 220*** *(Boardwalk)*, at paras 164 and 165. The Panel concurs. Although *Boardwalk* dealt with an application to dismiss a complaint owing to failure to produce information, which is not the case here, it highlights that the Assessor has a duty to deal fairly with taxpayers through open communication about what is required. While the PA submits that it has done as much as possible with respect to considering the PCNs, the Panel finds that the Parties require additional meetings to better understand one another's position.

SECTION 4 – DECISION and ANALYSIS for ISSUES 1, 2, and 3

Issue #1 – Should the Panel accept the Joint Recommendation where the Parties had agreed on the determination of several PCNs?

The Parties have provided a Joint Recommendation to amend the M&E portion of the prescribed base costs of construction by $3,969,442,416 and request that the Panel accept the Joint Recommendation.

Decision on Issue #1 – The Panel accepts the Parties' Joint Recommendation.

Party Positions:

Complainant

[24] The Complainant summarized its understanding of the Joint Recommendation in the report of Mr. Matthews (Exhibit 14-C, pages 15-16, para 53). Mr. Matthews confirmed the agreed-upon excluded abnormal costs totaled $3,969,442,416 (Exhibit 70-C, lines D28 and E28, and Exhibit R-20, para 62) . His report provided a listing of the areas agreed upon.

Respondent

[25] The Respondent also summarized the items agreed upon in the Joint Recommendation, and confirmed the amount (Exhibit 20-R, page 31, para 62).

Intervenor

[26] The Intervenor did not take a position with respect to the Joint Recommendation.

Reasons for Decision on Issue #1

[27] The Panel is satisfied that the Parties have mutually resolved certain aspects of the excluded abnormal costs and confirms the Joint Recommendation in the amount of $3,969,442,416.

Issue #2 – Should all abnormal construction costs be adjusted by allowing the benchmarking of abnormal construction costs ("adjustment") in order to create a balanced market for all properties in Alberta? The adjustment is referred to as the Edmonton Area Adjustment ("EAA").

Decision on Issue #2 – The Panel finds that the *Construction Cost Reporting Guide* ("*CCRG*"), while not explicit, intends that the Edmonton Area Adjustment should be allowed.

Party Positions

Complainant

[28] The Complainant's position is that historically the EAA has been considered when assessing DIP in Alberta. The purpose of the EAA was to consider a balanced market in Alberta by bench-marking costs for all regulated properties to an area of Edmonton and 50 kilometres surrounding Edmonton. By doing so, it ensured that all regulated properties were assessed consistently. It further considered that by applying an adjustment, all regulated property would be assessed on a similar basis. The salient features of the EAA were to consider the following (Exhibit 18-C, page 4, para 4):

a) a balanced market in order to identify abnormal costs associated with unbalanced market productivity losses; and
b) a central Alberta location in order to identify abnormal costs associated with remote location productivity losses.

[29] The Complainant's position is that the application of the EAA not only complies with the *CCRG*, but the *Special Property Assessment Guide* ("SPAG") which was a predecessor to the *CCRG* explicitly

included the EAA. When the *CCRG* was being adopted, there was nothing to suggest that the EAA would no longer be included. In addition, there have been recent discussions concerning an updated version of the *CCRG*, which has been provided a working group name of "Regulated Industrial Property Assessment Guide" ("RIPA"). Mr. Matthews was a participant in the RIPA working group discussion and provided a copy of a draft form of the proposed amendment, showing the document specifically allows for the EAA (Exhibit 37-C page 398). Mr. Matthews confirmed that RIPA is not currently legislated and continues in a discussion stage; however, it is evident that SPAG and RIPA both consider the EAA and it would be reasonable to consider that the *CCRG* would permit the EAA as well. Therefore, absent any legislative change there is no principled reason to depart from the historical practice (Exhibit 18-C, page 4, para 5).

[30] In support of the Complainant's position that the EAA should be applied, Mr. Fluney also confirmed the application of the EAA to the assessments of many of his client's province-wide and across numerous municipalities. Mr. Fluney stated that property owners and assessors have interpreted that the EAA has continued from SPAG to the *CCRG*. He also was of the opinion that if the EAA was not applied to Fort Hills, Fort Hills would be the only major oilsands project assessed without the benefit of the EAA (Exhibit 39-C, page 4, para 9).

[31] The Complainant's position was that any departure from the EAA would result in an incorrect application of the *CCRG* principles. The intent of the legislation is to provide consistency amongst regulated property in Alberta. The longstanding practice of applying the EAA to other DIP assessments demonstrates that the practice of applying the EAA is consistent, and historically has been negotiated, applied, and accepted by assessors across the province. Mr. Matthews stated that the *Minister's Guidelines* do not distinguish among regions for M&E; therefore, the intent of the *CCRG* is to also use the EAA as a benchmark.

[32] The Complainant noted that several CARB Decisions clearly show that the EAA adjustment was provided. It acknowledges that these decisions are not binding on the Panel; however, they demonstrate the understanding of both the property owner and the assessor that the application of the EAA was included. Mr. Matthews showed that the reductions approved in a large number of 2017 CARB Decisions[1] matched the amount considered when applying the EAA. In addition, certain parts of the 2017 CARB Decisions specifically contain a reference to the EAA (Exhibit 14-C (Unredacted), page 537, para 10). This was a rebuttal of the testimony of Mr. Minard who stated that he was unable to ascertain any instances where the EAA was applied.

[33] Mr. Iliev also provided examples of a breakdown of the components of labour productivity, all of which are included in the *CCRG* (Exhibit 9-C, page 8, para 25). Mr. Iliev stated that he attempted to incorporate these types of inclusions where the PA had already applied them; however, not all the EAA adjustments were captured by the PA.

Respondent

[34] The Respondent relied on the plain wording of the *CCRG* and stated that the EAA is only provided for Transportation Costs. It also stated that the *CCRG* required the assessment to be based on the actual

[1] The 2017 CARB Decisions were complaints against the 2014 and 2015 assessments by RMWB and included Suncor, Syncrude, Stat Oil, Nexen, Cenovus, Meg Energy, Conoco Phillips, Athabasca Oil, CNRL and Imperial Oil. The complaints are found in Exhibit 14-C (Unredacted), Appendices 34 to 50 inclusive.

cost of construction. Its opinion was that if the legislation was intended to consider an EAA, it would have explicitly included that.

[35] The Respondent also stated that the *CCRG* represents a deliberate policy decision to depart from the previous practices, and specifically SPAG. The PA emphasized that the intent of the *CCRG* was to apply the EAA only for Transportation Costs. The EAA was included in SPAG, however SPAG is no longer in effect. The Respondent also noted that SPAG was never a legislated document; rather it was a guideline. The *CCRG*, on the other hand, is a legislated policy which deliberately allows the EAA only for Transportation Costs.

[36] The Respondent's witnesses (Pickering, Driscoll, and Young) all confirmed that it was never the intent to include the EAA into the *CCRG*, and that robust discussion occurred when the *CCRG* working group met to discuss the adoption of the *CCRG*. In response to the suggestion that RIPA included the EAA, the Respondent noted that it was simply a working group document, which has not been adopted as legislated, and therefore has no authority.

[37] The Respondent also stated that it has adopted the RMWB interpretation of the *CCRG* which was encapsulated in a document referred to as the RMWB Blue Book.

[38] Another of the Respondent's witnesses, Dr. Thompson, also stated that the *CCRG* is clear that the prescribed base cost calculation is based on costs in the local municipality (RMWB) and not an EAA.

[39] The Respondent addressed the Complainant's position with respect to consistency. It was the Respondent's opinion that there is nothing inconsistent with incorporating typical local costs and noted that the *CCRG* is clear that "typical is hard to define…" (*CCRG*, section 2.5000).

[40] The PA stated that it was unaware of any proof or evidence that the EAA is being applied to any regulated properties. In response to the Complainant's submission that Suncor Energy Corp. ("Suncor") is receiving the EAA on certain of its properties, the PA submitted that there are some outliers.

[41] With respect to the 2017 CARB Decisions, the Respondent submitted that these were negotiated settlement agreements and that they were not principled nor based on legislative requirements. Its testimony was that the PA discussed the nature of the settlements with Mr. Schofield, who worked for RMWB as an assessor at the time of the settlements and found the agreements were to reach a settlement to finalize property tax payments.

[42] Dr. Thompson stated that with regard to the 2017 CARB Decisions, he was unable to "reverse engineer" the amounts reported to be the EAA. Dr. Thompson stated that the amount was likely an unproductive labour deduction, which although similar to the proposed adjustment, did not match it entirely.

Intervenor

[43] The Intervenor referred to the 2017 CARB Decisions, which were based on joint recommendations. It was its position that the entire matter concerning the settlement agreements could have been determined if Suncor, the parent company of Fort Hills, had produced copies of the settlement agreements. Suncor refused to do so, and as a result, the Intervenor submitted that the Panel should assume an adverse inference with respect to how the settlement agreements formed a part of the 2017 CARB Decisions.

Reasons for Decision on Issue #2

[44] The Panel finds that the wording of the *CCRG* in respect of the application of the EAA is not explicit. It is clearly stated that the EAA is applied to Transportation Costs. Because the wording is not explicit to the remaining sections of the CCRG, the Panel turned to examine the context and purpose of the legislation to interpret whether *CCRG* intends the EAA to be applied more broadly.

[45] The Panel finds that it was apparent there was considerable discussion surrounding the EAA in the *CCRG* working group discussions during the development of the *CCRG*. There are opposing views between the Respondent's witnesses (Pickering, Driscoll, and Young) and other participants (Matthews and Fluney), whether the EAA was specifically left out of the *CCRG*. The Respondent also cites the RMWB Blue Book as confirming the EAA was excluded in its interpretation. Notwithstanding the Respondent's views, others have interpreted the EAA as being maintained in the *CCRG* as evidenced within the transcripts of the working group meetings. The working group discussion was that the *CCRG* was not straying too far from SPAG and was attempting to get away from other cost-based manuals for other types of improvements; however, there was no expectation that the EAA was being removed.

[46] The Panel also considered the chronological history of the development of the *CCRG*. There does not appear to be any disagreement amongst the Parties that SPAG was a predecessor document to the *CCRG*. Nor is there disagreement amongst the Parties that the *CCRG* is a legislated document, whereas SPAG was simply a guide. While SPAG was not legislated, the evidence was that SPAG's guidelines incorporated the EAA and assessors commonly applied it to property assessment when determining costs excluded from the prescribed base cost. Notwithstanding the testimony of the PA that he was unable to locate any assessments where the EAA was applied, the Panel accepts the testimony of Messrs. Matthews and Fluney that the practice of assessors in applying the EAA continued until at least 2018, and for some Suncor properties specifically, after that date as well. The Panel finds that the EAA was viewed as being normally applied by industry participants and therefore the EAA was continued when determining the abnormal excluded cost. The Panel also finds that industry working group discussion with regard to RIPA, which is proposed as an update to the *CCRG*, had within a draft version contemplated the continued use of the EAA. Therefore, the predecessor to the *CCRG* and the potential replacement of the *CCRG* both considered applying the EAA. This contextual background tends to favour an interpretation of the *CCRG* as intending the continued application of EAA.

[47] The Panel acknowledges the specific reference in the *CCRG* to the EAA being applied to Transportation Costs and the Respondent's submission that the *CCRG's* silence as to application of the EAA to other costs shows it is specifically excluded with respect to other costs. However, given that the EAA was applied in the predecessor guide (SPAG), the Panel would expect more explicit wording in the replacement document if the intent were to eliminate it; further, it would not have been reasonable to eliminate it without some form of advance notice or discussion to signal a decision that it was being removed. The Panel finds that this would have represented a significant change in practice and a bulletin or discussion would have been issued to alert assessors and industry members. The 2013, 2014, and 2015 CARB decisions, as well as the 2017 CARB Decisions, and evidence of Suncor's assessments demonstrate that the EAA continues to be applied to at least the late 2010 period.

[48] The Respondent cites the *CCRG* as being developed to promote consistency. The Panel concurs with that concept; however, does not agree with the Respondent that "typical and normal" can promote consistency within a localized municipality. The Panel accepts the Complainant's argument that by applying a consistent benchmark, the EAA would promote consistency in regulated properties across Alberta. The Panel specifically notes that within section 2.500 of the *CCRG*, the last bullet states that an

example of abnormal costs is "a cost that is excluded to maintain consistency among regulated properties." The Panel finds that applying the EAA promotes that consistency province-wide.

[49] The Respondent also submits that the assessment should reflect regional costs that would have a different market value for different regions. The Panel finds that this argument appears to introduce elements of the "market value" concept to assessments using regulated rates. This is contrary to the use of regulated rates, which recognize that DIPs are special purpose properties that cannot be assessed on a market balance basis. Overall, it would not be logical to be self-reporting M&E costs based on regional labour rates and consider that would provide consistency to all regulated properties.

[50] The Respondent submits that other forms of regulated industrial assessment use market data to establish reproduction cost estimates (Exhibit 21-R, page 8, para 18). The Respondent fails, in the Panel's opinion, to take into consideration that the Complainant's sanctioned budget is based on market data. Dr. Thompson also cited that Suncor is a highly evolved corporation and has significant volumes of market data available to them, which would be used in the preparation of its sanctioned budget. Mr. Driscoll's testimony spoke to what occurred historically in gathering M&E costs to use in the *CCRG*. An example would be the use of union labour rates which would be consistent province-wide.

[51] The Panel also considered the Complainant's argument that singling out Fort Hills as the only plant being assessed in the manner proposed by the PA is unfair and inequitable. The Panel accepts the Complainant's argument that Fort Hills is not being assessed equitably. The PA's testimony suggests it was unable to find any property where the EAA is applied. However, the Complainant has provided a number of examples that demonstrate the PA's statement is inaccurate. The evidence suggests that there are many regulated properties being assessed using the EAA.

[52] Arguing from its premise that a correct interpretation of the *CCRG* does not require application of the EAA, the Respondent maintained the LPRT lacks authority to change the assessment because *MGA* s.499(3) prevents it from altering "… any assessment of designated industrial property that has been prepared correctly in accordance with the regulations …". Even supposing the Panel were to accept the Respondent's premise (which it does not), the Panel would still reject this argument. Rather, it finds the principle of equity is in itself a sufficient reason in this case to justify amending the assessment. Having applied the EAA in some cases, the PA would continue to be required to equitably apply the adjustment to similar M&E assessments for which complaints are filed.

[53] This finding follows from the requirement in s.293(1) of the *Act*, which states, "In preparing an assessment, the Assessor must, in a fair and equitable manner, (a) apply the valuation and other standards set out in the regulations, and (b) follow the procedures set out in the regulations." The requirement for equitable assessment generally implies that owners of similar properties are entitled to similar treatment. (***Strathcona No. 20 (County) v Alberta (Assessment Appeal Board)*, 1995 ABCA 165 (Alta. C.A.)** at para 8). Of course, in the regulated assessment context, it is possible for the legislators to override this requirement for policy reasons and specifically require different treatment of properties that would otherwise appear similar. However, even in the regulated context, different treatment of similar properties must be supported by clear legislated direction. In the absence of such direction, the assessor should apply the procedures and regulated standards fairly and consistently. If the assessor does not do so, the principle of equity implies a taxpayer who appeals their assessment is entitled to an adjustment that restores equitable treatment – i.e., treatment consistent with that received by other similar properties. This interpretation is in line with many previous authorities; see, for example, Municipal Government Board order ***MGB 075/16*** at para 67, upheld on judicial review by ***Alberta (Minister of Municipal Affairs) v Ember Resources Inc.,*** 2018 ABQB 971. In the case now before the Tribunal, the Complainant has demonstrated that equity is not

being applied. It would not be equitable to assess Fort Hills on a stand-alone basis while other M&E assessments receive the EAA adjustment.

Issue #3 – What should the actual construction costs be compared to in order to determine abnormal costs?

- **a) To what extent does the difference between the sanctioned budget and what was actually spent reflect abnormal costs?**
- **b) To what extent are design-change costs abnormal?**
  - **i. What is "typical" or "normal"?**
    1. **Budget estimates**
    2. **Market average**

Decision: The Panel finds that the sanctioned budget is an appropriate basis for establishing the baseline budget for the purpose of comparison to actual costs in this case, for all project areas excluding the Secondary Extraction ("SE") portion. For the SE project the appropriate basis for establishing the baseline budget is the Quantity Adjusted Budget ("QAB").

Party Positions:

Complainant

[54] The Complainant stated that in all its prior Suncor projects, it has used the sanctioned budget as the starting position to establish the basis to determine abnormal costs. It further submitted that historical practice continued with the subject assessment. The sanctioned budget has a number of names it identifies with including the Gate 3 budget, the Front-End Engineering Design budget ("FEED"), and the EDS.

[55] In this case, the sanctioned budget is appropriate for all project areas, except SE.

[56] Mr. Matthews stated that the policies and procedures used prior to the current PA being named the assessor for DIPs, were not well understood by the PA and this included using the sanctioned budget as the starting point for comparison to actual construction costs.

[57] The Complainant submitted that originally, the SE project sanctioned budget was estimated at $3.85 billion in 2013. The original sanctioned budget for SE was based on a lower quality review of engineering as compared to other project budgets. As a result, when the entire project was sanctioned and received the partner approval to proceed, it was known that the SE budget was not finalized and required additional scrutiny. As a result, in July 2014, the sanctioned budget for the SE was received and created a revised estimated cost ("QAB") which was used by Fort Hills in replacing the previous sanctioned budget amount. The Complainant also stated that the SE PCNs that were created were measured against the QAB budget and not the original sanctioned budget.

[58] The Complainant's position was that the accepted practice has been to use the actual project costs, subtracting any scope changes that were not excluded costs, less the sanctioned budget to form the abnormal non-scope excluded costs. The Complainant acknowledged that if the sanctioned budget contemplated abnormal costs, then those abnormal costs would also be deducted in the foregoing formula.

[59] The Complainant submitted that project changes include Scope changes, Non-Scope changes, and Budget Transfers, and are defined as follows (Exhibit 3-C, page 5, para 17):

17. Types of Project Changes include Scope Change PCNs, Non-Scope Change PCNs, and Budget Transfer PCNs. Each of these three types of Project Changes are outlined below:

a. Scope Change PCN is defined as a change in any item of work that materially alters the layout, specification process, configuration, capacity, quality, or execution strategy of a project. Scope changes represent significant alterations to the project plans not considered or funded within the approved project budget. All scope changes are subject to the PMoC ("Project Management of Change") process. Examples of what might be evaluated as a Scope Change PNC include:

i. addition or deletion of a process unit or facility;
ii. modifications to process equipment, piping to increase or restrict plant through-put;
iii. design changes resulting from changing feedstock composition or product specifications;
iv. impact of scheduling compression or extension for Owner's commercial reasons including, for example, changing market conditions; and
v. changing the technology upon which the EDS[2] design was based (i.e., replace one process unit with another of newer technology).

b. Non-scope Change PCN is defined as project changes that are not considered to be a Scope Change PCN as defined above. Non-scope PCNs will be used for all other changes which impact cost, schedule, quantities, and workforce hours. Examples of what might be evaluated as a Non-scope Change PCN include:

i. productivity increase or decrease for either of construction or engineering;
ii. bulk material or equipment cost increases or decreases from forecasts as a result of circumstances that are outside of the deemed tolerance for the current budget; and
iii. rework, schedule delays, design development beyond design allowances, wage rates, labour turnover, and commodity pricing for defined scope.

c. Budget transfer PCN is defined as a transfer of both scope and budget. An approved budget transfer within a project would have a zero-dollar net impact. An approved budget transfer between projects or areas would require a change to be initiated in each area.

[60] The Complainant advised that the sanctioned budget typically includes contingency allowances to allow for unexpected costs. Such was the case in this project; however, the Complainant submitted that those contingencies underwent a rigorous analysis by the Fort Hills Project team. It was also submitted

[2] (*) - EDS - "Engineering Design Specification"

that the expectation of the Fort Hills Project team was that contingency amounts would be spent. It was further noted that there were some PCNs which included a negative amount. That would suggest that the amount spent was less than the sanctioned budget, and that would be considered in the overall consideration of abnormal costs as well. The Complainant emphasized that it was not requesting that the contingency amounts be removed as abnormal costs.

[61] The Complainant advised that in excess of 3,000 people were involved in the creation of budgets for the Fort Hills Project. This level of involvement must be considered the "best in practice". In response to the Respondent's position that it would be prudent for the property owner to "lowball" the budget in order to achieve a lower assessed value, the Complainant stated that was simply unrealistic. The sanctioned budget was identified as a well-supported, cautious estimate, where budget amounts were conservative (higher), and were based on actual tenders which were also supported by third party estimates.

[62] Within the testimony of Mr. Matthews were detailed spreadsheets (Exhibit 14-C (Unredacted), Appendices 6, 7, 8, 9, 10, 11, 29 and 51) which formed the basis for "renditions", which were the variances between the sanctioned budget (SE – QAB Budget) and actual costs, which then determined the proposed excluded abnormal cost.

[63] It was also Mr. Matthews' testimony that the Respondent refused to meet with the Complainant to conduct a detailed review of each of the renditions and to discuss the PCNs associated with the proposed excluded cost.

Respondent

[64] The Respondent disputed using the internally prepared sanctioned budget as the document to be considered to determine abnormal costs. Its position was that the *CCRG* directs the assessor to consider actual costs compared to similar improvements in the same municipality, constructed at the same time, similar project, same industry, and of similar size.

[65] The Respondent stated that using internally prepared budgeted costs encourages the property owner to underestimate budget costs in order to reduce the assessed value and thereby reduce the property taxes paid by the property owner.

[66] In this matter, the Respondent submitted that even if one used the sanctioned budget to compare actual costs, the variance between the two is so large that it casts a lack of credibility on the entire budget process.

[67] Dr. Thompson's testimony was that the measurement of abnormal construction costs is a four-step process (Exhibit 26-R, page 21, para 43):

> a. the comparison of actual working conditions to the project specifications defined in the DBM/FEL ("FEED") documents;
> b. the measurement of deviations between actual and DBM specifications;
> c. the determination of actual additional costs as a result of any measurable impacts; and
> d. a comparison to typical construction costs in the applicable location (in this case the RMWB).

Intervenor

[68] The Intervenor took no position with respect to this issue.

Reasons for Decision on Issue #3

[69] The Panel adopted the Complainant's Project Scope, Non-scope, and Transfers Definitions (see para 59).

[70] The Panel looked for guidance in the *CCRG* for the purpose of considering abnormal cost deductions in the formula to determine the project prescribed base cost as the starting point for the assessment (Schedule "A"). The Panel's interpretation is that abnormal costs are captured if there are no market anomalies or other issues which increase costs beyond what those costs would have been if constructed in ideal conditions.

[71] As an example, the Panel finds that where design changes occur, creating additional project costs, and there is no change to the overall scope of the project, these costs must be deducted from the actual construction costs and be considered eligible abnormal expense deductions. Conversely, where specific design changes occur which create additional project costs, and the design change enhances the overall scope of the project, these costs would be ineligible abnormal expenses deductions, and would remain in the actual project construction costs.

[72] The Panel acknowledges that the *CCRG* (section 2.500 – Abnormal Costs of Construction) states:

> The determination of what constitutes "typical" or "normal" is difficult; it is subjective and it may vary over time, from one location to another and among industries. If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded.

[73] The foregoing introduces the recognition of the selective nature of "typical" and "normal", however, contrary to the Respondent's assertion (that the actual costs must be compared to similar improvements in the same municipality, constructed at the same time, similar project, same industry and of similar size), there is no specific direction provided which supports that position.

[74] The Panel finds that the sanctioned budget, as submitted by the Complainant, is a good estimate in this matter. The Panel also finds that estimates for the sanctioned budget are based on the expectations for actual costs and actual industry pricing. This is not dissimilar to how Alberta Municipal Affairs ("MA") develops costs for M&E rates for commonly occurring improvements. The draft RIPA document, although not in effect, references the use of a draft budget as being acceptable (Exhibit 37-C, page 404).

[75] The Panel also finds the Fort Hills sanctioned budget is based on a proven and rigorous budget process. Complainant witnesses Messrs. Jackson and Imdadullah described the budget process, its comprehensive nature, and the detailed analysis that occurs. The Panel accepts their testimony, which was highly descriptive in nature, and rejects the Respondent's argument that the budget process was flawed and unreliable since there was no supporting documentation demonstrated to the Panel to support the Respondent's opinion, other than the project was extremely over budget.

[76] The Panel also considered the Respondent's testimony that the M&E *Minister's Guidelines*, like other forms of regulated industrial assessment, use market data to determine reproduction cost estimates (Exhibit 21-R, – page 8, para 19). The Panel finds that it would be consistent to follow a similar approach to determine costs in the *CCRG*. For example, the sanctioned budget estimates are based on market data and budget estimates from engineers, contractors, and others. This is consistent with the Respondent's

testimony as to what occurred historically with development of M&E costs and the *CCRG*. That testimony cited union rates, as an example, which would be used province-wide.

[77] The Panel also disagrees with the Respondent's proposition to use actual comparable costs to create the benchmark for typical costs. The Panel finds that the subject property is unique and that there is no comparable project of comparable size. The closest comparison to the subject would be the Athabasca Oil Sands Project ("AOSP") and that property is much older than the subject.

[78] The Panel noted that Dr. Thompson suggested a 4-part process for a budget estimate to be used as a starting point. The Panel finds that the proposed use of the DBM was a working assumption provided by the PA, and little justification was provided to support this assumption. Mr. Minard stated that the DBM reflects what the owner intended to build. However, the Panel finds the DBM budget was based on original concepts, which changed significantly as the design matured. The Panel was not convinced the DBM estimates form a reliable starting point to use as a benchmark.

[79] The Panel also finds that there are similar difficulties with the 19 assumptions imposed by the PA on Dr. Thompson's engagement. In his reports there was no indication that the reasons for the assumptions were supported by other evidence. The Panel finds the assumptions restricted Dr. Thompson in providing his analysis, support, and findings. Accordingly, the Panel did not place significant weight on Dr. Thompson's suggested methodology or conclusions.

[80] The Panel also finds that in this case, the PA did not discuss historical assessment practices of comparable properties with Fort Hills. The Panel finds that discussion of this nature would have benefitted the Respondent in developing a better cost estimate. The Panel does note that the PA's contention was that it did not have access to older assessment information.

[81] The Panel finds that *CCRG Interpretive Guide: Reporting of Construction Costs* allows for estimates to be used as a comparison (Exhibit 19-C, page 501, first bullet). The other bullets also support the concept that budget comparison as reported by the operator is appropriate, and encourage discussion between the assessor/taxpayer, as necessary. The concept is further supported in ***Canadian Natural Resources Limited v Regional Municipality of Wood Buffalo CARB Order CARB 001-2014*** (Exhibit 19-C, page 28, para 62) as well as in ***Canadian Natural Resources Limited v Regional Municipality of Wood Buffalo CARB Order CARB 001-2013*** (Exhibit 40-C, para 38, and para 350 of the decision). Similar wording can also be found in the draft RIPA document (Exhibit 37-C, page 396, para 6).

[82] The Panel does not accept the Respondent's position that relying on a budget encourages owners to under-budget to reduce assessment and taxation. Budgets are used for other purposes and intended to be relied on by users, including project partners, senior executives, accountants, project engineers, contractors, etc. It is not logical to consider the sole purpose of the internal budget would be to reduce the assessment and consequential taxation of the subject.

[83] Next, the Panel turned to the SE budget and found the Fort Hills sanctioned budget included SE; however, it was a placeholder, in that the SE project had issues at the sanctioned budget timing with finalizing its project design and estimated costs. The SE sanctioned budget was prepared by the Fort Hills Project team with the assistance of the primary SE contractor and was deemed reliable at the time. However, the Board accepts the Complainant's submission that when the contractor was replaced, the project team's expectations changed. The new contractor was able to create more accurate inputs following the implementation of design changes affecting the scope of the SE project. These design changes were described by Messrs. Jackson and Imdadullah in detail and were accepted by the Panel. The Panel also

notes that if the original sanctioned budget was used, it was much lower than the replacement QAB and the difference between the cost of construction and the QAB and determination of abnormal costs would be greater.

SECTION 5 - WITNESS TESTIMONY - COMPLAINANTS IN THE ORDER OF OCCURRENCE AT THE MERIT HEARING

Project Overview - Mr. Ryan Jackson (Exhibit 1-C)

[84] The background information was derived from the disclosure report of Mr. Jackson, General Manager of Projects in Suncor's Project Execution Function.

[85] The property under complaint is owned by Fort Hills Energy Corp. The Fort Hills lease has a long history and is home to the oldest oil sands processing plant in Alberta. At the time of the complaints, Suncor held 54.11% ownership in the Fort Hills Project, while Total E&P Canada Ltd. held 24.58%, and Teck Resources Ltd. held the remaining 21.31%. Suncor had the role of operator and oversaw the construction activities. During 2023, Suncor purchased the minority partners' interests and is now the 100 percent owner of Fort Hills.

[86] The Fort Hills Project is located approximately 90 kilometres north of Fort McMurray in northern Alberta. Due to its remote location, the project could not benefit from proximity to large populations and infrastructure like many other similar industry projects. The Fort Hills Project needed to build a significant amount of infrastructure including paving Highway 63, on-site water treatment, power generation and power distribution, and the construction of workforce camps. The Fort Hills Project also incurred additional costs to transport the workforce, equipment, and materials to the remote Fort Hills location. Many of these items are reflected in the non-assessable cost impacts on the Fort Hills Project, of which many are the subject of these complaints.

[87] Fort Hills is a mine-based oil sands extraction and processing project, designed to produce 194,000 bpd of bitumen. The project, in its current configuration, was restarted in 2010 with a new DBM. The project continued into Front End Execution and Design ("FEED") in 2011 and the project was fully sanctioned by the partners for execution in mid-2013 with first oil achieved in 2018.

[88] It is frequent practice in major projects to compartmentalize into smaller, manageable project areas. However, this creates the need to integrate and continuously coordinate the areas from both a technical and project management perspective. Project integration typically requires the areas to progress in unison, especially when the project area designs are technically interconnected with each other, such as the case in Fort Hills.

[89] Fort Hills, relevant to this assessment complaint, is subdivided into the following project areas: (i) Mining; (ii) Ore Processing Plant ("OPP"); (iii) Extraction and Tailings ("ET"); (iv) Secondary Extraction ("SE"); (v) Utilities and Cogeneration ("U&C"); (vi) Infrastructure; (vii) Automation, Electrical and Telecommunications ("AET"); and (viii) Facilities and Common Services ("F&CS"), (collectively the "Project Areas"). All areas except for Mining contribute to the assessment complaint of Fort Hills.

[90] Suncor has developed and executed several extremely large capital projects. This experience, along with observing other large capital projects in the region (*e.g.* the Athabasca Oil Sands Project, Syncrude

UE-1, and Imperial Kearl), led to a "rule of thumb" to keep the on-site workforce limited to approximately 5,000 persons. While not an exact number, Suncor believes that workforces exceeding this approximate level become prone to risks such as declining workforce competencies, reduced productivity, issues with logistics, on-site congestion, and a decline in safety culture, which can lead to workplace incidents.

[91] Early modelling of the Fort Hills construction execution plan indicated that the on-site workforce would see peak levels exceeding 9,000 persons. To avoid the risks associated with such large workforces, the project areas were planned in a sequence that would keep the peak workforce limited to approximately 5,000 persons. This became the basis of the final project execution plan.

[92] In the Fort Hills plan, the first wave of execution was scheduled to include Mining, OPP, ET, Infrastructure, and F&CS. As the peak of the first wave was scheduled to be nearly completed, the second wave, which was scheduled to include SE and U&C, would ramp up. AET was unique in that it interconnected to all project areas and execution of AET spanned across both the first and second waves.

[93] The Fort Hills Project was an extreme size for the Alberta labour market. As an integrated project, delays in one Project Area often led to increased costs and delays in other Project Areas. These delays resulted, in part, from design changes to the Project Areas. To alleviate some of these resulting delays, Fort Hills increased its work schedules and added night shifts and overtime for its workers. It also engaged in global suppliers in multiple locations with the intention of minimizing the delay and cost escalation impacts to the Fort Hills Project.

[94] Mr. Jackson stated that the Fort Hills Project experienced significant issues which led to construction being delayed. These issues, which are addressed in the body of Fort Hill's disclosure document, included:

- Remote location;
- Market labour constraints;
- Atypical site conditions;
- 2016 Fort McMurray wildfire;
- Rework and changes in work location; and
- Contractor performance that required changes.

Utilities and Co-Generation ("U&C") - Mr. Jeff Yarycky (Exhibits 7-C Redacted and Unredacted), Exhibit 35-C and Exhibit 54-C)

[95] The U&C information was derived from the disclosure reports of Mr. Yarycky, Director of Project Controls.

[96] Mr. Yarycky provided background information concerning the construction and construction costs associated with U&C.

[97] Mr. Yarycky was qualified primarily as a fact witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Yarycky is primarily a fact witness. He will testify in respect of the utilities and cogeneration project area. He is a Suncor technologist, on the overall Fort Hills project and what happened on the secondary extraction unit. In the course of giving his evidence he may give opinions on the impact of delays, rework or repair on productivity on project costs.

[98] Mr. Yarycky submitted his educational and work history and stated that he was Manager of Project Controls from 2012 to 2018. Subsequently, he has was elevated to Program Manager of Project Controls from 2018 to 2020 and then within Suncor as Director of Project Controls in 2020, and that is the role he currently holds.

[99] Mr. Yarycky holds a Computer Aided Design & Drafting Technology Diploma (1997), Bachelor of Commerce - incomplete (2003-05), and a Master's Certificate in Project Management (2006).

[100] Mr. Yarycky's involvement in the U&C Project was as the Project Controls Manager commencing in the FEED stage, through project sanction, detailed engineering and execution, and completing the turnover and project closeout.

[101] Mr. Yarycky provided background information that, at the outset of the project, the U&C was within the Utilities and Offsite Scope project area. This was later reduced to U&C. The U&C contract was awarded to a single Engineering, Procurement, Fabrication and Construction ("EPC") contractor.

[102] The U&C project was largely split equally between the EPC Contractor and another Swedish firm who oversaw the cogeneration portion of the overall project. None of the identified costs were attributed to the cogeneration contract.

[103] Mr. Yarycky stated that in his opinion, the U&C project experienced $453,504,965 in costs incurred as a result of design changes which reflected rework or changes. He also stated that the design changes were outside of the nameplate or scope of the U&C Project and should be excluded from the assessment.

[104] The primary causes for the design changes were summarized as follows:

(i) a lack of a complete and accurate plan and execution of that plan (the "Execution Challenges"),
(ii) a new and unproven engineering method of very high modularization (the "Engineering Challenges"), and
(iii) the EPC Contractor's inability to manage a project of this magnitude (the "Contractor Challenges").

[105] Mr. Yarycky also stated that the foregoing challenges were compounded by the EPC contractor challenges. The contractor had worked with Suncor early in the project at the EDS level, and Fort Hills was confident in its work. As a result, the EPC contract was sole sourced and was established as a fixed cost contract, which is defined as a fixed fee and fixed overhead and disbursements and engineering, which together were the "Target Price". Within that contract, the equipment, bulk material, and labour (direct and sub-contracted) were reimbursable within the Target Price. Mr. Yarycky stated that the contract value was $1.5 billion.

[106] In addition to the Target Price contract, a performance fee was also established with potential to earn portions of the incentive each year from 2014 to 2017. A cost sharing initiative was also included in the contract, where the EPC contractor would share 50% of any savings under the Target Price. The contract structure was established to drive the "right behaviours" from the contractor and incentivize them to underrun costs and maintain the planned schedule.

[107] It was the EPC contractor's intention to use a concept referred to as 3rd Generation Modularization ("3G"). The 3G concept was being used on the Shell Quest project; however, it was relatively new when

the U&C engineering started. Additionally, the EPC contractor had never used the concept before. The 3G concept was an effort to reduce field hours and the manpower required on site and the 3G modules were to include installation of steel, pipe, equipment (including smaller horsepower pumps), electrical, and instrumentation. This was to occur at the modular yards, which were a more controlled environment than in the field, and did not require travel or associated camp costs. The Quest project was much smaller than Fort Hills and was not a remote site, as was Fort Hills; however, Mr. Yarycky stated that the process was the same as used at Quest.

[108] Mr. Yarycky addressed each of the three levels of challenges faced by the U&C project, as outlined in paragraph 104, beginning with Execution Challenges, followed by Engineering Challenges and Contractor Challenges.

(i) Execution Challenges

[109] The 3G concept was that 361 modules were required and that approximately 80% would be modularized within the 3G concept. This required three (3) modular yards to be engaged as sub-contractors to construct the modules.

[110] Initially, the fabricated steel required to complete fabrication was delayed. This had compound effects as the modular yards were reluctant to begin fabrication until a satisfactory level of steel was on hand to not have the manufacture process stop and start. The effect was a two-month delay in fabrication, as the EPC contractor had not established a proper material management system. To mitigate the schedule slippage and avoid high manpower peaks in each of the module yards, a fourth module yard was engaged, and the number of modules were redistributed amongst all four (4) yards.

[111] When modular yard construction began, there were significant issues with engineering, which required change orders. Mr. Yarycky stated that there were many engineer drawings and Request for Information ("RFI") changes. Engineering revisions, according to Mr. Yarycky, are normally one or two. In the Fort Hills project, the revisions were 10-12 per module and were so much of a problem that the EPC contractor transferred engineers from its offices to reside on-site at the module yards. Engineering changes occurred in every discipline: structural, mechanical, piping, electrical, and instrumentation.

[112] As a result of the overheated market, a decision was made to expand global procurement efforts. The fabricated steel and pipe spools were procured from overseas suppliers. The fabricated material was then shipped to Edmonton, where the modules were assembled and transported to site. The steel was procured from China under a supply and fabrication purchase order. The pipe was procured from India, also under a supply and fabrication purchase order. Based on the experience these vendors had, the EPC contractor initially assigned light oversight in the vendor shops, which resulted in failure to identify material deficiencies, resulting in late deliveries of steel and pipe modules, and lower site-specific productivity.

(ii) Engineering Challenges

[113] Mr. Yarycky stated that the EPC contractor lacked the ability to meet the design challenges of the U&C project. This resulted in late engineering deliverables and the budgeted hours were almost doubled. The result was an estimated $70 million overrun in engineering, which started to erode the underrun potential before construction had even started. Much of the overrun was due to the EPC contractor having never used the 3G concept. Fort Hills management conceded that it did not understand the full ramifications of the engineering issues it faced. Later Fort Hills management learned that the early engineering impacts set off a chain reaction of other impacts that cascaded all the way through the entire project lifecycle.

[114] The EPC contractor originally levelled the fault at the steel and pipe suppliers. In the case of the Chinese supplier of fabricated steel, the EPC contractor reported monthly fabrication delays and assigned blame to the supplier. Fort Hills management, after several months, began investigating the claims and found the Chinese supplier was receiving late, incomplete, or missing issued-for-construction drawings and as such could not meet timelines. The lack of adequate drawings made the Chinese supplier hesitant to start fabrication as they could not ramp up to full capacity because the drawings kept changing. When Fort Hills brought this to the EPC contractor's attention, it dispatched an engineer to oversee the Chinese supplier. In addition, Fort Hills sent an employee to China to join the EPC contractor on-site. The EPC contractor also deployed engineering resources to the fabrication shop in Shanghai to overcome the volume of drawing changes required. Fort Hills determined the Chinese supplier was in fact producing 2,300 tons per month versus the projected 1,800 tons per month. This, however, was after they were delayed by inadequate drawings.

[115] As a result of its investigation, Fort Hills management determined that the Chinese supplier had performed $8M worth of additional engineering that should have been performed by the EPC contractor directly, and for which the EPC contractor instructed the Chinese supplier not to show as a line item on invoicing until the end of the contract.

[116] A second example of the engineering challenges was the design of 1,200 horsepower pumps which were engineered to bolt to the structural steel. After installation, it was determined that studies found the bolting onto structural steel created significant vibration. The bolt to steel concept was abandoned in favour of the traditional method of bolting to concrete pads; however, there was a design change workaround created.

[117] Another example was provided where two modules were connected by a large 18-inch pipe. When installed, the modules connected by pipe were not aligned. This connection used expansion loops; however, due to the pipe stress inflicted on the joint, the realignment was required to be completed on site, supervised by field engineering personnel. The result was to cut the pipe, adjust the equipment, refit, and reweld. This further cascaded into retesting. Mr. Yarycky described this as less than optimum conditions. If the work had been properly completed at the modular manufacturing yard, costs would have been significantly lower. In many cases, the planned work required additional scaffolding due to the location within the buildings.

[118] Lastly, modularization yards continued to experience delays in receipt of inventory of steel and pipe. In order to mitigate and attempt to keep the program as on-course as possible, air freight was used rather than shipment by ocean freight. Additionally, a further reorganization of modular yard work was made by transferring responsibly from one Alberta modular yard to another.

(iii) Contractor Challenges with EPC Contractor and Others

[119] Mr. Yarycky opined that the execution and engineering challenges were compounded by contractor challenges, specifically derived from the EPC contractor. The contractor was unable to accurately forecast either costs or schedules, and mitigation attempts by the contractor targeted the wrong assumptions and were subsequently ineffective. This resulted in repeated volatility in the contractor's costs and schedule performance.

[120] Included in Mr. Yarycky's disclosure (Exhibit 7-C (Unredacted), page 6, para 24) is a chart which demonstrates the original project cost at $1.53 billion at the initial projected completion of April 30, 2017,

compared to the reforecast cost of $1.797 billion as at October 31, 2017. Total labour hours were projected at 3,013,307 hours versus the reforecast of 6,871,571 hours.

Description	Original Contract Amounts	Forecast Amounts October 2017	Variance Value	Variance Percent	
	a	b	c = b-a	d = c/a	
Total Installed Cost ($M)	$ 1,495	$ 1,796	$ 301	20%	
Performance Fee ($M)	$ 30	$ 17	($ 13)	-43%	
Home to Hub Expenses ($M)	$ 5	$ 4	($ 1)	-20%	
Deadband Clawback ($M)	$ 0	($ 20)	($ 20)		
Total Project Cost ($M)	$ 1,530	$ 1,797	$ 267	17%	
Home Office Hours	1,313,840	1,697,487	383,647	29%	
DFL Direct Hours	1,035,042	2,649,790	1,614,748	156%	
Scaffolding Hours	350,019	676,698	326,679	93%	
Total Field Hours (Direct + Indirect)	3,013,307	6,871,571	3,858,264	128%	
Mechanical Completion (MC)	31-Mar-2017	31-Oct-2017	214	days	
Turnover Care Custody Control (TCCC)	30-Apr-2017	31-Oct-2017	184	days	

[121] Mr. Yarycky stated that the EPC contractor was provided with a very detailed scope of work and obligations. Fort Hills did not set out the "how" to complete the project and relied heavily on the EPC contractor to execute the plans. Also, there was a significant incentive to complete the project at a lower cost.

[122] Mr. Yarycky stated that from the outset, a weakness showed up when the EPC contractor struggled to set up its systems and tools to control the job. This weakness appeared primarily in the project controls and supply chain and later in construction. Mr. Yarycky opined that by not adequately setting up the proper systems and controls at the beginning, the EPC contractor eventually lost control of the quantity tracking for the project.

[123] Mr. Yarycky also submitted that there were issues from the outset with a pipe fabricator, who refused to perform any work unless the issued-for-construction documents were completed and also refused to use material take-off amounts included by the EPC contractor, as the supplier was under a unit pricing contract, and could not build without price and availability of inventory certainty.

[124] Mr. Yarycky also stated that another of the modular yard manufacturers was problematic at the outset and required Fort Hills management to intervene on a number of occasions to resolve management and structural issues with the subcontractor. This eventually resulted in a change in management with the subcontractor even before the manufacture of modules had ramped up.

[125] The EPC contractor's original delivery date for the modules to be completed and ready to ship was July 31, 2016. Recognizing the issues that arose, as well as due to the nature of the 3G modularization, construction work on-site could not commence without the modules being in place, as they formed the base structure for the buildings. It was determined that all modules needed to be set in place by October 31, 2016 to mitigate further schedule impacts and enable construction to proceed. To achieve the revised scheduling, Fort Hills was forced to allow the shipment of incomplete modules to site, and have any remaining work completed at site instead of at the module yards. This resulted in significantly higher costs due to lower productivity and higher rework. Specifically, Fort Hills had to have crews fly in-fly out and incurred camp costs, all of which would have been unnecessary if the work had been done at the modular yards. The 3G concept was to reduce field hours and transfer the labour force to the modular yards, and this did not occur.

[126] Without having the modules on site, the overall work of the project was curtailed until they arrived. The 3G modules were not only pipe racks and stair towers but formed the building walls and roof as well. There was only one conventional stick-built building within the Utilities project area, and work was already underway on it. Until the modules were set, there was no direct above-ground work that could be performed. Mr. Yarycky stated that a further challenge was that the buildings required the modules to be set in a particular sequence, like Lego blocks. The sequence was determined by the shape and levels of the building and the crane location. The most complex (mechanical and piping intensive) modules were located on the bottom floors and ended up taking the longest to complete and be ready to set in place. This complicated the module setting and resulted in deficiencies in completeness of the modules, as the bottom floor modules were required to be set in place to enable further modules to be stacked on top or beside.

[127] Another issue identified by Mr. Yarycky was the size and weight of the modular units. The engineers were to calculate the weight of the module, and after some were built it was determined they were overweight for the highway. Pieces had to be removed to deal with the overweight issue and were sent in a second truck, and then reinstalled once on-site.

[128] Mr. Yarycky stated that once the modules were shipped, the modular yard subcontractors reconciled all of its final costs. The costs of the module program had increased because of the engineering design changes that occurred. The Fort Hills team started to get indications from various reports that the final module program costs were projecting higher than what the EPC contractor was communicating to Fort Hills management. The overall result was a massive cost overrun compared to the budget.

[129] Mr. Yarycky also commented on the impact of the wildfire, as the EPC contractor was already two months delayed at the time of the fire in June 2016. The EPC contractor advised the Fort Hills team that it was still on schedule with a minimal cost increase to the target price.

[130] Mr. Yarycky then stated that in October 2016, the EPC contractor had concluded higher direct field labour costs, however no schedule impact and no cost increase. Mr. Yarycky stated that Fort Hills management did not consider the EPC contractor revised forecast lined up with what the contractor was trying to impart to Fort Hills management. For the Utilities scope that was being executed by the EPC contractor, Fort Hills had been experiencing low productivity by the craft labour for several months. It was initially thought that the project was making construction progress and the quantities installed were also increasing, with the overall total quantity amounts remaining static. Mr. Yarycky opined that when a project encounters low productivity, progress is below plan; however, where progress is at or above plan, it typically means that there is more workforce than planned on the project. Fort Hills management raised a concern and the decision was made to hold the workforce at a higher numerical level to support achieving First Froth of the entire Fort Hills Project.

[131] In March 2017, which was the original project completion date, the EPC contractor could no longer suppress the productivity information, and was obligated to advise that the project was nowhere near completion.

[132] Fort Hills management determined that during the construction process, the EPC contractor had used affiliated businesses to maximize its own direct field labour force as well as supplying small tools, consumable and construction equipment. Utilizing the affiliates provided the EPC contractor greater opportunity to make profit over and above the target price contract and greatly increased the revenue received by the EPC contractor.

[133] Mr. Yarycky also stated in the rebuttal disclosure (Exhibit 35-C, page 7, para 25) that in July 2017, Fort Hills had lost confidence in the EPC contractor, and his disclosure stated:

> Fluor's reporting was so inconsistent, and the Fluor team would either not provide information or would lie about progress status. As a result, Suncor assembled an independent team of Quantity Surveyors to walk the entire construction areas to identify what work was actually completed and what was remaining to be completed.

[134] Mr. Yarycky also provided comparison tables of how the direct field labour and sub-contractor hours were reported on the project, as well as the direct labour force hours on the project, and the scaffolding and total hours were reported in relation to the project reported progress. The tables show that significant increases were observed, especially in the hours in April 2017. When the EPC contractor provided the information, Fort Hills management submitted it had no option other than to continue working with the EPC contractor to achieve first oil production.

[135] As outlined above, several excess costs were incurred in the U&C Project area in design changes. These excess costs were incurred for a few reasons, as outlined in specific PCNs which summarized the cost increases documented in PCN logs. These increased costs derived from execution challenges, including late deliveries of steel and pipe and assembly at modular manufacturing yards, and the requirement to procure fabricated steel and pipe spools from overseas suppliers. Increased costs also arose from engineering challenges and schedule delays in the monthly production of fabrication and steel and pipe, which arose from a lack of late, incomplete, and missing issued-for-construction drawings. Also, the main EPC contractor for utilities encountered low productivity on its direct field craft labour and ultimately completed significant rework on the U&C Project.

[136] Mr. Yarycky stated that there were 30 PCNs associated with design changes, and he led the Panel through 12 of the 30. He also stated that of the three (3) categories of change, 25% were attributed to engineering challenges, 25% to modular assembly (execution challenges), and 50% to field construction productivity and rework (contractor challenges). Mr. Yarycky submitted the total reductions to the cost of the project based on the foregoing PCNs is $453,504,965.

Secondary Extraction ("SE") - Mr. Ryan Jackson, (Exhibit 2–C Redacted and Unredacted, Exhibit 30–C, and Exhibit 55-C), Mr. Shukrullah Imdadullah (Schedule B, Exhibit 2-C Redacted and Unredacted, Schedule A, Exhibit 30-C, Exhibit 50-C and Exhibit 55-C), and Mr. Krishna Pavathaneni and Ms. Mona Lisi Ghosal, (Schedule A, Exhibit 2–C Redacted and Unredacted and Exhibit 59-C)

[137] Mr. Jackson provided background information concerning the construction and construction costs associated with SE.

[138] Mr. Jackson was qualified primarily as a fact witness (Exhibit P16C, page 1, item 6). The Respondent agreed to the following:

> Mr. Jackson is primarily a fact witness, he will testify on the overall Fort Hills project, and what happened on the secondary extraction unit. He is an engineer by training and has worked in roles across Fort Hills in leadership in project development and project management. In the course of his evidence he may give opinion on project scope and contracting decisions and pre-sanction timelines, as well as post-sanction execution in the

secondary extraction project area, planning and execution, project management, and the impact of design changes and change in execution strategy on cost of the secondary extraction project area.

[139] Mr. Jackson submitted his educational and work history and stated that he is General Manager of Projects in Suncor's Project Execution Function, specializing in project development and execution of large capital and high complexity heavy industrial projects. Mr. Jackson stated that his experience included eight years of full-time involvement with the development and execution of the Fort Hills Project and that he held three sequential roles. First, as Director of Project Development (Facilities) for the Fort Hills Oil Project, he had accountability for front-end design and planning for the fixed-plant facilities (i.e., excluding the mine) and delivering the project to Sanction. Second, as General Manager of Project Execution for the Fort Hills Infrastructure and AET Project Areas, he had accountability for the design, construction, and delivery of finished assets to operations. Third, in his role as General Manager of Construction for the Fort Hills SE project, he had accountability for the site construction from approximately 40% completion status through to turnover of the finished asset to the operation group.

[140] Mr. Jackson holds a Bachelor of Science degree in Mechanical Engineering from the University of Calgary (1995); he is a Professional Engineer in the Province of Alberta (since 1997); and he has completed the General Management Program at the Harvard Business School (2021).

[141] Mr. Jackson briefly explained the function of SE. This project area receives "froth" from three "trains" or units which move product from the OPP. The product moved is the bitumen mixed in a slurry. The secondary extraction then separates the water and the bitumen through a solvent based froth treatment resulting in oil ready to market.

[142] Mr. Jackson testified that SE encountered significant design changes, alterations, and modifications (collectively "Design Changes") in the Fort Hills Project. This aspect of the project had the highest dollar value in the Fort Hills Project in determining the requested amendments to the assessment.

[143] Originally, the SE project sanction was estimated to cost $3.85 billion in 2013. The original sanctioned budget was based on a lower quality review of engineering and as a result, when the entire project was sanctioned, and received the partner approval to proceed, it was known that the SE budget was not finalized and required additional scrutiny. As a result, in July 2014, the sanctioned budget for the SE was received and created a revised estimated cost of $4.7 billion ("QAB"). The actual costs of construction reported by Fort Hills in respect of the SE project was $6.292 billion, which was $2.442 billion higher than first estimated (FEED) and $1.592 billion higher than the QAB.

[144] The QAB budget replaced the original sanctioned budget and was the revised starting point after replacing the original engineering contractor. Fort Hills management identified issues with the lack of capability and quality of work of the major engineering firm initially engaged to work on the SE project. In Mr. Jackson's opinion, the engineering firm had insufficient talent within Alberta for the project. In what Mr. Jackson submits is an almost unheard-of decision, the Alberta based engineering firm was terminated and replaced mid-project by an offshore engineering firm. This was done prior to the QAB budget completion, and before construction has been initiated on the SE project; however, many components for the project had been ordered, given the lengthy timelines to complete construction of long lead time items.

[145] Mr. Jackson also stated that the PCNs related to the QAB budget and not the sanctioned budget. Management determined that the QAB budget of $4.7 billion was the most likely budget that SE should

have had at the outset. All Fort Hill's proposed assessment changes are based on the variation to the QAB budget.

[146] Mr. Jackson opined that the increased costs and the inability to meet the planned budgets were the result of an overheated, stretched labour market. Initially this resulted in the project being out of sequence, engineering design issues, and issues with procurement of product in the early stages of the project; all of which made achieving the sanction schedule more difficult. The remainder of the Fort Hills project was being achieved, which necessitated the SE project to accelerate its project to enable start-up of production.

[147] Compounding these issues was the wildfire. At the time of the fire, the SE project was approximately 25% complete. The fire set back the work schedule and significantly altered costs associated with concrete placement, which was planned for summer conditions and led to concrete placement in the less optimum winter months.

[148] Mr. Jackson testified that there was a total of 298 PCNs associated with the SE project. Of the 298 PCNs, 165 were identified by the Complainant as being non-scope changes which in Mr. Jackson's opinion should not be assessed by the Respondent.

[149] In questioning by the Respondent, Mr. Jackson provided further clarity as to the purpose of the PCN process. Mr. Jackson stated that PCNs are a project management tool. It begins with a cost estimate and then PCNs track deviations from the estimate. PCNs are not designed with suggested changes to assessment amounts in mind.

[150] Mr. Jackson testified that the additional costs of the SE project reflecting changes and rework that did not change the nameplate or scope of the SE project and labour unproductivity impacts totaled $1,831,382,347. (Exhibit 2-C, page 3, para 6)

[151] The requested amendments to the assessment for the SE unit, based on Approved Non-Scope ("APNS") PCNs were as follows: (Exhibit 2-C, (page 6, para 16)

1)	Site specific labour productivity	$261,399,700
2)	Change in execution plan	254,160,090
3)	Change of work location to Module Yard and/or to Site	111,003,528
4)	Site specific rework or repair	182,403,286
5)	Passive fire protection rework and repair	125,485,747
6)	Labour productivity and design changes	554,516,703
	Total APNS PCNs	$1,488,969,051
7)	Rebuilt with completed engineering	272,388,870
	Total SE portion of assessment changes	**$1,761,357,921**

[152] In addition to the PCNs identified in the APNS (1-6), an additional line item (7) is shown as "Rebuilt with completed Engineering" in the amount of $272 million. This is for portions of the scope change for overbuilt components identified on the change of engineering firms, "the impact of the change would be worse than living with it".

[153] Mr. Jackson also reconciled the requested reduction in assessment as follows:

As built construction costs	$6.292 billion
Original sanctioned budget	($3,850) billion
Difference (paragraph 143 above)	$2.442 billion
Less: Assessable costs	$ .681 billion
Total Assessment changes (reconciled to paragraph 151 above)	$1.761 billion

[154] There was considerable discussion during questioning by the Respondent concerning contingency estimates and the process for using contingency and how it related to the PCN process. Mr. Jackson explained that the original budget (Gate 3 and FEED) estimated costs and then identified potential risks – both negative and positive. A risk registry is created to review what potential credible events might be, and begin the process of quantifying the risks, along with the probability of occurrence. There is a high level group review of the potential risks to determine if most risks have been identified. After this process, contingency models are developed and benchmarked. Any risks would then be reviewed to determine potential effects to the estimate.

[155] In terms of process, the amounts in contingency are used first and there would be an internal accounting allocation to remove funds from contingency and place them in the appropriate costing group. Once the contingency was fully used, then PCNs would be used to compare the actual cost to the estimate.

[156] In addition to Mr. Jackson's disclosure, additional commentary on the requested change areas identified from 1. to 6. inclusive, which totaled $1,488,969,051, was provided by Mr. Imdadullah. The report was contained in Mr. Jackson's disclosure and sur-rebuttal (Exhibit 2–C, Schedule B and Exhibit 50-C) and was supplemented with a power point presentation (Exhibit 55–C).

[157] Mr. Imdadullah was qualified primarily as a fact witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Imdadullah is primarily a fact witness who will testify on what happened in secondary extraction unit. He was involved in many of the PCNs issued for the cost escalations, and the categorization of same. A Suncor engineer, in the course of his evidence he may give opinion on project execution, project management and the impact of design changes on productivity and cost escalations on the secondary extraction project.

[158] Mr. Imdadullah submitted his educational and work history and stated that he is Manager Project Controls – CDIP, Business & Operations Services. He worked as Project Controls Manager on Fort Hills Secondary Extraction Handling Planning, Scheduling, Cost Management, and Reporting. Mr. Imdadullah is a Professional Engineer with a Bachelor of Mechanical Engineering from the University of Madras in Chennai, India and a Masters in Business Administration from the University of Alberta. He is also a Certified Cost Engineer with the American Association of Cost Engineers, as well as a member of the Project Management Institute where he is a Project Management Professional, and a Project Management Institute-Agile Certified Professional.

[159] The underlying causes of the abnormal costs incurred in the SE Project were outlined in the witness report of Mr. Jackson. Mr. Imdadullah's report provided further detail and addressed specific PCNs relevant to the increased abnormal costs in the SE Project.

[160] Mr. Imdadullah's report also discussed the PCN process used in the Fort Hills Project, which was described in paragraph 59 of this decision as Project Scope, Non-scope, and Transfers Definition.

[161] Mr. Imdadullah stated the cost impacts of each PCN are estimated as they are initially identified and as the issue is progressing, the actual amount or impact is then arrived at through invoicing with the contractor and the trend or PCN is approved.

[162] Identification and approval of the cost impacts are raised with the project management team and discussed and approved by a project committee.

[163] Mr. Imdadullah submitted that during the course of construction of the SE Project, he would follow the process described in initiating PCNs. That would include identification of scope, non-scope, and budget transfer activities. The APNS and PCN log identified at the time of construction and finalized during project close out was used for the purpose of his report.

[164] Mr. Imdadullah further stated that of the $2.442 billion (see paragraph 153 above) in the SE Project cost growth, $1.488 billion represented the amount identified as excluded costs in non-scope PCNs (see paragraph 151 above). Mr. Imdadullah opined that these excluded costs related to rework, labour scarcity, faulty construction, schedule slippage, and lack of availability of materials. He also submitted that labour coordination challenges also caused rework along with alterations and modifications in the SE Project Area. Adjustments for previously accepted non-assessable claims, such as camp and owner costs, were made to prevent any double counting.

[165] Mr. Imdadullah also stated that the costs were analyzed through reports and project team meetings and the impact was summarized through the review of the APNS and PCN log. He was personally involved in the initiation of many of the PCNs for the SE Project. He also worked with the other engineers who signed off on, and approved, the PCNs. A total of 298 non-scope PCNs were reviewed by the SE Project Control team and classified to the areas identified in paragraph 151 totaling $1.488 billion. Mr. Imdadullah did not analyze the cost of item g) Rebuilt with completed Engineering, which totaled $272,388,870.

[166] The basis for the requested changes is discussed below by each aspect of the requested change. Mr. Imdadullah also discussed a number of the PCNs in detail to provide information as to how the process worked.

1. Site Specific Labour Productivity ($261,399,700)

[167] Mr. Jackson opined that the SE experienced the highest degree of cost overruns in the Fort Hill Project. Mr. Jackson testified that the increased costs associated with site specific labour productivity were a symptom of an overheated period of business expansion (2012-2018). During that time frame, Mr. Jackson submits that the SE project experienced a shortage of resources, engineering personnel, vendors, fabricators, construction personnel, and contractors.

[168] The shortages identified above created increased labour costs in mobilization, demobilization, and in poor labour productivity, all of which manifested in rework, alterations, and modifications to the SE project. A portion of the labour productivity issue was the inability to attract qualified workers. In order to try to rectify the issue, Fort Hills increased its manpower density to try to meet the original construction schedule.

[169] Mr. Jackson stated that in mid-2016, the labour force peaked at 9,600 workers, which exceeded the planned capacity threshold of 5,000. In 2017, the workforce had reduced in size to the desired 5,000 and SE was approximately 90-95% of the total work force (4,500 workers).

[170] A further issue with the on-site labour component was the federal government implementation of the Labour Market Impact Assessment which severely restricted the ability of Fort Hills to access temporary foreign workers.

[171] In an effort to overcome labour issues, the Fort Hills project added and experienced the following:

1. Night shifts;
2. Overtime;
3. Continuous winter work;
4. Shortage of workforce with expected industry experience, including supervisory and management, led to abnormal productivity and rework; and,
5. During construction, and as labour scarcity continued, a "bowl wave" occurred which drove higher than planned levels of labour and scarcity during critical points of engineering, fabrication of modules and materials, and construction.

[172] Mr. Jackson stated that of the $2.442 billion in additional costs, the decision to terminate the engineering firm contributed approximately 80-85% of the cost. The remaining significant aspects were the wildfire and the strained workforce. Additionally, Mr. Jackson stated that the effect of removing the engineering firm and subsequent replacement with the offshore engineering firm caused the SE project to be delayed a further six (6) months. This effect of this was explained in respect of the decline in productivity, not necessarily the quality of work, but the comprehensive plan was impacted as the project became out of sequence. The revised plan attempted to return to the schedule; however, this was never achieved according to Mr. Jackson.

[173] Mr. Imdadullah stated that PCNs were created to identify the productivity loss the SE Project experienced. Those PCNs were listed in a table in his report. He summarized that these costs were due to availability of lesser skilled labour, the higher-than-expected turnover, and premiums paid to attract non-local labour in an attempt to recover from the schedule delay and achieve the first oil date. These costs are over the unproductive labour included in the sanctioned budget, as the reasons for the cost overruns were unexpected and not predicted.

[174] In summary, Mr. Jackson submits that PCNs were created to identify productivity losses. While the original sanctioned budget had forecast unproductivity, the levels of experience due to availability of a less skilled labour force, higher-than-expected turnover, and premiums paid to a non-local labour force were much higher than forecast.

2, Change in Execution Plan ($254,160,000)

[175] Both Mr. Jackson and Mr. Imdadullah stated that in an effort to rectify the SE project issues, there were four (4) key areas items which changed the execution plan:

a. Out of sequence work;
b. Development of one of three extraction "trains";
c. Removal of the original engineering contractor; and
d. Engagement of global supplier.

Further details of each are as follows:

a. Out of Sequence Work

[176] Due to the labour scarcity as well as lack of availability of modular yard shop space, the local engineering firm and procurement services provider experienced issues in sequencing, including completing engineering and ordering long lead time items, such as large vessels and settlers. These two items led to multiple cost escalations and slippage in the execution plan.

[177] In addition, in order to secure fabrication shops in the Edmonton area, multiple items had to be ordered in advance of the engineering being finalized.

[178] Mr. Jackson further stated that the concurrent engineering and fabrication issues resulted in the SE project being out of sequence. The negative effect of the concurrent activities was compounded by the continuous development of technology affecting the project quantities, and the ongoing availability of manpower and productivity challenges. Mr. Jackson also stated that these impacts were not fully mitigated until the final stages of construction.

b. Development of One of Three Extraction Trains

[179] The original design and completed project have three extraction trains. The extraction trains are the part of the project where raw material is transported from the OPP and enters the SE area. In order to attempt to meet the first oil production target of fall 2017, the decision was made to concentrate on finishing one train. The work force in 2017 was working on all three extraction trains until the fall, at which time a reduced work force was deployed to working solely on one, which reduced the labour force over the winter, when work conditions were less favourable, and improved the best and safest workplace for the workers, along with project optimization. The workers finished the first train in late 2017 and the first oil was produced. The second train was completed in March 2018 and the third train in mid-2018.

[180] In completing the second and third trains, work was impeded by having to work around other equipment as well as the operating first train.

c. Removal of the Original Engineering Contractor

[181] The front-end engineering was awarded to an Alberta firm based in Calgary and started in July 2011. Pre-sanction, the firm worked on the DBM, which was a precursor to the FEED sanctioned budget. The engineering firm continued into the early stages of the FEED process of the SE project and it was intended that the firm would complete FEED to its entirety and include the sanction process.

[182] During the FEED process, Mr. Jackson stated that project management became concerned with the engineering firm's performance, particularly in the SE and U&C project areas. Mr. Jackson further stated, "Concerns were centered around weak technical and cost estimating, which influenced key design decisions, schedule adherence, inadequate resources, and generally poor responsiveness to clients requests for corrective action."

[183] Mr. Jackson also stated that management at many levels, including the highest executive level managers of Suncor, attempted to resolve these performance issues. In the end, in mid-2013, it was decided to replace the Alberta-based engineering firm with an offshore engineering firm from Korea. The original engineering firm worked to facilitate the transfer of information to the offshore firm.

[184] The change in engineering firms midway through the FEED process required an extensive sourcing effort and resulted in the engagement of the new firm to scrutinize the work done by the Alberta-based firm and complete the FEED. As a result of the replacement of the Alberta firm, the project experienced a six-month delay, which forced the SE project to be out of sequence with the greater Fort Hills Project. At the same time, the project required partner sanctioned approval in mid-2013; however, the engineering component of the SE project was at less than desirable levels. Mr. Jackson stated that allowances were made on a best-effort basis; however, quantity and cost growth in the SE sanction became a significant factor. The decision to remove the Alberta firm was made to avert larger cost impacts from occurring.

d. Engagement of Global Supplier

[185] Mr. Jackson stated that in order to reduce cost escalations and delays, the decision was made to engage global suppliers in multiple locations to minimize the local Alberta impact for those services and goods. Fort Hills and its partners attempted to mitigate the challenging market conditions it was facing, including Alberta's scarce labour market availability, the high demand for goods and services, and the out of sequence engineering. The foregoing required a review and re-performance of project deliverables. This resulted in an extension of the SE project schedule. During the process of changing engineering firms, it was realized that the equipment, vessels, and materials already committed to the project at local shops to secure manufacturing space were not the optimal design. The project was forced to alter its design to accommodate the already ordered vessels and equipment.

[186] Mr. Jackson provided an example of this project design. The SE project Froth Settler Unit was designed at a height of 63 metres. It was determined that a lower unit height was appropriate, which would have reduced the height of the pipe racks, which would have resulted in savings on steel, piping, cable, and fireproofing quantities. In addition, this impacted scope and quantities of structural steel, piping, electrical instrumentation cables, cable trays, etc., and also affected the manpower requirements of the SE project.

3. Change of Work Location to Mod Yard and/or Site ($111,003,528)

[187] Mr. Jackson and Mr. Imdadullah stated that due to the schedule being delayed, management determined that it would be advantageous to ship incomplete modules to the project site. This resulted in the modules not arriving in the correct order and further required additional laydown yards to store the modules. Additionally, Mr. Jackson stated that module materials and parts were not shipped in an organized manner, which required a determination as to whether all the materials and components had arrived, and then required the assembly of the modules with the materials and parts.

[188] The decision required the modules to be assembled/constructed on site which increased the on-site labour costs as well as indirect costs for accommodating the labour force.

[189] Mr. Jackson summarized that the change in locations from module yard to site resulted in increased costs in the installation of components. He also stated that the cost impact of not having the modules on site was far greater than having them on site, as certain modules needed to be sequenced to allow the building to be constructed. He opined that the costs of being on site in camp, going to and from camp, mitigated the overall cost.

4. Site Specific Rework and Repair ($182,403,286)

[190] Mr. Jackson and Mr. Imdadullah advised this aspect of the claim relates to activities that were completed more than once, as well as activities that altered the original plant design through the removal of previously installed work, regardless of the scope of the original work.

[191] Many of the costs associated with this work included the cost of scaffolding, which was required to be installed to higher-than-expected height to repair damaged components. This occurred as the result of the significant height of the plant and requiring structure craftsmen to traverse the plant.

[192] Mr. Jackson also stated that contractors challenged by labour shortages incurred additional costs associated with out of sequence execution and rework.

[193] Mr. Jackson submitted that the Fort Hills project utilized a froth treatment process that was largely untested prior to the Fort Hills Project. The process uses a solvent in the extraction process, and large quantities of the solvent are required to be on site. The solvent is particularly volatile, and requires process safety hazard mitigation, including leak detection, fire detection, fire prevention, and passive fire protection "PFP"). It was not known at the time the FEED estimates were made of the installed quantities and field productivities for the installation. Mr. Jackson stated that the oversight was due to "lack of competency in the early FEED engineering phase".

[194] Mr. Jackson provided an example of engineering issues. A key architectural design in the early FEED work projected using several solvent storage vessels to store the solvent working inventory. The decision to use several bullets, as opposed to an atmospheric tank and fewer vessels was made based on an early technical and cost study. In hindsight, the study did not capture the cost and complexity of using several vessels, and the resulting design put additional pressure on passive and active fire protection and impacted field productivity and cost.

[195] Mr. Jackson cited another example where the early stages of FEED determined fire heaters (furnaces) were more appropriate rather than steam heaters for many of the heat requirements within the SE project. The decision was correct; however, the process safety implications were substantially underestimated and put on additional costs for quantities and field productivity.

5. Passive Fire Protection (PFP) – Rework and Repair ($125,485,747)

[196] Mr. Jackson noted that the Respondent had accepted many of the proposed changes to PFP.

[197] Mr. Jackson and Mr. Imdadullah stated that given the hazardous nature of the secondary extraction process, extensive fire protection was required. This protection was applied to the modules in the module yards and then shipped to the project site. Mr. Jackson further stated that the fire protection experienced issues during transport to the work site and repairs were required. Additionally, due to the EPC contractor's inexperience in the frigid northern Alberta climate, the protection was not able to withstand the harsh winters, requiring further additional rework and repairs. Additional scaffolding was required to repair all the protection for it to meet safe standards.

[198] As discussed in paragraph 194, the FEED process failed to address the additional fire protection requirements for the solvent storage vessels and the SE process, which involves mixing the bitumen froth with a solvent under pressure, which can create a risk of jet fire. Mr. Jackson stated that jet fire can occur when an accidental release of pressurized hydrocarbon fuel ignites. To mitigate this risk, the SE Project determined that a protective fireproof coating should be applied to certain steel structures that support the equipment and piping. In the event of a jet fire, protective fireproof coating would enable the Structural

Steel to withstand fire and damage and allow workers to escape safely. As noted in paragraph 197, the protective fireproof coating was first applied to the SE Project structures in June of 2015 prior to shipping, and between October 2016 and March 2017, project staff observed cracking in the coating on the structural steel, an unexpected health and safety risk to employees and contractors.

[199] Mr. Jackson submitted that the SE project incurred higher costs to engage additional contractors, travel costs, costs of labour and camp costs, and overtime, as well as additional materials costs to contain, repair, and re-fireproof portions of structural steel. Also, the project incurred costs to assign personnel to manage and supervise the abnormal repair work, and additional costs to engage in ongoing investigations into the failures of the fireproof coating. The project also experienced increased indirect costs due to the delay in the completion of the fireproofing work, the overall extended project schedule, and costs of materials, equipment, and rentals kept in place to facilitate the repair work, including scaffolding which would otherwise not have been required.

6. Labour Productivity and Design Changes ($554,516,703)

[200] Mr. Jackson and Mr. Imdadullah stated that the category changes for labour productivity and design changes were the result of the prior five categories where PCN log numbers could be tracked and amounts applied to the five categories.

[201] The sixth category includes PCN changes that did not fall within the first five categories, but were proposed reductions to the assessment and fell within the following categories:

a) Indirect Budget transfer PCNs from Contingency relating to escalation of costs due to execution challenges that are not related to scope;
b) Related to fees, overhead, and other indirect increases to various vendors and contractors for changes in other non-scope categories such as delay and out of sequence work;
c) Design changes and modifications at field and in module yards that did not affect the scope and cost escalations related to changes because of unforeseen site conditions. Site conditions included a higher than typical water table, frost conditions, change in soil conditions. Remedies included reworking underground containment and additional excavation;
d) Costs related to other non-scope changes in the original design:
e) Materials incorrectly supplied which needed to be replaced, or lost or stolen materials that were not covered under insurance;
f) Stoppages due to unforeseen site-specific conditions; and,
g) Increases in market rates over and above the escalation budgeted due to the heated market conditions for procurement and construction activities.

[202] Mr. Jackson stated that many of the amounts identified in item 6. were built into the revised forecast around mid-2016 of $5.2 billion. Mr. Jackson also confirmed that in his opinion there is no double-counting within PCNs.

7. Rebuilt with Completed Engineering ($272,388,870)

[203] The Fort Hills project report concerning the rebuild with completed engineering quantification was based on a report that was authored by Mr. Pavathaneni and Ms. Ghosal. Their report was contained in Mr. Jackson's disclosure (Exhibit 2–C, Schedule A) and was supplemented with a power point presentation (Exhibit 59–C). The report was prepared solely for the assessment appeal.

[204] Mr. Pavathaneni and Ms. Ghosal were qualified primarily as fact witnesses (Exhibit P16C and P17). The Respondent agreed to the following:

> Mr. Pavathaneni is primarily a fact witness, a Suncor engineer who will explain his analysis undertaken to explain the quantities and costing used in his replacement cost model of the secondary extraction unit. In the course of his testimony, he may give opinion evidence on cost estimating industrial projects, and the impact of design changes.
>
> Ms. Ghosal is fact witness, and a Suncor estimating technician who assisted Mr. Pavathaneni on estimating cost of replacement cost model of secondary extraction unit.

[205] Mr. Pavathaneni submitted his educational and work history and stated that he is Director Engineering - Projects & Specifications Business & Operations Services. Mr. Pavathaneni holds a Bachelor of Science, Civil Engineering from Punjab University in India, and a Master of Science, Civil Engineering from Concordia University in Montreal. Ms. Ghosal also provided her educational and work history. She is presently a Project Controls Manager – Estimating. She holds a Bachelor of Technology in Industrial Electronics from the University of Nagpur in India.

[206] Mr. Pavathaneni stated that his report conducted a replacement cost engineering analysis to identify excess costs in the SE unit of Fort Hills, once quantities are adjusted. In questioning by the Respondent, Mr. Pavathaneni confirmed the deficiencies were determined in hindsight; however, the deficiencies in the original engineering were beyond normal elements.

[207] Mr. Pavathaneni submitted that SE underwent significant design changes as a result of the procurement of long lead items which were not ideal in terms of size, quantity, location, and function. He further elaborated that this resulted in a form of hybrid construction, with components from earlier engineering being made to fit subsequent engineering and design that was undertaken by the offshore engineers who replaced the Alberta based engineers. Mr. Pavathaneni stated that the end result has embedded quantities and components in place that would not be necessary in a rebuild or replacement project, and his report identifies excess quantities, their source, and location.

[208] In Mr. Pavathaneni's opinion, his report was an analysis to compare and cost replacements within the SE project that would represent typical dimensions, components, and costs. It was intended to provide a secondary line of analysis for the calculation of abnormal costs incurred for property tax purposes. As a result of the analysis, he opined that the excess costs associated with the SE project were $272,388,870, and that this estimate was very conservative. This reflects the cost difference had the plant initially been designed with adequate engineering and completed prior to ordering long lead items that added additional complexity, quantities, and costs to the SE project.

[209] Mr. Pavathaneni stated that the basis for the analysis was premised on the SE unit designed and built without the inadequate engineering, the change in design, and the less than perfect component selection and related quantities experienced in the construction of the SE project.

[210] Mr. Pavathaneni stated that due to the heated market at the time of construction, long lead time items created an issue, as they were ordered based on assumptions early in the DBM process, and then designed around the items. He stated this was not wrong; however, was not optimal and the result was increased engineering and quantities due to the sub-optimal design.

[211] Mr. Pavathaneni further stated that while working with the offshore engineering firm in developing alternative technology, it was determined that the design could have achieved the same results with a different, less expensive, and less complex design.

[212] Mr. Pavathaneni also noted the discussion concerning the storage of the solvent and the heaters used in the SE as detailed in paragraph 193 and paragraph 195, respectively. In addition, in paragraph 186, there is reference to the height of the froth settling unit being 63 metres. All three aspects, if engineered correctly, would have had significant cost savings, and this is the basis for the requested assessment reduction. The specific savings could have been realized as follows:

a) Reduced height and fewer vessels would reduce the cost of steel, piping, cable, and fireproofing quantities.
b) Reduced height of the SE plant would have resulted in steel cost savings and reduced PFP; and,
c) Heaters were fire based therefore the vessels needed to be located further apart which increased steel and piping quantities, associated insulation and fireproofing.

[213] Mr. Pavathaneni also stated that due to the early lead time for the vessels, the design work was incomplete, requiring major rework.

[214] Mr. Pavathaneni stated the basis for the rework calculation was derived from the difference between actual cost and costs based on proper engineering.

[215] Ms. Ghosal spoke to how the table of cost comparisons was derived and the assumptions used to prepare the data. Those assumptions included:

a) The table was developed using a "reduction in quantity" estimate from the project engineering director;
b) Possible reduction in quantity were captured in the following areas:
    i. Mechanical engineering (including vessels and heaters); and
    ii. Associated bulk (including steel, pipe, cables, insulation, and fireproofing) (the "Quantities");
c) The estimated reduction in the Quantities includes the quantities in the Approved Project APNS PCNs;
d) Estimates were developed using Quantities which were received from engineering, and specifically through the use of "Unit Rates" which were calculated based on actual amounts and bids for the SE project.
e) Unit Rates include (i) Materials; (ii) Direct Labour; (iii) Construction Indirects; (iv) Engineering; (v) Suncor Home Office Costs; (vi) Commissioning and Start-Up Costs; and (vii) Pre-Commissioning Costs;
f) For each of the Quantities considered, a range of estimates was provided by the engineering department which considered the potential quantity reduction in: (i) cables; (ii) insulation; (iii) mechanical; (iv) PFP; (v) piping; and (vi) structural steel;
g) In each of the specific Quantities, from the high and low range, averages were taken;
h) To avoid double counting the Quantities, one-third of the estimated Quantity reduction was removed;
i) The remaining two-thirds of the Quantity reduction reflects the Quantity that was due to out of sequence engineering and procurement;
j) Process is reflected in the Fort Hills Quality Adjustment Chart;

k) For the Quantities remaining, two-thirds were then applied to the Total Project Cost Unit Rate and reflected a calculated reduction of $272,388,870 due to out of sequence engineering and procurement;
l) To prevent double counting of costs accounted for in settled non-assessable categories the percentage of non-assessable amounts from the negotiated settlement between Fort Hills and the Respondent was deducted; and
m) The cost reduction adjusted for previously settled non-assessable categories is $190,672, 209.

[216] Mr. Jackson submitted the total reductions to the assessment based on the foregoing was $1,761,357,921.

Automation, Electrical and Telecommunications ("AET") – Mr. Matthew Colden (Exhibit 6-C Redacted and Unredacted, Exhibit 34–C, and Exhibit 56-C)

[217] Mr. Colden provided background information concerning the construction and construction costs associated with AET.

[218] Mr. Colden was qualified primarily as a fact witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Colden was primarily a fact witness (sic), and will testify in respect of the automation, electrical and telecommunication project area. He is a Suncor engineer. In the course of giving his evidence, he may provide opinions on the impact of delays, design changes or repair and other matters on productivity and cost escalations.

[219] Mr. Colden's work history includes Manager - Utilities and Infrastructure Development at the Fort Hills Mine from 2011 to 2014, Director for the Automation, Electrical, and Telecommunications Area of the Fort Hills Project from 2014 to 2017, and in 2017 assumed his present position at Suncor as the Director of Renewable Power – Development and Business Services.

[220] Mr. Colden's educational background includes a Bachelor of Applied Science - Chemical and Environmental (1998) and Master of Engineering - Chemical and Environmental (2000). He is also a Professional Engineer in Alberta (2004).

[221] Mr. Colden's involvement in the AET Project was as the Director of Automation Electrical and Telecommunications.

[222] Mr. Colden submitted that the purpose of his report was to identify abnormal costs in the AET portion of the Fort Hills Project. Working with Suncor cost engineers, Mr. Colden stated that he assisted in identifying additional costs associated with the AET Project of $84,148,565. These costs reflected changes and rework which did not increase the nameplate or scope of the AET Project. The primary causes of these additional costs were design changes corrected during field construction, geotechnical challenges, release and replacement of one of the main contractors, and coordination of contractors executing concurrent scopes in other project areas. The exclusions relate to doing work multiple times (as a result of error or faulty construction), as a part of the project regardless of source (rework); schedule slippage due to replacement, lack of, or incorrect materials; and poor engineering and labor productivity that caused rework, alterations, or modifications.

[223] Mr. Colden stated that these unforeseen changes were captured in PCN logs and reviewed for exclusion for property tax assessment purposes.

[224] Mr. Colden referred to the types of Project Changes which were described in paragraph 59 of this decision as Project Scope, Non-scope, and Transfers definitions.

[225] Mr. Colden also stated that the major financial impacts to the AET Project were the result of cost escalations from three (3) main contractors: Main Automation Contractor ("MAC"), Main Electrical Contractor ("MEC"), and Main Telecommunication Contractor ("MTC"):

a. MAC
- design changes identified and corrected during field construction.

b. MEC
- contractor mobilization too early without proper job planning, geotechnical site investigation, engineering deliverables, and material procurement;
- late engineering deliverables;
- late delivery of materials;
- unfavorable soil conditions and complexities;
- release of original major contractor due to incompetent work and replacement by a second contractor; and
- design changes to improve inherent safety in design of site-wide electrical system to meet corporate requirements.

c. MTC
- lack of adherence to integration requirements resulting in deficiencies to telecommunications systems;
- contractor productivity impacted due to slower interaction and coordination with concurrent scopes and contractors; and
- unplanned growth in temporary facilities to accommodate additional labor brought on site to meet schedule pressures.

[226] Mr. Colden extrapolated on the major financial impacts to the AET Project. Those impacts were broken down as Fuel Costs, MAC, MEC and MTC, as identified below.

Fuel Costs	$ 2,650,000
MAC	$ 706,669
MEC	$38,748,181
MTC	$29,807,232
Total PCNs identified	$71,912,082

Fuel Costs $2,650,000

[227] The PCN for Fuel Costs of $2,650,000 states the costs were the result of the impact to fuel costs associated with the design changes which required scheduling extensions into winter months versus summer months. This included schedule slippage requiring the extended use of generators.

a. MAC

[228] Mr. Colden stated that the MAC was primarily an engineering services contract for automation. In the case of Fort Hills, the MAC project worked closely interfacing with other areas of the project, and when other project areas had scheduling slippage issues, it cascaded to the AET project. Most of the MAC increased costs were due to rescheduling, and many were indirect costs such as travel, camp, and field labour costs.

[229] Mr. Colden also stated that although Fort Hills incurred $3.6 million in design changes, only $706,669 were considered in reducing the assessment. Those were extensions for field technician stays on site for field changes at interface of $18,400. In addition, $688,299 was established for indirect costs due to schedule changes (temporary construction facilities, temporary construction services and utilities, construction equipment) while the MAC scope of work waited to interface with other construction areas that were delayed. Delays were caused due to material shortages, unproductive labour, and various other causes that were addressed in the specific project PCN claims. Significant time and effort were invested to have construction schedules align to avoid unproductive efforts coordinating the direct and indirect construction activities.

b. MEC

[230] Mr. Colden stated that MEC cost escalations of $38,748,181 were incurred, and Mr. Colden provided further comments on some of the major financial impacts:

a. The high voltage electrical transmission and distribution system for the Fort Hills site is a complex grid with hundreds of kilometers of power lines, 6 large substations, and 11 skid substations. There was a critical requirement to have Fort Hills connected to the electricity grid and able to deliver power to the various project areas in advance of construction completion. To meet the required timelines, the EPC contractor mobilized to the field early, but without proper job planning, geotechnical site investigation, engineering deliverables, or procured materials.

b. The result was a significant delay in the field and rework. Engineering deliverables were late, or incomplete, and changed, which resulted in rework. Materials were not delivered when needed, resulting in standby costs and inefficient execution. There were complexities with the soil, groundwater and subsurface on site which drove both rework in the field and engineering, which resulted in significantly increased costs. The performance of the EPC did not meet expectations, and after some time of working with the EPC to improve, the contractor was released from the job.

c. The replacement contractor was the EPC for the MTC portion who was already on site and had the capability to step in. After reviewing the state of work on site, the new contractor submitted change orders to account for the rework of some of the work done by the original EPC, and to finish the scope. As the primary EPC had already consumed most of the budget for the original scope, the costs for the remaining work significantly inflated the Estimated at Completion amount for the scope. These issues were identified through PCNs for:

    i. engineering productivity and rework - $1,136,164;
    ii. field changes at interface - $22,292;
    iii. field changes due to design or found conditions - $6,349,378;
    iv. indirect costs increase due to extension of schedules due to rework and change $258,413; and
    v. rework, productivity, quality - $14,050,599.

d. There was a design change implemented to improve safety of the electrical system site wide. This involved designing an Electrical Protection Network ("EPN") consisting of dual protection schemes utilizing high speed communication using a messaging protocol to minimize arc flash potential in the system. The concept was relatively new, and designers had challenges making the system work. There were multiple engineering hour increases to rework the design. The requirements of the Inside Battery Limit ("ISBL") areas were not clear, and the areas did not typically deliver what was ultimately required through interface management tools. There were significant gaps with all interfaces of the design with respect to cabinets, wiring and programming. The resulting impact added significant on-site resources to complete the protection system in every area, reworking installations, and resetting programming.

c. MTC

[231] Within MTC, cost escalations of $29,807,232 were incurred, and Mr. Colden provided further comments on some of the major financial impacts:

a. The telecom scope was highly complex in its integration site-wide of all fibre optic cabling, networks, and applications, and building systems integration. Due to lack of adherence to the interface requirements established by the Telecom team, many deliverables by ISBL areas were deficient. The design requirements were not well translated by the EPC into its scoping for package units, subcontracted building, and other systems. The telecom contractor faced issues such as:

    i. being required to rework or complete many aspects of the scope that should have been delivered on site as complete;
    ii. heavily impacted by its ability to plan and manage work inside other project areas as they were under the authority of other construction contractors;
    iii. being denied access, delayed permits and moving schedules; and
    iv. once granted access into these areas, the telecom contractor often found deficient scope.

[232] This led to increased costs due to delays, rework, and low productivity of onsite resources. These cost impacts are represented as follows:

a. field changes at interface - $3,816,569;
b. field changes due to design or found conditions - $427,389;
c. indirect increases due to schedule extensions due to rework and change - $1,950,789; and
d. rework, productivity, quality - $14,365,136.

[233] Mr. Colden stated that there were 44 PCNs associated with the AET project. He led the Panel through 18 of the PCNs in detail and submitted the total reductions to the assessment based on the sum of the PCNs is $71,771,420.

[234] Mr. Colden also advised that two further amounts totalling $12,377,145 were included in the total requested adjustment to the assessment based on the AET portion of the project.

a. $12,360,522 – calculated as a 5% contingency from all labour projects included in certain Fort Hills project control accounts (17HA, 17HC, 17E, 17F, 17G, 18JA, 50A0, 50B0 and 50C0). The rationale provided was that the contractors included a contingency within their contracted amount for rework and productivity and that this amount should reduce the assessment as well.

b. $16,623 – calculated a 1% contingency from all engineering costs in Fort Hills engineering control accounts (60 series). The same rationale provided was that engineers included a contingency within their contracted amount for rework and productivity and that this amount should reduce the assessment.

[235] Mr. Colden summarized that $84,148,565 in adjustments attributed to the AET project should be accepted.

Ore Processing Plant ("OPP"), Extraction and Tailing Ponds ("E&T"), and Facilities & Common Services ("F&CS") – Mr. Chris Woloshyn (Exhibits 3-C, Exhibit 4-C and Exhibit 5-C Redacted and Unredacted, Exhibit 31-C, Exhibit 32-C and Exhibit 33–C)

[236] Mr. Woloshyn provided background information concerning the construction and construction costs associated with OPP, E&T, and F&CS.

[237] Mr. Woloshyn was qualified primarily as a fact witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Woloshyn is primarily a fact witness. He will testify in respect of the ore processing plant ("OPP"), extraction and tailings project area ("E&T") and common services project area. He is a Suncor engineer. In the course of giving his evidence he may provide opinions on the impact of delays, rework or repair on project costs.

[238] Mr. Woloshyn's work history includes that he began employment with Suncor in 2001, and through a series of promotions, was the Project Director, Fort Hills Ore Preparation Plant, from 2013 to 2017. From 2017 to 2018, he was the Site Integration Director, Fort Hills Site, and from 2018 to 2019, was Director, Upstream Project Development. From 2019 to 2020, he was Director, Meadow Creek Project, and in 2020 he assumed the role he currently holds as General Manager, Project Excellence and Performance Improvement.

[239] Mr. Woloshyn's educational background includes a Bachelor of Science - Electrical Engineering (1996). He is a Professional Engineer. He also attended the Southern Alberta Institute of Technology in the Project Management Institute Program (2005) and attended the Harvard Business School Residence Leadership Program (2017).

[240] Mr. Woloshyn's involvement in the OPP, E&T, and F&CS projects was as project director for the OPP project, with no direct accountability for the E&T project, but he was responsible for the close-out of the project, and he worked with the team on F&CS as the integration director and was responsible for the close-out of the project.

[241] Mr. Woloshyn submitted that the purpose of his reports was to identify abnormal costs in the three (3) projects with which he was involved. The three (3) areas and the related reports were OPP (Exhibit 3-C), E&T (Exhibit 4-C) and F&CS (Exhibit 5-C), as well as his rebuttal disclosure exhibits (Exhibit 31-C, Exhibit 32-C and Exhibit 33-C). He reviewed each report separately.

Ore Processing Plant ("OPP")

[242] Working with Suncor cost engineers, Mr. Woloshyn stated that he assisted in identifying additional costs associated with the OPP Project of $129,795,201. These costs reflected changes and rework which

did not increase the nameplate or scope of the OPP Project. The primary causes of these additional costs were design changes corrected during field construction pertaining to ground water remediation, which costs have been agreed to by the Provincial Assessor. In addition, there was a loss of site-specific productivity, as well as the insolvency of an external contractor, and the indirect costs associated with schedule delays to complete the project due to the preceding problems.

[243] Mr. Woloshyn stated that these unforeseen changes were captured in PCN logs and reviewed for exclusion for property tax assessment purposes.

[244] Mr. Woloshyn referred to the types of Project Changes, which were described in paragraph 59 of this decision as Project Scope, Non-scope, and Transfers Definitions.

[245] Mr. Woloshyn provided further details as to the causes of the changes and rework he referred to:

a. Ground water remediation – was due to costs associated with significant ground water incursion onto the site, which necessitated abandoning typical dewatering techniques including wells and ditching. This was replaced with a much more complex and expensive system that involved installing a system of gravel filled trenches, piping, and sumps forming a perimeter around the site, thereby preventing ground water ingress into the construction and operating area.
b. Loss of site-specific productivity and work delays – were the result of better understanding the detail of the work completed and additional scope required to complete the project.
c. Insolvency of an external contractor – was the result of a lump sum contractor who was responsible the conveyors, crushers, surge bins and all associated facilities, advising Fort Hills in late 2016 that it was at risk of financial insolvency because of projects outside of Fort Hills. It advised it would not be able to complete its contractual obligations to sub-contractors and vendors. Suncor stepped in and decided with those sub-contractors and vendors to be paid and to remain on the project. The result was the engagement of the lump sum contract to a time and material contract with one of the other contractors on site. Mr. Woloshyn submits that making this transition when the project was approximately 75% complete was a very complicated and expensive undertaking. Many instances of incomplete scope and low-quality work were discovered during the changeover, which needed to be addressed as part of the remaining work to complete the project. The change of general contractor resulted in a period of very low productivity and delays while the new contractor mobilized its own resources, as well as taking over and managing more than a dozen subcontractors.
d. Increase in indirect costs – costs associated with the delays noted above created an increase in indirect costs associated with the project.

[246] Mr. Woloshyn stated that there were 26 PCNs associated with the OPP project. He led the Panel through nine (9) of the PCNs in detail and submits the total reductions to the assessment based on the totality of the PCNs is $114,889,330.

[247] In addition, Mr. Woloshyn submits that a further $14,869,871 should be included in the reduction based on $14,746,129 and $123,742, which were based on a 5% contingency for additional labour costs and 1% for engineering service costs respectively considered to be estimates of rework costs.

[248] Those amounts were further clarified as:

a. $14,869,871 – calculated as a 5% contingency from all labour projects included in certain Fort Hills project control accounts (10AB, 10AH, 10AJ, 10AO, 11BB, 11BD, 12CA, 12CB, 13DO, 15FO, 16GO, 17HB, 17HC, 17HE, 17HF, 18JB, 19KA, 20LO, 29WA, 31DE, 31E0 and

31HO). The rationale provided was that the contractors included a contingency within its contracted amount for rework and productivity and that this amount should reduce the assessment as well.

b. $123,742 – calculated a 1% contingency from all engineering costs in Fort Hills engineering control accounts (60 series). The same rationale provided was that engineers included a contingency within its contracted amount for rework and productivity and that this amount should reduce the assessment.

[249] Mr. Woloshyn summarized that $129,759,201 in adjustments attributed to the OPP project should be accepted.

Extraction & Tailings ("E&T")

[250] Mr. Woloshyn stated that he was not responsible for the day-to-day management of the E&T Project. He was brought in at the close-out of the project; however, he was comfortable presenting the report on the E&T challenges and associated request for a reduction of the assessment.

[251] Working with Suncor cost engineers, Mr. Woloshyn stated that he assisted in identifying additional costs associated with the E&T Project of $109,371,187. These costs reflected changes and rework which did not increase the nameplate or scope of the E&T Project. The primary causes of these additional costs were design changes corrected in the field, demarcation of the firewater lines, and schedule delays caused by the wildfire.

[252] The primary exclusions in the E&T Project related to the EPC contractor schedule running longer than planned. The original targeted mechanical completion date for the E&T Project was March 2017 and the actual completion was December 2017, a total delay of nine months. Mr. Woloshyn stated that the following contributed to unexpected cost escalations:

a. Fire hydrant amendments: eleven hydrants and associated bollards had to be removed from the E&T Project prior to mass pours. The height of the hydrants unexpectedly ended up being the same height as the piles being transported by loaders. This amendment included evacuation of the fire hydrant and fire line to the valve connection, sloping and benching of all excavations and installation of appropriate access and egress points and subsequent reinstallation of the hydrants. In addition, there was a need to excavate and remove abandoned improvements from the original work at the site;
b. Piling costs: piling installation was more intensive and costly than forecasted. More piles were required than planned due to the geotechnical deliverables being split among the EP house, the Geotechnical Engineer, and the Piling Contractor which caused confusion and increased expense;
c. Out of sequence engineering: out of sequence engineering & rework related to the interface issues with the MAC, MTC, and MEC led to higher engineering costs;
d. Extended field engineering support: extended field engineering support from December 2016 to December 2017 increased costs;
e. Home office costs: Suncor home office cost overruns due to the overall project extension from December 2016 to December 2017;
f. Wildfire costs: the wildfire impacted the ISBL at a key stage of project construction. The fire stopped all site activities for 35 days and had additional cost impacts related to demobilization,

remobilization and restart of work after the fire. The General Contractor not only demobilized personnel but was also required to demobilize the work area of all equipment and materials;

g. Product quality challenges: the ISBL piping experienced increased costs because of a quality issue from the supplier. Approximately 5.1km of piping had to be removed, refabricated, and reinstalled. In addition, the E&T Project experienced increased costs associated with the incorrect installation of a liner on the East PAW Pond which delayed flooding, and resulted in the demobilization of the General Contractor and the re-award of the unfinished scope to another contractor; and

h. Contractor changes: change out of the contractor responsible for Thickener construction occurred. The original sub-contractor was replaced due to poor safety and poor execution performance issues. This resulted in a schedule delay of 1 month. The original contractor was demobilized from the Thickener site in November 2015. To avoid standby time and the higher additional cost of winter work, the replacement contractor was engaged to carry on the Thickener scope beginning in April 2016 for the balance scope of Phase I and Phase II work. This delay resulted in a $17.9M cost impact.

[253] Mr. Woloshyn referred to his description of scope change PCNs, non-scope PCNs, and budget transfer PCNs as described in paragraph 59 as Project Scope, Non-scope, and Transfers Definition.

[254] Mr. Woloshyn stated that there were 78 PCNs associated with the E&T project. He led the Panel through 16 of the PCNs in detail and submits the total reductions to the assessment based on the totality of the PCNs is $109,371,187.

[255] In addition, Mr. Woloshyn submitted that a further $14,218,298 should be included in the reduction based on $12,971,457 and $1,246,841, which were based on a 5% contingency for additional labour costs and 1% for engineering service costs, respectively considered to be estimates of rework costs.

[256] Those amounts were further clarified as:

a. $12,971,457 – calculated as a 5% contingency from all labour projects included in certain Fort Hills project control accounts (10AJ, 10AO, 11B0, 12CA, 12CB, 13DO, 14EO, 15FO, 16GO, 17HA, 20LO, 29WA, 31EO and 31HO). The rationale provided was that the contractors included a contingency within its contracted amount for rework and productivity and that this amount should reduce the assessment as well.

b. $1,246,841 – calculated a 1% contingency from all engineering costs in Fort Hills engineering control accounts (60 series). The same rationale provided was that engineers included a contingency within its contracted amount for rework and productivity and that this amount should reduce the assessment.

[257] Mr. Woloshyn summarized that $109,371,187 in adjustments attributed to the E&T project should be accepted.

Facilities and Common Services (“F&CS”)

[258] Mr. Woloshyn submitted that the F&CS Project provided site-wide services to facilitate direct construction in the Fort Hills Project, mainly in indirect costs with some minimal direct costs. It was the only area of the Fort Hills Project that did not involve direct construction, apart from the Operation Service Access Road. The F&CS Project Area dealt with approximately 45 contractors, support groups including Material Management and EMS, and other camp services such as Water, Sewage, Power, and Security.

[259] Mr. Woloshyn expanded on the nature of the project's key areas, as follows:

a. Common Construction Indirect Costs including the management and coordination of common F&CS identified as costs identified as facilities, services, and utilities costs; equipment costs; construction management personnel costs; and related camp and transportation costs.

b. Common Engineering Services which included the following:

- engineering work to support the service access road, temporary fuel depot, area preparation for camp, and the material management area, including the warehouse, laydown yard, and parking;
- system and non-process process hazard analysis facilitation – HAZOP of vendor data;
- third party inspections per agreed to inspection and test plans;
- Logistics Control Software Tool;
- Heavy Lift Plans;
- geomatics information, lidar and satellite photographs;
- welding procedure review and approval process;
- non-destructive testing and advanced ultrasonic testing review;
- site installation inspection for pressure vessels and visits by Alberta Boiler Association;
- Safety Codes Inspection;
- process safety;
- pipe specification development for AutoPlant V8i;
- turnover support services including the Turnover Management System upgrade and Vendor Document Management for Master Data;
- consequence analysis and quantitative risk assessment ("QRA") report development, including the production of a mitigated version of QRA via software modelling, calculations, cross boundary impacts and CA new contours;
- site-wide engineering studies including studies associated with noise, lighting, chemical interaction matrix, and a fire protection layout;
- Fort Hills Interface Management Tool; and
- cathodic protection.

[260] Mr. Woloshyn stated that Fort Hills excluded $16,036,833 of the total F&CS Project costs as costs of design changes, alterations, and modifications. He submitted that the exclusions reflect the rework or changes in the F&CS Project that did not increase the nameplate or scope of the F&CS Project.

[261] Mr. Woloshyn also stated that the primary exclusions relate to doing work multiple times because of errors or faulty construction (rework), schedule slippage due to replacement, lack of or incorrect materials, and poor labor productivity that caused rework, alterations, or modifications.

[262] He also submitted that rework includes activities in the field that have been completed more than once or that remove work previously installed as a part of the project regardless of source.

[263] Mr. Woloshyn specified that the delays in the project included a delay in completing permanent site power construction, which required the use of generators. In addition, there was a delay in SE which required construction infrastructure to be maintained longer than expected.

[264] Mr. Woloshyn stated that there were ten PCNs associated with the F&CS project. He also advised the Panel that with respect to three of the PCNs, numbers 5, 6, and 7, were not in the disclosure; however,

were included in the accounting log (Trend Log). He led the Panel through five of the PCNs in detail and submitted the total reductions to the assessment based on the totality of the PCNs is $16,036,833.

General Assessment Matters ("General") – Mr. Benjamin Matthews (Exhibit 14-C Redacted and Unredacted, Exhibit 37–C, and Exhibit 57-C)

A. Matthews Background

[265] Mr. Matthews was qualified primarily as a fact witness (Exhibit P16C). The Respondent agreed to the following: "Mr. Matthews will provide opinion evidence on industrial assessment matters, including interpretation and application of *CCRG*."

[266] Mr. Matthews' work history includes being an assessor in Saskatchewan from 1997 to 1998; Manager, Assessment for a private company in Alberta from 1998 to 2004; Manager, Property Tax with a major accounting and consultancy firm from 2004 to 2006; and Senior Tax Manager, Western Property Tax Division with a major consulting firm from 2006 to 2007. Mr. Matthews was originally hired by Suncor in 2007 and he has progressed from Property Tax Manager to Team Lead, Property Tax, the position he currently holds.

[267] Mr. Matthews' educational background includes a Business Administration Diploma, Major in Appraisal and Assessment (1997), Certificate in Real Property Assessment (1997), Certified Assessment Evaluator designation from the International Association of Assessing Officers (2004), and an Alberta Municipal Accredited Assessor designation from the Alberta Assessor's Association (2007).

[268] Mr. Matthews stated that he is an industrial property tax specialist with Suncor and that his area of responsibility includes the oversight and management of Suncor and Suncor partnership industrial properties across Western Canada. Mr. Matthews stated that within Alberta he has been involved in the reporting of over 300 projects for assessment and taxation purposes over the past 15 years, representing capital costs of more than $14.4 Billion. Mr. Matthews asserted that throughout the Fort Hills Project he was the primary point of contact for assessment matters and was directly involved in communications with the PA for the periods under appeal. Mr. Matthews stated that the Fort Hills Project was a Suncor partnership where Suncor assumed the role of project oversight, providing the property assessment and tax function.

[269] Mr. Matthews submitted that the purpose of his report was to provide discussion of Fort Hills assessment history. He also set out the areas of dispute that have been resolved by joint recommendation and the areas of assessable costs that remain in dispute. He outlined the process for assessing M&E in Alberta. Mr. Matthews also discussed his understanding of the reporting of construction costs for Fort Hills and cost exclusions as provided in the cost renditions prepared for Fort Hills, in addition to his understanding of historical assessment practices in the application of the *CCRG* and the *CCRG* predecessor document – SPAG. Mr. Matthews also provided an overview of the assessments of other oil sands projects for context and comparison.

[270] Mr. Matthews discussed Fort Hills' parent company, Suncor's, role in the oil sands sector. He identified that Suncor had constructed several significant projects in the oil sands as well as processing capacity in the Edmonton area. The significant plants and milestones were reported to be the Suncor Base plant, which commenced operations in 1967 and the Steepbank facility which commenced in the 2000s. These two primary extraction plants combined with two secondary extraction plants – Firebag Steam Assisted Gravity Drainage ("SAGD") Plant in 2003 and MacKay River SAGD Plant in 2002; along with

the Syncrude Mine, Extraction, and Upgrader facilities which originally started in 1975, the East Tank Farm, the Northern Courier Tank Farm, and the Strathcona refinery pipeline network. With this number of significant projects, Mr. Matthews opined that the Suncor property tax team has significant experience in working with assessors to establish the base costs and excluded costs to derive the assessment value of the property.

[271] Mr. Matthews opined that Suncor is well positioned to interpret and complete the steps required in the *CCRG* to determine the correct assessment of Fort Hills. Mr. Matthews submitted that the renditions for the Fort Hills project comply with the *CCRG* and identify the impacts of the unskilled and unproductive labour and non-scope construction costs. Those costs are removed to establish the Fort Hills requested assessment. Consistency has been created in relation to historic regulated properties and other regulated properties within the region and the province. The requested assessment is consistent with Suncor's prior reporting on other projects and treats Fort Hills equitably given its remote location, and challenges in the execution of the project. Suncor used project experience, the property tax team, and cost engineers to assist in developing exclusions to present to the PA.

[272] Mr. Matthews submitted that he joined Suncor in 2007 and during the subsequent time frame he has been involved in preparing reports to the assessment departments of both the RMWB and the PA. He confirmed that he has consistently applied the *CCRG* as the basis for the methodology to prepare assessments, and that the methodology for preparing the Fort Hills rendition is the same process used to prepare other renditions of Suncor's projects. This includes the two significant areas at issue in Fort Hills which were non-scope construction costs and the application of the Edmonton area factor.

B. History of *CCRG* and Predecessor Legislation/Regulations

[273] Mr. Matthews provided historical information with respect to SPAG, which Mr. Matthews informed was the predecessor to the *CCRG*. Mr. Matthews submitted that SPAG specifically recognized the Edmonton area as the baseline in determining what was typical within Alberta. He further submitted that SPAG resulted in standardized assessments throughout Alberta and as a result, there was no discrimination between the assessment of remote locations in comparison to Edmonton.

[274] Mr. Matthews also submitted that SPAG was used by assessors until approximately 2001, at which time the first version of the *CCRG* was developed. During the transition from SPAG to *CCRG*, a bulletin was issued from the SPAG Stakeholder Working Group providing a summary of the events of the working group. Mr. Matthews submitted that the working group's work was summarized as follows:

> [t]he final draft of the guide, now named "Construction Cost Reporting Guide for Regulated Property", will be very similar to the existing SPAG with only a few minor changes. The new Guide is scheduled to be released in early November and intended to be included in the 2001 Minister's Guidelines.

[275] Mr. Matthews acknowledged that the *CCRG* became a regulated document in 2005 and he opined that there has been a common understanding within Alberta's assessment community that Edmonton and a 50-kilometre area around Edmonton represented a market where an adequate labour force existed and continued to be the baseline to standardize assessments. Remote sites do not represent a "balanced market" nor that "an adequate labour force" was "readily available at the worksite". He stated that labour productivity was measured against an Edmonton benchmark. These concepts were discussed, reviewed, and implemented by appointed assessors within the RMWB and elsewhere, and used in the development of rates for standardized assessments.

[276] Mr. Matthews opined that MA commissioned many reports to assist in identifying the rates to be used for assessment purposes, and the parameters of those studies provided the form for the basis of rate development, and what is deemed typical construction costs are those set out in the *CCRG*. Those rates were based on Edmonton and area costs, or also referred to as mid-Alberta based.

[277] Mr. Matthews submitted that the PA has adopted, or has agreed with, the RMWB Blue Book. This was a document developed by the RMWB at the time it attempted to introduce changes in its assessment methodology. The RMWB Blue Book removed the reference to the EAA. Mr. Matthews disagreed with the interpretation of removing the EAA and submitted that the 2017 CARB Decisions restored the EAA and rendered the RMWB Blue Book as having no effect.

[278] Mr. Matthews contends that the PA's position that the EAA is not representative of "typical" or "normal" is incorrect. He illustrated that such a change would represent a substantial change in assessments, and to do so without any significant roll-out would be illogical. Also, the PA's position would represent an inconsistent application if all properties in Alberta were not being assessed on a similar methodology.

[279] Mr. Matthews also stated that during 2016, a working group was formed to consider changes to the *CCRG*. The revised document was referred to as RIPA. Mr. Matthews' understanding from the working group, of which he was a member, was that the EAA was the basis for assessments in Alberta and abnormal costs were to be measured against what would be typical in the Edmonton area.

[280] Mr. Matthews also understood the purpose of RIPA was to provide the required clarity for the *CCRG* and the indications were that there would be no introduction of new policies to the assessment of regulated assets. Within the document it stated that Edmonton was the baseline for measurement of abnormal costs.

[281] Mr. Matthews concurred that RIPA remains a discussion document and there has been no formal resolution of any policy changes.

C. Assessment Practices for *CCRG* Reporting

[282] Mr. Matthews agreed with the assessment principles for M&E as described in paragraph 9 of this decision.

[283] Mr. Matthews submitted that M&E is a regulated assessment and the calculation is as described in paragraph 12 of this decision.

[284] Mr. Matthews opined that the Table of Contents of the *CCRG* establishes the basis for determination of the assessment, which begins with Section 1.100 – Direct versus Indirect Costs. The *CCRG* (Exhibit 14-C (Unredacted), page 203) cites the definition of costs as follows:

> Direct costs are costs for labour, materials, and installation costs which can be directly related to the construction of a specific facility.
>
> Indirect costs are costs incurred away from the site or are costs allocated to the project. Indirect costs are also incurred by a company that uses in-house resources to construct a facility.
>
> The assessor should review the company submission to determine whether in-house staff have been involved in any construction activities. When such activities are identified

allowances for indirect costs are to be included.

Direct costs include but are not limited to:

- staff, including labour, supervision, inspection, janitorial, and security,
- materials used for construction,
- consulting fees,
- engineering, design, and surveys,
- construction equipment: including scaffolding, pumps, tools, and consumable supplies,
- monitoring and control of construction,
- handling and storage of materials and equipment,
- equipment maintenance, repairs, and winterization,
- temporary facilities,
- clean-up costs and removal of rubbish, and
- security, including yard lighting and fire protection.

Indirect costs include but are not limited to:

- general contractor and subcontractor profit,
- contractors' overhead, including administration costs and head office allocations,
- staff recruitment,
- permits: building, electrical, etc.,
- insurance: fire, liability, property, etc., and
- cost to obtain a performance bond.

[285] Mr. Matthews submitted that s.2.400 Design Changes, Alterations, and Modifications specifies that alteration costs incurred during construction that improve the operational efficiency of the original plant design are excluded. Additionally, the costs of "de-bottlenecking" or modifying an operating process are excluded if there are no changes to the equipment inventory. Conversely, the cost of equipment installed to improve operational efficiency is included.

[286] In respect of the EAA, Mr. Matthews identified that the adjustments for Fort Hills were calculated in the same manner as previous Suncor reporting, and this was previously accepted by assessors, including the PA for the 2018 tax year. The calculation included considering the following additional costs which were deemed non-assessable and not included in the included cost:

a. due to unproductive labour (including EAA);
b. due to unavailability of an adequate labour force;
c. costs that would not be typically incurred in a balanced market; and/or
d. costs required to maintain consistency among regulated properties

[287] Mr. Matthews also expanded on the nature of adjusting costs and labour based on the EAA. He opined that this adjustment was made so that there would be consistency in Alberta with how projects are assessed. The concept allows for consideration of events that might not occur on a project site when compared to Edmonton as the base cost. This would include the availability of a skilled workforce and inventory of raw materials or prefabricated aspects being readily available.

[288] It was Mr. Matthews' opinion that Edmonton has always served as a hub centre for Alberta industry as it had the bulk of major industrial growth in the province. In addition, most of Alberta's modular assembly yards are in the Edmonton area, and Edmonton is well connected with transportation routes and is a central location; accordingly, it is a shipping hub for western Canada. The Edmonton area typically provides an existing, sufficient, and trained labour force as the components of a major city, such as adequate transportation, shopping, school, and hospitals.

[289] The unionized nature of the industry also contributed to the development of a superior workforce in the Edmonton area. Union seniority determined where workers were able to bid on job locations. As such, senior, skilled workers were able to work on local projects in Edmonton and remain close to family and friends. Less senior trades tended to hone their skills and build their seniority at remote sites. This resulted in inequities in skill levels for a labour force employed at remote sites.

[290] Mr. Matthews further opined that s.2.500 of the *CCRG* begins with the statement that "In order to reduce uncertainty and consistency among related properties the following assumptions are made to describe normal conditions for the construction of regulated property." He submitted that it is necessary to reduce uncertainty before construction commences, and that all regulated properties must be treated in the same manner. Mr. Matthews put forward the following assumptions:

- An adequate labour force is available at the worksite;
- Raw materials and prefabricated component parts are readily available;
- The determination of what is "typical" or "abnormal" is subjective;
- If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded;
- Abnormal costs can result from delays in construction caused by natural disasters or inclement weather or they may occur when the construction workforce is on site but a lack of supplies or a work slowdown reduces or stops actual construction. Additional costs incurred because of unproductive labour are excluded.; and
- Specific examples are included in the *CCRG* as follows:
  - a cost that would typically not be incurred in a balanced market; and/or
  - a cost that is excluded to maintain consistency among regulated properties.

D. Fort Hills Assessment History

[291] Mr. Matthews provided historical context for the subject property. The property was originally assessed in the 1990s with a shop and several security trailers. In 2013 the Fort Hills Project received sanction by its partners and a construction camp was constructed and first assessed in 2014. As construction progressed, assets were added as they qualified for assessment. Non-process buildings, such as administrative offices, tire shops, and warehouses, were added in 2016. Both the 2016 and the 2017 assessments of the Fort Hills Project included assessment of completed assets, including the mining and infrastructure scopes of work. In 2018, the Fort Hills Plant was partially started up with mined product processed off-site, and a progressive assessment for the M&E was rendered, which included the EAA. The overall plant become 100% operational in 2018 and was fully assessed in 2019.

[292] It was Mr. Matthews' contention that the historical assessments prior to 2019 were accepted by several RMWB senior assessors, including Messrs. Schmidt, Horn, Campbell, and Scofield, prior to the involvement of the PA.

[293] Mr. Matthews confirmed that the 2017 CARB Decisions (also described in paragraph 32 of this decision) were for complaints filed concerning the 2015 and 2016 tax years, which represented 2014 and 2015 assessment years respectively, and where the RMWB attempted to remove the EAA.

[294] Mr. Matthews submitted that Suncor took the lead on the assessment complaints, as Suncor had the largest number of properties (11) on the assessment roll. Mr. Matthews advised that both Suncor and RMWB filed disclosure in advance of a proposed hearing. Prior to the hearing, Suncor and the RMWB agreed to a settlement which restored the Edmonton area productivity allowance. All of the mutual agreements were accepted by the RMWB Composite Assessment Review Board. Mr. Matthews opined that the mutual agreements were compliant with section 2.500 of the *CCRG*.

[295] Mr. Matthews provided copies of the RMWB CARB decisions respecting the 2015 and 2016 complaints ("2017 CARB Decisions") for each of the complaints (Exhibit 14-C, Appendices 34 to 50 inclusive). Mr. Matthews noted the language was very similar in each of the 2017 CARB Decisions. The following extract was from Board Order 2017-007 which concerned 2015 (Exhibit 14-C, Appendix 34, page 508) as follows:

> [5] …. The matter originally arose because the Assessor had sent out notice arising from his view of the ruling in a previous CARB decision about how productivity claims were to be addressed. The notice was provided late in 2013 with the change to be effective for the 2015 assessment, which resulted in the complaints being filed. The complaint had both site-specific components, for example, unexpected events such as bridges being blocked, as well as an element which dealt with the Edmonton area adjustment. The Edmonton area adjustment describes a call for consistency in the determination of abnormal costs. The project costs are compared to the costs of construction in the Edmonton area.
> …
>
> [13] The CARB notes that the parties have jointly agreed to the assessment values submitted as part of the joint recommendation and that both counsels have confirmed that the agreed values meet the requirements of the CCRG, section 2.500 and also address the site-specific elements which were in dispute.
> …
>
> [15] Further, the CARB accepts the submissions that the intention of the Assessor is to uniformly apply the approach used in this resolution to all of the other machinery and equipment complaints, which provides assurance to the CARB that there will be a consistency of approach for machinery and equipment assessments within the municipality.

[296] Mr. Matthews also referred to a decision for 2016, which was Board Order 2017-008 (Exhibit 14-C, Appendix 34), and provided a copy of the Joint Recommendation attached as an Exhibit (Exhibit 14-C, Appendix 37, page 541), which dealt specifically with the EAA as follows:

> [12] The Accepted Lost Productivity Claims reflect the circumstances, situations and other factors that caused lower productivity during construction of the Suncor projects that ordinarily would not have been incurred had the Suncor projects been constructed during the same time periods in conditions of a relatively balanced market within 50 kilometres of Edmonton, Alberta. Following discussions between the parties, the RMWB determined that the Accepted Lost Productivity Claims represent abnormal costs for purposes of s. 2.500 of the CCRG. Specifically, the RMWB determined that the Accepted Lost Productivity Claims

> represent costs that would typically not be incurred in a balanced market, and/or costs that were not typical. Section 2.500 of the CCRG specifies that such costs are to be excluded from the Base Cost determined for purposes of Schedule A of the *Alberta Machinery and Equipment Assessment Minister's Guidelines*.

[297] In addition, Mr. Matthews submitted that Exhibit 14-C, page 537, Appendix 36, para 10 supports the Mutual Recommendation and references the use of Mr. Iliev's reports, which Mr. Matthews submits are the basis for the reports Mr. Iliev used for this matter.

> Upon review of the information provided by Suncor in the Iliev Reports, and the additional information provided in November-December 2016, the RMWB determined that the Accepted Lost Productivity Claims represent abnormal costs for the purposes of s. 2.500 of the *CCRG*.

[298] Mr. Matthews submitted the 2017 CARB Decisions relate to 2015 and 2016 complaints. He advised that for 2017, the RMWB issued amendments to the assessment notices which reflected the EAA. He also submitted that for all 11 Suncor properties, the RMWB continued to carry forward the original agreed to construction costs which reflect the EAA in 2018.

[299] Mr. Matthews also advised, that based on personal discussions with the other companies who filed complaints in the 2017 CARB Decisions, those complaints were resolved on the same basis as the Suncor complaints, and the Edmonton area adjustment continues to be applied to those facilities. Mr. Matthews opined that it would not be possible to consider that the assessments for oil sands properties were equitable if the EAA is applied to some, but not all properties.

[300] Mr. Matthews submitted that the PA was not involved directly in the 2018 assessment; however, it was understood that the PA would be preparing the assessment for 2019. Accordingly, Mr. Matthews indicated that Fort Hills initiated conversations with RMWB staff to include the PA in discussions pertaining to 2018 so that the PA was up to speed for the transition. During those meetings with the RMWB and the PA, Mr. Matthews stated that the PA indicated that it intended to depart from the EAA. Mr. Matthews stated that as a result, the RMWB disengaged from including the PA in discussions because of the PA's perceived interference with the Municipal Assessor's processes and the PA's apparent lack of previous oil sand project renditions and understanding of abnormal costs that occurred in remote major capital projects. Mr. Matthews stated that Fort Hills attempted to keep the PA informed; however, the PA was not a party to further discussions with the RMWB.

[301] Mr. Matthews provided supporting documentation (Exhibit 37-C, paras 14–23 inclusive) to demonstrate the removal of the EAA, and the subsequent restoration of it for 2015 to 2018.

E. Reporting of Fort Hills Construction Costs

[302] Mr. Matthews confirmed that the sole basis of the Fort Hills appeal pertains to Schedule "A" – the calculation of the base cost. Fort Hills has no issues with respect to the calculations of Schedules "B", "C", "D", nor the "77% factor". Within the base cost calculation and the subject of the appeal is the admissibility of excluded costs, as prescribed in the *CCRG*. Mr. Matthews submitted that excluded costs are provided for in the *CCRG* and that, from a high level, this does not allow for the following to be considered excluded costs:

> Section 2.100 – the cost of a pre-construction activity
> Section 2.200 – the cost of a post-construction activity
> Section 2.300 – associated with a component of the project which is not defined as property in the *MGA*

Section 2.400 – associated with property which is made exempt from assessment in the *Act*
Section 2.500 – abnormal costs of construction

[303] Mr. Matthews further submitted that the disagreement between Fort Hills and the PA is with respect to a minor issue concerning Section 2.200.100 and 200 F&CS within post construction, and disagreement respecting 2.300.400 – Design Changes, Alterations, and Modifications and 2.300.500 – Interferences Costs, and 2.500 – Abnormal Costs. Within the areas under appeal, the largest issues are with respect to Section 2.500.

[304] Mr. Matthews stated that Fort Hills reported in the way the *CCRG* intended in terms of Direct and Indirect Costs.

[305] Mr. Matthews stated that the Fort Hills Project was comprised of eight specific major project areas, consisting of:

a. Ore Preparation Plant ("OPP");
b. Extraction and Tailings ("E&T");
c. Utilities and Co-gen ("U&C");
d. Secondary Extraction ("SE");
e. Automation, Electrical and Telecommunication ("AET');
f. Infrastructure;
g. Facilities and Common Services ("F&CS"); and
h. Commissioning and Start Up.

[306] Of the eight project areas referenced, only six areas are subject to appeal. Those areas not subject to appeal are items f. Infrastructure and h. Commissioning and Start Up. Of the remaining six project areas under appeal, the focus is on M&E. B&S have no outstanding issues subject to appeal.

[307] Within Exhibit 14-C (para 7), Mr. Matthews provided a summary of the Fort Hills requested revision to the property assessment in the 2019, 2020, and 2021 tax years:

DIPAUID 10534014 Requested Assessment					
		Assessment on Roll	**Part of Assessment not under appeal**	**Requested Assessment for Items Under Appeal**	**Total Requested Assessment**
2019	Land	$25,520,930	$25,520,930		$25,520,930
	B&S	$782,705,610	$522,708,436	$261,314,410	$784,022,846
	M&E	$4,534,840,680	$27,949,432	$3,065,007,864	$3,092,957,296
	Total	**$5,343,067,220**	**$576,178,798**	**$3,326,322,274**	**$3,902,501,072**
2020	Land	$25,520,930	$25,520,930		$25,520,930
	B&S	$779,042,300	$519,674,906	$260,681,623	$780,356,529
	M&E	$4,570,497,210	$28,169,192	$3,089,107,283	$3,117,276,475
	Total	**$5,375,060,440**	**$573,365,028**	**$3,349,788,906**	**$3,923,153,934**
2021	Land	$25,520,930	$25,520,930		$25,520,930
	B&S	$770,296,500	$512,146,350	$259,457,981	$771,604,331
	M&E	$4,596,465,110	$28,360,800	$3,106,634,132	$3,134,994,932
	Total	**$5,392,282,540**	**$566,028,080**	**$3,366,092,113**	**$3,932,120,193**

[308] Mr. Matthews identified that the differences in assessment values in the table in paragraph 307 are due to the application of the assessment year modifier (*CCRG* – Schedule B) and depreciation (*CCRG* – Schedule C), neither of which are an issue.

[309] Mr. Matthews provided a second table which identified the project construction costs for the areas under appeal, including the total construction costs, the B&S portions agreed to, and the related assessable construction costs under appeal.

Summary of Total Project Costs and Requested Assessable Costs			
	Total Project Costs	**Requested B&S Assessable Costs**	**Requested M&E Assessable Costs**
Ore Preparation Plant (OPP)	$1,355,128,860	$44,447,920	$502,828,530
Extraction and Tailings (E&T)	$1,415,603,768	$17,251,974	$734,009,975
Secondary Extraction (SE)	$6,292,077,750	$133,204,132	$2,399,953,550
Automation Electrical Telecommunications (AET)	$942,743,208		$379,733,711
Utilities & Offsites (U&O)	$2,632,111,726	$73,544,622	$1,180,560,736
Facilities and Common Services (F&CS)	$754,326,513		$217,371,603
Total	**$13,391,991,825**	**$268,448,648**	**$5,414,458,105**

[310] Mr. Matthews also stated that the total cost to construct the Fort Hills project was $17.3 billion. The table in paragraph 309 excludes Land and Mining costs which have been agreed to, and Infrastructure costs which are not at issue. Within B&S, Mr. Matthews submitted that there were no buildings within AET nor F&CS.

[311] Mr. Matthews opined that there were substantial changes incurred at Fort Hills due to replacing engineering firms and contractors. In the case of SE, many of the components or prefabricated aspects had significant lead times and, as a result, errors were made which impacted on the project in delays as well as poor productivity of the workforce. Mr. Matthews further stated that there were many design changes which necessitated rework of portions of the project, which were installed incorrectly as a result of unskilled labour, which he considered was unproductive labour.

[312] Mr. Matthews highlighted that the Fort Hills basis for its claim under section 2.500 - Abnormal Costs is based on Fort Hills having treated its costs as normalized to the Edmonton area and that unproductive labour in Fort McMurray should be exempt. Additionally, Mr. Matthews advised he would further detail what might be considered abnormal, or typical or normal, and then exclude costs which exceed typical or normal. Mr. Matthews advised that Fort Hills prepared PCNs for all its unplanned costs within the project to correct the baseline assessment value. Examples of significant abnormal costs at Fort Hills included the wildfire, inclement weather conditions, suppliers providing the wrong materials, or incomplete shipments of materials. Unproductive labour was considered on a site-specific basis and compared to typical labour costs in Alberta to normalize its cost to Fort Hills.

[313] Mr. Matthews expanded on certain of the principles from paragraph 290 and how they affected the Fort Hills project:

a. In terms of an adequate labour force at the site, that labour force must have the right skill set. This would include journeymen in addition to labour with various levels of skills;
b. The timing of the delivery of key components, whether raw materials or fabricated components is critical to the project being on schedule, as many aspects of construction had 5,000 workers on site;
c. The actual costs of the project should be measured against typical costs. Mr. Matthews position is that the basis for comparison should be the actual costs compared to the sanctioned budget. He submits that the Fort Hills team was highly experienced at constructing major projects thus the typical costs heading into construction are the known typical costs;
d. Mr. Matthews' position was that additional costs incurred as a result of unproductive labour should be excluded;
e. Mr. Matthews opined that the *CCRG* is specific in respect of excluded additional labour costs:
    i. due to unproductive labour;
    ii. due to unavailability of an adequate labour force;
    iii. costs that would not be typically incurred in a balanced market; and/or
    iv. costs required to maintain consistency among regulated properties.

[314] Mr. Matthews also stated that PCNs were used to identify where costs did not meet typical costs. However, he noted that those PCNs were either scope, non-scope, or transfer of budget. It was his position that only non-scope PCNs were considered abnormal costs, and that budget transfers had no overall effect on the renditions.

[315] Mr. Matthews next provided the methodology implemented by Fort Hills to arrive at its proposed assessment of the project. He confirmed that he was involved in the preparation of the renditions for each area, and that the project team supported him in deriving the information. Mr. Matthews advised that upon conclusion of the project, each project team prepared an internal project close-out report and compared the actual costs to the original budget (sanctioned budget) to determine what caused the variances to the sanctioned budget. He also advised that this project close-out review provides support for costing future projects and is referred to as "Lego blocking". Mr. Matthews confirmed that detailed reports were provided for each of the six areas under review (Exhibit 14-C, Appendices 6-11). He also confirmed that all the project areas were reviewed in detail to ensure there was no double counting of costs between projects.

[316] The property tax team working with the project team identified abnormal costs and Mr. Matthews confirms they were consolidated into PCNs, which were further consolidated and reported to the assessor. Historically, it was typical that the assessor would select some of the PCNs for review and then discuss its understanding of the cause with the property tax team and accept them, or a revised version, of non-scope PCNs.

[317] Mr. Matthews provided a detailed review of the OPP rendition (Exhibit 14-C, Appendix 7) and submitted that the remainder were prepared using similar methodology. Mr. Matthews also provided an overview of the SE rendition (Exhibit 14-C, Appendix 6).

[318] Based on the information the project team provided, the property tax team understood the total project costs and assisted in identifying what might be abnormal or unexpected costs, and determined what may be put forward as non-assessable costs. Mr. Matthews opined that the mathematics on the spreadsheets (Exhibit 14-C, Appendices 6-11) are prepared at a high level. The *CCRG* requires actual total cost, less deductions for any non-assessable amounts, which results in a step-down approach (declining balance). He pointed out that within the spreadsheets there is an explanation as to the formula used in each cell. For

example, the Abnormal Labour Costs calculation is shown as a multiplier of the difference between Fort Hills and the Edmonton area. Mr. Matthews also identified that by mutual agreement between Fort Hills and the PA in early 2022, certain categories within the spreadsheet have been agreed to and are no longer a part of the Fort Hills appeal.

[319] Mr. Matthews opined that the form of each of the renditions meets the *CCRG* requirements respecting direct/indirect costs and non-assessable costs. He also identified that the format for reporting costs and non-assessable costs to the assessor has been the same for over 10 years. As the Fort Hills project evolved the reporting was originally to RMWB, and when the *MGA* amendments were enacted, and the PA assumed responsibility for the 2019 assessment, the same model was sent to the PA.

[320] Mr. Matthews reiterated that the primary areas in which Fort Hills and the PA disagreed were Design Change, Alteration and Modification, and Abnormal Labour Costs. Mr. Matthews provided a rollup of the entire Fort Hills requested amendment to the assessment (Exhibit 14-C, Appendix 51). The summary did not include all the project costs, rather it was for project costs in the six (6) areas previously identified. The rollup excluded the mining scope, trucks and shovels, and infrastructure for non-process buildings, as these areas were agreed to previously between Fort Hills and the PA. Mr. Matthews also stated that the requested reduction in assessment derived a balance of 42% of total project costs, which Mr. Matthews opined was much lower than comparable projects. Mr. Matthews stated that Fort Hills and the PA agreed that the starting point for total construction costs for the six (6) areas under appeal was $13.392 Billion. The rollup reconciled with the chart provided in paragraph 309.

[321] Accordingly, Mr. Matthews submitted that Fort Hills has correctly applied the EAA and the non-scope changes to the base cost of the Fort Hills project.

[322] Mr. Matthews provided a chronology of the interactions and filings between Fort Hills and the PA as follows:

[323] On June 15, 2018 Suncor provided the Provincial Assessor with additional information requested at the June 7, 2018 meeting. On June 29, 2018 the Provincial Assessor indicated an intention to assess the Fort Hills Project possibly on different standards than applied on past RMWB projects and to depart from the assessing practices previously in place by the Municipal Assessor. Discussions that followed were then mainly focused on the change in practice and less on the assessment details.

> On October 30, 2018 Suncor reported to the Provincial Assessor with the first updated property tax rendition and non-assessable claim reports for the Ore Preparation Plant ("OPP") Project Area within Fort Hills. The remaining project area renditions were delivered throughout November and December 2018 with the Secondary Extraction ("SE"), Utilities and Cogeneration ("U&C"), and Facilities and Common Services ("F&CS") Project Areas.
>
> The format of the renditions modeled the same format and the same standards supplied to Municipal Assessor on historic renditions for other oils sands facilities in RMWB as well as the previous year's renditions supplied to the Municipal Assessor on the Fort Hills Project.
>
> On November 27, 2018, FHEC provided the Provincial Assessor a tour of the Fort Hills Project site. Presentations were provided from the Director of the SE Project Area, Andre Gomes, and the Fort Hills Plant General Manager, Stephane Gagnon. The day included detailed explanations of execution challenges the Fort Hills Project faced during construction and a bus tour providing a visual explanation of the plant and the execution challenges of the Fort Hills Project. The representatives of the Provincial Assessor in attendance indicated

they were appreciative of the detailed explanations as they had never seen or experienced any construction project like Fort Hills.

On January 9, 2019, the Provincial Assessor's representative at the time, A. Slostve, emailed notification to Suncor on the acceptance of Suncor's reported assessable costs for the power generation portion of the U&C project scope. This related to the portion that would be assessed as Linear Property. The costs relating to power generation capable of producing power into the provincial power grid are identified separately from the costs that are to be assessed as M&E. The assessable amounts calculated by Suncor for the entire cogeneration project were consistent with existing practices and interpretation of the CCRG and the exclusion of abnormal costs in RMWB.

On February 5, 2019, not having heard from the Provincial Assessor on the non-linear aspect of Fort Hills, Suncor emailed the Provincial Assessor to obtain a status update. On February 8, 2019, the Provincial Assessor responded that they required additional time to complete the annual 2018 annual assessment of the Fort Hills Project.

On February 22, 2019, the Provincial Assessor delivered a spreadsheet prior to the official annual assessment being sent out. A copy of this spreadsheet has been provided below **(*)**. The spreadsheet listed the assessment at a summary level only and showed what the assessable costs would be for the 2019 tax year. The overall assessment was shown as 34% higher than Suncor's renditions provided for those areas not part of the linear cogeneration assessment.

The Mining, Infrastructure and C&SU project scopes were assessed generally in accordance with Suncor's rendition and are not in dispute.

From the few details provided, it was not clear how the Provincial Assessor's assessable costs were determined and what non-assessable categories were agreed to or denied. Previous and historic assessment practices for complex projects with execution challenges normally involve the appointed assessor contacting company representatives to meet and discussing the project costs to ensure a thorough and detailed review prior to declaration of the assessment. Even though the Provincial Assessor had the preliminary cost reports and non-assessable claims used for the previous year's assessments for a full year, these discussions did not occur.

In the Provincial Assessor's February 22nd spreadsheet, formulas were found in some cells that calculated the Provincial Assessor's excluded costs. The formula simply took Suncor's requested non-assessable amounts and applied a 20% reduction to the originally requested amount. Other project areas just had a hard number coded in. No explanation was given as to how the 20% or the hard numbers were arrived at by the Provincial Assessor.

Over the next month, Suncor pursued discussions with the Provincial Assessor to try to obtain clarity as to how the new assessment was arrived at, any areas of disagreement, and what non-assessable claims were denied. Throughout the discussion it was apparent that the Provincial Assessor had not yet reviewed the data provided by Suncor in detail for the project areas. It appeared that the Provincial Assessor just felt the requested assessable amount for the M&E was too low and should be 20% higher. When asked why or how this was determined, it was stated that this was determined by their past experience in other parts of the province and by reviewing a design change claim category in the OPP project. This was then applied across the remaining projects and adjusted based on what the representative of the Provincial Assessor said, "seemed best". Their explanation was limited, as they were

experiencing staffing changes and needed more time to review. No facts or details were provided to support the Provincial Assessor's adjustments.

(*) - information is not in the quote but is provided in Exhibit 14 – C, para 34

[324] In the spring of 2019, the PA issued assessment notices. Mr. Matthews submitted that Fort Hills was not clear as to how the assessment was arrived at. Accordingly, a complaint was filed, and discussions continued. Those discussions have not rendered a solution and the 2020 and 2021 assessments were appealed as well.

[325] Based on the PA's position and lack of clarity, Mr. Matthews stated that on March 28, 2019, Fort Hills submitted a request based on s. 299.1 of the *MGA* and requested all documents, records, and other information showing how the assessable costs were arrived at from the original reported costs with respect to all the M&E on the roll. Specifically, Suncor asked how the *CCRG* was applied in arriving at the assessable costs and what specific allowances for non-assessable items were granted.

[326] Mr. Matthews stated that on April 11, 2019, the PA responded to Fort Hills request; however, the response provided little clarity for Fort Hills to understand how the PA had assessed the project. Additionally, Mr. Matthews stated that the PA requested additional information under s. 295 of the *MGA*, and further stated that this was the first occasion where either the Municipal Assessor or the PA advised that the information provided in a Suncor rendition was not sufficient for assessing any project since Mr. Matthews' involvement beginning in 2007. On occasions, where an assessor may have had an inquiry about information provided, it was resolved informally through conversation and follow-up if required by only information on a requested area.

[327] Notwithstanding Fort Hills' confusion as to the nature of what was being requested, Mr. Matthews submitted that all questions or information requested by the PA was provided September 20, 2019 and September 24, 2019.

[328] Mr. Matthews also provided a timeline for issues which have been mutually agreed to. Those are detailed as follows:

a. Settlement discussions were held in September 2019 and November 2019;
b. In July 2021, Fort Hills provided further renditions which included additional information on the areas under dispute; and
c. Between October 2021 and April 2022, additional discussions occurred resulting in a Joint Recommendation.

[329] Mr. Matthews advised that the Joint Recommendation includes the following:

1. Feasibility Studies – $134,214,950
2. Pre and Post Construction Costs – $398,452,904
3. Interference Costs – Excluded costs in the amount of $4,740,942 are agreed to. There remains $5,024,983 in disagreement.
4. Spare Equipment – Jointly recommended excluded costs of $11,195,224.
5. Bonus or Penalty – Jointly recommended excluded costs of $99,775,154.
6. Water and Sewer Domestic – Jointly recommended excluded costs of $21,691,080.
7. Travel Costs – $386,423,962, adjusted from the originally requested amount of $388,151,595.
8. Transportation Costs – $257,340,250. There remains $49,442,240 in disagreement.
9. Overtime – $569,070,717

10. Owner's Costs – $982,731,809
11. Camp Costs –$710,087,593.
12. Atypical and Abnormal Condition and Costs – $21,179,670
13. Not Typical Site Development – $59,792,294, $6,012,712 remains in disagreement.
14. Site Prep Costs – $171,170,591.
15. Material Spares – $91,693,571.
16. Higher than Industry Standard – $2,235,907. $5,824,678 remains in disagreement.
17. Other – $47,745,833.

[330] Based on the issues identified, and after allowing for those resolved by Joint Recommendation, Mr. Matthews advised that the following table identifies the remaining issues, which total $3,754,869,717:

Excluded Machinery and Equipment Non Assessable Claims in Dispute Summary

Property Tax Report Reference	Cost Description	Total Excluded Amount	E&T	SE	AET	OPP	U&C	F&CS
2.3.5	Interference Costs	$5,024,983				$4,924,983	$100,000	
2.4.4	Design Changes and Reworks	$2,472,498,011	$109,371,187	$1,679,641,260	$84,148,565	$129,795,201	$453,504,965	$16,036,833
2.6.2	Transportation	$49,442,240	$10,350,152	$15,526,971	$1,078,283	$18,184,924	$4,301,910	
2.6.10	Abnormal Labor Costs	$1,181,891,771	$171,539,214	$440,229,181	$69,995,673	$222,837,428	$200,333,838	$76,956,437
2.6.13	Not typical or normal site development	$46,012,712	$9,964,440		$18,270,425		$17,777,847	
2.6.19	Higher than Industry Standard	$5,824.768			$5,824,678			
Total in Dispute		**$3,754,869,717**	**$301,224,993**	**$2,135,397,412**	**$179,317,624**	**$375,742,536**	**$676,018,560**	**$92,993,270**

F. Other Oil Sands Projects

[331] Mr. Matthews stated that the actual assessment under appeal compared to the reported base cost represents 42.43% of the total construction costs of those assets.

[332] Mr. Matthews provided information pertaining to each of the Suncor projects, identifying the percentage of assessment in comparison to the reported base costs of the project.

Summary of Past Major Projects by Suncor in RM of Wood Buffalo						
Plant	**Project**	**Year Completed**	**Reported Capital Costs**	**Assessable B&S**	**Assessable M&E**	**Percentage Assessable**
Steepbank Mine	Plant 300	2009	$1,021,007,831	$28,124,922	$537,483,562	**55.40%**
Steepbank Mine	Steepbank Debottleneck	2005	$121,992,649		$74,617,016	**61.17%**
Firebag	FB1	2003	$613,935,765	$5,618,777	$197,824,160	**33.14%**
Firebag	FB2	2004	$416,960,298	$7,663,133	$212,497,217	**52.80%**
Firebag	FB3	2011	$4,238,942,440	$76,241,990	$2,247,930,520	**54.83%**
Firebag	FB4	2012	$1,570,764,867	$41,888,972	$906,081,546	**60.35%**
Bae Plant	MCU	2007	$2,235,468,946	$8,455,098	$1,112,270,303	**50.13%**
Steepbank Mine	TRO	2012	$1,226,616,402	$5,521,110	$525,333,688	**43.28%**
Bae Plant	MNU	2011	$969,366,000	$4,597,096	$534,114,445	**55.57%**
Bae Plant	MVU	2005	$449,111,587	$2,344,261	$269,912,806	**60.62%**
MacKay River	MR1	2002	$273,157,072	$6,317,601	$162,418,281	**61.77%**
	Total		**$13,137,323,857**	**$186,772,960**	**$6,780,483,544**	

[333] Mr. Matthews noted that Fort Hills' percentage of assessable construction costs (42.43%) is much lower than most of the projects, and especially the projects with the largest reported base costs. He referred to information including the preceding projects (Exhibit 14-C, Appendix 29), which concluded that the percentage assessment for those projects globally was 51% compared to reported capital costs, whereas Fort Hills is assessed at a 42.43% rate.

[334] Mr. Matthews also elaborated on the Assessment to Cost Ratio. As stated, Fort Hills' ratio is 42.44%, and based on the requested assessment the ratio would be reduced to 25.3%. Mr. Matthews stated that the request is more in line with other major oil sands developments including Suncor, CNRL, and Imperial Oil, which for comparative purposes are:

- Other Suncor projects- between 18.78% and 35.15%
- CNRL 25.7%
- Imperial Oil 15.4%

Labour Productivity – Secondary Extraction ("SE"), Ore Processing Plant ("OPP"), Utilities and Co-generation ("U&C"), Automation, Electrical and Telecommunications ("AET"), and Extraction and Tailing Ponds ("E&T") – Mr. Lubo Iliev (Exhibit 8-C, Exhibit 9-C, Exhibit 10-C, Exhibit 11-C and Exhibit 12-C, Exhibit 36-C, Exhibit 58–C, and Exhibit 51-C)

[335] Mr. Iliev provided background information concerning the labour productivity costs associated with SE, OPP, U&C, AET, and E&T areas of construction.

[336] Mr. Iliev was qualified primarily as a fact witness (Exhibit P16C). The Respondent agreed to the following:

> He is a Suncor engineer primarily responsible for the productivity analysis prepared for Fort Hills on the basis of mid-Alberta adjustment. He is a professional engineer with APEGA with an expertise in cost estimating for industrial projects, including project planning, and

identifying and quantifying labour productivity losses.

[337] Mr. Iliev's work history includes entering the workforce in 1994 as a junior engineer with Genmark Automation Inc. (1994 to 1998), ProSyst AG (1998 to 2000), Petro Canada (2000 to 2001), Husky Energy and Encana (2002 to 2003), IMV Projects Inc. (2004 to 2005), Bantrel Co. (2005 to 2007), and Petro Canada (2007 to 2009). Mr. Iliev commenced employment with Suncor in 2009 as Director, Estimating Project Controls, Major Projects.

[338] Mr. Iliev's educational background includes a Master of Computer Science, and numerous courses and certificates. He is a Professional Engineer, and a member of the Association for the Advancement of Cost Engineering ("AACE") International, as well.

[339] Mr. Iliev's involvement in the SE, OPP, U&C, AET, and E&T projects was as the Director of Project Controls Central. He led estimating, benchmarking, planning, and scheduling services, and was involved in the Fort Hills project since 2007, initially with Petro Canada and then with Suncor. He has been involved with developing Fort Hills sanction estimate and Suncor's growth projects since 2007.

[340] Mr. Iliev stated that he had prepared five reports concerning labour productivity, and that four of the reports were similar in using methodology and format. Mr. Iliev then advised he would address the comments in the OPP area (Exhibit 9-C) and that the same comments would apply to U&C, AET, and E&T projects, and that SE would be addressed separately.

[341] Mr. Iliev submitted that he identified unproductive labour costs included in the sanctioned budget for the purpose of determining costs that should be excluded from the five projects. The resulting exclusions ultimately rolled up into the property tax assessment calculation, in accordance with the *CCRG*.

[342] Mr. Iliev stated that Suncor has extensive experience in projects in the oil sands and strives to have the project sanctioned costs be as close to actual costs as possible. In rebuttal testimony, he opined that the Fort Hills sanctioned budget was developed using industry practice by almost 3,000 Engineering Procurement and Construction (EPC) experts and benchmarked against historical project actuals with similar scope and location.

[343] He also stated that the sanctioned budget includes unexpected productivity losses that occurred in comparison to the Edmonton area and that he was asked to undertake a quantification of productivity loss in the construction of the Fort Hills Project. This included:

(a) losses in productivity included in the sanctioned budget;
(b) productivity losses occurred on site in the Wood Buffalo region as compared to productivity on an Alberta-wide basis; and
(c) productivity losses that occurred on site in the Wood Buffalo region as compared to productivity in the Edmonton area.

[344] Mr. Iliev opined that labour productivity includes two elements. In the budgeting process, the cost of constructing in a remote location is considered and the Fort Hills budget includes costs of this nature. Included within the sanctioned budget are anticipated losses in labour productivity arising from such things as camp work, travel, and weather impacts. In adjusting those costs to mid-Alberta, Mr. Iliev's analysis looked at the anticipated productivity losses contained within the sanctioned budget associated with a remote location.

[345] Mr. Iliev also stated that there were several site-specific cost escalations in the construction of Fort Hills and that those escalations were dealt with in the witness reports of others. Mr. Iliev stated that within cost escalation there were also productivity losses related to execution circumstances. He advised that those cost impacts were dealt with by way of PCNs to identify costs more than the sanctioned budget.

[346] Mr. Iliev's analysis was independent of the PCN process, and his analysis of productivity accounted for are those embedded within the sanctioned budget. For example, the budget anticipated lost labour time associated with working in cold weather in the Fort McMurray region. When rework was undertaken in any project area, the cost of that rework would also have been impacted by working in cold weather. That cost escalation is beyond that anticipated in the budget.

[347] Mr. Iliev opined that all productivity losses would be those arising from execution challenges and that the final project cost is compared to a quantity adjusted budget, and then productivity adjustments would be made to compare to a mid-Alberta baseline. He received a summary prepared by Suncor internal employees of the renditions prepared on each of the five project areas. He also confirmed that he reviewed his productivity loss analysis independent of productivity claims made in the overall rendition to ensure there was no duplication of amounts claimed in those reports that were made in his report. He also received a summary of the renditions prepared by Suncor on each of the five Project Areas. He reviewed the report of Mr. Matthews to confirm any abnormal costs previously claimed in Mr. Matthews' report are separate and distinct from those productivity losses claimed in this report.

[348] In rebuttal, Mr. Iliev also took exception to Dr. Thompson's characterization that Mr. Iliev's report "haphazardly disregards abnormal costs claims incurred on the Fort Hills project, based on a series of "double accounting" errors, where no such errors have occurred".

[349] In order to confirm what labour productivity is, Mr. Iliev provided a definition where he submitted that it is a ratio of production output to the input that is required to produce it. The measure of productivity can therefore be defined as a total output per one unit of a total input, i.e. unit of measurement/hour or:

$$\text{Productivity} = \frac{\text{Unit of Measure (UoM) installed}}{\text{Man-hour}}$$

[350] Mr. Iliev also said that "Labour productivity loss or gain is the difference between a contractor's anticipated achievable or planned rate of production and its actual rate of production. The productivity factor is the ratio of actual productivity and estimated productivity."

[351] Mr. Iliev provided examples of how productivity might be affected including weather, work schedule, craft experience, camp versus non camp labour source, fly-in fly-out ("FIFO") versus local labour, field and shop work, etc. He expanded that the factors used to estimate productivity rates for work in the RMWB are largely based on Alberta industry standards developed by the major EPC firms who have significant experience and knowledge in respect of factors that impact productivity in Alberta. The factors are used to build a productivity adjustment model on a project specific basis to estimate the productivity, and the required labour hours for the approved construction execution plan for each specific project. The model is further refined based on low to high dependency within the project. Mr. Iliev provided a copy of the Bantrel Co. productivity adjustment model in his report (Exhibit 9-C, page 5, para 20).

[352] Mr. Iliev also provided an example of a calculation using the model, as follows:

> 20. … the craft experience impact criteria in the Bantrel productivity adjustment model set out below is weighted at 16% of the total weight. For illustrative purposes, if project "A" with a defined scope of work plans for an optimal crew mix (with excellent craft experience) and no productivity impact, they would calculate that it will require 10,000 hours to complete such scope of work. Conversely, project "B", with a similarly defined scope of work has a sub-optimal crew mix (with poor craft experience) and expects a significant productivity impact in completing such similar scope of work. Given the information available in the model, project "B" would plan for the high end of the range and would multiply 16% (weight %) by 2.35 (the high end of the range of impact) and further multiply that number by 10,000 (hours to complete scope of work) resulting in 3,760 additional hours to complete project B's scope of work relative to project "A". Calculated as follows:
>
> 0.16(weight %) x 2.35 (productivity factor) x 10,000 (estimated hours) = 3,760
>
> 21. The Productivity adjustment factor is applied to the direct labour man hours. The resulting adjusted estimated construction labour hours are converted to costs by multiplying the hours by the full cost per hour. The cost per hour includes the direct portion (base wages, benefits, burdens, etc.) and an indirect portion (construction services, facilities, transportation, equipment, etc.).
>
> 22. Estimates developed using the above-described productivity adjustment factor already takes into account the expected productivity loss for working in the RMWB. To obtain the difference between the productivity rate for RMWB and productivity rate for average Alberta it is necessary to remove from the budget the additional estimated labour for factors unique to working in RMWB, such as FIFO, weather, and camp living. See Suncor's OPP Project labour rate calculation is set out in Exhibit 9-C, page 35, Appendix "E".

[353] Mr. Iliev submitted that he adopted the following as components of unproductive labour:

a. abnormal costs associated with unavailability of an adequate labour force;
b. abnormal costs associated with unproductive labour;
c. abnormal costs not typically incurred in a balanced market;
d. abnormal costs excluded to maintain consistency among regulated properties;
e. abnormal costs where actual costs are greater than typical construction costs due to events or factors impacting the project;
f. abnormal costs associated with delays in construction;
g. abnormal costs associated with inclement weather; and
h. abnormal costs associated with lack of supplies or a work slowdown.

[354] Mr. Iliev reviewed how each of the categories identified above were created.

a. Labour Availability – Fort Hills cited a scarcity of labour. This required workers to fly-in fly-out, and costs associated with travelling from a camp to the gate of the project. In 2016, Mr. Iliev advised that the Alberta rates are 98% local labour, and RMWB is 95% local and Fort Hills labour force was 100% FIFO. In addition, average commuting times from camp/home are 50 minutes for the Alberta average and 90 minutes for Fort Hills.

b. Craft Experience – The labour force is mostly (if not all) unionized. Accordingly, seniority and relative experience would take local construction as opposed to working in Fort Hills which

is a camp, with long commutes and long days. Accordingly, to attract labour, experience is at the lower end. Less experienced workers require: (i) more training time; (ii) increased tool time; and (iii) additional rework (given inexperienced workers have a higher percentage of rework compared to projects completed by experienced workers) and, therefore, require more time to complete projects.

c. Camp vs Non-Camp – Mr. Iliev opined that camps negatively impact health, morale and subsequently productivity. For example, some of the differences between living in a camp and living in one's personal residence and a comparison (in brackets) include confined environment (open environment), living away from family (living with family), limited nutrition options (choice of nutrition), monotonous living (normal living), various living arrangements and comfort level (choice and consistency of living arrangements based on individual set up and comfort zone), differing sleep position (choice of sleep positions), and limited social life (choice of social life).

d. Longer working days – Mr. Iliev's position was that longer working days reduces productivity. Mr. Ilive provided information that the average Alberta work week for 2011 was 41.7 hours whereas Fort Hills was 46.67 hours.

e. Weather Impact – Mr. Iliev provided data to support that productivity drops as temperatures drop because work becomes more difficult in lower temperatures. Similarly, higher wind chill factors impact productivity, such that under extreme wind chill conditions, efficiency and productivity can drop 50% or greater. The weather issues include temperature, wind chill, and snow volume levels.

[355] Mr. Iliev went through examples of his calculations for each of the four project areas. He noted that the format for each of the areas was identical other than the data used to calculate the labour unproductivity. He also confirmed that there was a "cascading effect" on the calculations and that effect was considered and the labour productivity amount was reduced accordingly.

[356] Mr. Iliev also advised that the SE labour productivity was somewhat different than the other four (4) areas. Those areas were all compared to the sanctioned budget; whereas SE was not formally sanctioned until approximately one (1) year after the sanctioned budget was approved.

[357] Mr. Ilive stated that the SE Project increased in cost from the sanctioned budget of $3.85 billion to a QAB of $4.7 billion. The actual cost of the SE Project was $6.292 billion.

[358] Mr. Iliev noted that in his detailed analysis to identify unproductive labor, he included a comparison of the original budget, to what would be the total man hours and costs for the Edmonton area. Due to the increase in the SE Project QAB, the sanctioned budget was not updated in detail to identify the hours in the QAB budget. In order to account for the variance in hours and the relative productivity loss, he provided an analysis, and noted that the revised analysis accounted for any previous non-assessable claims to prevent double counting. He provided details of the analysis in Exhibit 8-C, pages 20 to 21, paras 63 to 69.

[359] Mr. Iliev's analysis of labour unproductivity for the five areas was as follows:

	Unproductive Labour Cost	Reference
	$	
SE	440,229,181	Exhibit 8-C, pages 8&9, para. 27
OPP	222,837,428	Exhibit 9-C, page 8, para. 27
U&C	200,333,838	Exhibit 10-C, pages 8&9, para. 27
AET	69,995,673	Exhibit 11-C, pages 8&9, para. 27
E&T	171,539,214	Exhibit 12-C, pages 8&9, para.27
	1,104,935,334	

[360] It was Mr. Iliev's opinion that the PA's assessment of the Fort Hills project correctly excluded abnormal costs such as camp, travel, and overtime; however, did not make exclusions of the associated additional cascading costs of unproductive labour.

[361] Mr. Iliev also noted that his methodology was the same as was used by Suncor in its filings which were subsequently reviewed in the 2017 CARB Decisions. His opinion was that "RMWB reviewed the filed assessment reports for 11 Suncor projects in 2016 and agreed on productivity loss in relation to Alberta average that was in excess of what was typical for the Projects locations over that time period".

[362] Mr. Iliev's sur-sur-rebuttal (Exhibit 51-C, page 1, para 2) references Dr. Thompson's Rebuttal Report (Exhibit 43-Rv2, page 5, para 2.2 j), where Mr. Iliev submitted that:

> Dr. Thompson's commentary in J2.2 (sic) reveals a misunderstanding of the industry's productivity measures. It is important to clarify that the estimate is directly connected with the execution plans and specific scope of work (per the defined work breakdown structure), and once finalized (and agreed with the EPC company), that becomes the baseline for the performance during execution. Variance in labour for the same work represents the productivity for each scope, that could be a factor either above or under.

[363] In Mr. Iliev's sur-sur-rebuttal testimony, he advised that in response to the Respondent's questioning of his direct testimony, he reviewed the calculation associated with weather as a contributing factor to labour productivity. He conceded that there was an error in his calculation where temperatures of -30 degrees and lower were also included in temperatures -40 degrees and colder, rendering a double counting of certain data. The resultant correction to labour productivity was $96 million allocated as follows:

	Unproductive Labour Cost Revised	Prior Unproductive Labour Cost	Difference
	$	$	$
SE	406,390,393	440,229,181	-33,838,788
OPP	201,917,533	222,837,428	-20,919,895
U&C	181,585,498	200,333,838	-18,748,340
AET	63,558,485	69,995,673	-6,437,188
E&T	155,428,196	171,539,214	-16,111,018
	1,008,880,105	1,104,935,334	-96,055,229

Assessment of Designated Industrial Property – Mr. Ian Fluney (Exhibits 17-C, 39-C, 52–C)

[364] Mr. Fluney provided background information concerning the assessment of Designated Industrial Property.

[365] Mr. Fluney was qualified as an expert witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Fluney has an appraisal and assessment diploma, and a real property assessment certificate, and will provide opinion evidence on industrial assessment matter, including interpretation and application of CCRG.

[366] Mr. Fluney's work history began in 2003 as an Assessment Technician/Assessor 1 with Rocky View County (2003 to 2008). He joined Ducharme McMillen & Associates ("DMA") in 2008 as a Tax Manager (2008 to 2012), became Senior Property Tax Manager (2012 to 2017), then Director, Property Taxes (2017 to 2021), culminating as Managing Director, Western Canada – the position he currently holds.

[367] Mr. Fluney's educational background includes an Assessment and Appraisal Diploma (Lakeland College, 2003) and a Real Property Assessment Certificate (UBC, 2003).

[368] Mr. Fluney's role in the subject appeal was "to assist the LPRT in the understanding of the Regulated Assessment process in the Province of Alberta including the role of the assessor and taxpayer in the process. The intent of the report is to provide a detailed review of CCRG provisions as to what is considered an included and excluded cost within those provisions, to provide a review of the Fort Hills abnormal cost submissions and its compliance with CCRG standards and to review how the Fort Hills abnormal costs compare with my past knowledge and experience in the assessment of regulated industrial properties." (Exhibit 17-C, page 3, para 2)

A. Fluney Background

[369] Mr. Fluney advised that DMA is the largest industrial property assessment and tax consulting firm in Western Canada and does property assessment and taxation work across all industrial sectors including forestry, pulp and paper, oil and gas production, processing and refining, intensive agriculture, food

processing, petro-chemical, coal, concrete, and electric power generation. This includes both linear and non-linear properties assessed under the *Minister's Guidelines*.

[370] Mr. Fluney has extensive experience concerning the review and auditing of property assessment and taxation for a wide variety of industrial property owners. On behalf of clients, he has broad experience in assessment reporting and compliance with assessors, reviewing and auditing assessment and tax notices, the preparation of new and annual rendition reports, reviewing, and meeting with assessors and conducting facility tours and inspections.

[371] Mr. Fluney advised that his disclosure report addressed the concept of the EAA under the *CCRG,* and how that adjustment has been applied historically, and how it is addressed in the *CCRG* in the context of abnormal costs of construction (*CCRG* s. 2.500). Mr. Fluney's report also discussed the excluded cost claims of Fort Hills regarding non-assessable and abnormal costs.

B. History of *CCRG* and Predecessor Legislation/Regulations

[372] Mr. Fluney stated that the predecessor to the *CCRG* was SPAG (Exhibit 17-C, Tab 1, pages 38 to 63). He stated the purpose of SPAG was to assist in analyzing construction cost returns that were related to a project's costs. SPAG identified categories of assessable, non-assessable, and abnormal construction costs.

[373] Mr. Fluney explained that, on page 2 of SPAG, the standards and methods of assessment for improvements are predicated on replacement cost new.

> The 1984 Assessment Manual at Section 1090.002:
>
> The Replacement Cost New concept combines typical quantities and qualities of material and labour to establish benchmark Unit Costs which are combined to produce Component and/or Module Costs which, in turn, are used to produce Base Rates representative of replacement costs for various classes and qualities of improvements.
>
> And at section 1.080.001:
>
> Base Rates, Installation Rates, Adjustments and Specialty Rates, Module Costs, Components Costs and Unit Costs contained in the Manual are representative of typical construction replacement costs for the year 1983 in the Edmonton Area.

[374] Mr. Fluney's interpretation of SPAG was that when suitable rates were not provided, the costs must be assessed in a manner that is fair and equitable with the rates that are provided. As the rates were built on the "Edmonton area," to assess in a fair and equitable manner the costs that had to be valued through SPAG were also then based on an "Edmonton area" adjustment.

[375] Mr. Fluney stated that in 2001 the province issued the *CCRG* (Exhibit 17-C, Tab 2, pages 64 to 77) as well as the "Interpretive Guide to the Construction Cost Reporting Guide" (Exhibit 17-C, Tab 3, pages 78 to 99). Mr. Fluney stated that these documents replaced SPAG, and opined that while the *CCRG* was a new document, it did not change the underlying basis of assessment described in SPAG, including the concept that consistency amongst regulated property meant that *CCRG* provisions would continue to reflect Edmonton (mid-Alberta) area rates. This was communicated to stakeholders at the time CCRG was released.

[376] Mr. Fluney's understanding was that when the *CCRG* was being contemplated in discussions with a working group, that group was advised that the *CCRG* had only a few minor changes and there were no changes intended for the EAA.

[377] Mr. Fluney also cited a document from Mr. Larry Riep who was acting for the Alberta Assessors Association (Exhibit 17-C, Tab 4, pages 100 to 102), which advised the assessment community that:

> The group met for one final time on October 16th to finalize the wording of the SPAG draft. The final draft of the guide, now named "Construction Cost Reporting Guide for Regulated Property", will be very similar to the existing SPAG with only a few minor changes.

[378] Mr. Fluney's opinion is if there was an intended change to remove the EAA, except transportation costs, this would be a significant change in practice, and that was never communicated to the working group. He also interpreted the minor changes referred to by Mr. Riep as dealing with how land was valued as well as the assessment of earth berms around tanks and paved internal site roads.

C. Assessment Practices for *CCRG* Reporting

[379] Mr. Fluney stated that the valuation of machinery and equipment must be based on:

a) rates produced by the Minister; or
b) a detailed review of both the indirect and direct construction costs to arrive at a regulated assessment value.

[380] Mr. Fluney also stated that in 2005, the *CCRG* became regulated. His opinion was that the *CCRG* identifies the mechanics of the reporting process, along with the costs that are part of the construction of a facility. The *CCRG* identifies costs to be included in determining assessable costs, provides examples of direct and indirect costs, and identifies costs that are to be excluded in determining assessable costs. Mr. Fluney provided a summary of the *CCRG* provisions (Exhibit 17-C, pages 14 to 16, paras 30 to 34).

[381] Mr. Fluney also provided his interpretation of the Interpretive Guide to the Construction Cost Reporting Guide (Exhibit 17-C, pages 17 to 20, paras 35 to 47).

[382] Mr. Fluney described his personal experience as prior to the creation of the Centralized Industrial Property Assessment (CIPA), costs were reported through *CCRG* and brought to an Edmonton area cost. He reported that this historical practice has also been confirmed by municipal, contract, and linear assessors. Mr. Fluney further submitted that any work that he has completed for remote locations such as oilsands facilities, pulp and paper mills, coal mines, gas plants, power generation, sawmills, and agricultural projects have always included an EAA.

[383] Mr. Fluney also discussed the *Minister's Guidelines* rates which he opined represent Edmonton area costs. He stated that MA's own practices when determining costs and modifiers specifically instructed consultants retained by the province to use *CCRG* principles and to develop the regulated rates set out in the *M&E Guidelines* based either on mid- Alberta or Edmonton Area Costs. This was illustrated in several documents (Exhibit 17-C, Tabs 6 to 12, pages 106 to 127), which represent the time frame July 1, 2006 to June 30, 2007, and immediately after the *CCRG* was enacted.

[384] Mr. Fluney provided an example of the scheduled rate application from the *M&E Guideline* as follows (Exhibit 17-C, page 25):

> 65) To be consistent, costs that are in excess of the rates prepared by the Minister should be excluded from the assessable costs. An example of would be a separator. The rate can be found in the Alberta Machinery & Equipment Assessment Minister's Guidelines but by using the costs and *CCRG* correctly which should include an Edmonton region adjustment should result in a similar rate. The result should be the same regardless of where the separator is located.
>
> 66) This shows the intent was to maintain consistency among regulated properties throughout Alberta, not regions within Alberta. If the intent was to have consistency only within specific regions rather than throughout Alberta then the *CCRG* would have said so.

[385] Mr. Fluney also cited s. 2.500 of the *CCRG*, which he opined clearly describes that an abnormal cost includes "a cost that is excluded to maintain consistency among regulated properties". His perception is that it would be incorrect to assess some properties using the EAA and to exclude the EAA for other properties.

[386] Mr. Fluney discussed a number of documents which he indicated support the basis of the EAA. These can be found in Exhibit 17-C, Tabs 14 to 21, pages 134 to 217, as detailed in para 67.

[387] Mr. Fluney also stated that since 2015, a working committee was formed to create a new document that would replace *CCRG*. This proposed document was called the RIPA. The committee was constituted to conduct an in-depth review of the *CCRG* and to build a baseline of proposed changes from the current *CCRG*. Mr. Fluney advised that the committee never finalized the document, although the working committee remains in place.

[388] Mr. Fluney stated that:

> 69) The Alberta Assessors Association CCRG Working Group provided comments on the draft RIPA in August 2016. The AAA working group's submissions on revisions to the CCRG [TAB 25, pg. 3] references efforts to continue to normalize construction to the Edmonton region. The reference to "continued" efforts implies that the committee was of the view that CCRG incorporates an Edmonton area adjustment:
>
> > *We have developed a new version of the CCRG written in the format of a regulation. The new version contains some new concepts and updates the value that is produced to represent included project costs based on typical modern-day construction practices and procedures. We continue to take efforts to normalize construction costs to those found in the Edmonton region (base area or region). We have named our document the "Total Project Cost Regulation" (TPCR).*
>
> 70) Larry Riep, who was previously on the CCRG committee, is also on the RIPA committee. Mr. Riep has previously stated that there were only minimal changes from SPAG to CCRG [Tab 4]. It was his opinion as an experienced assessor with knowledge of the creation of CCRG that CCRG wasn't built on an Edmonton region, this would have been addressed within the committee.

[389] Mr. Fluney also commented on certain assessments from 2014 and 2015 which were appealed, and which were resolved prior to the proposed hearings. The decisions are referenced in the 2017 CARB Decisions accepting joint recommendations in each case. The outcome was that the EAA was restored to the assessments. These decisions were provided in Exhibit 17-C, Tabs 26 to 40, pages 280 to 382.

[390] Mr. Fluney stated that those assessments dealt with the RMWB assessor removing the EAA. He noted that he had many clients who were affected by this change in practice by RMWB and stated that the assessments were appealed. The result of the appeals was that the EAA was restored. Mr. Fluney also noted that, for his clients, the restoration was based on Suncor's appeal, and the joint recommendation was applied to his clients without any further discussion.

[391] Mr. Fluney submitted that similar verbiage appears in most of the decisions. Using MEG Energy vs. RMWB CARB 2017-024 (Exhibit 17-C, Tab 33, pages 340 to 344) as a reference, the Board accepted the joint recommendation from both parties that the EAA should be applied to the assessments. Supportive documentation on this can be found in the decision:

> [6] The Joint Recommendation resolves all abnormal cost claims, which focused on the issue of the Edmonton area adjustment regarding productivity, which is in regard to the cost expected for labour productivity at the time when compared to the benchmark of Edmonton.
>
> [7] The recommended assessment for the 2016 Tax Year is $684,071,147. The initial assessment for the 2016 Tax Year is $768,859,040.
>
> [8] The recommended assessment is a compromise position on behalf of the Assessor and the Taxpayer. The recommendations resolve the disputes in each category of costs which were in issue in the 2016 Tax Year, and represent finality between the parties. The current Joint Recommendation resolves the disputes on each category of costs in issue, including productivity claim adjustments in 2016. The methodology, as well as the new evidence, which was presented to the assessor, allowed the parties to come to this.

[392] Mr. Fluney stated that based on his knowledge, the clients he dealt with included assessments dating back in some cases to 2002, and the subsequent assessments included the EAA. This supports that when the transition from SPAG to *CCRG* occurred, the EAA was considered in the assessment. Mr. Fluney also stated that in the assessments which were appealed, the RMWB attempted to ensure equity was achieved by reviewing the old assessments and making amendments. In the Fort Hills matter, Mr. Fluney stated that the PA is ignoring the equity requirements by making determinations that equity somehow does not apply to Fort Hills, or by ignoring the 2017 CARB Decisions.

[393] Mr. Fluney also submitted that it appears the PA performed a selective review of new major oil sands projects. He further stated that it does not appear there was a comprehensive review. As a result, there are many thousands of facilities that were not subject to the review and this created a significant inequity.

[394] Mr. Fluney included the following in his report:

> 75) When the centralization of designated industrial properties was implemented in 2018 the Government of Alberta posted on its website that "centralization of designated industrial property assessment will lead to improved consistency and equity for industrial tax payers (sic) and lower administrative costs for municipalities." [TAB 42]
>
> 76) A rejection of the Edmonton-area adjustment would represent an extreme departure from the principles that can be traced from SPAG, through the transition from SPAG to CCRG which did not change the Edmonton area adjustment, the fact that Ministers rates are built on Edmonton area costs, and the current definition of abnormal costs in CCRG. If a hypothetical assumption that CCRG does not take into account the Edmonton area is accepted, a significant amount of resources would be required to remove the current applied Edmonton modifier to each assessment. Since Alberta operates on an annual assessment cycle, in order to maintain equity, all assessments would have to be adjusted in the same

> assessment year. Since the creation of CCRG this also means that not only would the big expansions or new facilities have to be audited, but also each capital expenditure reported each year through the annual request for information process. Based on my experience, it is not uncommon for larger companies to have hundreds of new capital projects, both big and small, throughout the year. This then means each new project, each expansion and each annual expenditure report would have to be reviewed, a task would take considerable amount of time and resources to complete.
>
> 77) The information described above in this report supports that the Edmonton area adjustment is part of CCRG. It also speaks volumes that after seeking to remove the Edmonton-area adjustment in 2015 the RMWB, the municipality that is most impacted by this issue, agreed to put a joint recommendation to the board to re-apply the Edmonton area adjustment to the assessments and has since supported the inclusion of the Edmonton-area adjustment.

D. Reporting of Fort Hills Construction Costs

[395] Mr. Fluney reviewed the Fort Hills abnormal costs claims which remain at issue. These include the following:

a. Interference costs
    1. Abnormal site preparation (poor soil condition)
    2. Utilities and cogeneration
b. Design Changes (*CCRG* s. 2.300.400)
    1. Design error
    2. Re-engineering and rework
c. Transportation Costs (CCRG s. 2.500.200)
d. Abnormal costs of construction (Concrete) (*CCRG* s. 2.500)
e. Abnormal labour costs (*CCRG* s. 2.500)
f. Site preparation.

[396] Mr. Fluney also noted that based on his understanding of the background and experience of the Fort Hills team, Fort Hills has employed the skill set to quantify labour productivity levels and construction costs.

[397] Mr. Fluney's position is that the *CCRG* provisions do not dictate the content or form of a cost submission for *CCRG*, but the regulation states only that "specific documentation is required to substantiate claims for abnormal costs".

[398] Mr. Fluney stated further that the Fort Hills cost analysis was prepared and resulted in the determination of what would be considered as normal or typical costs as allowed for in the *CCRG*. The purpose of a *CCRG* analysis is to exclude costs that are not normal or typical, as set out in the assumptions used to describe those terms in the *CCRG*. These include costs associated with unproductive labour, costs that would not typically be incurred in a balanced market, and costs that are excluded to maintain consistency among regulated properties.

[399] Mr. Fluney also confirmed that his review of the Fort Hills assumptions used in abnormal cost claims submission are those that are set out in the *CCRG* provisions for the reporting of costs for assessment purposes.

[400] Mr. Fluney also opined that the *CCRG* specifies that documentation is required to substantiate claims for abnormal costs. Based on his experience, Mr. Fluney stated that the documents and detailed reports supplied by the Complainant meet these criteria. He continued that members of the Fort Hills team have significant expertise in the construction field, and they also have the skills required to identify issues and costs that have exceeded those expected in a typical construction project such as Fort Hills.

[401] Mr. Fluney asserted that the supporting documents supplied in his report show that *CCRG* was developed and consistently applied using the Edmonton area as the benchmark. By the assessor choosing not to apply this adjustment to a specific assessment, it is no longer maintaining consistency among regulated properties.

[402] Mr. Fluney also submitted that based on his experience, the typical practice for reviewing PCNs is for the Assessor and the taxpayer to meet to review a summary and sample of the PCN claims, and for the Assessor to spot audit the claims. The new requirements being imposed by the PA require individual review of each and every PCN, which Mr. Fluney submitted is unprecedented, and no explanation has been given for why this requirement is being imposed. Mr. Fluney observed that it would take many months to go through every PCN. Again, in his experience, he is unaware that the PA has even tried to do so. Also, the standard the PA is employing, that abnormal cost cannot be derived from a comparison to company "estimate", is simplistic and impractical.

E. Other Oil Sands Projects

[403] Mr. Fluney stated that the percentage of Fort Hill claims are consistent with his experience with cost reporting in oils sands facilities that typically see included costs in the range of 35% to 50% of total project costs. He also stated that projects with "black swan" events, such as the issue in the secondary extraction at Fort Hills, tend to have higher excluded costs.

[404] Mr. Fluney takes exception to the PA's position that, to its knowledge, there are no exceptions, or perhaps maybe a few outliers in terms of the EAA being applied subsequent to MA assuming responsibility for DIP assessments. Mr. Fluney opined that MA has an assessment audit team. If, as in 2015, the RMWB Assessor was able to identify projects with EAA, it is not plausible that the MA audit team would not have identified similar assessments if it was of the opinion that the adjustment was not consistent with the *CCRG*. If that were the case, it would have directed their removal. It was Mr. Fluney's opinion that the EAA was not identified as an issue by the MA assessment audit team from 2001 onward. Mr. Fluney suggested this implied that the MA considered adjustments for the EAA to be part of *CCRG*.

[405] It was Mr. Fluney's understanding that the EAA continued after the introduction of the *CCRG*, and that opinion was not limited to assessors. In Mr. Fluney's experience, assessment industry professionals and ratepayers also understood the evolution from SPAG to *CCRG* to have retained the EAA. Ratepayer in-house representatives and consultants continue to apply the adjustment, which continues to be accepted by assessors. Mr. Fluney submitted that he is engaged with several businesses across the province, and that he has seen the adjustment applied to numerous northern municipalities, such as Lac La Biche County, County of Northern Lights, ID 349 (now MD of Bonnyville), MD of Bonnyville, MD of Opportunity, Northern Sunrise County, and others. Assessors interpreted *CCRG* to have minimal changes from SPAG and that the Edmonton area is the base for *CCRG*. Mr. Fluney stated that Mr. Minard suggests his approach is universal, but in Mr. Fluney's opinion, "…it is an outlier, inconsistent with CCRG, and an approach which leaves Fort Hills as the only major oilsands project assessed on this new, inconsistent basis." (Exhibit 39-C, page 4, para 9)

F. Conclusion

[406] Mr. Fluney summarized his position as follows:

> 85) Through my review of the documentation attached to this report, and based on my experience, it is my opinion that the CCRG should be based on construction within 50 km of Edmonton. This has been the historic interpretation of the CCRG, continuing the principles and application of SPAG, and has also been the manner in which other oilsands facilities have been assessed in the past. The CCRG provides for the exclusion of abnormal costs, including costs that are to be excluded to maintain consistency among regulated properties. The regulated rates are based on the Edmonton area and are applied regardless of the location of the assessed property. There is no reason why property assessed pursuant to the CCRG should be treated differently, and to do so results in inconsistency and inequity.
>
> Fort Hills' assessment should reflect consistency with the assessment of other regulated property and should be equitable with the assessment of other oil sands facilities which have been assessed on the basis of an Edmonton area adjustment. Based on my review of other reports provided by the taxpayer in this matter, Fort Hills' abnormal cost claims in the categories are consistent with the historic application of the CCRG.

Assessment of Designated Industrial Property – Mr. Fumio Otsu (Exhibits 16-C and 38-C)

[407] Mr. Otsu provided background information concerning the assessment of DIPs and the impact of productivity adjustments.

[408] Mr. Otsu was qualified as an expert witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Otsu is an engineer, former instructor at the University of Calgary on cost estimating for engineers. He is to give opinion evidence on quantifying labour productivity loss and the historic practice of quantifying productivity loss for assessments of industrial projects in Alberta.

[409] Mr. Otsu's work history began with Fluor Engineering in a number of roles, principally in the fields of cost engineering and scheduling. He next worked for Informatics Corporation as a Project Management Consultant and has a number of projects in the oil sand sector. Since 2002, Mr. Otsu has been a Principal Consultant for Project Review & Analysis, LLC. His resume lists 19 projects where he has provided consulting services which includes oil sands properties.

[410] Mr. Otsu's educational background includes a Bachelor of Science, Chemical Engineering from the University of California at Berkley, and a few courses in the Business Management Certificate Program at the University of California at Los Angeles. He was also a lecturer at the University of Calgary in the field of Cost/Estimating.

[411] Mr. Otsu also has several affiliations including the American Association of Cost Engineers ("AACE"), Project Management Institute ("PMI"), Co., President and Director, Alaska Chapter PMI (1987), Fluor Daniel Executive Sponsor to Drexel University, University of California, Irving Engineering Advisory Committee, and the Construction Industry Institute ("CII"), Task Force Member Power Projects.

[412] Mr. Otsu explained his role in the hearing as follows (Exhibit 16-C, para 1):

> 1. I have been asked to provide commentary on the identification and quantification of productivity loss claims in industrial property tax renditions in Alberta since the initial implementation of CCRG. As a former lecturer at the engineering faculty of the University of Calgary on issues of Cost/Estimating and having provided consulting services on a number of projects in Alberta over the years, it is my intention to provide an overview of the development of reporting principles used in various projects over the past decade. As I had been involved in the preparation of models to assist companies and assessors in quantifying productivity loss, it is hoped that a review will be of assistance to the Tribunal in understanding rendition methodology in the context of productivity claims.

[413] Mr. Otsu advised that productivity is based on two material cost considerations:

> 1. Cost differentials for remote jobsite location as compared to Mid Alberta; and
> 2. Work efficiency losses due to delays, unplanned work, and inefficient work performance specific to a project location.

[414] Mr. Otsu's involvement in assessment matters began with the Athabasca Oil Sands Project ("AOSP") in 2001. Mr. Otsu was engaged as a professional cost engineering consultant. At the time, he was experienced in Alberta, and he was previously an Officer for the AACE.

[415] In 2002, Mr. Otsu assisted in developing a model using the principles of cost engineering and developed a methodology and process for cost reporting.

[416] This model resulted in consultation with the RMWB assessment department (Mr. J. Elzinga) to review the methodology for compliance with the CCRG. Mr. Elzinga also engaged outside consultants (Mr. K. Milne). As a result of the consultation process, a final report was agreed to in January 2004 without modification.

[417] Mr. Otsu advised that because of the acceptance of the cost methodology and cost calculations for AOSP, these principles were used for the Shell Muskeg River project in Fort McMurray. The final cost report was submitted to Mr. H. Schmidt, Tax Assessor for Wood Buffalo in December 2003, and was agreed to without modifications.

[418] Mr. Otsu advised that he developed the methodology for productivity based on cost estimating principles and since its development, it has been used for multiple projects within Alberta.

[419] Mr. Otsu stated that there were two methods of developing costs. The first was collectable costs which could be derived from cost accounting methods. The second was costs derived based on applying cost engineering estimating methodology.

[420] Mr. Otsu cited the *CCRG* respecting productivity being defined as an abnormal loss: "If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded."

[421] Mr. Otsu's position was that the *CCRG* provides direction that abnormal costs can result from delays in construction caused by natural disasters or inclement weather, or they may occur when the construction workforce is on site, but a lack of supplies or a work slowdown reduces or stops actual construction. Additional costs incurred because of unproductive labour are excluded.

[422] The *CCRG* also provides two additional examples of abnormal costs:

1. a cost that would typically not be incurred in a balanced market, and/or
2. a cost that is excluded to maintain consistency among regulated properties.

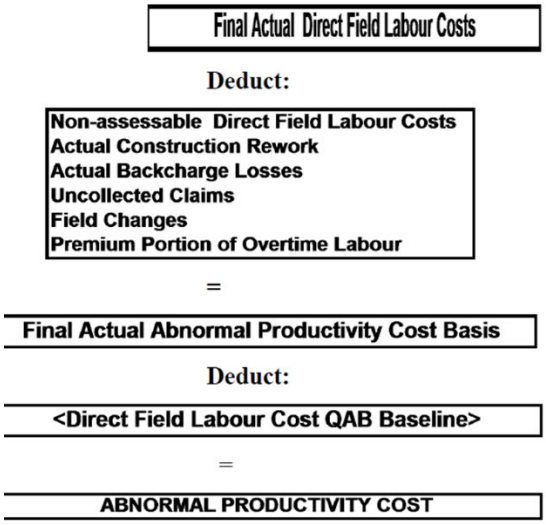
[423] Mr. Otsu opined that based on these definitions, he considered costs for abnormal labour were calculated utilizing the baseline estimate for construction labour hours and comparing this budget value to the final actual labour hours. He also confirmed the RMWB assessors previously accepted the internal budget estimate as the baseline.

[424] Mr. Otsu stated that the concept of the baseline budget is a methodology used by cost estimating professionals for measuring project construction labour performance, and that it is a practice which was established by the AACE as a recommended estimating practice and continues to be applied for tax assessment purposes.

[425] Mr. Otsu disagreed with Dr. Thompson's position that cost estimates should not be used. He commented that benchmarking of actual costs against estimated costs is important and a basic concept of cost engineering. He also stated that cost engineering methods were applied for each project; therefore, it is incorrect to say that the data was not verified. He further commented that the cost engineering methods proposed are consistent with the recommended practices of the AACE. A description of the AACE and references to additional information about the organization were included in his report (Exhibit 16-C, page 20, Appendix A). He also stated:

> 7. This methodology is consistent with methodology presented in previous projects in Edmonton using the Quantity Adjusted Budget (QAB), which was applied to all Edmonton/Ft McMurray projects in which I had consulted on, such as Shell and Suncor The basis for this was to ensure that all products were collected and controlled to ensure a reliable and consistent comparison could be made between the expected and final productivity for all projects." (Exhibit 38-C, page 3, para 7)

[426] Mr. Otsu also provided a summary of how unproductive labour was calculated (Exhibit 16-C, page 7 with terms defined on pages 7 and 8):



[427] Mr. Otsu stated this model is used in the Fort McMurray area, and significant aspects for the model include increased work week hours, weather, turnover of craft labour, travel time to work sites, and location logistics for several sites.

[428] Mr. Otsu also stated that the variables are included in the project cost estimate and establish the baseline for all the project execution plans. When this is completed, the following is expected:

- Expected costs are "norms" i.e. budget
- Variables are applied to set "norms" for the project
- Productivity measurement is made from project "norms"

[429] Mr. Otsu stated that in 2015 and 2016, he had the opportunity to meet with Mr. Iliev to review his labour productivity analysis. He found Mr. Iliev's analysis to be consistent with his expectations.

[430] Mr. Otsu acknowledged he had not reviewed the analysis in any detail for the subject complaint, but was made aware that the methodology was consistent with the 2015/16 analysis, which he confirmed was consistent with the analysis he established.

[431] In respect of the model, Mr. Otsu opined that:

> Since productivity loss for most projects could not be collected without extensive work sampling, the productivity model was developed. This model grouped multiple types of losses and is considered a derived abnormal cost. In this model the Fort McMurray productivity adjustments are included in the baseline budget for the productivity calculation. These adjustments are expected losses in productivity for the specific project." (Exhibit 16-C, page 15, paras 46 and 47)

[432] Mr. Otsu's conclusion was as follows:

> 67. The productivity loss concepts for Fort McMurray have been applied to other locations in Alberta due to conditions described in the CCRG.
>
> 68. Since the inception of CCRG, I have been involved in the development of models and concepts to assist in arriving at a basis for calculating productivity losses at site and in relation to losses incurred as a result of an imbalanced market, shortage of labour, and remote location. In some cases, these models have been vetted by engineers employed by the municipality. (Exhibit 16-C, page 19, paras 67 and 68)

[433] He further concluded in his rebuttal as follows:

> 13. I will conclude by reiterating one of the key points from my initial report, which is that the historically accepted considerations for productivity analysis included two key elements: a mid-Alberta adjustment and site-specific adjustments.
>
> 14. To the extent that Dr. Thompson and the Provincial Assessor are now arguing these two key elements should not be considered or form part of the analysis on productivity, based on my experience this would be inconsistent with how it has been historically done and accepted. (Exhibit 38-C, page 4, paras 13 and 14)

Soil Conditions – Mr. Parmit Parmer (Exhibit 13-C)

[434] Mr. Parmer provided a report concerning adverse soil conditions; however, he did not present his report and was not made available for examination by the Respondent.

[435] His report was provided to identify the abnormal costs associated with the soil conditions present in the development and construction of the Fort Hills Oil Sands Project in the AE&T, E&T, and U&C project areas.

[436] Mr. Parmer was qualified as an expert witness (Exhibit P16C). The Respondent agreed to the following:

> Mr. Parmer is primarily a fact witness, a Suncor engineer, will testify in respect of the abnormal soil conditions in automation, electrical and telecommunications, extraction and tailings and utilities and cogeneration.

[437] Mr. Parmer began his work career with GML Associates as a Junior Civil/Structural Engineer (1987-1988), then with SNC Lavalin in Montreal as a Senior Civil/Structural Engineer (1988-1993), and with SNC Lavalin in Calgary as Lead Civil/Structural Engineer (1993-2003). He began his employment with Suncor in 2003-2016 as Program Lead Civil/Structural Engineer and in 2017 was promoted to his current position of Manager, Civil/Structural Engineer.

[438] Mr. Parmer holds a Bachelor of Science, Civil Engineering from the Punjab University India, and a Master of Science, Civil Engineering from Concordia University.

[439] Mr. Parmer's report identifies the nature of ground conditions at the Fort Hills Project site as requiring additional pilings, dewatering, and work that would not be encountered in an Edmonton area greenfield site or the finished industrial land standard. The muskeg conditions and deeper bedrock at the Fort Hills site resulted in an excluded cost allowance for site preparation.

[440] Mr. Parmer also included in his report that for earthwork scopes of work, the depth of annual frost impacts the construction costs in Edmonton, which were compared to the construction costs in Fort McMurray, which confirm that Fort McMurray is impacted more than Edmonton.

[441] The frost depth in Edmonton is significantly shallower than the frost depth in Fort McMurray. Due to the frost depth, underground installations such as potable water, fire lines, and sewer lines the Edmonton area requires 75% less excavation and backfill material compared to Fort McMurray area and the Fort Hills site.

[442] Mr. Parmer's report also notes that foundation costs would be 15% lower in Edmonton, and piling costs would be lower by 25% in the subject site when compared to Edmonton.

[443] Mr. Parmer's report submits that in total, $46,012,712 in excluded costs were incurred in the three referenced project areas as a result of topography and soil conditions associated with the Fort McMurray area and the specific Fort Hills Project area.

Additional Foundation and Concrete due to unfavorable conditions and deeper bedrock than typical	**Cost Impact**
Automation, Electrical, Telecommunication	$18,270,425
Extraction and Tailings	$ 9,964,440
Utilities and Cogen	$17,777,847
Total	**$46,012,712**

Standard Practice Use of Productivity in Estimates – Mr. Felix Wong (Exhibits 15a-C and 15b-C)

[444] Mr. Wong provided a report concerning the Standard Practice of Use of Productivity in Estimates; however, he did not present his report and was not made available for examination by the Respondent.

[445] His report was provided to identify the Worley United States Gulf Coast ("USGC") workhour unit rates which are adjusted to the Worley Craft Labour Productivity Calculator to develop typical labour productivity adjustment factors.

[446] Mr. Wong was qualified as an expert witness (Exhibit P16C). Mr. Wong has a Construction Estimating Diploma from the Northern Alberta Institute of Technology (2004). He has many additional courses, which include Certified Engineering Technologist ("CET") (2014) and AACEI Certified Estimating Professional ("CEP") (2020).

[447] The Respondent agreed to the following: "Mr. Wong is a CET and CEP at Worley Parsons and will give opinion evidence on standard practice of use of productivity analysis in construction cost estimates."

[448] Mr. Wong's work experience includes Junior Technologist with EBA Engineering and Consultants (2005-2005), Facility Estimator with Flint Engineering (2005-2008), and Principal Estimator with Worley, his current position since 2008.

[449] Mr. Wong's report states that initial standardized task hours are initially based on USGC green field construction work hours and productivity to derive a cost for a specific site location. The outcome of those hours is then reviewed against the Worley Craft Labour Productivity Calculator, along with available historical data to develop adjustment factors. Accordingly, labour productivity can vary greatly amongst projects, including those in the same region. For example, a project in a remote North American location will not have the same productivity as a project in central North American location. When developing productivity, all aspects must be considered and one factor for all locations is not used.

[450] Mr. Wong provided examples of the USGC rates elements and factors in his report.

SECTION 6 - WITNESS TESTIMONY - RESPONDENT IN THE ORDER OF OCCURRENCE AT THE MERIT HEARING

Assessment of Designated Industrial Property – Mr. Brad Pickering (Exhibits 23-R and 45-R)

[451] Mr. Pickering provided a report to assist the Panel in understanding the development of the *CCRG,* which the Minister approved in 2001.

[452] Mr. Pickering was presented as a fact witness.

[453] Mr. Pickering's work experience began with the Municipal District of Sturgeon (1978-1979) as an appraiser for taxation purposes. He then moved to Strathcona County and held the positions of Property Assessor (1979-1983), Land Coordinator, Land Management (1983-1986), Manager, Real Estate Services (1986-1993), and finally Coordinator, Real Estate and Land Development Services (1993-1997). He joined the Government of Alberta in 1997 and he retired in 2019. This included positions as Executive Director, Assessment Services Branch (1997-1999), Assistant Deputy Minister, Local Government Services Division (1999-2002), Deputy Minister, Alberta Municipal Affairs (2002-2004), Deputy Minister, Sustainable Resource Development (2004-2008), Deputy Solicitor General and Deputy Minister, Public Security (2008-2011), Deputy Minister, Tourism Parks and Recreation (2011-2013), Chief Executive Officer, Alberta Environmental Monitoring, Evaluating and Reporting Agency (2013-2014), and Deputy Minister, Alberta Municipal Affairs (2014-2019).

[454] Mr. Pickering has a Municipal Assessment Certificate (1981), a Real Estate Certificate (1982) and a Local Government Certificate (1989) from the University of Alberta. He also has a certificate from the Appraisal Institute of Canada (1982).

A. History of *CCRG* and Predecessor Legislation/Regulations

[455] Mr. Pickering stated that the history of assessment in Alberta relates to pre-1995 and post-1995.

[456] In pre-1995, property was assessed on a fair actual value basis. This dealt with all land except farmland. There were regulated manuals used to assess farmland, buildings, and structures. There were about eight years between reassessments.

[457] Mr. Pickering stated that prior to 1995, a manual referred to as SPAG was used. SPAG tied assessments as if they were incurred in the Edmonton area. Similarly, all buildings and structures within a municipality were also based on the Edmonton area costs.

[458] Mr. Pickering opined that SPAG clearly reflected the legislated assessment regime of the time; however, SPAG was never a regulated or legislated document. It was simply a guide used for over 20 years to bring consistency to properties being assessed using the cost approach.

[459] Mr. Pickering stated that in 1995, the Alberta assessment system was revamped. In place of fair actual value, properties were to be assessed based on a market value assessment system and municipalities were expected to do an assessment every year. There were two assessment standards brought forward – a regulated procedure based standard and a market value based standard.

[460] In 1995, SPAG was not relevant, according to Mr. Pickering, when buildings and structures were assessed on market values within the municipality where the property was located.

[461] Mr. Pickering further stated that the *CCRG* is a regulated document, in a market value system. The *CCRG* is based on the appraisal concept of reproduction cost, however, it also identifies specific costs to either be included or excluded. The *CCRG* was prepared for assessments of complex, unique, and special properties where no rates have been regulated.

[462] Mr. Pickering went on to state that the *CCRG* was created to maintain consistency amongst regulated properties. By providing standardized procedures and costs, consistency and administrative efficiencies are achieved.

[463] Mr. Pickering opined that various assessment appeal hearings have assumed that the *CCRG* implied using Edmonton as the base for costs. Mr. Pickering submits that the *CCRG* working group discussed the concept; however, as stated by Mr. Angus Mackay:

> ***…the Industrial Property Reproduction Cost guide draft specifically excludes any reference to Edmonton area because that was all tied to the previous regulated manuals, and that's why, even though it might be accepted by this group that Edmonton area is the typical cost, then I think it is something that this group should make that conclusion. By leaving it out, I wasn't necessarily suggesting that that would not be the case, but because there was no reason, from looking at other legislation or regulations, that Edmonton area had any particular status, it would be inappropriate to reference it in the guide. So to summarize, it could be that typical is what happens in Edmonton. It could be something else. I think that's one of the things that this group really needs to come to grips with. (***Bold highlights by Mr. Pickering)

[464] Mr. Pickering also opined that the final draft of the *CCRG* document was shared and word-smithed by the working group and the concept of the Edmonton base cost was not included in the regulated *CCRG* document. As an example, one of the assumptions in the Abnormal Costs of Construction Section references "an adequate labor force is readily available at the **worksite**." It did not reference a benchmark location such as Edmonton or mid-Alberta."

[465] In addition, Mr. Pickering stated that there is an express reference within the *CCRG* for Edmonton for Transportation Costs only. Mr. Pickering's position was that if the Minister had wanted Edmonton to be viewed as the base for all costs, it would have included a provision to that effect, particularly since it was in SPAG, but not in *CCRG*. Mr. Pickering continued that the fact that it was removed from SPAG indicates that within *CCRG*, Edmonton is to be used for transportation costs only.

B. Assessment Practices for *CCRG* Reporting

[466] Mr. Pickering submitted that the legislation changes in 1995 required that regulated assessments have certain properties treated differently than market value based standard properties.

[467] Regulated properties were difficult to assess using a market value based assessment standard because:

(a) they seldom trade in the marketplace and when they do trade, the sale price usually includes non-assessable items that are difficult to separate from the sale price;

(b) they cross municipalities and municipal boundaries; and
(c) they are of a unique nature.

[468] Mr. Pickering stated that as a result, the *Minister's Guideline* were developed to assess regulated properties in Alberta. This includes establishing the procedures which includes using the *CCRG* to identify included costs ("ic"). The *CCRG* exists for assets where no regulated rates exist.

[469] Mr. Pickering testified that the *CCRG* was developed in 2001 by a working group in consultation amongst industry, municipal associations, and the assessment community. The working group was

established to review an updated guide based on market value principles. Mr. Pickering advised that it was presented to the working group in draft form and was the basis upon which the working group discussion occurred.

[470] Mr. Pickering indicated that in early meetings, the discussion centered around whether reproduction cost or replacement cost would inform the guide. The guide in its final wording landed on the appraisal principle of reproduction cost as the cost reported for the construction of the facility. He noted that the *CCRG* wording states "The policies and procedures incorporated in this guide are modelled on the appraisal principal of reproduction cost, subject to the divergences necessary to meet the requirements of Alberta's assessment legislation and secondly, to provide a stable property tax base."

[471] Mr. Pickering also stated that in mid-2001, the working group was tasked with identifying important issues. Once completed, the group was able to resolve most issues, with seven outstanding matters. Those remaining issues revolved around:

(a) Overtime
(b) Travel Time
(c) Temporary Camp Facilities
(d) Freight Charges
(e) Interest During Construction (IDC)
(f) How to define an abnormal cost
(g) Property Tax.

[472] The remaining issues were discussed at a meeting in September 2001. Of particular note was that EAA was not brought up by the working group as an issue. The seven issues were discussed and not all the considerations put forward by the department were accepted by the working group in the final draft of the *CCRG*.

[473] Also, during the September 2001 meeting, the idea of regulating the *CCRG* document and itemizing the assumptions which varied from market value principles was discussed with the working group to deal with the impasse on the substantive issues. These assumptions were:

(a) An adequate labor force is readily available at the worksite.

(b) Raw materials and prefabricated component parts are readily available.

(c) Projects are financed from operations or from shareholder equity and companies make no provision for interest during construction.

(d) Premium payments are not made for overtime worked.

[474] Mr. Pickering then submitted that the 2001 *CCRG* laid out the concept of assessable costs. It itemized a list of project costs which could be excluded under abnormal costs. The *CCRG* provided the following reasons:

- In a balanced market it is a cost that would typically not be incurred, and/or
- It is a cost that is excluded to maintain consistency among regulated properties.

[475] Mr. Pickering stated that the two points noted above acknowledged that depending on the time frame the project construction took place, the costs of certain construction components could vary upwards or downwards based on the construction market conditions which existed at the time. This was further expanded on in the 2001 *CCRG* where it laid out assumptions to produce assessment consistency for

regulated properties. It defined things, which in an appraisal context, would be considered as part of market value but would be excluded costs for assessment purposes under the *CCRG*.

[476] Mr. Pickering's opinion of the working group discussions was that travel time was identified as an item that could be dependent on when a project is constructed as to whether owners would be required to pay. This was a factor of market conditions at the time it was constructed; the rational to exclude this item was an example of an abnormal cost, based on an assumption of balance market, and to get consistency among regulated assessments irrespective of the timeframe the project was constructed. The Edmonton area location was not part of the discussion rationale to define these as abnormal costs.

[477] Mr. Pickering also noted that SPAG defined Normal or Typical Construction Cost Element as: "A construction cost element typically incurred in the construction of specific classes of industrial improvements, the cost of which reflect:

- Economic conditions typical at the time of construction, and
- Construction under typical climatic conditions."

[478] Mr. Pickering opined that the *CCRG* definition of "typical" or "normal" is difficult; it is subjective and:

(a) Varies over time
(b) Varies by location
(c) Varies by industry

[479] Mr. Pickering also stated that any claims for costs which are considered abnormal require specific documentation to substantiate the claim.

[480] Mr. Pickering stated that in October 2001, the working group received the final draft document and did not raise the EAA except for transportation costs. The document was accepted by Ministerial Order, and subsequently the regulated process of using a modified cost approach through the application of *CCRG* with regulated factors has not changed.

[481] Mr. Pickering also noted that he has reviewed the RMWB Blue Book. The document was prepared by Mr. Elzinga, who was an Assessor of Industrial Property in Alberta and was a very active participant during the working group development of the *CCRG*. The interpretation by Mr. Elzinga is consistent with Mr. Pickering's interpretation of the *CCRG*, and his understanding of the policy of MA while Mr. Pickering was the Deputy Minister.

D. Conclusion

[482] Mr. Pickering suggested that Mr. Fluney's reference to Mr. Reip's statement that there were no substantive changes between SPAG and the *CCRG* (Exhibit 17-C, page 21, para 51), is an oversimplification. Mr. Pickering concurred that several of the included or excluded items were like the previous SPAG document; however, the policy decision on the market value assessment system had moved away from an Edmonton based manual system. The SPAG document and its successor, the *CCRG*, were to determine what was included or excluded for assessable costs and a preamble dealing with Edmonton area cost basis was specifically removed.

[483] Mr. Pickering submitted that the preamble in SPAG outlines a concept to achieve consistency with other improvements. At the time SPAG was in place, assessors used the Provincial Assessment Manuals which were based on Edmonton area costs. The *CCRG* was developed at a time when other improvements

were based on market value, which takes into consideration the property location, and the property location is what the *CCRG* was endeavoring to do as well.

[484] Mr. Pickering's opinion was that under the previous fair actual value assessment system, SPAG was developed based on Edmonton area costs. Mr. Pickering further opined that the *CCRG* is modelled to determine value within a market value assessment system. As reported costs represent reproduction costs, they reflect typical construction costs at the time of construction, at the plant location, and under normal climate conditions. The *CCRG* determines assessable costs through a process of costs which are included or excluded based on the provisions of the *Ministers Guidelines*. Nowhere in the *CCRG*, other than transportation, has the Minister given direction to Assessors that Edmonton area costs are the basis of assessable costs. Through the regulated assessment process, the Minister has determined the procedure as to how the assessment is to be calculated.

[485] Mr. Pickering also stated that to determine how equity is achieved for regulated properties, as set out in *MGA* section 293(1), it is by the application of the regulations and procedures. If one looks at the market value assessments, as set out in *MGA* section 293(2), equity is achieved in those instances based upon similar properties within the same municipality and not the province generally.

[486] Mr. Pickering noted that during the working group review process, consensus was not reached on maintaining pure market value principles. Accordingly, certain assumptions were made to vary from those principles which were contained in the document. It was decided that the majority of the cost exclusion provisions in the SPAG would continue in the *CCRG*.

[487] Mr. Pickering further stated that the *CCRG* position on abnormal costs of industrial facilities did not identify a benchmark location which could be used as the basis for determining typical, normal construction costs. The *CCRG* acknowledges that what constitutes "typical" or "normal" is difficult and it describes a number of assumptions when describing normal conditions for the construction of regulated property. No assumption was made as to location, other than where the property is located under the appraisal methodology of reproduction cost.

[488] Mr. Pickering submitted that the definition of "typical" was tested by industry shortly after the final draft of the *CCRG* was sent out by MA. As noted in a letter dated December 5, 2001 from Mr. Best, representing CPTA, he requested that "Costs to deal with adverse factors related to topography or soil condition not ordinarily encountered in typical construction projects based at a location outside of Edmonton, would not be included". (Exhibit 20-R, page 1643) Mr. Pickering submitted that his response to that letter references section 2.600 of the *CCRG* which states "The determination of what constitutes "typical" or "normal" is difficult; it is subjective and may vary over time, from one location to another and among industries. If the actual costs of an industrial facility are greater than the typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded." Nowhere does it reference Edmonton based costs in Mr. Pickering's response as to what is typical and Mr. Best's invitation to include a reference to an Edmonton area baseline was not included in the final version of the *CCRG*.

Assessment of Designated Industrial Property – Ms. Sheila Young (Exhibits 21-R and 46-R)

[489] Ms. Young's report provided historical and factual information regarding the applicable regulations and underlying Alberta government policy respecting the assessment of machinery and equipment.

[490] Ms. Young was presented as a fact witness.

[491] Ms. Young's work experience began with Alberta Mortgage and Housing as an appraiser, then to Mendel, also as an appraiser. This was followed by the City of Calgary, Assessment Department as an Assessor 2, Assessor 3, and Acting Manager. In January 1998, Ms. Young began work for the Government of Alberta, Municipal Affairs, Assessment Branch, initially as an Auditor, Assessment Audit (1998-2001), Audit Coordinator (2001-2004), Project Manager, Industrial Assessment Review (2004), Audit Manager (2004-2007), and lastly as Director, Assessment and Property Tax Policy (2007-2022). She retired in 2022.

[492] Ms. Young completed the Certificate Program Real Property Assessment from the University of British Columbia, the Senior Manager and Executive's Development Program from the Alberta School of Business, and she received a Bachelor of Management, Athabasca University.

[493] Ms. Young is an Accredited Appraiser Canadian Institute (AACI – retired, Fellow) as well as a Designated Member - International Association of Assessing Officers (CAE)

A. History of *CCRG* and Predecessor Legislation/Regulations

[494] Ms. Young stated that the history of assessment in Alberta relates to pre-1995 and post-1995.

[495] Ms. Young testified that prior to the introduction of the *Municipal Government Act* in 1995, the assessment process for all properties was regulated, with cost manuals based on the Edmonton area. Ms. Young's testimony is that the cost manuals from that era, except for the farm land manual, no longer apply. SPAG, while not a regulation was applicable to the pre-1995 era, and it no longer applies.

[496] Ms. Young opined that the current framework from 1995 and subsequent has two valuation standards for property: the market value standard and the regulated standard. The regulated standard was introduced as some types of properties are difficult to assess using a market value assessment standard because:

- they seldom trade in the marketplace. When they do trade, the sale price usually includes non-assessable items that are difficult to separate from the sale price;
- they cross municipalities and municipal boundaries; and
- they are unique in nature.

[497] Ms. Young stated that for those regulated properties, the Minister prescribes rates and procedures to assess them.

[498] Ms. Young described the legislated term used where the PA determines the assessment of a property. These properties are referred to as DIP, which includes the categories of M&E, linear property, and in some cases, land and B&S.

[499] Ms. Young also stated that in the 2017 updates to the *MGA,* the property assessment function of designated industrial properties was amended to fall under the PA, who took responsibility for the assessment of these properties on January 1, 2018. The MA website states "centralization of designated industrial property assessments will lead to improved consistency and equity for industrial taxpayers and lower administrative costs for municipalities."

[500] Ms. Young also stated that the reference to M&E is defined in *MRAT*. *MRAT* directs the valuation standard for M&E to be calculated in accordance with the applicable procedures set out in the *Minister's Guidelines*. Ms. Young noted that the *Minister's Guidelines* are updated annually.

[501] Ms. Young testified that the PA's goal is to achieve consistent predictable assessments, and identified that consistency is achieved through policies such as excluded costs from the *CCRG*, truncated depreciation, 77 percent statutory level, and no education taxes for machinery and equipment.

[502] Ms. Young's position is that in preparing an assessment, the Assessor must follow s. 293 of the *MGA* which specifies that:

> In preparing an assessment, the assessor must, in a fair and equitable manner,
>
> a) Apply the valuation standards set out in the regulations, and
>
> b) Follow the procedures set out in the regulations
>
> If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

[503] In Ms. Young's opinion, assessment methodology is designed to distribute property taxes in a reasonable manner. She also opined that *MRAT* directs the assessor to assess some properties at market value and location is a primary component of market value. Ms. Young provided an example where a motel in Olds is unlikely to be assessed at the same value as a similar one in Edmonton. The regulation specifies that machinery and equipment is to be assessed using the *Minister's Guidelines*. This includes the 2005 *CCRG*. Ms. Young noted that the *CCRG* only specifies the Edmonton area location for transportation costs.

B. Assessment Practices for *CCRG* Reporting

[504] Ms. Young concurred with the basis for assessment of DIPs as described in this decision in paragraph 12.

[505] Ms. Young provided a detailed review of each of the components in the foregoing calculation (Exhibit 21-R, pages 8 to 12, and paras 16 to 33).

C. Reporting of Fort Hills Constructions Costs

[506] Ms. Young's interpretation of the Complainant's issues is that they center around abnormal labour costs; design changes, alterations, and modifications; interference costs; transportation costs; and abnormal construction costs.

[507] In respect of abnormal costs in general, Ms. Young stated that the *CCRG* applies to all M&E in the province, from all industries, in all locations, and for a number of years. Ms. Young quoted the *CCRG* at paragraph 4 concerning abnormal construction costs as follows:

> The determination of what constitutes "typical" or "normal" is difficult; it is subjective, and it may vary over time, from one location to another and among industries. If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded.

[508] Ms. Young opined that the foregoing definition "… is reasonable that normal or typical for one industry or one location or one period of time may not apply to all industries, all locations, or all time periods. It is reasonable because there are a variety of economic factors that influence each type of industrial development. Technology may be changing in one industry and not another, or one industry may be sourcing materials and labour from a global market, and another industry may only source local materials and labour."

[509] Ms. Young also noted that the *CCRG* on page 4 expands on its guidance as follows:

> "Two additional examples of abnormal costs are:
>
> - a cost that would typically not be incurred in a balanced market, and/or
> - a cost that is excluded to maintain consistency among regulated properties.
>
> Specific documentation is required to substantiate claims for abnormal costs."

[510] Ms. Young stated it was a requirement that a balanced market need to be considered based on what is "normal" and "typical". To do so, she expanded, would require comparing this project to what is occurring within the industry, a similar location in the municipality, and during the same time frame.

[511] Ms. Young also noted that the International Association of Assessing Officers ("IAAO") defines balance as:

> Markets have a tendency to move toward equilibrium. Balance is a term used by appraisers to indicate that there is a proper mix of types and uses of property. When a real estate market is in balance, land values are maximized. (International Association of Assessing Officers, 1990)

[512] Ms. Young confirmed that neither the *CCRG* nor the IAAO define a market in a particular location, time, or industry which is always in balance. However, the *CCRG*, in the four bullets under section 2.500, lists four of the common components of a balanced market (adequate, readily available labour, available materials, normal/typical financing, no overtime paid).

[513] Regarding abnormal labour costs, Ms. Young referred to the *CCRG*, page 4, section 2.500 which provides two examples:

- an adequate labour force is readily available at the worksite, and
- Abnormal costs can result from delays in construction caused by natural disasters or inclement weather or they may occur when the construction workforce is on site but a lack of supplies or a work slowdown reduces or stops actual construction. Additional costs incurred because of unproductive labour are excluded.

[514] Ms. Young spoke further about abnormal labour costs. Her opinion was that to achieve an adequate labour force readily available at the worksite, the costs of travel to the worksite and the premium paid for overtime are excluded costs, and therefore excluded from the property assessment. The lost time due to construction delays caused by a lack of supplies, work slowdown, natural disaster, or inclement weather also qualifies as an excluded cost. (*CCRG*, page 4).

[515] Ms. Young next commented on design changes, alterations and modifications, and referred to the *CCRG*, page 2, section 2.300:

> Alteration costs incurred during construction that improve the operational efficiency of the original plant design, are excluded. Likewise, the costs of "de-bottlenecking" or modifying an operating process are excluded if there are no changes to the equipment inventory. Note: The cost of equipment installed to improve operational efficiency is included.

[516] Ms. Young suggested that the assessed person and the assessor need to consider the following questions:

i. Did the design change, alteration, or modification improve the operational efficiency of the original plant design?
ii. For de-bottlenecking or modifications in operating processes, did the equipment inventory change?
iii. Was defective equipment installed or defective work completed and did the actions taken to correct this exceed the amount typically included in the budget for this type of error?

[517] Ms. Young also stated that interference costs as defined in *CCRG*, page 3, section 2.300.500 are:

> Additional costs incurred for reasons of safety while working in close proximity to existing facilities, such as the cost of pilings to ensure the structural integrity of existing buildings or the rerouting of piping, electrical lines, or telecommunications lines, are all excluded.

[518] In Ms. Young's opinion, the assessed person and the assessor must consider whether the additional cost incurred for safety is near existing facilities.

[519] In respect of transportation charges Ms. Young reviewed the *CCRG*, page 4, section 2.500.200:

> The costs of transporting raw material and components from the Edmonton area to the work site are excluded. However, if the actual transportation costs from the point of origin to the plant site are equal to or less than the cost to the Edmonton area, the entire transportation costs are included. Note: The cost of loading and unloading the raw materials and components is included.

[520] Ms. Young suggested that the assessed person and assessor should consider whether the documentation indicates the cost to transport raw materials and components to the worksite are higher than transporting to the Edmonton area.

[521] Ms. Young also testified that the reference to the cost of transporting raw material and components from Edmonton is the only area in which the *CCRG* refers to an Edmonton area adjustment.

[522] Ms. Young turned to abnormal construction costs and stated it was defined in the *CCRG* on page 4 under section 2.5000 as, "If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded."

[523] Ms. Young's opinion was that the assessed person and the assessor need to determine whether the cost of the component or material is like other projects in the municipality built within a similar time frame. If not, can the increase be tied to inflation, or other cost increases or decreases for similar industries and projects? Further, she submitted the Assessment Year Modifier could be used as a proxy for any changes in construction costs.

[524] Ms. Young also referred to the RMWB Blue Book, and she confirmed that in 2015, the precursor to the PA reviewed the interpretation of the *CCRG* submitted by the RMWB. Ms. Young stated that the Assessment Services Branch team, which included Ms. Young, agreed with the interpretation provided by the RMWB at that time. Ms. Young further confirmed that she continues to agree with this interpretation.

D. Other Oil Sands Projects

[525] Mr. Fluney's rebuttal report concerning whether similar properties were assessed in a similar manner, stated that "surely the Municipal Affairs audit team would have identified similar assessments if they were of the opinion that the adjustment was not consistent with the CCRG, and directed their removal." (Exhibit 39-C, page 3, para 6) Ms. Young in her sur-rebuttal report responded to Mr. Fluney's assertion as follows:

> The Assessment Services Branch, Assessment Audit Unit reviewed the assessments of mid-sized oil and gas properties in 2012. The properties reviewed were assessments between 100K and 100 million, and were located in all rural municipalities. The observations noted in the audit report are that "some older plants, or those where the assessments were created by the previous assessors lacked sufficient detailed historical cost information." Also, "excluded and non-assessable cost adjustments often lacked proper documentation, and in many instances, were "negotiated" by owners and assessors", and, "CCRG compliance for large plants requires sophisticated accounting, legal, engineering, and valuation expertise. Municipalities not having the resources and expertise are more prone to having unsupported, negotiated assessments, or are more likely to accept self-assessments prepared by industrial plant owners." The observations from the auditor were one of the factors that led to the centralization of industrial property within Municipal Affairs. (Exhibit 46-R, page 4, paragraph 2)

[526] Ms. Young also commented on Mr. Fluney's understanding of the Request for Proposal process to update assessment year modifiers and prescribed rates for certain machinery and equipment (Exhibit 39-C, page 11, para 38). Ms. Young's response was "these RFPs were issued during a transition period to new assessment rates which were implemented in 2007. In later years, the request for proposals was updated to direct the contractors to apply legislative directives to determine included and excluded components."

E. Conclusion

[527] Ms. Young provided the following summary and her conclusion:

> The development of the CCRG, or of prescribed assessment rates is not an easy task. Stakeholders (municipalities, assessed persons, assessors, tax agents, etc.) bring their unique perspectives to any discussion, and consensus is seldom found. Therefore, the Minister must make the decision. The Minister's decision may be different from discussions held in working groups, or recommendations developed from those discussions. However, at the end of the day, it is the Minister who has the legislative authority to determine assessment policy. While an Edmonton area adjustment has been discussed by stakeholders at various times in the past and present, and individual recollection of what was discussed and approved may vary, the only legislated requirement for an Edmonton area adjustment is for transportation costs.

Assessment of Designated Industrial Property – Mr. Dan Driscoll (Exhibits 22-R and 44-R)

[528] Mr. Driscoll's report was to clarify the Alberta legislation and assessment processes since the repeal of the *Municipal Taxation Act*, its Regulations, and procedural documents in 1995.

[529] Mr. Driscoll was presented as an expert witness as follows:

> The Provincial Assessor is seeking to have Dan Driscoll qualified (to) give opinion evidence as an Accredited Municipal Assessor of Alberta (AMAA) on the historical and current regulated property assessment regime and on the interpretation and application of the CCRG.

[530] Mr. Driscoll's work experience began at Government of Alberta, Municipal Affairs, Assessment Branch, initially as an Assessor (1985-1995), then as Coordinator, Linear Property Assessment Unit, Utilities Section (1995-2000), Manager, Regulated Policy Unit (2000-2004) and lastly as Director, Regulated Standards and Utilities Assessment (2004-2006). He subsequently worked for SNC Lavalin (2007-2016) and at the same time commenced a personal consulting business (D. Driscoll Consulting Inc. 2006-present).

[531] Mr. Driscoll completed the Farmland Appraisal and Assessment course at Olds College (1979), Certificate in Municipal Assessment from the University of Alberta (1982) and a Certificate Program Real Property Assessment from the University of British Columbia (1997).

A. History of *CCRG* and Predecessor Legislation/Regulations

[532] Mr. Driscoll testified that prior to 1995, the Alberta assessment scheme was governed by the *Municipal Taxation Act*, the *Municipal Provincial Property Valuation Act* and the *Electric Power and Pipeline Assessment Act.* As well, there were numerous regulations and manuals used to conduct assessments.

[533] Mr. Driscoll stated that in 1995, the legislation and regulations were repealed. The *Municipal Taxation Act* was replaced within the *MGA.* Also, the *Fair Actual Valuation Act* was replaced with the *Standards of Assessment Regulation.* Mr. Driscoll further stated that the task of assessing property was assumed by local Municipalities, as opposed to the previous legislation where the Assessment Operations within MA conducted assessments.

[534] Mr. Driscoll stated that a consequence of the overhaul of legislation was that it resulted in gaps in the new legislation.

[535] Mr. Driscoll testified that in 1995, there was a transitional period that lasted until 2001. For example, the *Standards of Assessment Regulations* allowed municipalities a period to move from the fair actual value which was in place prior to 1995, to the market value introduced in the 1995 legislation.

[536] Mr. Driscoll also submitted that within the transition period, the *Standards of Assessment Regulation* was repealed in 1999, and in its place the legislature enacted *MRAT*. Mr. Driscoll opined that many of the gaps were in the assessment of regulated properties.

[537] Mr. Driscoll provided an example of a gap and referred to the use of SPAG. This guide was not a regulated document; however, it was in place for many years and was used prior to 1995 when the legislation changed. Mr. Driscoll confirmed that SPAG was widely used before and after the legislation changed, to prepare assessments for Special Purpose Properties (both structures and machinery and equipment) until the introduction of the *CCRG* into the *Minster's Guidelines* in 2001.

[538] Mr. Driscoll stated that Regulated Property was defined to include linear property and machinery and equipment, and in 2001 MA began a process to develop new rates, policies, and procedures to assess those properties. Mr. Driscoll was appointed as the Manager, Regulated Policy to clarify, review, and implement those changes to legislation and the regulations.

[539] Mr. Driscoll identified SPAG as a starting point for the reform. SPAG was used in a number of situations and needed updating, as it was in place prior to the 1995 legislated amendments, related originally to the fair actual value assessment system, and it was not legislated. SPAG was used to assess machinery and equipment and building and structures, which after 1995, had different assessment valuation standards. Until then, fairness and equity were in conflict by comparing properties within the municipality, which was at odds with *MRAT*.

[540] After identifying the issues with SPAG, Mr. Driscoll stated that a working group was created in 2001 with the mandate to discuss and develop a new terms of reference document because SPAG was inconsistent with both the *MGA* and the *MRAT*. The replacement document was the *CCRG*.

[541] Mr. Driscoll explained the workings of the working group and his analysis as to what transpired between the formation of the working group until the MA's finalization of it and the Minister's signing to enact the *CCRG*. (Exhibit 22-R, pages 18 to 21, paras 32 to 42)

[542] The *CCRG* was introduced into the legislative scheme process in 2001 and Mr. Driscoll opined that it was consistent with the *MGA* and the *MRAT*. *CCRG* also incorporated market value principles, such as components of reproduction cost, cost indices for regulated properties, and depreciation that is calculated using updated depreciation factors and declining age life principles.

[543] It was Mr. Driscoll's opinion that any previous gaps in the legislation and regulations were corrected with the introduction of the *CCRG*, which was a legislated document.

[544] Mr. Driscoll also submitted that the *CCRG* held two options for establishing base costs for regulated properties. The first included M&E that was common (such as tanks, pumps, separators) and linear property (electric power systems, telecommunication systems, pipelines and well), which Mr. Driscoll referred to as "catalogued items". The second option was for "one-off" facilities such as oil sands plants, OSB plants, pulp and paper plants, electrical power generation facilities, sub-stations, and telecommunication data centres. The one-off site typically is not reoccurring, whereas the catalogue items are abundant in Alberta. Mr. Driscoll stated that each one-off site is unique, and the base cost is calculated on the actual construction costs of that facility, less excluded costs under the *CCRG*. Mr. Driscoll stated that in his opinion and based on his participation in the regulated rate working groups, and the variety of different rates identified in the *Minister's Guidelines* confirms the rates do not reflect the EAA. He further stated that the costs reflect the cost in Alberta where construction of the improvements typically takes place and that they are based on the value of the machinery and equipment (regulated property) calculated in accordance with the 2005 *CCRG*.

[545] Mr. Driscoll also submitted that for this hearing, the rates in the M&E *Minister's Guidelines* reflect that "included costs (ic) means the value of machinery and equipment calculated in accordance with the 2005 Construction Cost Reporting Guide, prior to adjustment by the cost factor".

B. Assessment Practices for CCRG Reporting

[546] Mr. Driscoll stated that once the *CCRG* was legislated in 2005, the next step was to determine rates, policies, and guidelines. Mr. Driscoll testified that once again there was significant discussion with industry specific stakeholder working groups comprised of municipal, industry specific professionals, and assessment professionals. Mr. Driscoll also testified that the new rates, policies, and procedures for Regulated Policies (Linear Property; Machinery and Equipment; and Railway) were introduced in the *Minister's Guidelines* in 2007 reflecting 2005 based costs.

[547] Mr. Driscoll stated that the starting point for assessment of one-off facilities is for the property owner to provide all construction costs, and he submitted that this means all actual expenditures. He further submitted that these costs cannot be based on generic models, and that while the actual costs for labour are incurred in the locations in which the property is built the cost for the fabrication of the modules (components) can be from anywhere in the world.

[548] Mr. Driscoll then testified that the *CCRG* is clear in section 2.500 that "In order to reduce uncertainty and improve assessment consistency among regulated properties…". Mr. Driscoll's opinion is that to achieve this consistency it is not reasonable to consider excluded costs by comparing actual expenditures against a "fictional plant, in a fictional location, using fictional costs." Mr. Driscoll further opined that the starting point to compare actual construction costs to is an engineering planning document such as a DBM.

[549] Mr. Driscoll also stated that the *CCRG* is explicit in section 2.500 that:

> The determination of what constitutes "typical" or "normal" is difficult; it is subjective, and it may vary over time, from one location to another and among industries. If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded.

[550] Mr. Driscoll's interpretation of the foregoing is that "typical' or "normal" cannot be interpreted as referring to Edmonton area costs. He opined that the reference to "may vary over time, from one location to another" means there is not a single, relevant location, such as Edmonton.

[551] Mr. Driscoll stated that, from the base cost (ic), the *CCRG* permits certain costs to be excluded from assessment.

[552] Mr. Driscoll maintained that the only reference to the Edmonton area was regarding transportation charges. Nowhere else in the *CCRG* does it refer to EAA.

C. Reporting of Fort Hills Constructions Costs

[553] Mr. Driscoll confirmed that he has not reviewed the assessments that are subject to the Complaints.

[554] Mr. Driscoll submitted that he had reviewed the reports of Mr. Fluney (Exhibit 17-C) and Mr. Matthews (Exhibit 14-C), and his understanding of both reports is that those writers have interpreted the 2005 *CCRG* to instruct assessors to prepare the assessment of Linear Property and M&E using Edmonton area or mid-Alberta costs. Mr. Driscoll's opinion is that "they cannot arrive at their conclusion regarding the Edmonton area when they consider the CCRG in its entirety along with the other legislation."

[555] Mr. Driscoll also confirmed the PA assumed responsibility for the preparation of assessments for Fort Hills, as well as other Designated Industrial Property, on January 1, 2019.

D. Conclusion

[556] Mr. Driscoll summarized his position as follows:

> 89. My position is that there is nothing identified in the Legislation to suggest the assessor is to use Edmonton or mid-Alberta costs. This is supported by the following correspondences including:

- December 5, 2001 - letter to Brad Pickering from CPTA Representative Larry Best (Book of Common Documents, Tab 22);
- December 21, 2001 – Brad Pickering response letter to Larry Best (Book of Common Documents, Tab 23);
- October 8, 2014 – B. Moore letter seeking clarification on the Regional Municipality of Wood Buffalo Practice and Principles of Application of the 2005 Alberta Construction Cost Reporting Guide (Book of Common Documents, Tab 24); and
- January 20, 2015 - Steve White confirmed the Linear Property Unit's understanding of the CCRG is assessments prepared by the department are based on local costs and not Edmonton costs (Book of Common Documents, Tab 26).

90. In addition to the correspondence identified above, I had regard for the following in reaching my conclusion.

- The evidence of Mr. Brad Pickering, Assistant Deputy Minister of Local Government Services (retired), who had oversight of the Assessment Services Branch and led and participated in the development of the CCRG;
- The evidence of Ms. Shelia Young, Director of Assessment and Property Tax Policy for Alberta Municipal Affairs from 2007 through 2022, who was responsible for policy development, legislative and regulatory changes relating to the Minister's Guidelines for Regulated Properties
- The evidence of Mr. Mike Minard, the Director of Centralized Industrial Property Assessment, Alberta Municipal Affairs, who is currently responsible for $102 Billion dollars of annual industrial assessment.
- the entire transcript (eight volumes) of the CCRG working group from April 18, 2001, through October 16, 2001, which does not reference Edmonton Area as the cost center for regulated assessments (Book of Common Documents, Tab 16).

91. The above documentation, the recollections of people involved during the CCRG consultation and my own recollections of the CCRG consultation process support the conclusions I have reached - the only adjustment of the actual construction costs to the Edmonton area is for transportation as identified specifically in the CCRG s2.500.200.

The Provincial Assessor – Mr. Michael Minard (Exhibits 20-R and 42-R)

A. Minard Background

[557] Mr. Minard was qualified as an expert witness (Exhibit P18R). The Complainant agreed to the following:

> The Provincial Assessor is seeking to have Michael Minard qualified to give both fact and opinion evidence as an Accredited Municipal Assessor of Alberta (AMAA) with expertise in the application of the 2005 Alberta Construction Cost Reporting Guide. As the Provincial Assessor and Director of Centralized Industrial Property Assessment, Michael Minard was involved in the preparation of the assessments under complaint.

[558] Mr. Minard's work history includes being a boilermaker from 2006 to 2008, an assessor in the RMWB from 2009 to 2012, and an appraiser in 2012. In 2012, he began with MA as an Assessment Advisor from 2012 to 2017, Manager of Industrial Sites from 2018 to 2019, Manager of Major Plants from 2019 to 2021, and as PA and Manager of Centralized Industrial Property Assessment in 2022, the position he currently holds.

[559] Mr. Minard's educational background includes a Business Administration Certificate (2007), Real Property Assessment Certificate (2009), Diploma majoring in Appraisal and Assessment (2009), Bachelor of Commerce (2011), Alberta Assessors' Association, Accredited Municipal Assessor of Alberta (AMAA designation) (2014), and a Post-Graduate Certificate in Real Property Valuation, UBC (2016).

[560] Mr. Minard discussed his roles within MA and the Assessment Business Unit. He stated that he had a few roles and responsibilities including Linear Assessment Advisor, Industrial Assessment Advisor, Industrial Sites Manager, Major Plants, Manager, Director of Centralized Industrial Property Assessment, and PA.

[561] With respect to the subject complaint, Mr. Minard stated that MA has been in discussions with Fort Hills for a few years and the parties have not been able to agree to a determination of the property assessment. Mr. Minard's opinion is that the PA has not been provided with the required cost reporting information to prepare the annual assessments. This has resulted in the PA relying on the best information available to it. He also stated that the first full year of operations and, consequently, the first full assessment of Fort Hills was for the 2018 assessment year, which was the 2019 tax year. Fort Hills has appealed the 2019 assessment and subsequent years. This hearing includes the 2019, 2020, and 2021 assessments.

[562] Mr. Minard stated that his report would consider the PA's requested assessment, clarify the applicable legislation/regulations, outline the current assessments, detail the joint recommendation, and provide explanations for the unacceptable excluded cost claims by Fort Hills. Mr. Minard further stated that he would provide the PA's interpretation of the *CCRG* and to illustrate the consistent approach that MA follows on related categories within the 2005 *CCRG*.

[563] Mr. Minard also stated that the party positions are as follows:

	Assessable Costs Determined by the Complainant	Assessable Costs Determined by the Respondent
Total Project Costs	$13,391,991,825	$13,391,991,825
Less Total Excluded Costs	$7,709,085,073	$4,146,595,946
Equals Total Assessable Costs	$5,682,906,752	$9,245,395,879

[564] Mr. Minard stated that the substantial difference between the PA and the Complainant related to:

i. An adjustment referred to a theoretical Edmonton Comparison;
ii. Design change excluded costs; and,
iii. Abnormal labour excluded costs.

B. History of *CCRG* and Predecessor Legislation/Regulations

[565] Mr. Minard does not dispute that previously (prior to 2001), SPAG formed the foundation for the industrial assessment in RMWB and across the province. The replacement to SPAG was the *CCRG* which is legislated. Mr. Minard also does not dispute that in 2016 a working group was formed to discuss potential amendments to the *CCRG*, and that group was referred to as the RIPA working group. That group held meetings; however, since COVID-19 it has not met and any discussions emanating from that group are simply discussions and have not resulted in any amendments to the legislation, regulations, or guidelines.

[566] Mr. Minard reviewed the applicable legislation and rules that the PA follows in respect of regulated assessment. In particular, he submits that the assessment of DIPs is based on regulated principles and is not based on market value principles.

[567] Mr. Minard submitted paragraph 188 of Mr. Matthews report says that "under the CCRG and the former SPAG an Edmonton area cost base has always formed the foundation for the industrial assessment in RMWB and the province". Mr. Minard submits that while Mr. Matthews makes this statement, Mr. Matthews does not provide any evidence to support the comment. Additionally, Mr. Minard submitted that even if SPAG was considered in the past, it was replaced more than 20 years ago with the *CCRG*. SPAG was never a legislated requirement whereas *CCRG* is legislated.

[568] Mr. Minard opined that the Assessor is not able to consider any repealed legislation or regulations in determining these assessments, and that includes SPAG. Therefore, SPAG is not applicable to the assessments under complaint. Mr. Minard also confirmed that the *CCRG* does not direct the PA to make Edmonton or mid-Alberta adjustments to project costs, with the one exception of transportation costs. His position is that there is no mention in the *CCRG* for other excluded costs to be based on a comparison or adjustment to Edmonton and that it would be incorrect for the PA to make any other EAA to Fort Hills, or any DIP assessment, that is not prescribed in the *CCRG*.

[569] Mr. Minard also opined that the legislation and regulation require all DIP assessments must be prepared consistently based on the PA's authority Mr. Minard's opinion was that the assessments for the Fort Hills for 2019, 2020, and the 2021 were prepared by using the following assessment legislation and regulations:

i. The *MGA*,
ii. The *MRAT*,
iii. The *Minister's Guidelines*"), and
iv. The *CCRG*.

[570] Mr. Minard also stated that the *MGA* provides the overall direction, rules, and definitions regarding preparing a property assessment. *MGA* section 292(2) provides that the assessment must reflect:

(a) the valuation standard set out in the regulations; and
(b) the specifications and characteristics of the property as specified in the regulations.

[571] The regulation that the Assessor is directed to is *MRAT*, which provides the valuation standard for M&E is *MRAT* section 12(1) which states "the valuation standard for machinery and equipment is that calculated in accordance with the applicable procedures set out in the Alberta Machinery and Equipment Assessment *Minister's Guidelines*." *MRAT* section 12(2) states "in preparing an assessment for machinery and equipment, the Assessor must follow the applicable procedures referred to in subsection (1)". A final factor in the regulated M&E assessment is the statutory level of 77%. *MRAT* section 12(3) states the M &E assessment "must reflect 77% of its value". Mr. Minard stated that his understanding of the foregoing means

the final M&E assessment is legislated to be factored by 77% resulting in a regulated 23% reduction for all regulated M&E assessments. This 23% reduction is not used for other property types and is unique to M&E assessments.

[572] The next step taken by the assessor is to consider the calculation of the components of the assessment which was described previously in paragraph 12 of this decision.

[573] Mr. Minard stated that achieving fairness and equity in the assessment is not by comparing properties; rather, it is by the correct and consistent application of the prescribed legislation. Mr. Minard cited *MGA* s. 499(3)(a) which states "the Board must not alter any assessment of designated industrial property that has been prepared correctly in accordance with the regulations." He further stated that the PA achieves equity by strictly following a consistent assessment process for all DIPs.

[574] Mr. Minard confirmed that the PA assumed responsibility for DIPs on January 1, 2018, and the MA cites that the "centralization for designated industrial property assessments will lead to improved consistency and equity for industrial taxpayers and lower administrative costs for municipalities".

[575] Mr. Minard submitted that to achieve an equitable and consistent assessment process, the provincial assessment department has many internal procedures and has instituted best practices to ensure the Alberta assessment legislation, regulations, and guidelines are consistently and correctly adhered to. He further submitted that consistency and accuracy of the application of the legislation across the province is a challenge and is a work in progress that will take some time to achieve. While there may be some outliers, the PA is taking steps to identify and correct any outliers to achieve this consistency. One way this is being done is by reviewing property types to assess for proper application of assessment principles, such as incorrect EAA or Schedule "D" adjustments.

[576] Mr. Minard provided a detailed examination of his interpretation of the *CCRG*. The following is from his report (Exhibit 20-R, pages 16 to 21, paras 33 to 36):

> 32. The following are the PA's interpretation of relevant sections of the CCRG as the Provincial Assessor. It is my understanding and belief that all assessments prepared by the PA (in-house and Contract assessors) were prepared consistent with these interpretations of the CCRG.
>
> 33. Interpretation and application for CCRG section1.000
>
> **1.000 COSTS TO BE INCLUDED IN DETERMINING ASSESSABLE COSTS**
>
> The costs of construction reported by the company to the assessor are the actual expenditures made in constructing the facility as referenced in the agreement with the contractor or as incurred directly by the company.
>
> Construction costs include both direct and indirect costs.
>
> - Section 1.000 is interpreted to mean all construction costs are to be reported to the assessor including:
> - all purchasing and procurement costs;
> - all construction costs incurred by the contractor(s);
> - all owner's costs that have a nexus to construction or that facilitate construction.
> - Total construction cost is the cost incurred by the contractor(s) plus the owner's cost that have a nexus to construction or that facilitate construction.

- Section 1.000 directs that “actual costs” are to be reported to the assessor. All excluded cost claims must be based on actual constructions costs and not on costs generated by estimating models.
- As section 1.000 directs that “actual costs” are to be reported; therefore, costs generated by generic models are not considered acceptable for reporting total construction costs for excluded costs.

34. Interpretation and application for CCRG section2.300.400

2.300.400 DESIGN CHANGES, ALTERATIONS, AND MODIFICATIONS

Alteration costs incurred during construction that improve the operational efficiency of the original plant design, are excluded. Likewise, the costs of “de-bottlenecking” or modifying an operating process are excluded if there are no changes to the equipment inventory.

Note: The cost of equipment installed to improve operational efficiency is included.

- Only design changes, alterations and modifications as referenced above may be claimed as an excluded cost. Normal rework cost that is included in budget estimates and are normal project costs are not an excluded cost. Rework may be claimed as an excluded cost if the cost of rework exceeds what is included in the budget for the subject construction project. Claimed rework costs greater than normal or typical rework costs are excluded costs. Actual rework costs must be measured against normal rework cost in the municipality.
- If the construct cost is simply a “like for like” replacement to old equipment, and there is no change to the replaced component part other than change in chronological age, then this is an excluded cost.

35. Interpretation and application for CCRG section 2.500

2.500 ABNORMAL COSTS OF CONSTRUCTION

In order to reduce uncertainty and improve assessment consistency among regulated properties the following assumptions are made to describe normal conditions for the construction of regulated property:

- an adequate labour force is readily available at the worksite,
- raw materials and pre-fabricated component parts are readily available,
- projects are financed from operations or from shareholder equity and companies make no provision for interest during construction, and
- premium payments are not made for overtime worked.

The determination of what constitutes “typical” or “normal” is difficult; it is subjective and it may vary over time, from one location to another and among industries. If the actual costs of an industrial facility are greater than typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded.

Abnormal costs can result from delays in construction caused by natural disasters or inclement weather or they may occur when the construction workforce is on site but a lack of supplies or a work slowdown reduces or stops actual construction. Additional costs incurred because of unproductive labour are excluded.

Two additional examples of abnormal costs are:

- a cost that would typically not be incurred in a balanced market, and/or
- a cost that is excluded to maintain consistency among regulated properties.

Specific documentation is required to substantiate claims for abnormal costs.

- This section starts out with the statement “In order to reduce uncertainty and improve assessment consistency among regulated properties…” This reinforces the guiding principle found in CCRG section 1.00 that “The costs of construction reported by the company to the assessor are the actual expenditures made in

constructing the facility as referenced in the agreement with the contractor or as incurred directly by the company."

- All abnormal costs below are to be read in the context of these two statements. Uncertainty and consistency are not achieved by comparing a fictional plant, in a fictional location, using fictional costs.
- It is assumed that a workforce does not need to travel to the worksite. Section 2.500 states, 'worksite' when considering labour force. Accordingly, this section contemplates costs to the gate of the worksite, not mid-Alberta. Travel costs to the worksite are therefore an excluded cost as per section 2.500.100.
- It is assumed that raw materials and pre-fabricated components do not need to be
- transported outside of a 50 kilometer radius of Edmonton. (also see TRANSPORTATION COSTS section 2.500.200).
- Normal construction costs do not include the cost of financing. (also see INTEREST DURING CONSTRUCTION section 2.500.300).
- Normal construction costs do not include the cost of overtime payments (also see
- OVERTIME section 2.500.400).
- Typical and normal must be measured based upon costs from similar projects in the same Municipality (area/location). Typical and normal for the subject site varies:
    - overtime – therefore any abnormal cost claims made under section 2.500 must be measured against what is typical or normal for the construction period;
    - by location - therefore any abnormal cost claims made under section 2.500 must be measured against what is typical or normal for the subject location; and
    - among industries – therefore abnormal cost claims made under section 2.500 must be measured against what is typical or normal for the subject industry.
- Typical and normal cannot be based on project estimates – see CCRG section 1.000
    - Typical must be measured based upon other similar projects constructed in the same location in the same time period.
    - Measurement is based upon the project estimate are not acceptable (see section 1.000). Measurement of abnormal construction costs = site specific cost – typical cost in the municipality.
- A typical cost is not a single number but represents a range of possible costs. For large projects that take several months to construct, statistical analysis of the construction costs of other large project in the municipality may be used to determine the typical construction costs. A reasonable process is: if the site-specific construction cost is between the mean construction cost + one standard deviation then the site-specific cost is typical. If, however, the site-specific cost is greater than (mean+ 1 Standard Deviation) then the site-specific cost should be adjusted to this upper limit. The difference may represent abnormal costs, subject to detailed documentation that evidences the same.

- For smaller projects detailed costs of other projects similar in scale and construction timelines may not be available and reliable data from knowledgeable sources may be required to determine the typical range.
- The starting point for the measurement of abnormal costs must be measured against documents similar to the Design Basis Memorandum ("DBM") and can result from:
    - a natural disaster such as a forest fire, flooding, tornado, etc.;
    - inclement weather which must be measured against what is normal for the location of the subject construction site using the environmental design conditions defined during engineering in the project DBM;
    - lack of supplies (late delivery of supplies) which must be measured by accounting for lost time;
    - work slowdown such as a work to rule, strike, etc.;
    - schedule slippage which must be measured against normal/typical schedule slippage for the construction period of the subject, the location of the subject;
    - and, an industry that is comparable to the subject.
- Labour productivity is a relative and not an absolute measurement. Site-specific is:
    - benchmarked to the metric defined in the project DBM, and
    - measured against the typical labour productivity for the location, time and industry.
- There is an inter-relationship between: changes in labour productivity, schedule slippage, change orders, weather impacts and re-work. Numerical analysis must be undertaken to differentiate the construction costs resulting from each issue. This will remove double accounting.
- The use of generic models to calculate abnormal labour productivity cost claims is not acceptable because assessments are calculated based on actual expenditures made in constructing the facility as referenced in the agreement with the contractor or as incurred directly by the company.
- A balanced market is achieved through a proper and consistent application of section 2.000 of the CCRG. A determination of what constitutes a balanced market needs to be made in the context of the:
    - time period in which construction is taking place;
    - location in which construction is taking place; and
    - industry that is being constructed.
- The application of the AYM accounts for fluctuations in market conditions.
- Abnormal construction costs resulting from dynamic market conditions must include the impact of the Minister's AYM in numerical analysis, see the chart below.

- Unless the level of cost escalation experienced was greater than that reflected in the cost factors, it is not an abnormal cost.
- Abnormal costs may be incurred when a specific construction site is experiencing a shortage of labour and/or materials that is not being experienced by among industry during the same construction period and in the same location.
- A comparison of the actual cost to the project plan/budget is not sufficient to measure abnormal costs.
- All cost impacts owing to market dynamics must be in the form of a scaled measurement.
- A comparison to the project plan/budget is not sufficient to measure abnormal costs.
- The CCRG provides direction to the assessor to determine the included cost (“ic”).
- Consistency in regulated property is achieved through the consistent and correct application from CCRG section 100. through CCRG section 200. to arrive at “ic”. This means starting with actual costs provided by the owner and then the consistent application of the CCRG removes costs that are not intended to be part of the “ic”. Examples of costs to be removed include transportation costs that exceed Edmonton area, fly-in/fly-out travel costs, overtime, premium costs, interest during construction, etc.
- The property owner must provide the assessor with site-specific documentation that enables abnormal cost claims to be specifically identified, measured and quantified.
- The calculation of abnormal cost claims cannot be made by comparing a fictional plant, in a fictional location, using fictional costs.

36. Interpretation and application for CCRG section2.500.200

2.500.200 TRANSPORTATION COSTS

The costs of transporting raw material and components from the Edmonton area to the work site are excluded. However, if the actual transportation costs from the point of origin to the plant site are equal to or less than the cost to the Edmonton area, the entire transportation costs are included.

- Transportation costs that exceed costs that would be incurred within 50 kilometres of the City of Edmonton city limits are an excluded cost.
- Onsite transportation costs are an included cost (all transportation costs within the boundaries of the construction site).
- Documentation that shows the calculation of the transportation cost claim must be provided.
- The requirement in the CCRG to reflect Edmonton area transportation cost as the normal transportation cost is the only reference and the only requirement in the CCRG to reflect Edmonton area cost as a normal cost.

[577] Mr. Minard cited two examples of information that he considered in respect of the Edmonton area adjustment:

1. Mr. Elzinga, a highly regarded assessor, prepared a *CCRG* interpretation document that has been described as RMWB Blue Book. The document was prepared when Mr. Elzinga was a contracted assessor at the RMWB and Mr. Minard indicates the document is consistent with the PA's interpretation of the *CCRG*.
2. Mr. Moore was the Municipal Assessor for the RMWB from 2012 to 2016 and Mr. Minard opined that based on the evidence in *Imperial Oil Resources Ventures Limited and Exxon Mobil Canada Properties assessed as Imperial Oil Resources Limited ("IOR") v Regional Municipality of Wood Buffalo ("RMWB")*, CARB 2015-001 [IORVL], Mr. Moore had instructed Mr. Elzinga to prepare the Blue Book interpretation document. It was Mr. Minard's understanding of Mr. Moore's evidence in the IORVL assessment complaint, that for the 2013 AY and 2014 AY, Mr. Moore instructed both Mr. Elzinga and Mr. Larry Horne (the two RMWB assessors who prepared all RMWB assessments of oil sands M&E at the time) to follow the practices and principles of application set out in The Blue Book interpretation to ensure consistency of interpretation of the *CCRG* in the RMWB.

[578] Mr. Minard submitted that the regulated assessment process is prescriptive, and he opined that if the Assessor is to consider an adjustment of other costs to an EAA, then it is expected that the *CCRG* assessment regulation would clearly stipulate this direction, just as it did for transportation costs. Mr. Minard submitted this is not the case. Rather, the Assessor is instructed to assess based on the actual expenditures made in constructing the facility as stated in *CCRG* section 1.000.

[579] Mr. Minard discussed the 2017 CARB Decisions that are relied on by the Complainant to demonstrate that the EAA was applied to assessments for the 2015 and the 2016 assessments, and the results of the 2017 CARB Decisions was also the basis for the 2017 assessments. He stated that all those assessments were done prior to MA assuming responsibility for DIP assessments commencing in 2018. He also stated that the PA was not involved with the assessments, were not party to the settlement discussions, and have been refused access to the Confidential Settlement Agreements related to the joint recommendations.

[580] It was Mr. Minard's position that in discussions with Mr. Schofield, who was the RMWB assessor who prepared the assessments subject to the 2017 CARB Decisions, Mr. Schofield advised him that the 2017 CARB Decision settlement agreements were "not based on a principled assessment approach which follows the assessment legislation and regulations". Mr. Minard also held that Mr. Schofield stated that "these agreements were done with a focus of lowering the outstanding taxation impact liability for the properties under complaint in order to reach a resolution and establish predictability for the municipal budget."

C. Assessment Practices for CCRG Reporting

[581] Mr. Minard submitted that it was his intent as PA to produce the best assessments possible. He asserted his confidence that most current and historic assessments are based on the working assumptions in his report and the outlined PA interpretations of the *CCRG*, outlined above. His level of confidence was based on an understanding that none of the linear assessments, which are part of DIPs, have been adjusted based on an EAA. He also stated that no EAAs were identified to the PA during the integration process in discussions with the previously appointed Assessors. As well, he submitted that no EAAs have been applied by the PA team since taking over the DIP assessment function in 2018 and that he has reviewed the DIP assessment base through a variety of analyses and sampling processes and no EAAs were found.

[582] Mr. Minard stated that any assessments that were prepared outside of the standard practice, including EAA, would be outlier discrepancies. He opined that RMWB is one municipality that has had some inconsistencies in the application of the *CCRG* in the past, but those are outliers, and most DIP assessments have been prepared in the correct manner. For context, he added that there are approximately 584,000 unique DIP assessment IDs (DIPAUIDs), otherwise known as roll numbers. Of those DIP rolls there are currently 34,799 unique DIP rolls (19,873 industrial and 14,926 linear) that utilize the *CCRG* for assessment preparations. Most of the assessments for these cost-reported rolls are based on the working assumptions in his report. They do not adjust for the Edmonton area, or for abnormal costs that were determined based on comparing to an internal budget, as those are not acceptable *CCRG* adjustments. Of the 34,799 DIP rolls that utilize the *CCRG* for assessment preparation, excluding the properties that were the subject of the 2017 CARB decisions, Mr. Minard stated that since the PA assumed responsibility for DIP assessment, the assessors do not apply the EAA and he is not aware of any properties that include EAA.

[583] Mr. Minard also provided a list of 25 projects, which he submitted were similar to the subject, and of which 11 were assessed at greater than $350 million. Of those 11 properties, seven were over $500 million. Mr. Minard confirmed that all those properties were assessed based on the PA's interpretation as outlined above.

[584] Mr. Minard spoke about the requirement for the Complainant to submit a DBM and EDS. He submitted that the PA has made requests in the RFI, which was sent to Fort Hills annually since 2018; however, the PA has not been provided the documents. Mr. Minard submitted that the PA requires the DBM/EDS to adequately analyze reported cost information. Mr. Minard stated that the DBM is particularly important for analysis of design changes, abnormal labour, and other excluded cost claims requested by Fort Hills. Mr. Minard submitted that the RFI explains that,

> to assist our office in determining the nature and assessability of the work, the RFI must be returned with copies of supporting documentation such as, but not limited to: A description of the scope and purpose of the work including sufficient explanation to support the cost reports and the cost classifications. Include a facility overview, site plans, plot plans, process flow diagrams, design basis memorandum (DBM), piping and instrumentation diagrams,

schematics, building blueprints, and any other information that helps to describe the scope of work.

[585] Mr. Minard opined that the DBM and supporting documents establish the principles, rationale, criteria, assumptions made, and potential constraints used for detailed engineering and the final design of the project. The Assessor requires the DBM to review the claims for potential abnormal and excluded costs. He also opined that it is not acceptable for the Complainant, or others, to measure what is abnormal against an internal budget as budget fluctuations are expected. He went on to state it is possible to use documents, such as a DBM, to establish what was expected or anticipated in the project construction and what could potentially be seen as an abnormal change or cost.

[586] Mr. Minard further stated that if a company is unwilling to provide the DBM and supporting documentation, the Assessor reviews the information that is available to determine the assessable costs. Mr. Minard also opined that any company must demonstrate that its actual cost is abnormal based on a metric to show what is typical and typical does not mean comparing costs to the company's own internal budget. Mr. Minard stated that the property owner must measure the abnormal cost and the onus is on the property owner to prove any abnormal cost. Mr. Minard's opinion is that it is not acceptable to claim the difference between actual costs and an internal budget as the basis for an abnormal excluded cost claim. Mr. Minard stated this is why the RFI specifically requests the DBM and other supporting documentation to assist the PA in determining the nature and assessability of the work.

D. Fort Hills Assessment History

[587] The PA first began the assessment function of industrial/non-linear DIP for certain municipalities in 2018, which included RMWB and the subject property.

[588] The Fort Hills assessment went on the provincial roll for 2019. Prior to the operational facility being assessed by the PA, the Fort Hills property had an assessment of $2.2 billion in 2018, which was prepared by the RMWB Municipal Assessor for the part of the property that was assessable.

E. Reporting of Fort Hills Constructions Costs

[589] Mr. Minard stated that Fort Hills, as other large facilities which are similar, is assessed based on its actual costs for its location because that is what is typical for those facilities. Mr. Minard also stated that the smaller, tabled rate for equipment in the *Minister's Guidelines* is not comparable to a major facility. He observed that the legislation prescribes a different method of determining the assessable costs for these contrasting types of property; however, he opined that it is not permissible for the Assessor to make Edmonton area or mid-Alberta adjustments for facilities like Fort Hills. He also stated that large facilities are typically built on site in a custom construction process, and that is not the case for the simple tabled rate M&E items.

[590] Mr. Minard also suggested that oil sands facilities should not be adjusted as if they were fictionally, or theoretically constructed in the Edmonton area, as that is not what the legislation, regulations, and *Minister's Guidelines* permits. He held that the Assessor must use the actual expenditures made in constructing the facility to determine the assessable costs as stated in section 1.000 of the *CCRG*.

[591] Mr. Minard stated that the assessments the PA created were based on the best information available to the PA at the time and lacked complete cost reporting information from Fort Hills.

[592] Mr. Minard stated that the PA had initially requested complete cost reporting information from Fort Hills since August 2018, which is demonstrated by the annual RFI package, and that additional RFI's were sent in August 2018, 2019, 2020, and 2021.

[593] Mr. Minard submitted that the party's requested assessment and the PA's position were as follows for the three tax years under appeal.

		Current Assessment on the Roll	Complainant's Requested Assessment	Provincial Assessor's Recommended Assessment
	Land	$25,520,930	$25,520,930	$25,520,930
	B&S	$782,705,610	$784,022,846	$784,022,846
2018AY (2019Tax)	M&E	$4,534,840,680	$3,092,957,296	$5,153,081,904
	Total	$5,343,067,220	$3,902,501,072	$5,962,625,680
	Land	$25,520,930	$25,520,930	$25,520,930
	B&S	$779,042,300	$780,356,529	$780,356,529
2019AY (2020Tax)	M&E	$4,570,497,210	$3,117,276,475	$5,189,889,632
	Total	$5,375,060,440	$3,923,153,934	$5,995,767,091
	Land	$25,520,930	$25,520,930	$25,520,930
	B&S	$770,296,500	$771,604,331	$771,604,331
2020AY (2021Tax)	M&E	$4,596,465,110	$3,134,994,932	$5,219,335,814
	Total	$5,392,282,540	$3,932,120,193	$6,016,461,075

[594] Mr. Minard submitted that the EAA and Design Changes account for approximately 97% of the claims rejected by the PA. Mr. Minard noted that the PA has agreed to $177 million in accepted excluded costs.

[595] Mr. Minard stated that beyond the formal RFI process, the PA also had ongoing communications with Fort Hills' representatives. The PA has been requesting complete cost reporting information from Fort Hills and some information was received in July 2021 and November 2021. However, Mr. Minard further stated that the detailed information it requested was not entirely received until the Complainant filed its May 2022 disclosure package for this hearing, and that information contained significant volumes of new and additional information.

[596] Mr. Minard also responded to Mr. Matthews contention that a "memory stick" was provided to the PA office, and Mr. Matthews' assertion that it had subsequently been lost, as not verified. Mr. Minard maintained that there is no record of a "memory stick" with information that was ever received.

[597] Mr. Minard submitted that during the latter portion of 2021 and into 2022, the PA worked with the Complainant to endeavour to identify areas the Parties could agree on. Mr. Minard said the negotiations were held to streamline the complaint hearing process, so the process could focus on the primary areas of disagreement. Several in-person and virtual meetings were held, and the primary documents used to settle the areas of agreement include:

The 2018 cost rendition documents:

- SE Cost Rendition December 16, 2018
- U&C Cost Rendition December 16, 2018
- OPP Property Tax Report from L2 Actual November 7, 2018
- AET Property Tax Report from L2 Actual November 13, 2018

- E&T Property Tax Report from L2 Actual November 7, 2018
- F&CS Property Tax Report from L2 Actual November 28, 2018

The 2021 newly provided documents:

- Fort Hills Property Tax Assessment – Non-Assessable Cost Description June 16
- Fort Hills Property Tax Assessment Back-up documentation

2022 rendition document

- FHPTA Project Area Assessment Summary Cost Analysis Rendition

[598] Mr. Minard advised there were several meetings with Fort Hills' representatives and email exchanges to work through the areas of agreement and identify the outstanding issues that ultimately could not be resolved. This resulted in multiple drafts of a joint recommendation and statement of outstanding issues document. The goal of this document was to focus on the areas of disagreement between Fort Hills and the PA. The parties worked in collaboration and good faith and finally arrived at the joint recommendation document entitled "FH Joint Recommendation and Statement of Outstanding Issues Mar 31, 2022" (the "Joint Recommendation"). Mr. Minard stated that at no time during the ongoing discussions between the Fort Hills team and the PA, did Fort Hills submit a section 299 request.

[599] The Joint Recommendation identified several items of agreement and listed the items that remained at issue. Among the areas remaining at issue was the 'Design Changes, Alteration, and Modifications' cost category of $2.18 billion. A list of the joint recommendations agreed to was provided, as follows: (Exhibit 20-R, pages 30 and 31, para 62)

Cost Description	**Excluded Amount**	**Status**
Feasibility Studies	$134,214,950	Accepted
Pre and Post Construction Costs	$398,452,904	Accepted
Spare Equipment #1	$11,195,224	Accepted
Bonus or Penalty	$99,775,154	Accepted
Water and Sewer Domestic	$21,691,080	Accepted
Travel Costs	$386,423,926	Accepted
Overtime	$569,070,717	Accepted
Not a Cost of Construction #1	$982,731,809	Accepted
Not a Cost of Construction #2	$21,179,670	Accepted
Costs to achieve adequate labour force at worksite	$710,087,594	Accepted
Site prep costs	$171,170,591	Accepted
Spare Equipment #2	$91,693,571	Accepted
Not a Cost of Construction #3	$47,745,833	Accepted
Interference: E & T	$1,519,852	Accepted
Interference: A E & T	$3,121,090	Accepted
Abnormal Costs of Construction: A E & T	$2,235,907	Accepted
Transportation Costs	$257,340,250	Accepted
Abnormal Costs of Construction: site development	$59,792,294	Accepted
Total Joint Recommendation Excluded Costs	$3,969,442,416	Total Accepted

[600] Mr. Minard provided additional information with respect to portions of excluded costs identified in the Joint Recommendation.

[601] Mr. Minard also provided details of the outstanding issues which are included on pages 6 and 7 of the Joint Recommendation. He opined that the claims were rejected as they are not consistent with the legislation and standard practices of the PA, as previously detailed in this decision (paragraphs 569 to 576). Mr. Minard stated that the PA's analysis is consistent with how the *CCRG* has been applied by MA since the formation of centralized industrial property assessment in 2018, and that the analysis is also consistent with the MA linear property assessments dating from the early 2000's when the *CCRG* was first introduced. The summary chart below shows each of the costs labelled as outstanding issues in the Joint Recommendation:

Order	Cost Description	Excluded Amount S	Status
a.i	Interference Costs: OPP 1	$3,815,475	Rejected
a.ii	Interference Costs: OPP 2	$1,109,508	Rejected
a.iii	Interference Costs Utilities and cogen	$100,000	Rejected
b.i	Abnormal Costs of Construction: OS-3M A003	$385,980	Rejected
b.ii	Abnormal Costs of Construction: OS-3M A003	$2,534,594	Rejected
b.iii	Abnormal Costs of Construction: OS-3M A069	$2,904,104	Rejected
c.i	Transportation Costs: ET	$10,350,152	Rejected
c.ii	Transportation Costs: AET	$1,078,283	Rejected
c.iii	Transportation Costs: OPP	$18,184,924	Rejected
c.iv	Transportation Costs: SE	$15,526,971	Rejected
c.v	Transportation Costs: UC	$4,301,910	Rejected
d.i	Abnormal Costs of Construction - Adverse Soil: ET	$9,964,440	Rejected
d.ii	Abnormal Costs of Construction - Adverse Soil: AET	$18,270,425	Rejected
d.iii	Abnormal Costs of Construction - Adverse Soil: UC	$17,777,847	Rejected
e.i	Abnormal Costs of Construction - Labour Costs	$644,330,320	Rejected
f.i	Abnormal Costs of Construction: site devlopment	$46,015,712	Rejected
g.i	Design Changes, Alterations, Modification	$2,183,852,264	Rejected
	Total of Disagreed Excluded Costs	$2,980,502,909	Total Rejected

[602] Mr. Minard provided further clarity as to why the claims were rejected as follows: (Exhibit 20-R, pages 33 to 44, paras 66 to 94)

> 66. a. Interference Costs (CCRG s.2.300.500) (Total $5,024,983)
>
> i. OPP - related to underground services and adverse soil conditions - excluded costs claim of $3,815,475
> ii. OPP – related to road crossing– excluded costs claim of $1,109,508
> iii. Utilities and Cogeneration - related to a secondary access road to the plant – excluded costs claim of $100,000.
>
> 67. These interference cost claims were rejected on the basis of 2.300.500 of the CCRG which states "2.300.500 INTERFERENCE COSTS – Additional costs incurred for reasons of safety while working in close proximity to existing facilities, such as the cost of pilings to ensure the structural integrity of existing buildings or the rerouting of piping, electrical lines, or telecommunications lines, are all excluded." The claim is not interference as per the CCRG, rather they are costs related to underground services, soil conditions, and road crossing. Underground services crossing a road is common throughout industrial property and it is not an acceptable interference cost as per the CCRG. The soil conditions are also

not an acceptable CCRG interference claim, and accordingly, should be assessed. The soil conditions are also not an acceptable excluded site preparation cost as this is beyond the "costs to clear, level and finish the site to standards typical for industrial property in the area" as outlined in the site preparations section of regulations. The costs are actually related to the company choosing to improve the land by changing the sloping conditions for better use in its facility. The road crossing was required to access the site and is not an abnormal cost or an interference cost as per the CCRG. These are three smaller items in comparison to the scope of this total assessment, amounting to approximately $5 million, but they must be rejected for consistency in how the CCRG is written and the PA's application the CCRG.

68. b. Abnormal Costs of Construction (Higher than industry standard) (CCRG s.2.500) Automation, Electrical and Telecommunication Project Area. (Total $5,824,678)

i. OS -3MA003 - related to costs over and above typical costs -excluded costs claim of $385,980
ii. OS -3MA003 - related to costs over and above typical costs-excluded costs claim of $2,534,594
iii. OS -3MA069 - related to higher than typical blend rates for engineering - excluded costs claim of $2,904,104

69. These abnormal costs are based on alleged higher than industry standard and were rejected on the basis of 2.500 of the CCRG. These are actual construction costs paid by Fort Hills, which are assessable. Page 29 of the Matthews report states "the control and safety MCC & VFD signals will be hard wired to DCS/SIS instead of using networked communication-based protocol (i.e. Device Net) for all areas of the Fort Hills Project. Typical standard is to have networked communication, and this is over the standard practice." It is clear that these are actual costs and how the company built the plant is its decision. It is not acceptable to claim a cost as abnormal simply on the basis of a company choosing to hard wire improvements rather than using a network option. The actual costs must be assessed, and this is not an abnormal cost. Furthermore, page 29 of the Matthews report also says the claim is based on a "higher than typical blend rate for engineering". Comparing an engineering rate to the internal budget or to other engineering rates on the project is not proof of an abnormal cost. The abnormal costs claims are not shown to actually be abnormal as per 2.500 of the CCRG and they must be assessed as included costs.

70. c. Transportation Costs – concrete transportation (CCRG s.2.500.200). (Total $49,442,240)

i. Extraction and Tailings – excluded costs claim of $10,350,152
ii. Automation, Electrical and Telecommunication – excluded costs claim of $1,078,283
iii. Ore Processing Plant – excluded costs claim of $18,184,924
iv. Secondary Extraction – excluded costs claim of $15,526,971
v. Utilities and Cogeneration – excluded costs claim of $4,301,910

71. These transportation cost claims were rejected on the basis of 2.500.200 of the CCRG which states, "2.500.200 TRANSPORTATION COSTS - The costs of transporting raw material and components from the Edmonton area to the work site are excluded. However, if the actual transportation costs from the point of origin to the plant site are equal to or less than the cost to the Edmonton area, the entire transportation costs are included." This claim is not actually transportation related. The concrete was brought in from the Fort McMurray area and is being claimed as excluded on the basis that it is more expensive than concrete in Edmonton by using a price per cubic meter for concrete in both locations. The concrete was

not transported from Edmonton and as such these excluded adjustments are not applicable or appropriate for a transportation cost claim as per the CCRG. This is also not an acceptable abnormal cost claim because a company cannot receive an abnormal cost adjustment on the basis of a general Edmonton area comparison. The CCRG does not direct the assessor to adjust actual costs to the costs of the Edmonton area. The one exception is transportation costs; however, as stated, the concrete was not transported from Edmonton, it was sourced in the Fort McMurray area. The assessor must reject this Edmonton area comparison claim.

72. d. Abnormal Costs of Construction – Adverse Soil Conditions (CCRG s.2.500). (Total $46,012,712)

i. Extraction and Tailings – excluded costs claim of $9,964,440
ii. Automation, Electrical and Telecommunication – excluded costs claim of $18,270,425.
iii. Utilities and Cogeneration – excluded costs claim of $17,777,847

73. These adverse soil condition claims totaling $46,012,712 and detailed in the Parmar report were rejected on the basis of the site preparation section of the CCRG Interpretive Guide, which states, “SITE PREPARATION - The costs to deal with adverse factors, for example topography or soil conditions not ordinarily encountered in construction projects, as well as reclamation costs required to bring the site back to the quality of raw land in the vicinity, are considered abnormal costs and are therefore excluded.” Paragraph 9 of the Parmar report summarizes the basis for this exclusion as "the soil conditions at the Fort Hills site, and in the Fort McMurray area differ greatly in comparison to the Edmonton area. This adds additional costs in comparison to similar projects in the Edmonton area." As mentioned previously, there is nothing in the CCRG that instructs the Assessor to adjust site development costs on the basis of those costs being higher than an Edmonton property. Naturally, the soil conditions in an oil sands region are very different than that of other areas in Alberta, such as the City of Edmonton. The soil conditions appear typical for the Wood Buffalo region as they are not shown to be abnormal for an oil sands project by Mr. Parmar. Instead, he makes the incorrect case of showing the soil is different than Edmonton. It is normal for the soil in Wood Buffalo to be different than the soil in Edmonton, or other regions of Alberta. What Mr. Parmar is suggesting would require soil analysis and review for every DI property, which would then be compared to an Edmonton soil sample. This approach is not consistent with the regulated assessment regime and is not allowable by any DI property related assessment legislation.

74. Also of note is that this approach for handling adverse soil condition cost claims has been consistent since the initial development of the CCRG. The issue of “typical” was questioned by Industry members shortly after the final draft of the CCRG was released in 2001. Tab 23 in Appendix 10 of my report provides a December 5, 2001 letter from Larry Best representing the Canadian Property Tax Association (CPTA). In this letter, Mr. Best requested that “costs to deal with adverse factors related to topography or soil condition not ordinarily encounter in typical construction projects based at a location outside of Edmonton, would not be included”. Assistant Deputy Minister, Brad Pickering responded to this CPTA letter on December 21, 2001, by referencing CCRG, which states the “determination of what constitutes “typical” or “normal” is difficult; it is subjective and may vary over time, from one location to another and among industries. If the actual costs of an industrial facility are greater than the typical construction costs, the excess construction costs of the facility are considered abnormal and are excluded.” As can be seen in this historic letter from December 2001, the Assistant Deputy Minister did not reference Edmonton as a basis for typical or for a location factor to consider in potential adverse soil conditions excluded costs. This CCRG

assessment approach from the Assistant Deputy Minister of Municipal Affairs in 2001 has been consist with Municipal Affairs over the last 22 years. So, when Mr. Parmar states, "the soil conditions at the Fort Hills site, and in the Fort McMurray area differ greatly in comparison to the Edmonton area", and when Mr. Parmar goes on to say, "this adds additional costs in comparison to similar projects in the Edmonton area", the Assessor should not, and cannot, make this adjustment. It is not acceptable for the Assessor to compare soil conditions in Wood Buffalo to soil conditions in Edmonton as the basis for an excluded cost claim.

75. e. Abnormal Costs of Construction – Labour Costs (CCRG s.2.500) (Total $644,330,320, however the revised total as of the Fort Hills disclosure document is now a total of $1,181,891,771)

i. Excluded cost claim of $644,330,320.

76. This is the second largest excluded cost claim which is in dispute and is detailed in each of the Lubo Lliev (sic) reports. As mentioned, this claim was previously submitted by Fort Hills at $644 million as seen on the Joint Recommendation document and referenced on page 16 of the disclosure Report of Ben Matthews; however, the abnormal labour costs claim was then increased to $1.18 billion just two months after the Joint Recommendation, as seen on page 18 of the Matthews report.

77. It is of note that there are 6 major areas for the Fort Hills project; however, Mr. Lliev (sic) only provides reports for 5 areas, as he does not provide an abnormal labour report or any details for the Facilities & Common Services (F&CS) area of the plant. Page 18 of the Matthews report shows the company is attributing $76,956,437 of their abnormal labour excluded cost claim to the F&CS area, but the Fort Hills disclosure did not include a report or any details for this claim.

78. The 5 labour productivity reports that Lubo Lliev (sic) did provide were written for the areas of SE, OPP, UC, AET, and ET (none for F&CS). Each report organizes the information for abnormal labour into 5 or 6 categories. The chart for the SE abnormal labour claims is shown as the example below.

Item	Productivity Impact Categories
(i)	Labour Availability
(ii)	Craft Experience
(iii)	Camp Stay vs Non-Camp
(iv)	Longer Work Days
(v)	Weather Impact
(vi)	Productivity Impact from Gate 3 to Key Quantity Adjusted Budget

79. These labour productivity arguments are all primarily based on the idea of comparing budgeted construction costs to the costs of building in Edmonton. This is known as the Edmonton area comparison or Alberta averaging costs. The CCRG does not direct the Assessor to adjust all labour costs to the Edmonton area and, therefore, these Edmonton area and labour productivity claims are not acceptable. The CCRG begins by outlining "costs to be included in determining assessable costs" in section 1.00 by stating the "actual expenditure made in constructing the facility" are to be used. The CCRG then gives specific direction on excluded costs from section 2.000 to 2.500.500. In all of those sections the only direction to exclude costs based on an Edmonton location consideration is for transportation

costs in section 2.500.200. It is an error by Mr. Lliev (sic) to make mid-Alberta/Edmonton area abnormal labour claims. Mr. Lliev (sic) explained his general mid-Alberta adjusting error in paragraph 7 by stating: "In adjusting these costs to mid -Alberta my analysis looks to the anticipated productivity losses contained within the sanctioned budget associated with remote location." This statement also points out another issue with this approach as Mr. Lliev (sic) is basing his excluded cost claim on a general comparison to the Fort Hills budget. Any excluded cost must be based on actual costs, making a claim based on a comparison to the internal company budget is not acceptable. In this way, it is determined that Mr. Lliev's (sic) analysis is flawed on two grounds: it is based on an unacceptable comparison to mid-Alberta, and it is based on an unacceptable comparison to an internal budget rather than actual costs.

80. (i.) Labour Availability – Mr. Lliev (sic) provides two abnormal cost reasons for labour availability. The first is a comparison between local labour and Fly In/Fly Out ("FIFO") labour, the second is commuting time. Both FIFO and commuting times are normal circumstances for all projects in the Regional Municipality of Wood Buffalo and are not acceptable excluded costs claims. Mr. Lliev (sic) does not provide information on how Fort Hills' actual costs compare to typical construction costs in the region, rather he provides a general excluded cost claim on the basis of FIFO and commuting time alone. CCRG 2.500 does impose an assumption that "an adequate labour force is readily available at the worksite" and this project has already had the actual labour travel costs of over $386 million excluded and the actual camp/living out costs $710 million excluded. These related costs totaling over $1.1 billion have been accepted by the Assessor as they were actual costs and acceptable based on the assessment regulations. This general cost model for FIFO and commuting costs are not based on actual costs, are not abnormal for the region, and are double dipping on actual excluded costs claims that the Assessor has already accepted.

81. (ii) Craft Experience - Mr. Lliev (sic) outlines the craft labour experience comparison by comparing Regional Municipality of Wood Buffalo general figures to an Alberta average as a whole. This comparison is used to claim an unproductive labour amount for craft experience. This is not a site-specific issue for Fort Hills as the craft experience in Wood Buffalo is common for the region. Section 2.500 of the CCRG says "the determination of what constitutes "typical" or "normal" is difficult; it is subjective and it may vary over time, from one location to another and among industries." So, using a general region comparison of craft experience in Wood Buffalo to that of Alberta does not prove an abnormal cost. Furthermore, these are generic models, not actual costs. It is not acceptable to use a mid-Alberta comparison as a benchmark for determining an abnormal cost, and it is further not acceptable to use a generic model that is not related to actual construction costs.

82. (iii) Camp stay vs Non-Camp – Mr. Lliev (sic) requests an abnormal cost exclusion on the basis of "social isolation that results from living in a remote workcamp." He does not provide any proof that this is abnormal for the region or is unique/site-specific to Fort Hills. It is the PA's understanding and experience that camp stay is typical for Wood Buffalo construction projects and is in fact not abnormal. Mr. Lliev (sic) does not claim that Wood Buffalo camp stay is abnormal but still requests significant excluded costs on the basis of this camp work condition being an abnormal cost. Once again this is based on a regional Edmonton area or mid-Alberta comparison, which is not acceptable as CCRG 2.500 clearly states what constitutes normal may vary "from one location to another and among industries." It is the PA's understanding that camp stays are normal for major construction projects in the Wood Buffalo location and Mr. Lliev (sic) has not provided any evidence to the contrary.

83. (iv) Longer Work Days - Mr. Lliev (sic) claims to measure the loss of working longer days with a comparison to a typical week in mid-Alberta. Mr. Lliev (sic) quotes from a 2015 Municipal Census that says "RMWB workers average 46.67 work hours per week, as compared to 41.70 work hours per week for the rest of Alberta as set out in the table below." It is the PA's understanding and experience that companies typically work longer hours during construction. This is especially common for construction projects in Wood Buffalo that utilize a camp work environment. It is certainly not abnormal to work longer days in Wood Buffalo during major construction projects and Mr. Lliev (sic) has not provided any proof of as site-specific abnormal cost. Mr. Lliev (sic) instead is once again using a generic model that compares Wood Buffalo to mid-Alberta. This is not acceptable as the CCRG states the assessment must be based on actual costs and does not direct the Assessor to use general models. It is also important to point out that the premium portion of all Fort Hills overtime labour costs was already claimed as an exclusion by Fort Hills and accepted by the PA pursuant to CCRG 2.500.400. This "longer workday" claim is made in additional to the overtime excluded cost allowance. This "longer workday" claim is not allowable by the assessment legislation or regulations and must be rejected.

84. (v) Weather – Mr. Lliev (sic) makes a general excluded cost claim on the basis of labour productivity decreasing as weather temperatures decrease. CCRG 2.500 does say "abnormal costs can result from delays in construction caused by natural disasters or inclement weather", however there is no direction in the CCRG for the Assessor to make a large general exclusion for the typical weather in the region. Mr. Lliev's (sic) report fails to provide any actual costs related to inclement weather. Instead, the Lliev (sic) report provides information on general weather trends for the region, typical company break schedules, and a generic weather comparison model. If the company provided actual costs for a delay in work caused by inclement weather, as the CCRG requires, the Assessor could review and make a potential adjustment. However, the Assessor cannot accept a claim that simply outlines the general weather in the region over time. The PA has accepted inclement weather claims for other projects, which provided actual costs and supporting evidence to show stoppages in work that occurred due to inclement weather. However, the PA cannot make an abnormal cost adjustment on the basis of the typical weather trends for an area.

85. (vi) Productivity Impact from Gate 3 to Key Quantity Adjusted Budget – Mr. Lliev (sic) states in his report that this budget analysis claim is based on "unproductive labor included in the Gate 3 budget in comparison to Edmonton." The information is unclear as to how the calculations were done to arrive at the percentage figures, and the fact that Mr. Lliev (sic) states the claim is based on an internal budget comparison to Edmonton makes the adjustment unacceptable as per the CCRG. Section 1.000 of the CCRG instructs the Assessor to use "actual expenditures" to determine assessable costs and this general comparison to between the internal budget and the Edmonton area does not follow the assessment regulations.

86. Overall, the abnormal costs of labour were not proven to be abnormal based on the Lubo Lliev (sic) reports, and they did not follow the assessment legislation and regulations. Fort Hills is not being assessed unfairly by rejecting their Edmonton area or mid-Alberta abnormal labour cost claims. The CCRG does not direct the Assessor to measure claims for abnormal costs against what is typical/normal in Edmonton or mid-Alberta. Since the beginning of centralization and the formation of the Provincial Assessor, we have consistently assessed all designated industrial properties by not allowing other Edmonton area adjustments. Furthermore, prior to 2017 the Assessment Services Branch was responsible for linear assessment and I can confirm that Edmonton area adjustments were

not acceptable for linear assessment either. Moreover, this approach has been consistent since the development of the CCRG going back to 2001. As mentioned, the issue of "typical" was questioned by Industry members shortly after the final draft of the CCRG was released back in 2001. Tab 23 in Appendix 10 of my report provides a December 2001 letter from the Canadian Property Tax Association ("CPTA") that stated costs not ordinarily encountered in construction projects" based at a location outside of Edmonton, would not be included". Assistant Deputy Minister, Brad Pickering responded to the CPTA letter in December 2001 by referencing CCRG which states the "determination of what constitutes "typical" or "normal" is difficult; it is subjective and may vary overtime, from one location to another and among industries". As can be seen in this historic letter from December 2001, the Assistant Deputy Minister did not reference Edmonton as the basis for typical for the Assessor to consider for excluded costs. This CCRG assessment approach from the Assistant Deputy Minister of Municipal Affairs in 2001 has been consist with Municipal Affairs over the last 21 years. So, Mr. Lliev's (sic) approach is flawed as he states in his paragraph 7 that "in adjusting these costs to mid-Alberta" his "analysis looks to the anticipated productivity losses contained within the sanctioned budget associated with remote location." The Assessor should not and cannot make this mid-Alberta or Edmonton based adjustment. It is not acceptable for the Assessor to make an excluded labour cost claim that is based on comparing labour productivity in mid-Alberta to actual expenditures. Rather, section 1.000 of the CCRG says the assessment is based on actual expenditures, and there is no direction to adjust for Edmonton in the CCRG expect for section 2.500.200 where the Minister has specifically identified only transportation costs to be adjusted based on an Edmonton comparison. As such, the PA has adjusted transportation costs based on Edmonton, but has not adjusted labour productivity based on Edmonton or mid-Alberta.

87. f. Abnormal Costs of Constructions – Abnormal Site Development Costs (Total $46,015,712 however the revised total as of the Fort Hills disclosure document is now a total of $0)

i. Excluded cost claim of $46,015,712

88. This excluded cost claim of $46 million is related to another non-typical site development land cost. However, it appears this has been removed by Fort Hills as it is not listed on page 18 of the Report of Ben Matthews. It appears Fort Hills is not in agreement with the PA on this previous claim for abnormal site development costs, which was rejected in the March 2022 Joint Agreement document.

89. g. Design Changes, Alterations, and Modifications (CCRG s. 2.300.400) (Total $2,183,852,264 however the revised total as of the Fort Hills disclosure document is now a total of $2,472,498,011)

i. Excluded cost claim of $2,183,852,264.

90. Design changes/alterations/modifications is by far the largest excluded cost claim in dispute. There are 2 overall parts for these design change claims: The first are the Project Change Notices (PCNs) provided for the 5 project areas of OPP, ET, FCS, AET, and UC. The second are the large categories shown for the Secondary Extraction (SE) unit. It was explained by Ben Matthews that the Secondary Extraction area was tracked differently than the other areas and that is the reason Fort Hills did not provide any supporting documentation for the SE design changes until the May 2022 disclosure. The OPP, ET, FCS, AET, and UC follow a similar structure and are found in the reports of Chris Woloshyn and Jeff Yarcky *(sic)*. The SE design change claims were structured differently by Fort Hills and are found in the report of Ryan Jackson.

91. The PA team has gone through the first submission of PCNs from Fort Hills in detail for OPP, ET, FCS, AET, and UC. We found there were some reasonable claims, some that were obviously unacceptable, and the majority of PCNs lacked the level of detail for analysis and could not be accepted. On principle, any excluded cost claim must be rejected by the Assessor if the company cannot provide information to support the excluded cost claim. The duty is on the company to substantiate any excluded cost.

92. Section 2.300.400 of the CCRG has a clear definition of what constitutes a design change, alteration, and modification:

2.300.400 DESIGN CHANGES, ALTERATIONS, AND MODIFICATIONS

Alteration costs incurred during construction that improve the operational efficiency of the original plant design, are excluded. Likewise, the costs of "de-bottlenecking" or modifying an operating process are excluded if there are no changes to the equipment inventory.

Note: The cost of equipment installed to improve operational efficiency is included.

93. The majority of PCN design change claims were not accepted. The complete list of PCNs for design changes are too long to list in detail here; however, a complete list of all PCN design change claims is provided in Appendix 2 of his report. This includes the description for each claim from Fort Hills as well as a response from the PA analysis.

94. The Design Changes category seems to have been used as a catchall bucket for a number of categories outside of Design Changes. The 5 examples below illustrate details and common themes for rejected design change claims:

- Misleading descriptions: Some of the claims have a misleading description that is not consistent with the details on the PCN document. Fort Hills provided descriptions for each Design Change in the body of the witness report and then attached a corresponding PCN in the appendix. An example of rejection with a misleading description is OPP PCN 0202A. Page 9 of the Chris Woloshyn OPP report says this PCN was for "additional costs due to rework delays", however the actual PCN in Appendix 22 of the same report says this cost is to "align the December 2014 re-forecast with Gate 3 Budget, an increase of $12,980,000". So, this claim is not based on rework costs as suggested in the description, rather the claim is actually an internal budget comparison to actual costs. This certainly does not meet the criteria for a Design Change as per CCRG 2.300.400. If we were to look at this more broadly as a CCRG 2.500 abnormal cost claim it would also not be acceptable because it is not allowable to simply claim the difference between actual costs and an internal budget as an excluded cost.

- Market cost increases over internal budget: E&T PCN 273 for $3,000,545 is briefly described as "Changes and reworks" on page 7 of the Witness Report by Chris Woloshyn; however, the individual PCN in Appendix 15 of the same report reads "Procurement Adjustment due to market fluctuations for Fire Alarm Systems." Market fluctuations are not a design change. CCRG 2.300.400 says "alteration costs incurred during construction that improve the operational efficiency of the original plant design, are excluded" as a design change. There is no improvement or change to the plant design related to this cost, rather this is simply a difference in costs between the internal budget and actual expenditures. The actual costs are assessable, this is not a design change, and it is also not a 2.500 abnormal cost. The E&T PCN 176A for $1,670,000 and 176B for $456,979 were claimed by Fort Hills based on "contract

increase due to hearted market," which are more examples of the unacceptable design change claims from Fort Hills on the theme of market cost changes over the internal budget.

- Additional equipment: Page 8 of the Mr. Colden's design change report for AET describes PCN OS-3ME036R EV. This is a claim for $5,400,695 requested for "Redesign and rework to fix deficiencies." Appendix 5 in the same report says "there are amounts required for EPN hardware for MEC and IBL that were not included in the EDS estimate" and continues on to say "EPN trend being revised to include accurate hardware costs." It is clear that these are costs or additional equipment that were missed on the original inaccurate estimate. These corrected costs are fully assessable and are not a design change. This was rejected because the assessment is not based on estimates, rather it is based on actual costs and additional equipment is assessable.

- Comparison to internal budget: Utilities PCN PD0163 is listed on page 16 of the Jeff Yarky (sic) Utilities design change report in the amount of $17,632,000 for "fuel increases due to changes and rework". Appendix 24 of the same report reads "increase in fuel cost forecast" and "PCN has been raised to align the December 2014 re-forecast with Gate 3 Budget". Once again this is not a design change, it is a comparison by the company from the budget to the actual costs. CCRG 2.300.400 says "alteration costs incurred during construction that improve the operational efficiency of the original plant design, are excluded" as a design change. There is no improvement to the plant design, rather this is simply a PCN to capture a change in fuel prices. The difference in fuel prices between an internal budget from 2014 and the actual construction costs in 2015 is in no way an acceptable design change as per the assessment regulations. Furthermore, this internal budget comparison to actual costs is also not an acceptable abnormal claim outlined in 2.500 of the CCRG. This is a very common theme throughout the design change claims as Fort Hills constantly issues excluded costs claims on the basis of comparing their internal budget to their actual costs. CCRG 1.000 states very clearly that the assessment is based on "actual expenditures" and does not direct the Assessor to make excluded cost adjustments on the difference between a company's internal budget and their actual expenditures.

- General rework contingency on top of individual claims: There are no PCNs provided for these claim descriptions in the design change reports for AET, E&T, and OPP. These are significant general rework claims of 5% and 1% on labour without any backup supporting documents or PCNs. Page 10 of the Mr. Colden's AET design change report claims $12.4 million excluded costs for this rework contingency. Page 10 of the Chris Woloshyn E&T design change report claims $14.2 million excluded costs for this rework contingency. And page 9 of the Woloshyn OPP design change report claims $14.8 million excluded costs for this rework contingency. These are significant excluded costs, which are not acceptable as they are claiming the best of both worlds. The company is submitting individual PCN design change claims for rework and they are also submitting general rework design change claims of 5% and 1% on labour categories.

[603] The above analysis for design changes was based on the PCN style witness reports for the five project areas of OPP, E&T, F&CS, AET, and UCT. The remaining areas of design change claims are the

large categories shown for the SE unit. For the SE design changes found in the Mr. Jackson report, the PA stated it has done a detailed review and has had meetings with Fort Hills to discuss. To this point, it concluded that the SE design change claims are not acceptable with the exception of the PFP Rework and Repair item, which is listed as #5 in the table below. The six large categories for SE design changes were organized by Fort Hills as:

	Approved Non-Scope PCNs	Increased Costs
1	Site Specific Labor Productivity	$261,399,700
2	Change in Execution Plan	$254,160,090
3	Change of Work Location to Mod Yard and/or Site	$111,003,528
4	Site Specific Rework and Repair	$182,403,286
5	Passive Fire Protection Rework and Repair	$125,485,747
6	Labor Productivity and Design Changes	$554,516,703
	Total APNS PCNs	**$1,488,969,051**
	Rebuilt with completed Engineering	$272,388,870
	Total	**$1,761,357,921**

[604] The SE design changes from Mr. Jackson's report account for $1.76 billion of the $2.47 billion total design change excluded cost claim, or 71% of the total design change claims for Fort Hills. However, it is noted that the PCNs provided total $1.49 billion for the six (6) PCN areas within SE, and there is an additional general "rebuilt with completed engineering" SE design change claim for $272 million that does not have accompanying PCNs. The details for the logic behind each the PA's rejection or accepting each SE design change claim are provided below for each SE design change claim.

98. *1. Site-specific Labour Productivity - $261,399,700*: This is primarily an abnormal labour adjustment with references by Fort Hills to a "heated market", "scarcity of labour", "lesser skilled labour", "crew mix", etc. Paragraph 23 of the Ryan Jackson report says "in total, $261,399,700 were increased costs incurred related to labour productivity as outlined above." These reasons and theory is very similar to what is found the Lubo Lliev (sic) productivity reports for abnormal labour claims but is also being used here for design change claims. These site-specific labour productivity claims were rejected on the basis of 2.300.400 of the CCRG which states, "2.300.400 DESIGN CHANGES, ALTERATIONS, AND MODIFICATIONS – Alteration costs incurred during construction that improve the operational efficiency of the original plant design, are excluded. Likewise, the costs of "de-bottlenecking" or modifying an operating process are excluded if there are no changes to the equipment inventory. The cost of equipment installed to improve operational efficiency is included."

99. Labour productivity was rejected in the abnormal labour excluded cost claim and it must be rejected here as well as it does not meet the criteria for an allowed claim. Further, labour productivity is in no way a design change and not applicable to this excluded cost category, as shown in the CCRG description above. This is also not an acceptable abnormal cost of construction defined in 2.500 of the CCRG. Abnormal cost claims made under section 2.500 of the CCRG must be measured against what is typical or normal for the construction period of the subject project and must be measured against what is typical or normal for the location of the subject construction site as the CCRG says typical "may vary overtime, from one location to another and among industries."

100. 2. Change in Execution Plan - $254,160,090: Page 7 of the Ryan Jackson report says the "changes in the execution plan developed from four causes: (i) out of sequence work; (ii) the development of only one, of three, extraction trains in 2018; (iii) the removal of the front end engineering contractor, (name redacted); and (iv) the engagement of global

suppliers." After reviewing each of these four causes and the newly provided PCNs it was determined this is not an acceptable design change as per 2.300.400, and not an acceptable abnormal cost of construction per 2.500.

101. The "(i) out of sequence work and (ii) the development of only one of three extraction trains" claims, was explained by Fort Hills to not be the most efficient way to construct. However, to be accepted as a CCRG Design Change, the claim must be "alteration costs incurred during construction that improve the operational efficiency of the original plant design." That is not what we have here, rather this is a business choice to construct in a certain order and the "original plant design" is not changed. Therefore, these are not design changes as per the CCRG, they are assessable costs that can occur on any project and must be rejected as exclusions.

102. With respect to "(iii) the removal of the front-end engineering contractor, (name redacted)" we already agreed to exclude 75% of total FEED (front-end engineering design) costs based on actual expenditures as part of the accepted $134 million exclusion that was allocated for feasibilities studies. This can be seen as item 6.a on page 2 of the Joint Recommendation document (Appendix 1). However, Fort Hills is now excluding these front-end engineering costs again under design changes. Fort Hills explained that this is the cost of switching engineering firms mid-way through the project and that this caused a delay. These are actual costs, which are assessable and must be rejected as exclusions. This claim does not meet the criteria of a CCRG design change (ie.no change to the original plant design) and furthermore, both parties have already agreed to excluding 75% of the total FEED expenditures.

103. (iv) The engagement of global suppliers– paragraph 36 of the Jackson report says, "this switch of the project Engineering and Procurement mid project to compensate for the challenged market conditions, including the labour scarcity, the high demand for goods and services, and the out of sequence engineering, resulted in a review and re-performance of project deliverables which resulted in an extension to the SE Project schedule." We inquired as to how much of these costs are associated with "re-performance" and if this is re-work engineering. However, Fort Hills stated it was unsure if this information is measured exactly. Due to a lack of understanding and supporting documentation this is rejected as a design change exclusion. Paragraph 37 also states "as an example, the SE Project's Forth *(sic)* Settler Unit was designed with a height structure of approximately 63 meters, when the lower height was more appropriate. A lower height would have reduced the height of the pipe racks and resulted in savings in steel, piping, cable, and fireproofing quantities." These cost claims are essentially the difference between actual construction costs and a theoretical design that was not constructed. The CCRG directs the assessment to be based on actual expenditures. Making an adjustment based on a theoretical design that was not constructed is completely out of line with the CCRG and regulated assessment principles. This is not an acceptable design change or an acceptable abnormal cost of construction.

104. *3. Change of Work Location to Mod Yard and/or Site - $111,003,528*: This claim explains this was a business operating decision to bring modules from the mod yard to the site earlier than originally planned. However, they were always going to be moved and this decision does not improve the operational efficiency of the original plant design as stipulated in the CCRG design change criteria, rather this is a location change for assembling the same modules. Fort Hills explained that the modules were sent earlier than originally planned and this did not work as effectively. This was rejected because it is not "alteration costs incurred during construction that improve the operational efficiency of the original plant design." This is a business operation decision to move modules to site based on the schedule. This

did not change the design of the plant and is therefore not an acceptable design change excluded cost. This is also not an abnormal cost of construction as per2.500 and must be rejected on that basis as well.

105. 4. *Site-specific Rework and Repair - $182,403,286:* Paragraph 42 of the Ryan Jackson report says, "contractors challenged by a labour shortage caused the SE Project to incur additional costs for out-of-sequence execution and rework." Paragraph 43 states "mitigations to this risk required significant process safety designs including leak detection, fire detection, fire prevention, and passive fire protection." These are all understood to be necessary construction costs and are therefore assessable. It sounds like it was not effectively planned, but it was always required, and these costs are not rework or duplications of any kind. The costs are in fact required safety expenditures, which are assessable as they do not meet the design change criteria of being "alteration costs incurred during construction that improve the operational efficiency of the original plant design." This also does not meet the abnormal costs of construction as paragraph 45 states "the decision was correct however the process safety implications were under-estimated and put pressure on the final quantities and field productivities." Comparing actual costs to an internal budget does not represent an acceptable abnormal cost of construction as per 2.500 of the CCRG.

106. 5. *Passive Fire Protection – Rework and Repair - $125,485,747:* Paragraph 46 of the Jackson report says, "the fire protection did not travel well to the project site and repairs were required." Paragraph 47 goes on further to explain the "coating was applied to the SE Project structures in June of 2015 prior to shipping and between October 2016 and March 2017 Fort Hills SE Project staff observed cracking in the coating on the structural steel, an unexpected health and safety risk to employees and contractors working on the SE Project." After analysis, this appears to be acceptable rework on the original plant design with no change to the equipment inventory. The fire protection coating was duplicated by applying it multiple times due to the coating not travelling well and requiring a reapplication. This resulted in an acceptable rework abnormal cost. The PCNs provided as supporting documentation for this rework total $125,485,748 and have been accepted.

107. 6. *Labour Productivity and Design Changes Non Assessable Claim - $554,516,703*: Pages 11 and 12 of the Jackson report outline seven parts to this labour productivity and design changes non assessable claim of $554 million. This includes the following descriptions, which are very limited:

- "a. indirect Budget transfer."
- "b. related to fees, overhead, and other in direct increases to various vendors and contractors for changes in other non-scope categories such as delay and out of sequence work."
- "c. design changes and modifications at field and in module yards that did not affect the scope and cost escalations related to changes because of site conditions, which could not be foreseen."
- "d. costs related to other non-scope changes in the original design,"
- "e. materials wrongly supplied that needed to be replaced or lost, or stolen materials that were not covered under insurance. Fort Hills explained that there is no breakdown for these repurchase items."
- "f. stoppages due to unforeseen site-specific conditions."
- "g. increases in market rates over and above the escalation estimated on account of the heated market conditions for procurement and construction activities."

108. To be a design change there must be "alteration costs incurred during construction that improve the operational efficiency of the original plant design." Furthermore, many of these claims (budget transfer, out of sequence work, lost materials, and increase in rates) are based on the company comparing actual expenditures to an internal budget. This does not represent an acceptable abnormal cost of construction as per 2.500 of the CCRG.

109. We were also told that the book-keeping would not track the difference between insured payout and re-purchase cost for lost or stolen materials. This adds another complexity to this unacceptable claim as it is likely that some of the costs for lost/stolen items were covered by insurance and it was not a double/re-purchase cost.

110. It was also explained by Fort Hills that the "stoppages" costs are for any stoppage at site, such as cold weather, rain, supply delays, stand by time, etc. It is not possible for the Assessor to understand or accept a reason for the stoppages without an allocation for each. Some could be acceptable, such as inclement weather and lack of supplies as per2.500 abnormal costs of construction, but they would need to be broken out and clearly supported with evidence. Furthermore, they certainly should not be under this design changes claim budget. There is also a likelihood of double dipping this claim with the productivity claims from the Lubo Lliev (sic) reports.

111. Any company must demonstrate that their actual cost is abnormal based on a metric to show what is typical. Typical does not mean comparing to the company's own internal budget. The property owner must measure the abnormal cost and the onus is on the property owner to prove any abnormal cost. It is not acceptable to simply claim the difference between actual costs and an internal budget as abnormal and an excluded cost claim.

112. 7. Rebuild - $272,388,870: Paragraph 50 of the Jackson report states, "through working with the new EPC firm in developing the new technology it was discovered that the design could have achieved the same results with a different less expensive design." Furthermore, Appendix A, page 7, paragraph 13 says "the $272,388,870 in costs was derived from the difference between the actual costs incurred as a result of using several bullets (the "As Built Quantities"), when the SE Project could have been created using one atmospheric tank and fewer bullets." Once again, we have a design change claim that is based on the difference between the actual construction expenditures by Fort Hills and a theoretical that was never built. There are no actual design changes occurring or abnormal cost of construction related to this $272 million dollar claim. This goes beyond the unacceptable claim theory of comparing actual costs to an internal budget. In this case, Fort Hills is going further to request significant excluded cost allowances based on a comparison of actual costs and a theoretical design that was never implemented. No actual design changes were done; this is a theoretical engineering comparison for a different approach. The Assessor has no ability to accept an excluded cost claim based on this comparison of actual costs and theoretical redesign costs. The Assessor must follow the CCRG and assess the actual construction costs. CCRG 1.000 outlines the costs to be included in determining assessable costs which clearly states, "the costs of construction reported by the company to the assessor are the actual expenditures made in constructing the facility." Nowhere in the CCRG does it direct the Assessor to make excluded cost adjustments for the difference between the actual expenditures and post-construction theoretical redesign that was never implemented. Therefore, the Assessor cannot make an excluded cost adjustment for this $272 million claim. This claim does not meet the criteria for a design change as per 2.300.400 of the CCRG and it also does not meet the criteria for an acceptable abnormal cost of construction per 2.500 of the CCRG.

[605] Mr. Minard submitted that the May 25, 2022 Complainant disclosure submission was extensive and contained over 4,800 pages of material, plus eight additional multi-tab Excel workbooks, and a video, all of which was spread over 30 individual documents. Mr. Minard noted that as the PA worked through the disclosure documents, the PA observed that the Complainant had substantially increased its excluded cost claims. The significant changes between the Joint Recommendation and the May 2022 disclosure were the abnormal labour excluded costs claim increasing from $644 million to $1.18 billion, and the design change excluded cost claim which increased from $2.1 billion to $2.47 billion. Mr. Minard identified that the differences can be seen by comparing the Joint Recommendation document from Mr. Minard's report (Exhibit 20-R, Appendix 1) to Mr. Matthews' witness report (Exhibit 14-C, pages 15-18). Mr. Minard submitted that the Fort Hills disclosure package posed a serious challenge to the PA due to the significant amount of new information, which was not provided in previous years and was required information to prepare the assessment. Mr. Minard stated that the fundamental problem was that because the facility is assessed on the legislated reported cost basis, the PA is entirely dependent on information provided by the company. Cost-based assessments place the onus on the company to provide the required information, which is explained in every annual RFI sent by the PA. There are several areas of project and cost information that have been requested since 2018, which were newly provided to the PA in 2021, and then again in the May 25, 2022 disclosure.

[606] Prior to the May 2022 disclosure package, Mr. Minard stated that the PA did not receive any details on the SE design change excluded cost claim of $1.76 billion dollars. Mr. Minard submitted that the SE design change claims accounted for 81% of all design change cost claims for Fort Hills. He submitted that the May 2022 design change information that was provided required substantial time and resources committed from the PA team to review and analyze this new information. In the opinion of Mr. Minard, this review should not have occurred so late, as Fort Hills was required to provide this information as part of the original 2018 assessment cost reporting. Mr. Minard expanded his comments and submitted that the majority of the SE design change documents in the "Ryan Jackson – Design Changes - SE" disclosure document (Exhibit 2-C Redacted), which was comprised of 1,033 pages, are dated in 2015, 2016, or 2017 such that they were clearly available to be provided with the 2018AY reporting information. Mr. Minard noted that this documentation had been requested since 2018 yet the PA received this historic information with the May 2022 disclosure.

[607] Mr. Minard also addressed the abnormal labour cost claim, which increased based on the May 2022 disclosure. He advised that at the time of the Joint Recommendation, the Complainant was using an amount of $644 million for abnormal labour costs, which amount was in dispute between the parties. In the May 2022 disclosure, the amount increased to $1.18 billion. Mr. Minard submitted the PA was surprised that the amount had almost doubled in amount two months after the signing of the Joint Recommendation.

[608] Mr. Minard provided another example of a category area remaining at issue from the March 2022 Joint Recommendation. Mr. Minard submitted that the "Abnormal Soil Conditions" category cost claim was the subject of discussion between Fort Hills and the PA; however, the details and supporting documentation were not provided. Mr. Minard stated that Fort Hills first provided this required information in the May 2022 disclosure package and was contained in the Parm Parmar disclosure (Exhibit 13-C Redacted) and the Ben Matthews disclosure (Exhibit 14-C), as well as the associated Excel workbook appendices from Mr. Matthews' disclosure. Mr. Minard opined that this is all late reporting information that should have been provided to the PA as part of the original 2018 cost rendition.

[609] Mr. Minard included in his disclosure (Exhibit 20-R, page 27, para 54) a chart that highlighted the comparison of the Parties' positions:

	PA Assessable Costs as of the March 2022 Joint Agreement	FH Requested Assessable Costs as of the March 2022 Joint Agreement	FH Requested Assessable Costs as of the May 2022 Disclosure
Total Project Costs	13,391,991,825	13,391,991,825	13,391,991,825
- agreed excluded costs	(3,969,442,416)	(3,969,442,416)	(3,969,442,416)
- disagreed excluded costs	0	(2,980,502,909)	(3,754,869,717)
Schedule A assessable costs	9,422,549,410	6,442,046,501	5,667,679,693

(Highlighted by Mr. Minard)

Note – the chart above refers to the Schedule A assessable costs for improvements only. This is before factoring in the steps to arrive at the assessed value (i.e. Schedule B, C, D, and the statutory 77% factor).

[610] Mr. Minard also discussed the lack of the Complainant providing the DBM/EDS and additional supporting documents. Mr. Minard noted that the PA was hopeful that the Complainant would include the information in its May 2022 disclosure package, based on representations Mr. Minard stated were made by the Complainant. The DBM was not received in the disclosure package, so additional requests were made by the PA. In a meeting held on June 15, 2022 with the Complainant, Mr. Minard stated that it was agreed that Fort Hills would provide the requested DBM/EDS to the PA. Mr. Minard also submitted that follow up emails for this request were sent on June 16 and June 21, 2022 and Mr. Matthews advised he had requested the files and was contemplating options for the file transfer due to its large size. Mr. Minard submits that additional emails were sent on August 31, September 1, and September 12, 2022 as well as in a meeting on October 3, 2022; however, the Complainant had yet to provide the information.

[611] Mr. Minard provided a detailed list of all PCNs submitted by the Complainant and the PA's response to each (Exhibit 20-R, Appendix 2, pages 72 to 126).

F. Summary

[612] Mr. Minard summarized that it is important to recognize that the PA is obligated to follow the assessment legislation and regulations in preparing all assessments, including the Fort Hills assessment. His interpretation of the *CCRG* is that it does not direct the Assessor to adjust labour, design changes, or soil conditions to an EAA. He further stated that the PA's recommended assessment has been prepared correctly for Fort Hills and consistently with the MA's practices for all DIPs.

[613] Mr. Minard's position is that Fort Hills is not being assessed unfairly by rejecting its claimed EAA or Alberta averaging adjustments, and that the PA has consistently assessed all designated industrial properties by not allowing other EAA, other than for transportation costs. Mr. Minard noted that the only mention of "Edmonton area" in the *CCRG* is with respect to transportation costs. Mr. Minard opined that the regulated assessment process is prescriptive, and if the Assessor is to consider an adjustment of other costs to an EAA, then the *CCRG* would clearly stipulate this direction. Rather, the Assessor is instructed to assess based on the actual expenditures made in constructing the facility (*CCRG* 1.000).

[614] Mr. Minard's position is that all DIP assessments must be prepared by following the assessment legislation and regulations, based on a cost reporting system. In the matter of Fort Hills, the PA did not receive appropriate cost reporting, therefore adjustments cannot be made.

[615] In response to the 2017 CARB decisions, Mr. Minard submitted that those decisions should not impact the assessment for Fort Hills. Mr. Minard stated that the settlements were done prior to the PA taking over the DIP assessment function in 2018 and that the PA was not involved in the settlements. He also stated that the PA has been denied access to the actual details within those settlements. Mr. Minard noted that his meeting with Mr. Schofield substantiated that the 2017 CARB settlement agreements were not based on a principled assessment approach which follows the assessment legislation and regulations and were done with a focus of lowering the outstanding taxation impact liability for RMWB.

[616] Mr. Minard submitted that some design changes have been accepted and accounted for in the PA recommended assessment for each year. In the design changes which were accepted, Mr. Minard confirmed that Fort Hills provided supporting evidence. Where Fort Hills has not provided supporting evidence, the PA's position is that they must be rejected. Additionally, a significant portion of the design change claims include an adjustment for the EAA which the PA submitted is not allowed.

[617] Mr. Minard provided a chart recognizing the total excluded costs and total assessable costs from the Complainant and the PA (see paragraph 562). The Complainant claims $7.709 billion (58% of its costs) as excluded. The PA recommended $4.147 billion (31% of the project costs) as excluded.

[618] Mr. Minard further stated that the PA's original assessments were prepared based on the information available to the PA for the 2018 assessment year, however a significant amount of information was not provided until 2021 and then more new information was sent in the May 2022 disclosure package from the Complainant. Based on the May 2022 disclosure, which Mr. Minard stated expanded detailed reporting, the PA submitted that more information was available when the assessments were created, and Fort Hills withheld information from the Assessor. Accordingly, the PA prepared updated assessments taking into consideration the Joint Recommendation and the May 2022 Complainant disclosure. Mr. Minard provided a further chart depicting the three (3) years under complaint (see paragraph 593).

[619] Mr. Minard confirmed that both parties agree that the total project costs for the Fort Hills facility are $13.392 billion for the matters under complaint. The dispute between the Parties is on the assessable costs and corresponding assessment value. The PA is recommending an assessment of $5.962 billion for the 2018 assessment year, which represents 45% of the total project costs for Fort Hills. The Complainant is seeking an assessment of $3.903 billion for the 2018 assessment year, which equates to an assessment value that represents only 29% of the total project costs for Fort Hills.

[620] The PA requests the LPRT accept the "Provincial Assessor's Recommended Assessment" for each year under complaint, as being fair, consistent, and equitable assessments for Fort Hills.

Assessment of Designated Industrial Property – Dr. Edward Thompson (Exhibits 24-R, 25-R, 26-R and 43-Rv2)

[621] Dr. Thompson was presented as an expert witness (Exhibit P18R) as, "The Provincial Assessor is seeking to have Dr. Thompson qualified as an expert in mechanical engineering with expertise in project planning/project engineering and numerical modeling."

[622] Dr. Thompson's work experience spans fifty years in mechanical engineering with extensive experience in the design and planning of oil and gas production facilities. Dr. Thompson has worked on the design, construction, and commissioning analysis of many oil sands development projects. Further, he has developed considerable experience in the prediction of labour productivity.

[623] Dr. Thompson has been awarded Bachelor of Science [1st class honours] in Mechanical Engineering, from the Imperial College of Science & Technology (1967), Bachelor of Science [Honours] in Mechanical Engineering, University of London (1972), DIC Fluid Mechanics from Imperial College (1975), and a Ph.D. in Mechanical Engineering from the University of London (1975).

[624] Dr. Thompson confirmed that he was provided with a detailed engagement from the Provincial Assessor which included "having regard to the interpretation of the CCRG and was provided the following working assumptions by Mr. Michael Minard, the Provincial Assessor" (Exhibit 24-R pages 10 to 12, para 20). The detailed assumptions were as follows:

(i) The engineering advice requested by the PA is in respect to the assessment of machinery and equipment ("M&E") within RMWB and in particular, with respect to the interpretation of the *2005 Alberta Construction Cost Reporting Guide* ("*CCRG*").

(ii) Decisions regarding whether a cost is an included or excluded cost under the *CCRG* are made by the PA;

(iii) It is the responsibility of the property owner to provide documents to the PA to substantiate claims for excluded costs. In this respect, the property owner must provide the PA with site-specific documentation that enables abnormal cost claims to be specifically identified, measured and quantified;

(iv) There are a set of Agreements established by Mr. Schofield on behalf of RMWB. These Agreements are addressed in 14 CARB BOs. These Agreements are not believed to be consistent with the CCRG. These Agreements did not involve the PA or Municipal Affairs. In addition, these CARB BOs are based on joint recommendation and are not binding;

(v) All claims for abnormal costs must be considered under section 2.500 of the CCRG. Abnormal cost claims made under section 2.500 of the CCRG must be measured against: what is typical or normal for the construction period of the subject project; what is typical or normal for the location of the subject construction site (in this case, being RMWB); and what is typical or normal for the industry in issue;

(vi) Claims for abnormal costs are not measured against what is typical or normal in Edmonton (central Alberta);

(vii) Construction costs are those "that facilitate construction" or are required for construction or "have a sufficient nexus to construction;"

(viii) The appropriate measure for abnormal costs is inter-project measurement, not intra-project measurement. Assessments are to be consistent among regulated properties;

(ix) Engineering, design, project planning, purchasing, scheduling and survey costs contained in the Design Basis Memorandum ["DBM"] & Engineering Design Specifications ["EDS"] (both parts of Front End Engineering & Design activities ["FEED"]) are included costs. It is only the cost of the feasibility study that is an excluded cost. Other FEED costs included in the Design Basis Memorandum ["DBM"] and Engineering Design Specifications ["EDS"] are included costs;

(x) A "balanced market" in terms of labour force, raw material, financing, and labour premium payments for overtime is achieved by a consistent application of section 2 of the CCRG. This requires a consideration of the context of the time period that construction

was taking place, the location in which construction was taking place, and the industry in issue;

(xi) Imbalanced market conditions are accounted for by the Assessment Year Modifiers ["AYM"] & Cost Factors ["CF"]. To allow for excluded costs for an imbalanced market, and then apply the cost factors and base year modifiers would result in a double counting for those costs;

(xii) The Cost Factors in the Minister's Guidelines account for year to year construction cost escalations [CARB BO 001-2015 para 253];

(xiii) The CCRG requires the use of actual costs. As such, the use of generic models to calculate abnormal cost claims is not acceptable;

(xiv) Abnormal costs may be measured when a specific construction site is experiencing costs that are not being experienced in RMWB during the same construction period and in the same industry as the subject;

(xv) Abnormal cost claims for schedule slippage must be measured against normal/typical schedule slippage for the development period of the subject, the location of the subject and the same industry as the subject;

(xvi) Where an abnormal cost claim is accounted for in one category of costs, it will not also be accounted for in another category. Double counting in this respect is not permitted;

(xvii) A comparison to the project plan/budget/QAB is not sufficient to measure abnormal costs [CARB BO 001-2015, para 194];

(xviii) Timing of when a cost is incurred is not a relevant factor to determining if the cost is an engineering cost or a construction cost;

(xix) The entity that incurred the construction cost is not a determining factor in whether a cost is a construction cost or not.

[625] Dr. Thompson's reports addressed aspects of labour productivity which were raised in the following:

- Exhibit 24-R - Response to the Iliev Report (Exhibits 8-C, 9-C, 10-C, 11-C, 12-C)
- Exhibit 25-R – Response to the Matthews Report (Exhibit 14-C)
- Exhibit 26-R – Response to the Otsu Report (Exhibit 16-C)

[626] Dr. Thompson referred to the Fort Hills rebuttal reports, which he understood to state that the 2017 CARB Decisions were based upon a reversal of the RMWB labour productivity calculations and that the assessments contained an EAA. Based on that understanding, Dr. Thompson provided a focused reply to the Fort Hills labour productivity abnormal cost claims. He did so in the sur-rebuttal report (Exhibit 43-Rv2).

A. Background

[627] Dr. Thompson stated that his report would consider the five reports submitted by Mr. Iliev, the report of Mr. Matthews, and the report of Mr. Otsu, as well as their rebuttal reports. While Dr. Thompson's work is within three initial reports as well as a sur-rebuttal report, he testified globally on all.

[628] Dr. Thompson submitted that based on the five Iliev reports, there were five topics he intended to address. They included:

a. Fort Hills estimates – can they be considered against the actual construction costs and which estimate is correct, if company estimates can be used
b. The *CCRG* - how costs are established numerically
c. Geographic – what is the appropriate area to consider costs – Edmonton, mid-Alberta, San Francisco or local on site
d. Reliable numerical process – how to measure costs at the project activity level
e. 2017 CARB Decisions – inability to re-engineer the relationship between project labour unproductivity and the Board Order adjustments.

B. Fort Hills Estimates

[629] Dr. Thompson's position is that it is not correct to compare actual construction costs to an owner prepared estimate. He acknowledged that the project estimate is an important document; however, he opined that it is not suitable for determining excess costs.

[630] Dr. Thompson submitted that when abnormal costs are deducted from actual construction costs, the claim amount can vary significantly based on the estimate being used. In his opinion, the levels of the estimates are as follows:

1. DBM - defines the basic design parameters for the intended project; and
2. EDS - defines all elements of project and is the control document for the commencement of detailed engineering and procurement activities on the project. It is also used in scoping the development of the Authorization for Expenditure ("AFE").
3. Dr. Thompson also noted that a further estimate is FEED"), or Front End Loaded ("FEL") which are sometimes interchangeably used with EDS.

[631] Dr. Thompson understands that the Provincial Assessor's position is that it must have the DBM. Dr. Thompson's position is that he has never requested the DBM, and he commented that if provided, he would "not know what to do with it". He opined that a DBM would be superseded by the EDS and the EDS would be superseded by a FEED/FEL.

[632] Dr. Thompson also stated that an estimate is not a single number, rather it is a range of numbers. Additionally, he stated that Fort Hills prepared a number of estimates and that there was confusion in the Complainant's evidence concerning which estimates Fort Hills was using to compare to actual construction cost in this matter. As an example, Dr. Thompson used the SE project and noted that between the original estimate and the QAB, there was an $850 million difference. The sheer amount and which estimate is used could inflate or deflate the Complainant's cost claim.

[633] Dr. Thompson also submitted that if Fort Hills intended to use the sanctioned budget, which was approved in 2013, whether the labour standards used to prepare the report could be different if the standards changed. Dr. Thompson opined that the Fort Hills budget has "no reliance on tendency" as it is based on a probability of 70%. If the estimate was based on a probability of 100%, then that estimate maybe could be considered for comparison.

[634] Dr. Thompson also addressed his understanding of what the cost estimate prepared by Fort Hills included. He stated that the cost estimate of the project plan is an integral component. He suggested that contractors bidding on a project may estimate low in order to receive the contract, and the use of the contractor's estimate is not reliable as it is a business decision to win the bid and not based on engineering.

[635] It was Dr. Thompson's opinion that all the abnormal cost claims as determined by Fort Hills are already included in the Fort Hills plan.

[636] Dr. Thompson further stated in his opinion "…that as Suncor is a very experienced operator in RMWB it would include all the elements identified above in the Fort Hills project plan. Should there be any abnormal construction costs then those abnormal costs must be measured from the project specifications prepared in the project DBM/FEL. That Suncor has not provided copies of the DBM/FEL documents is a concern and a significant limiting factor in all the Suncor complaint reports."

[637] Dr. Thompson also submitted that Fort Hills included EAA in its cost claims. His opinion is that these costs were included in the estimates and as a result, any request for a cost claim is double accounting. He based this on CARB BO 001-2015 paragraph 194 concerning double accounting.

[638] Dr. Thompson provided a specific example of Mr. Iliev's calculations with respect to weather (Exhibit 26-R, page 70, para 5):

> 5. Let us consider an example: the impact of site-specific weather conditions. Labour productivity would have been established using site weather conditions. Suncor would have a wealth of data on this topic. Activity durations in the project schedule would have been established as a function of local environmental conditions. Included in the weather impact analysis would be a function of when particular activities were planned, i.e. different durations would be set for activities undertaken in summer months compared to winter months. The project specifications for environmental conditions are established in the DBM/FEL. For an abnormal construction cost to be considered it would be measured relative to those site-specific specifications. Should an abnormal construction cost be considered it is not measured relative to some other arbitrary geographical location [e.g. Edmonton]. Should a calculation be considered and compared to Edmonton weather conditions, it would be a case of double accounting. For a particular example if the maximum low temperature established in the DBM/FEL as set at -48oC [this by the way is a typical condition], then abnormal costs might be measured on activities undertaken and disrupted when the site-specific temperature is less than -48oC, say -52oC. Actual costs as a result of this impact should be compiled and provided to the assessor. Mr. Iliev does not follow this procedure but compares the site-specific weather conditions with those derived from Edmonton [or mid-Alberta] and then calculates the impact upon labour productivity. This procedure is a case of double accounting.

C. CCRG – Establishing Costs

[639] Dr. Thompson stated that Fort Hills used many technical words in its submissions, and that certain of them were undefined. To address the disclosure reports his definitions were as follows:

> Typical – a mathematics tool and is a particular number that represents a group
>
> Group – not an assessment of the plant – it is derived from a group of construction activities
>
> Average – a likely number from a distribution of numbers
>
> Balanced market – is generally accepted as a first time derivative when at zero – equilibrium
>
> Deterministic – where a number is not subject to random chance
>
> Probabilistic – where a number is subject to random chance
>
> Monte Carlo – based on random number generation

[640] Dr. Thompson also submitted that he was a mathematical statistician, and as such he would look to the *CCRG* for guidance on how to calculate the project costs on a mathematical basis. Dr. Thompson's findings are that the *CCRG* permits two types of calculation. The first is the actual cost of the project, and the second is the "excess cost claims greater than typical". Dr. Thompson submitted that if one were on the left side of the ledger, and the other was on the right side, it would create confusion. He is looking for mathematical transparency as his guiding principle. Dr. Thompson opined that the actual costs are within the domain of the property owner, whereas excess costs from a group are within the domain of the assessor. However, both need to be transparent, and the need to review transparency is the responsibility of the assessor.

[641] Dr. Thompson's position is that section 1.000 of the *CCRG* is clear that the costs must be actual expenditures and section 2.500's words provide the basis for the mathematical calculation where:

> "normal" means numbers or amounts that represent a range – or within a group theory
>
> "typical" is more difficult as it represents a group
>
> "actual costs greater than typical" are costs that exceed actual (from section 1.000) if the grouping is greater than typical
>
> "excluded" are costs whose scope can only be confirmed by the assessor
>
> "costs" and example of costs are those not within a balanced market, albeit Dr. Thompson was unsure of what a balanced market would be.

[642] Dr. Thompson rebutted the Matthews report (Exhibit 14-C, page 26, para 82) where Mr. Matthews states that "A general factor by discipline was provided to estimate the loss in productivity included in the baseline budget". Dr. Thompson opined (Exhibit 25-R, page 9, para 14) that:

> There is a clear distinction in the objectives of the analysis undertaken by Mr. Iliev as presented in his five reports. Mr. Iliev was given instruction to consider the difference between labour costs at Fort Hills compared to labour costs in Edmonton [see Iliev paragraphs 5, 7 & 10]. Mr. Iliev does not determine the magnitude of abnormal labour costs at the Fort Hills site, but rather he presents the results of labour cost differences between two geographical locations. This result is not a labour cost that occurred at the Fort Hills site but a theoretical difference in labour costs that has zero reference to actual construction costs and is therefore of limited use to the assessor when undertaking the assessment. Further, the Board rejected the use of a project estimate as the baseline in labour productivity calculations for the Horizon & Kearl Lake projects.

D. Geographic – Edmonton Area Costs

[643] Dr. Thompson was advised in his working assumptions that there is no provision in the *CCRG* nor the *MGA* that allows for the EAA sought by Fort Hills. Dr. Thompson submitted that he is not the one who should be commenting on this and referred the Panel to other reports (Minard, Young, and Driscoll) as the authority for any adjustment based on geography.

[644] Dr. Thomspon adopted the position of Mr. Minard that "there are no known industrial property assessments in Alberta that have an Edmonton Adjustment." Dr. Thompson also stated that:

> Mr. Minard provides significant examples of Alberta industrial property assessments with no Edmonton adjustment. The Minard analysis demonstrates that Mr. Matthews' suggestion [paragraph 188] that the Edmonton adjustment is used in Alberta is incorrect. The PA knows of no industrial property assessment that contains an Edmonton adjustment [see the Minard report

paragraphs 30, 33, 34 & 35].

[645] Dr. Thompson noted that Mr. Matthews stated that the CNRL Horizon decision (CARB BO 001-2013) confirmed the productivity claim using the project budget as a baseline. Dr. Thompson submitted that this statement was an error, and his opinion was that the Assessor used actual costs rather than Mr. Otsu's model. Dr. Thompson also cited CARB BO 001-2014 (CNRL) which he explained was using the QAB as the baseline. Dr. Thompson submitted this was not accepted by the Panel, whereas the Panel accepted the values calculated by the Assessor using actual costs.

E. Reliable Numeric Process

[646] Dr. Thompson expressed concern that Fort Hills was using "mixed arithmetic" in its comparison of budget costs to actual. His opinion was that if one has a fixed number versus an actual number, it does not get to a specific number, it determines a range of numbers. Fort Hills is using fixed numbers and not the range of numbers which he would expect.

[647] Dr. Thompson also had concerns with Fort Hills estimates and lack of clarity on which probability level Fort Hills used to create its estimates.

[648] Given the lack of estimating clarity, Dr. Thompson stated that on labour productivity and design changes, there are three potential estimates: a detailed cost estimate, a detailed cost claim, and no detailed cost report which supports a cost claim. For example, Mr. Matthews had cost claims in his report (Exhibit 14-C, Appendix 6) that were based on information available for May 2022 costs, but the Complainant used information from SE from July 2021.

[649] Dr. Thompson provided numerous charts and diagrams. As a group, Dr. Thompson submitted, it is statistically incorrect to use an estimate where the probability of being met is 50% or even 70%. His example was that a forecast with a probability of 50% is right one out of two times; however, is also wrong one out of two times.

[650] Dr. Thompson addressed the inconsistency between Fort Hills reports. As examples:

i. In Mr. Otsu's report (Exhibit 16-C), Mr. Otsu indicated that the results of Mr. Iliev's work are as expected. Dr. Thompson's issue with Mr. Otsu's report was that there are two sets of calculations provided by Mr. Iliev in his July 2021 and May 2022 reports. The difference between the two is significant. Dr. Thompson stated that the Iliev report dated July 2021 was a basic element of the Joint Agreement between the PA and Suncor and the May 2022 report significantly changed the value from $641 million in July 2021 to $1.3 billion in May 22, without explanation. The July 2021 report proposed a geographical adjustment based on 21%, and the May 2022 report geographical adjustment was 33%.

ii. However, to further complicate this, in Mr. Matthews' report (Exhibit 14-C, Appendix 6), Mr. Matthews calculated the geographical adjustment at 19%.

iii. Dr. Thompson provided the SE project as a further example. He provided a comparison of SE productivity impact, where between July 2021 to May 2022 the amount increased from $193 million to $440 million (Exhibit 26-R page 12, para 24, Table 4.2.1) an increase of 228%. Dr. Thompson also provided a comparison of the variables used by Mr. Iliev (Exhibit 26-R page 12, para 25, Table 4.2.2), and those variables on average rose by 215%.

[651] Dr. Thompson noted that Mr. Iliev provided five reports on labour productivity, and there was a sixth area that was referred to by Mr. Matthews, for which no report from Mr. Iliev was submitted. The

area was Facilities and Common Services, to which Mr. Matthews submitted a claim of $76,956,437 was made, but for which there is no report from Mr. Iliev nor support within the Complainant's disclosure material.

[652] Dr. Thompson also reported that he had considerable difficulty in reconciling the amounts of labour productivity between the Matthews and Iliev Reports.

F. 2017 CARB Decisions

[653] Dr. Thompson stated that he reviewed material that was provided by the Respondent after his initial reports were concluded concerning the 2017 CARB Decisions. He submitted that he reviewed the assessor's working papers and determined the total appealed by Suncor was $1.666 Billion (Exhibit 43-Rv2, Table 4.1, page 12, para 28). The RMWB assessor accepted certain of those claims which totaled $757 Million; however, rejected five cost categories, all which were categorized as Edmonton Costs – Labour Availability, Craft Experience, Camp Stay vs Non-Camp, Longer Working Days, and Weather Impact. (Exhibit 43-Rv2, Table 4.2, page 13, para 29) Dr. Thompson acknowledged that the amount accepted did not entirely line up with what the Board ordered, however it was remarkably close. He stated that this supported that the 2017 CARB Decisions were not reduced because of applying an Edmonton area adjustment.

G. Summary

[654] Dr. Thompson summarized his findings in his sur-rebuttal (Exhibit 43-Rv2, pages 4 to 6, paras 3 and 4) as follows:

> 3. In the Fort Hills rebuttal reports it is stated that the 2017 CARB assessment decisions were based upon a reversal of the RMWB labour productivity calculations and that the assessments contained an Edmonton Adjustment. Now that this relationship has been declared by Fort Hills a focused reply to the Fort Hills labour productivity abnormal cost claims can be prepared.
>
> **2.1 The 2017 CARB Decisions:**
>
> 4. For the eleven Suncor properties subject to the CARB 2017 assessment complaints:
>
> a) It is stated in the Fort Hills rebuttal reports that the CARB assessment changes were a direct result of the reversal of labour productivity calculations undertaken by me for RMWB. The reverse engineering of the CARB decisions prove that that suggestion is correct for the Suncor properties, and I accept that result.
> b) The eleven Suncor properties that were the subject of the 2015/2016/2017 assessment complaints do not contain an Edmonton or mid-Alberta adjustments.
> c) All the Iliev labour productivity abnormal costs claims based upon a mid-Alberta comparison were rejected by the RMWB Assessor, see the Larry Horne & RMWB Technical Reports.
> d) The assessment changes made by the CARB in 2017 for the eleven Suncor properties were based upon labour productivity cost claims measured against the RMWB normal & typical benchmark,
> e) Labour productivity cost claims based upon an Edmonton or mid-Alberta benchmark were rejected by RMWB,
> f) Edmonton labour productivity adjustments did not form part of the Suncor/RMWB Settlement Agreements as per item a),
> g) RMWB prepared an assessment recommendation for the eleven Suncor properties

that rejected a mid-Alberta Adjustment for all eleven properties;
h) The RWMB assessment recommendation subsequently became a joint recommendation between RMWB & Suncor, see Horne, paragraph 4.

2.2 The Fort Hills Rebuttal Reports:

Labour Productivity and the Rebuttal Reports:

i) Fort Hills has provided significant quantities of actual labour productivity data in the rebuttal reports measured at the construction site by experienced constructors. This permitted the PA to 'approach' the measurement of actual labour productivity at Fort Hills against the RMWB normal baseline. More work is required on this topic.
j) The actual labour productivity presented by Fort Hills provides a mixed view of labour productivity at the Fort Hills construction site. For certain activities the reported labour productivity factors are greater than the RMWB normal baseline, indicating no abnormal costs.
k) The reported labour productivity factors show a steady decline [approximately 36%] as the project progressed, suggesting potential construction difficulties. This topic requires further work. This topic is discussed in section 9.2 of this report.
l) For certain construction activities the reported labour productivity factors appear to be less than the RMWB normal baseline, suggesting that abnormal construction costs may exist. A detailed review of the significant amount of data provided in the Fort Hills rebuttal report(s) has not been possible owing to the piecemeal manner in which Fort Hills has provided the source data and the limited response time permitted by this Board.

Labour Productivity the Original Approach:

m) Fort Hills has measured abnormal construction costs using job tenure and commuting times, etc. data derived from various geographical locations, in mathematics this is known as a "proxy variable substitutions" and is an unnecessary complication when actual data is available.
n) The identical form of proxy variable substitution was used by Mr. Iliev on the eleven Suncor properties in 2017 and that form of analysis was rejected by Mr. Horne the RWMB appointed Assessor.
o) It is incorrect to use proxy substitutions when analyzing abnormal costs when actual site-specific labour productivity factors are available, see above.
p) Actual labour productivity factors derived from site-specific construction activities should be used to measure labour productivity abnormal costs at Fort Hills using the RMWB normal baseline.
q) Actual labour productivity factors derived from site-specific construction activities are complex when measured against the RMWB normal labour productivity factors. The mid-Alberta baseline issue is unnecessary and complicates the analysis.
r) Labour productivity abnormal costs do not exist for the Fort Hills project when the reported labour productivity factors are greater than the RMWB normal baseline.
s) All RMWB reports listed as exhibits at the 2017 CARB hearing rejected all abnormal labour productivity cost claims measured against a mid-Alberta Adjustment.
t) All cost claims measured against an Edmonton Adjustment were rejected by the RMWB assessor.

u) The eleven Suncor properties that were the subject of the 2107 assessment complaints did not contain an Edmonton Adjustment.

2.3 The Project Estimate:

v) Oil & gas projects in RMWB have demonstrated significant cost overruns. Average cost overruns for major projects are about 97% over the project estimate.
w) The Fort Hills internal project estimate is not sufficiently accurate to use as a benchmark for the measurement of abnormal assessment costs.
x) Fort Hills has not provided measurements regarding the accuracy of the internal project estimate.
y) Using the Fort Hills internal project estimate results in erroneous abnormal cost calculations.

2.4 The CARB Hearings

z) Thompson was not involved in the presentation of evidence at the 2017 CARB assessment complaint hearings as suggested by Suncor.
aa) The RMWB reports prepared and listed exhibits to the 2017 CARB assessment complaint hearings demonstrate that a mid-Alberta adjustment is inconsistent with the CCRG.
bb) The evidence listed as exhibits in the 2017 CARB assessment complaint hearing demonstrated that the correct benchmark for the measurement of abnormal costs was the RMWB normal & typical condition or baseline.
cc) The 2017 RMWB Technical Team Suncor Report demonstrated that the use of a mid-Alberta adjustment was incorrect, and all abnormal costs based upon an Edmonton Adjustment were rejected by the Assessor.
dd) The data presented in the RMWB 2017 CARB reports are clear that a mid-Alberta adjustment is incorrect in the manner in which Fort Hills has applied the benchmark to construction costs.
ee) A review of the final RWMB technical report at this assessment hearing will demonstrate the limitations in the Fort Hills approach to labour productivity analysis.

SECTION 7 - INTERIM DECISION and DIRECTION TO THE PARTIES

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[655] A summary of the Panel's resolution of the issues identified is presented below:

Issue #1 – For the PCNs where the parties were able to reach agreement, the Panel accepts the Parties' joint recommendation.

Issue #2 – The EAA adjustment should be considered as appropriate.

Issue #3 – The Panel determined that abnormal costs are costs that are not contemplated in the sanctioned budget. Abnormal costs are specifically outlined in the *CCRG Interpretive Guide*. The Panel finds that the Complainant's methodology of using the sanctioned budget and PCNs to identify excluded/included costs is appropriate.

The Panel also determined that the variance between total actual costs and the sanctioned budget is reconciled by the Complainant's PCNs. This determination is further expanded to find that where PCNs reflect non-scope changes, the associated costs are abnormal. Where the change in scope adds to the project and as a result scope changes are involved, those associated costs are assessable.
The Panel determined that scope and non-scope changes were defined by the Complainant, and the Panel adopts those definitions (paragraph 59, and Exhibit 3-C, page 5, para 17). For ease of reference, these are reproduced below:

> 17. Types of Project Changes include Scope Change PCNs, Non-Scope Change PCNs and Budget Transfer PCNs. Each of these three types of Project Changes are outlined below:
>
> *a.* Scope Change PCN is defined as a change in any item of work that materially alters the layout, specification process, configuration, capacity, quality, or execution strategy of a project. Scope changes represent significant alterations to the project plans not considered or funded within the approved project budget. All scope changes are subject to the PMoC ("Project Management of Change") process. Examples of what might be evaluated as a Scope Change PCN include:
>
> i. addition or deletion of a process unit or facility;
> ii. modifications to process equipment, piping to increase or restrict plant through-put;
> iii. design changes resulting from changing feedstock composition or product specifications;
> iv. impact of scheduling compression or extension for Owner's commercial reasons including, for example, changing market conditions; and
> v. changing the technology upon which the EDS design was based (i.e., replace one process unit with another of newer technology).
>
> b. Non-scope Change PCN is defined as project changes that are not considered to be a Scope Change PCN as defined above. Non-scope PCNs will be used for all other changes which impact cost, schedule, quantities, and workforce hours. Examples of what might be evaluated as a Non-scope Change PCN include:
>
> i. productivity increase or decrease for either of construction or engineering;
> ii. bulk material or equipment cost increases or decreases from forecasts as a result of circumstances that are outside of the deemed tolerance for the current budget; and
> iii. rework, schedule delays, design development beyond design allowances, wage rates, labour turnover, and commodity pricing for defined scope.
>
> *c.* Budget transfer PCN is defined as a transfer of both scope and budget. An approved budget transfer within a project would have a zero dollar net impact. An approved budget transfer between projects or areas would require a change to be initiated in each area.

Direction of the Panel

[656] The Panel determined it is not able to provide specific directions for each individual PCN. The Parties are directed to pursue further discussion to determine the PCN abnormal cost claims in light of the Panel's decision on the issues referenced above and the following comments, which may assist the Parties in their discussion:

a. Costs that were not or could not have been anticipated in the sanctioned budget (and QAB budget for SE) should be considered to be abnormal excluded costs.

b. Scheduling was a significant issue, and in many instances the events referred to as "black swan events" created scheduling issues where being "out of cycle" created a snowball effect to the project and created construction issues. Many of these events required work that was originally scheduled for the summer months to be rescheduled to winter months, where inherently the weather conditions are less favorable. Abnormal excluded costs could not reasonably have been foreseen, and those events created direct or indirect costs from those black swan events.

   Examples of the events include:

   i. The 2016 Fort McMurray wildfire;
   ii. The dismissal of the SE project engineers;
   iii. The dismissal of certain contractor for safety and performance issues; and
   iv. The looming bankruptcy, resulting in the replacement of a significant contractor.

c. The Complainant's inclusion of reductions for contingencies (5% for certain labour projects and 1% for certain engineering costs) is not supported by legislation nor actual expenditures, and those contingencies should not be considered as abnormal costs; and

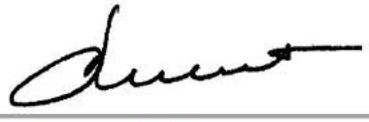
d. The costs associated with the SE which were identified by Mr. Pavathaneni and Ms. Ghosal in the amount of $272,388,870, are estimated costs which in their opinion were the result of improper engineering. This claim is rejected by the Panel. While re-engineering might have reduced costs, the actual costs were based on the engineering used for the project.

[657] The Panel directs the Parties to collaboratively review and analyze outstanding issues in light of the Panel's determination and direction and return the summary to the Panel. In the event the Parties are unable to agree on a specific PCN or group of PCNs, they are to provide their detailed written position, supported with relevant legislation and legal precedent with respect to the specific PCN or group of PCNs. The Panel will not accept a submission of "insufficient information". The summary and any submissions as to specific PCNs that may be required are to be provided to the Tribunal no later than 10 weeks from the date of the decision. The Panel will then review the submissions and render its final decision.

[658] The Panel remains seized of this matter.

Dated at the City of Chestermere in the Province of Alberta this 21st day of March, 2024.

LAND AND PROPERTY RIGHTS TRIBUNAL



D. Roberts, Member

APPENDIX "A"

PRELIMINARY AND PROCEDURAL MATTERS DURING THE MERIT HEARING

ISSUE #1– In its Sur-sur-rebuttal Brief (Exhibit 47-C) filed on July 14, 2023, the Complainant Requested Relief in the Sur-rebuttal filed by the Respondent.

Issue

[1] In its Sur-Sur-Rebuttal Brief (Exhibit 47-C) filed on July 14, 2023, the Complainant requested the following relief concerning sur-rebuttal evidence filed by the Respondent:

a. The response from Dr. Thompson regarding estimates and historic articles and reports be struck because the sur-sur-rebuttal is not proper rebuttal, it is case-splitting.

b. Evidentiary filings referring to the 2017 CARB Orders between the Regional Municipality of Wood Buffalo (RMWB) and a number of property owners, be struck as irrelevant and improper sur-rebuttal, case splitting, and hearsay.

c. Costs against the Provincial Assessor.

Decision

[2] The Panel decision is as follows:

a. The Panel declines to strike the evidence of Dr. Thompson.

b. The Panel notes the reference to RMWB in Exhibit 47-C is referred to in the Respondent's brief. The Panel declines to strike the RMWB evidentiary filings pre-settlement (leading to the 2017 CARB Decisions) by the Respondent.

c. Costs were not addressed by the Parties and any cost issues should be addressed either in closing argument, or by submissions post-merit hearing, as may be determined by the Panel.

[3] The Panel also advises that it relied on Exhibit 43-R v.2 which was filed subsequent to the original filing (Exhibit 47-R v.1). The Panel notes the Respondent's advice that v.2 excluded Appendix D as well as many pages within Appendix F. While the revised document was filed past the deadline imposed by the Panel, the Exhibit was reduced from 849 pages to 123 pages as a result. The revision simply deleted unnecessary pages and does not prejudice the Complainant.

Party Positions

Complainant's Position

[4] The Complainant's position was outlined in Exhibit 47-C. The Complainant argued that the sur-rebuttal amounted to approximately 1,500 pages (Dr. Thompson 43R v1. – 849 pages and Mr. Minard 42-R – 682 pages) and the Complainant had inadequate time to respond to the sur-rebuttal. Much of the information was concerning the time frame from 2000-2015 and the Complainant lacked the time to adequately analyze anything from 2014 and, in the Complainant's opinion, the date was unnecessary, not relevant, and unfair.

[5] It was its position that Dr. Thompson's evidence strays into advocacy, and large portions of Dr. Thompson's evidence (Exhibit 43-R) "is inappropriate, irrelevant, case splitting, hearsay and beyond the role of an expert".

[6] The Complainant also submitted that the Respondent's position was that there was urgency for the Panel to make its decision prior to Dr. Thompson providing his evidence.

[7] The Complainant also cited the *Matters Relating to Asset Complaints Regulation* ("*MRAC*") on the provision for the Complainant to provide its disclosure, the Respondent to respond to the disclosure and the Complainant to provide rebuttal disclosure. The position of the Complainant is that there are circumstances where the Panel may permit sur-rebuttal disclosure from the Respondent, and in doing so allows sur-sur-rebuttal disclosure from the Complainant. In this matter, the Complainant argued that the sur-rebuttal disclosure of Dr. Thompson was beyond the scope of proper rebuttal.

[8] In respect to "case splitting," the Complainant argued that the Respondent was attempting to split the case. The Complainant submits this is an attack on the Complainant using an Edmonton area adjustment in its submissions, and that it is a revisitation of the 2017 reinstatement of a number of assessments rendered by RMWB. The Complainant submits that the Respondent is attempting to evolve or change its position, and that should not be permitted as it is unfair and improper sur-rebuttal evidence.

[9] In respect to the Edmonton area adjustment, the Complainant submitted that the Respondent had ample time to present its argument in its original disclosure.

[10] The Complainant also submitted that the Respondent has entered into three "fictions" in its sur-rebuttal:

1) that the Respondent did not know that the changes in the 2017 settlement agreements (2017 CARB Orders) would be an issue;
2) the notion that Dr. Thompson forecast what would be required of him in sur-rebuttal based on the January 2023 filing of his disclosure; and
3) somehow the Complainant ought to have known the Respondent's theory that costs could not be benchmarked against estimated costs to determine excluded cost adjustments.

[11] For the Respondent to submit its argument in sur-rebuttal only allowed the Complainant two days to respond and thereby denies the Complainant natural justice.

[12] Additionally, the Complainant submitted that Dr. Thompson gave evidence that he located documents that pertain to the reinstatement of assessments (2017 CARB Orders). The Complainant submitted the information was available at the time Dr. Thompson filed his original disclosure (Exhibits 24-R, 25-R and 26-R), and filing it in sur-rebuttal is akin to an "ambush" when the Complainant has only two days to file its sur-sur-rebuttal. In addition, the Complainant argued that Dr. Thompson has filed considerable evidence that misstates and misunderstands the 2017 reinstatement of assessments. The information Dr. Thompson has filed does not reflect the actual 2017 reinstatement assessments and it is a mistake to suggest that Dr. Thompson's work is correlated to the reinstatement. There is no evidence that Dr. Thompson was involved in the settlement agreements; therefore, his testimony is speculation.

[13] The Complainant relies on ***Halford v Seed Hawk Inc., 2003 FCT 141*** as well as ***Noco Company, Inc. v Guangzhou Unique Electronics Co. Ltd, 2023 FC 208,*** at paras 15-16 and para 31, respectively, which suggested four key principles governing the admissibility of rebuttal evidence:

1. Evidence which is simply confirmatory of evidence already before the Court is not to be allowed.
2. Evidence which is directed to a matter raised for the first time in cross-examination and which ought to have been part of the plaintiff's case in chief is not to be allowed. Any other new matter relevant to a matter in issue, and not simply for the purpose of contradicting a defence witness, may be allowed.
3. Evidence which is simply a rebuttal of evidence led as part of the defence case and which could have been led in chief is not to be admitted.
4. Evidence which is excluded because it should have been led as part of the plaintiff's case in chief will be examined to determine if it should be admitted in the exercise of the Court's discretion.

[14] In addition, the Federal Court in ***T-Rex Property AB v Pattison Outdoor Advertising Limited Partnership, 2022 FC 1008*** opined that "a party cannot present some evidence, wait to hear the other side's evidence and then respond with additional evidence to account for weaknesses identified by another expert". This decision also noted fairness should limit the scope of rebuttal and there simply cannot be "[an] endless alternation between parties in adducing evidence".

[15] ***Signalta Resources Limited v Canadian Natural Resources Limited, ABKB904*** determined that "The purpose of the expert report process is to encourage meaningful pre-trial disclosure and help focus the issues." The Complainant submitted that the limited time in which it had to respond to Dr. Thompson's sur-rebuttal did not put the issues into focus.

[16] In ***Janssen Inc. v Teva Canada Limited, FC 1309*** at para14 and ***Amgen Canada Inc v Apotex Inc., 2016 FCA 121*** at para 12, the decisions have the effect of creating "an unending alternation of successive fragments of the case coming forward." The Complainant's position is that the evidence of Dr. Thompson is speculative since the Respondent has not brought forward anyone involved in the resolution, other than through Dr. Thompson's report, such that the evidence is hearsay. The Complainant argued that Mr. Matthews has put forward Suncor's position. Accordingly, allowing Dr. Thompson's evidence will simply prolong the hearing.

[17] In a brief filed April 21, 2023, the Complainant cited ***White Burgess Langille Inman v Abbott and Haliburton Co., 2015 SCC 23*** as requiring five requirements to be met to satisfy allowing expert evidence. This was further supported by ***Nia Wine Group Co. Ltd. v North 42 Degrees Estate Winery Inc., 2022 FC 241*** at para 32 as those requirements being:

a) The evidence is logically relevant;
b) The evidence is necessary to assist the trier of fact;

c) There exists no other exclusionary rule;
d) The expert must be properly qualified, which includes the requirement that the expert be willing and able to fulfill the duty to the court to provide evidence that is impartial, independent and unbiased; and
e) For opinions based on novel or uncontested science or science used for a novel purpose, that the underlying science must be reliable for that purpose.

[18] The Complainant submitted that sur-rebuttal evidence of the Respondent, and specifically Dr. Thompson, is not relevant to this matter. Dr. Thompson was "qualified as an expert in mechanical engineering with expertise in project planning/project engineering and numerical modeling" (Exhibit P18R) and he has exceeded his scope in referring to the testimony of Messrs. Matthews, Fluney, Iliev and Otsu. The assertion is based on a decision referred to as ***Kon Construction Ltd. v Terranova Developments Ltd., 2015 ABCA 249*** at para 36 which states "Courts have held that external witnesses cannot be permitted to give an opinion which requires specialized expertise," of which the Complainant argues Dr. Thompson lacks.

[19] The Complainant further submitted that Dr. Thompson has taken on the role of an advocate in assessment matters for which he has no expertise. The Complainant suggested that any evidence related to assessment matters should be disregarded.

[20] The Complainant concluded as follows:

29. The following relief is sought:

a. The voluminous response from Dr. Thompson regarding estimates and historic articles and reports be struck as this is pure case-splitting and available at the outset and only provided 2 days before the hearing was to commence. As such it is not proper sur-rebuttal.

b. The foray into evidentiary filings pre-settlement by RMWB to be struck as irrelevant and improper sur-rebuttal, case splitting and hearsay.

c. Costs against the Provincial Assessor.

Respondent's Position

[21] The Respondent filed its brief in response to the Complainant (Exhibit 61-R).

[22] The Respondent confirmed that the sur-rebuttal of Dr. Thompson (Exhibit 43-R v1) was filed on July 12, 2023, which was the final date prescribed by the Panel. After filing the brief, it was determined by the Respondent that Appendix D in the original report was filed in error and that Appendix F contained an entire publication, rather than the specific article the Respondent referred to. The Respondent then filed an amended sur-rebuttal (47-R v2) on July 13, 2023. There were no other changes to the sur-rebuttal document of Dr. Thompson. Thus, the Respondent opined that there was no prejudice to the Complainant.

[23] The Respondent's position was that the sur-rebuttal was allowed by the Panel, in response to its submission with respect to its request to exclude the Complainant's rebuttal disclosure. The Panel rejected the request to exclude the rebuttal disclosure; however, permitted sur-rebuttal to be filed by July 12, 2023, and if desired by the Complainant for it to file sur-sur-rebuttal by July 14, 2023 (***Tribunal Order LPRT2023/MG0389*** at paras. 20-21).

[24] The Respondent's position is also that the issues originally raised at the time of the complaint have evolved and are no longer the same issues.

[25] The Respondent noted that ***Elgert v Home Hardware Stores Limited, 2010 ABKB 66*** at paras. 23-25 cited the following:

> [23] In ***Edmonton (City) v. Westinghouse Canada Inc***. 2000 Carswell Alta 211 (C.A.), McClung JA., writing for the majority of the court said with respect to this discretion generally:
>
> Trial Judges have a wide discretion in making evidentiary rulings and their discretion ought to be interfered with only in the case of an error in principle or a palpable and overriding error... .
>
> [24] Fraser C.J.A., writing a dissenting judgment in the case, said further:
>
> . . .I am well aware of the considerable discretion afforded to Trial Judges to decide whether it is appropriate to permit rebuttal evidence to be called... .
>
> [25] In the motor vehicle accident case of Gartner v, 520631 Alberta Ltd., [2005] A.J. No. 194 (Q.B.), my colleague Germain J. reviewed the law regarding reply evidence and commented:
>
> The rules surrounding reply evidence are not written in stone. Even historically, some judicial discretion did exist in this area: B. F. Goodrich Canada Ltd. v. Mann's Garage Ltd. (1959), 21 D.L.R. (2d) 33 (N.B.Q.B.).. . .
>
> The rules of evidence, including those relating to reply evidence, were once strictly and rigorously applied, often with inappropriate and unexpected results. This, in turn, led to exceptions to the rules, and exceptions to the exceptions: R. v. Graat, [1982] 2 S.C.R. 819 at 835.
>
> Gratt is heralded as the starting point for the new, more principled, approach to evidence, which I apply in this case. An underlying theme in R. v. Mohan, [1994] 2 S.C.R. 9, is that relevant evidence that should be admitted will be admitted.
>
> **There is now an over-arching concern for fairness in admissibility. Courts must look to the relevance or the importance of the evidence on a case specific basis. This is often referred to as the contextual approach. If the probative value of the evidence outweighs any risk associated with its admission, the evidence generally will be admitted. In many cases, the risk is reliability of the evidence. In the case of reply evidence, it is the risk of unwarranted trial delay, or adjudicative unfairness.**
>
> This approach to reply evidence does not depend on whether the evidence to which a party wishes to reply is elicited in-chief or by cross-examination. If it is relevant and will assist the court in discovering the truth, latitude should be given in terms of its admission rather than forcing counsel to torture their way through the many exceptions and exclusions to the traditional rules of reply evidence.[emphasis added by Respondent].

[26] The Respondent submitted the foregoing promotes what the interests of natural justice are, which in its opinion is to ensure that the relevant information is before the Panel. Not to do so would be procedurally unfair.

[27] The Respondent noted that while the Complainant now advises it has been prejudiced it its ability to respond in two days, it was clearly identified by the Complainant that it only required a "couple days" prior to the hearing scheduled to commence on July 18, 2023 to respond to sur-rebuttal. Accordingly, the Panel provided the two days the Complainant suggested. The Respondent submitted that the Complainant ought to have known the scope of the material the Respondent intended to file and as a result cannot now claim about the lack of time to review and respond, which was based on its submission to the Panel.

[28] The Respondent noted that the Tribunal is not bound by the Rules of Evidence established by the Courts (***LPRT Act s 10(1)***). In the Complainant's submission to the LPRT in May 2023, the Complainant submitted the need for the LPRT to consider the interests of natural justice, rather than applying a set of rigid rules. The Respondent argued that "Rebuttal evidence (and Sur-rebuttal if necessary) should be admitted in a manner that allows the parties to hear and respond to the full submissions of the other on issues relevant to the Tribunal" citing ***Davidson v Patten, 2003 ABQB 996*** at paras. 7 and 9.

[29] At the time of the May 2023 hearing, the Complainant submitted the following test concerning the admissibility of the Complainant's rebuttal disclosure:

a. Does the evidence relate to the Respondent's evidence?

b. Is the evidence a fair response to the position advocated by the Assessor?

c. Given the content of the Rebuttal, the position of the Provincial Assessor to request additional backup in its filings, and where the Assessor has rejected the claim based on 5 or 6 "categories" that require Panel direction, is it fair Rebuttal?

d. Is the Rebuttal merely reinforcing the same evidence.

[30] The Respondent submitted that a similar test should apply to Dr. Thompson's sur-rebuttal:

a. Does the evidence relate to the Complainant's Rebuttal?

b. Is the evidence a fair response to the position advocated by the Complainant?

c. Given the content of the Sur-rebuttal, the position of the Complainant to rely on the 2017 CARB Board Orders but fail to outline the specific details underlying the 2017 CARB Board Orders, and the new information contained in the Complainant's rebuttal materials, is it fair Sur-rebuttal?

d. Is the Sur-rebuttal merely reinforcing the same evidence provided in chief? Or is the Sur-Rebuttal responding to the position of the Complainant in Rebuttal?

The Respondent submitted that if the test is followed, the Panel should admit the sur-rebuttal disclosure.

[31] The Respondent also addressed the Complainant's assertion of case-splitting. The Respondent submitted that the onus or proof lies with the Complainant. Therefore, when the Complainant provides new evidence in its rebuttal the Respondent must be afforded an opportunity to respond. The Respondent's obligation is to respond to the evidence put forward by the Complainant.

[32] The Respondent addressed the Complainant's evidence in its original disclosure. The Respondent submitted the Complainant then expanded the scope of its evidence in its rebuttal. Thus, in sur-rebuttal the Respondent must be provided the opportunity to respond. The Respondent submitted that if the Complainant argues that the Respondent is case-splitting, it is only in response to the Complainant admitting to case-splitting in its rebuttal. The Respondent submitted it is not changing its position; it is merely responding to the evidence put forth by the Complainant. The Respondent also submitted that the evidence it has entered was not raised in its initial disclosure because the Complainant only raised it in rebuttal.

[33] The Respondent also submitted that the Complainant presented new evidence that was not in its initial disclosure. Notably, there were few details in respect of the 2017 CARB Board Order calculations. The Complainant then relied on its evidence that the agreements restored the Edmonton area adjustment. In the preliminary matter on June 28, 2022, the Complainant cited at para 48:

> 48. The response suggests that because the Complainant cited multiple prior CARB decisions involving RMWB on the Edmonton area basis for productivity, that the Provincial Assessor requires "a detailed understanding of the basis of the decisions". **This is not the case. Fort Hills does not believe the details of the assessments of other facilities needs to be examined in great length by the Provincial Assessor, nor evidence be provided related to same. Fort Hills cites only on the public decisions rendered by the Tribunal, and its own experience.** [Emphasis added by Respondent] This does not require the Provincial Assessor to undertake a detailed historic analysis of all other assessments.

[34] Notwithstanding the position identified above, the Complainant provided additional calculations in its rebuttal to provide additional context to its position. In response to the Complainant's position, Dr. Thompson's sur-rebuttal disclosure (Exhibit 43-R) indicated the following:

> a. Mr. Matthews presents material about the labour productivity cost claims for 11 Suncor properties in paragraph 23. The numbers presented in column 3 appear to be consistent with the labour productivity analysis undertaken by RWMB and presented in part in Appendix 2. However, the LP costs are not the same as the numbers presented in paragraph 75, the costs are different by approximately $200 million. This creates uncertainty. Further, the numbers presented in paragraphs 23 & 75 are different to the costs shown in paragraph 198 of Mr. Matthews' original report. The summary number shown in paragraph 198 are derived from the CARB decisions. In other words, Mr. Matthews' analysis includes various and different LP costs as the purported basis for the 2017 CARB decisions. As a result, that comparison is not as simple to interpret as Mr. Matthews suggests. In particular, the analysis [suggests/indicates] that LP adjustments applied in the 2017 CARB decisions are not solely restricted to abnormal labour productivity costs.
>
> b. The labour productivity costs presented in paragraph 75 [of the Matthews Sur-rebuttal Report] represents new material and as indicated above are different from the CARB decisions.
>
> c. Appendix 2 [of the Matthews Sur-rebuttal Report] references reports, and statistical analysis derived from work undertaken by RMWB on labour productivity when measured against normal or typical conditions in RMWB and not measured against mid-Alberta, as suggested by the Fort Hills team. The material presented by Mr. Matthews in this appendix is based upon substantial work completed by RMWB in 2014. The material listed in Appendix 2 is not the complete RMWB report, it summarizes certain properties only thereby providing a limited view.

d. Significant reference is made to work undertaken by RMWB pre-2017 and how site-specific labour productivity was measured against normal or typical labour productivity in RMWB. Mr. Iliev tends to suggest that the material presented in the RMWB reports has been rejected, this will need to be reviewed for application to the Fort Hills Assessment Complaint. This suggestion appears to be inconsistent with new material presented in Mr. Matthews rebuttal report.

e. In paragraph 69 Mr. Iliev states, "I undertook my own analysis to determine if the productivity loss claimed was supportable and filed reports with respect to same. These were filed with the RMWB CARB for Dr. Thompson to review. In each case I concluded both aspects of the productivity loss was supported and, in several instances, I identified losses greater than those claimed. I did not have to testify as ultimately all Edmonton based productivity adjustment made based upon Dr. Thompson's analysis were reversed and the productivity claims reinstated."

f. Paragraph 3 d introduces a new topic, not contained in Mr. Iliev's first Report in terms of the Suncor 11 Assessment Complaints that were investigated in 2017. Further, the concept of average is new to this Rebuttal.

g. Paragraph 10 provides a new description of the Suncor approach to cost analysis, and the relationship presented is not mathematically sound.

h. In paragraph 12 a new concept is introduced that is inconsistent with statements and relationships made in paragraph 10: the term 'average' is now introduced into the measurement of Fort Hills abnormal costs. This is new material and introduces a new measurement matrix that has not been suggested in the original Fort Hills Reports. The Fort Hills team has suggested the use of a mid-Alberta baseline but never the concept of an average value.

i. Mr. Iliev introduces the concept of probabilistic estimate in paragraph 39 in which estimate spread is newly introduced. In the original reports by Mr. Iliev, Matthews, and Otsu this topic is ignored and the collective reasoning with respect to a project estimate is based upon deterministic mathematics and that is inconsistent with the best working practices of a qualified capital cost estimator or AACE. This is a major new area introduced by Mr. Iliev. This is echoed in paragraph 40 and 41 and 42.

j. In the Fluney Rebuttal Report new material is presented in terms of the Schofield Agreements, and examples of suggested locations where Edmonton adjustments assessments exist. Those issues were directly raised in Fort Hill's initial Disclosure and this new evidence is clearly intended to supplement the evidence previously provided.

k. It is being suggested in the Fort Hills Technical Rebuttal Reports and the Rebuttal Legal Brief that the Schofield Settlement Agreements ["SSA"] are based upon work undertaken by RMWB and that I have knowledge of such work. This was never suggested in the Fort Hills original Assessment Complaint documents.

[35] As a result of the foregoing, the Respondent submitted that Dr. Thompson's report directly responds to the following topics raised by the Complainant:

a. the 2017 CARB Decisions;

b. the Fort Hills Rebuttal Reports re: labour productivity;

c. the project estimate; and

d. the CARB hearings.

[36] The Respondent also submitted that the Complainant had adequate indication as to what would be included in a sur-rebuttal report. The sur-rebuttal of Dr. Thompson is exactly what he indicated would be required and should not be a surprise to the Complainant. The witness report of Dr. Thompson, dated May 12, 2023 (Preliminary Hearing Exhibit P5R), included the following references of additional evidence he proposed to provide.

> a. All CARB decisions listed by Mr. Matthews that form the central core of the Schofield Agreements will need to be reviewed in terms of resultant adjustments for: a) abnormal labour productivity costs, and b) other non-labour adjustments.
>
> b. The labour productivity costs presented in paragraph 75 represents new material and as indicated above are different from the CARB decisions. This is new material and source documentation will need to be reviewed.
>
> c. This body of work undertaken by RMWB between 2014 and 2017 will need to be reviewed within the context of the Fort Hill Assessment Complaint.
>
> d. If, however, Mr. Iliev wishes to pursue this line of analysis then all relevant reports derived from the Suncor 2015 to 2017 Assessment Complaints must be submitted for review. This will take time. The suggestion that the, "… Thompson's analysis were reversed. …" is a new topic to me and as such must be reviewed based upon material contained within the Iliev Rebuttal Reports as presented to this Board. See my comments about the Schofield Settlement Agreements, presented below.
>
> e. Paragraph 3 d introduces a new topic, not contained in Mr. Iliev's first report in terms of the Suncor 11 Assessment Complaints that were investigated in 2017. Further, the concept of average is new to this Rebuttal. The amount of work undertaken by RMWB on these Suncor Complaints was substantial and a review of that material will be presented in the Sur-rebuttal, if permitted.
>
> f. The material presented in section 3.5 Sanction Estimate and Estimate Budgeting is not a response to material presented in my Report and will need to be reviewed and the results presented in the Sur-rebuttal.
>
> g. In the Fluney Rebuttal Report new material is presented in terms of the Schofield Agreements, and examples of suggested locations where Edmonton Adjustments Assessments exist. Those issues were directly raised in Fort Hill's initial Disclosure and this new evidence is clearly intended to supplement the evidence previously provided. If this supplemental Rebuttal Evidence is admitted, the time to investigate and respond to this new material will be undertaken in parallel with the Matthews and Iliev responses.
>
> h. This new issue is expanded in the Rebuttal Legal Brief that will need to be researched and a proper response prepared. It is suggested in the reports that I have prior knowledge of the contents of the Schofield Agreements, this topic is echoed by Mr. Iliev. I had no part in the Schofield Agreements. I was not working for RMWB when these Agreements and subsequent Board decisions were issued. The background and contents of the Schofield Settlement Agreements are unknown, and more information is required to measure the impact on the Fort Hills Assessment. I should be afforded an opportunity to provide a fulsome sur-rebuttal in respect to these assertions regarding my personal knowledge of, or involvement in, the Schofield Agreements.

[37] In response to the Complainant's assertion that Dr. Thompson's evidence falls outside his area of expertise, the Respondent opined that Dr. Thompson's expertise was required to review the underlying calculations that resulted in the joint recommendation referred to as the 2017 CARB Board Orders.

[38] Additionally, the Complainant had said it would provide evidence to support its claim that the assessments were amended as a result of the Edmonton area factor; and challenged the Respondent to obtain the information. Now that the Respondent has challenged it, the Complainant objects.

[39] The Respondent also spoke concerning the prolonging of the hearing unnecessarily. At this juncture (August 22, 2023) the Respondent has had three days of witness testimony, whereas the Complainant has had five weeks. The Respondent has only two witnesses remaining, and it appears that of the total time presently allocated for the hearing, the Respondent will only have used one third of the time allotted. The Complainant's case has expanded over the course of the five weeks and any curtailment of the Respondent's case would be unfair.

[40] The Respondent also commented on the Complainant's Final Legal Brief (Exhibit 40-C). The Complainant submitted that:

> 66. It was also available to the Assessor to call witnesses who were parties to the joint recommendations and settlement agreements to counter the evidence put forth by the Complainant's witness reports. The Assessor has apparently made no efforts to do so. An adverse inference should be found as against the Assessor as a result.

As a housekeeping matter, the Intervenor submitted that efforts were made to call witnesses; however, due to the scope of confidentiality agreements witnesses were not available.

[41] The Respondent concluded the following:

> 28. The Thompson Sur-Rebuttal Report responds directly to the new evidence presented in the Rebuttal Reports of the Complainant. The Respondent must be provided with an opportunity to respond to this new information from the Complainant. The Complainant had an opportunity to present its full case in its initial disclosure, which would have allowed the Respondent to reply fully in January 2023. Instead, the Complainant disclosed new details in its Rebuttal Materials that the Respondent had to respond to in order to provide the Board with a balanced perspective. The Thompson Sur-Rebuttal Report must be admitted into evidence to ensure a fair hearing to the Respondent.

Intervenor's Position

[42] The Intervenor filed a letter dated August 21, 2023 with LPRT Administration which was entered as Exhibit 62-I.

[43] The Intervenor's position was that it supports the Respondent's position and that four points should be addressed.

[44] First, the Intervenor supports the Respondent that sur-rebuttal materials should not be struck.

[45] Second, was the request appropriate and fair? It was the Intervenor's position that while the Complainant's position was that the sur-rebuttal was unfair, both Complainant and Respondent issues can be addressed in rebuttal or cross-examinations on the sur-rebuttals.

[46] Third, is there proportionate evidence on the changes in the Complainant's argument and its introduction of further new evidence, especially regarding the 2017 Board Orders? The Intervenor opined that there has been a continuous change in the Complainant's argument which could be resolved; however, Suncor was the party to the agreements with the RMWB, and Suncor has thus far refused to release the agreements based on confidentiality matters. The Complainant chose to expand its argument on its own volition. It is attempting to tell the outcome without having to provide the argument behind it. The Intervenor's position was, and continues to be, that it is not opposed to releasing copies of the settlement agreement; however, it needed to be ordered to produce the documents. To the extent that the Respondent has located copies of public documents reported to pertain to the 2017 CARB Orders is not of concern to the Intervenor.

[47] Fourth, in terms of expert witness testimony, the Intervenor submits that if experts are properly qualified, they should be permitted to provide opinion evidence, whereas fact witnesses do not have that ability. Both Dr. Thompson and Mr. Minard have been qualified as expert witnesses and need not reply by way of sur-rebuttal but could qualify this evidence in oral testimony.

[48] The Intervenor also noted the Complainant's submission that it would only require two days to respond to the sur-rebuttal. To now complain of a lack of time is without basis.

Reasons for Decision and Findings

[49] The Panel will rely on the revised version of Exhibit 43-R (Exhibit 43-Rv2). The Panel is satisfied that the deletions shorten the document and were not necessary in the original filing. The filing of the replacement document was done on the morning of the date after which disclosure was required, and as a result the Panel finds the Complainant was not prejudiced by the removal of the pages.

[50] Between May 23-26, 2023, a Preliminary Matter was heard on the Respondent's request that the Panel exclude the Complainant's Rebuttal Disclosure or, in the alternative, that the Panel allow the rebuttal disclosure and postpone the scheduled merit hearing for at least six months to allow sufficient time for the Respondent to prepare and file sur-rebuttal. In a written decision issued by letter dated June 7, 2023, which was followed by ***Board Order LPRT2023/MG389*** dated July 17, 2023, the Panel declined to strike the Complainant's rebuttal disclosure, and directed that sur-rebuttal from the Respondent could be filed prior to July 12, 2023 and sur-sur-rebuttal could be filed by the Complainant by July 14, 2023.

[51] At that hearing, the Complainant had no objection to the filing of the sur-rebuttal by the Respondent, it suggested it would only require two days to file sur-rebuttal. The Panel finds that it was the Complainant who advised the Panel it could file its response within two days. To now suggest that is unfair given the alleged volume of the sur-rebuttal is without merit.

[52] The Respondent provided ample advice that if a sur-rebuttal was to be filed, what the information was that Dr. Thompson intended to address (witness report of Dr. Thomspon dated May 12, 2023 (Preliminary Hearing Exhibit P5R)). The Panel finds that the Complainant's submission that it was "ambushed" is not correct as the Respondent clearly identified what Dr. Thompson intended to include in his sur-rebuttal disclosure.

[53] The Panel also finds that very little of the rebuttal disclosure from the Complainant and the Respondent had been spoken to prior to this Preliminary Matter being heard. Accordingly, the Participants' positions addressing the Preliminary Matter were heard on the basis of what was filed and not the testimony of the witnesses supported by their disclosure. Certain portions of rebuttal reports were referred to in the testimony heard prior to the hearing of this matter; however, not the testimony supported by the rebuttal, sur-rebuttal, and sur-sur-rebuttal disclosures. The Panel finds itself in the position of adjudicating a request by the Complainant to strike Dr. Thompson's report, as well as the discussion on the 2017 CARB Orders pre-settlement, without having the benefit of hearing the testimony.

[54] The Complainant submitted that Dr. Thompson's sur-rebuttal is "inappropriate, irrelevant, case-splitting, hearsay and beyond the role of an expert." The Panel finds that without the benefit of hearing the evidence, the Panel is unable to determine if that is correct. However, the Complainant will have the opportunity to cross examine Dr. Thompson on his initial disclosure (Exhibits 24-R, 25-R, 26-R, and 47-Rv2) at which time the Complainant will be able to test the veracity of Dr. Thompson's testimony. The Panel finds that the appropriateness, relevancy, hearsay, and opinions beyond the role of the expert are matters that can be explored by the Complainant and the Panel will apply the appropriate weight to Dr. Thompson's testimony and disclosure.

[55] The Respondent also argued that while the Complainant referred to the 2017 CARB Orders in its original disclosure, it also argued that the evidence was compelling that the adjustment was based on the Edmonton area adjustment. However, in rebuttal, the Complainant further expanded on the effect of the 2017 CARB Orders. As a result, the Respondent felt it necessary to respond to the rebuttal evidence. The Panel finds this reasonable; however, the Panel will assess the testimony of the Respondent to ensure it is appropriate, relevant, not hearsay, and within the role of an expert to determine the appropriate weight to be provided to the testimony.

[56] The Panel finds that the issues raised by the Complainant in its initial filings appear to be changing. The assertion by the Complainant is that the Respondent is case-splitting based on the role of estimates in the determination of the excluded costs for the assessment, as well as the role of the 2017 CARB Orders, and the settlement agreements in determining whether an Edmonton area adjustment is appropriate. The Respondent, on the other hand, submits that it was the Complainant who first "split" the issues, and the Respondent is merely responding to the new evidence introduced by the Complainant. The Panel finds that in this regard, it will examine the evidence, once heard, to determine if there is sufficient evidence of case-splitting, and the Panel will determine in its decision how it will be dealt with if needed.

[57] The Panel finds the Respondent's reference to ***Elgert v Home Hardware Stores Limited, 2010 ABKB 66*** and para**.** 25 includes the following:

> There is now an over-arching concern for fairness in admissibility. Courts must look to the relevance or the importance of the evidence on a case specific basis. This is often referred to as the contextual approach. If the probative value of the evidence outweighs any risk associated with its admission, the evidence generally will be admitted. In many cases, the risk is reliability of the evidence. In the case of reply evidence, it is the risk of unwarranted trial delay, or adjudicative unfairness.

[58] The Panel finds that while the Court Rules of Evidence are not binding on the Panel, they are instructive. In this matter, the issues are complex and the clearer the disclosure is, the better the ability of the Panel to make a reasonable decision. The Respondent has provided a reasonable argument that the Complainant has entered new evidence and the Respondent is merely responding to it. The Panel finds this is fair. The Complainant's arguments concerning volume and "ambush" are noted; however, it was the

Complainant who submitted it only required two days to file sur-sur-rebuttal and should have been aware of the Respondent's sur-rebuttal based on Dr. Thompson's submission in May 2023.

ISSUE #2– The Respondent Requested That All Participants Either Be Shown on the Full Screen or in a Separate Window

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Party Positions

Respondent Position

[59] The hearing was conducted by virtual technology. Upon the testimony of the first Complainant Witness, the Respondent requested that all participants be shown either on the full screen or in a separate window.

[60] The Respondent submitted that at an in-person hearing, all participants are within the hearing room. While this is similar in a virtual hearing setting, the participants are not always capable of being observed in a virtual setting. The Respondent requested that all participants be observable.

Complainant Position

[61] The Complainant noted that it was the only party this appeared to apply to. It was agreeable to widen its lens for viewing, and to have witnesses when testifying on a separate screen. It also agreed to identify all those participating in the hearing, and in its board room to be identified each morning, as well as if participants left or joined the hearing.

Intervenor Position

[62] The Intervenor supported the Respondent position.

Decision and Findings

[63] The Parties agreed, and the Panel accepted, that all parties with multiple participants in the same room would be shown on a full screen, so that they could all be seen. Each morning, any party with multiple participants would identify who was in the room, and any persons leaving or joining would be identified.

ISSUE #3– The Intervenor Raised a Procedural Matter concerning the Capacity of Ms. K. Perry, Who was with the Complainant Participants

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Party Positions

Intervenor Position

[64] The Intervenor raised a procedural matter as to the capacity of Ms. K. Perry, who was attending as a participant with the Complainant. The Intervenor submitted that its belief of Ms. Perry's capacity was

that she was an employee of Suncor. It learned later that she is a lawyer. The Intervenor queried who Ms. Perry represented.

Complainant Position

[65] The Complainant submitted that the Intervenor had limited ability to raise procedural issues; however, advised that Ms. Perry was previously a Suncor employee in the property tax group at the time of the assessments. She recently began employment with PricewaterhouseCoopers ("PwC") in its legal department. She has been engaged by Suncor in her role at PwC.

Respondent Position

[66] The Respondent had no position on this matter; however, noted it was not the spokesperson for the Intervenor, and it was its position that the Intervenor could raise procedural issues.

Decision and Findings

[67] Ms. Perry's position was clarified, and the Intervenor was satisfied with the Complainant's response.

[68] The Panel also determined that the Intervenor was entitled to raise procedural issues.

ISSUE #4– The Intervenor Objected to the Complainant's Witnesses' Use of Power Point Presentations

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Party Positions

Intervenor Position

[69] The Intervenor raised its objection with the first Complainant witness and raised its objection with each ensuing witness. The Intervenor's position was that the power point presentations were disclosed too late and were deemed by the Intervenor as being new information. As a result of being filed late, often the day prior to the testimony or the day of testimony, the Intervenor did not have the opportunity to review or respond to the information. In addition, the Intervenor submitted that the presentations were a "script" for the witness, were created by legal counsel, and there was no case law or basis to consider allowing this type of disclosure. The Intervenor also submitted that if legal counsel created them, then in the rules of achieving a fair hearing, legal counsel ought to be examined as to why it chose the evidence it referred to.

Complainant Position

[70] The Complainant submitted that all the information on the power points comes from the witness disclosure which was filed on time. Each point raised also had a source reference to the witness's testimony shown on the corresponding power point slide.

[71] The Complainant also noted that previous Panels have allowed the use of power point presentations as an aid to the witness if it did not contain new evidence.

[72] The Complainant also noted that in normal circumstances the witness would prepare the power point. However, as previously identified to the Panel, Suncor experienced a significant data breach in early July 2023 and as a result, witnesses lost their access to Suncor's data and were unable to access their witness reports. Those reports had been provided electronically and without hard copies. To keep the hearing schedule, the Complainant legal counsel offered to assist the witnesses in the preparation of the power points.

[73] Legal counsel for the Complainant conceded that these were unusual circumstances; however, reaffirmed there was no new evidence introduced.

Respondent Position

[74] The Respondent confirmed it agreed with the Complainant that witnesses would be allowed to the use of power points to be expedient in the delivery of witness testimony. This understanding was on the basis that the presentations were verbatim from testimony that was in the disclosure.

[75] The Respondent's only issue was it would have preferred to have seen them submitted earlier.

Decision and Findings

[76] The Panel finds that the Complainant and Respondent had agreed earlier to allow the use of power point presentations. In that there is no new information contained within the power point presentations, the points raised are cross referenced to the source referenced.

[77] The Panel requested that power point presentations be provided as soon as possible prior to the witness testimony.

[78] The Panel also finds that the presentations are limited to information within the witness disclosure and cross referencing is required. The power points are witness aids provided to condense witness testimony to the highlights intended to be considered.

[79] The power points are to be provided to all parties and will be listed as Exhibits to this matter.

ISSUE #5– The Intervenor Raised a Point of Procedure as to Its Ability to Question Witnesses

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Party Positions

Intervenor Position

[80] The Intervenor submitted that its ability to question witnesses should not be restricted to having any of its questions be submitted to the Respondent, who would then determine whether or not to advance the question.

[81] The Intervenor submitted this put them in a difficult position, especially with respect to questions it may have to the Respondent's testimony.

Complainant Position

[82] The Complainant submitted that the role of the Intervenor was clearly enunciated in LPRT Decision ***Fort Hills Energy Corp. v Provincial Assessor, 2022 ABLPRT 1333***. The Complainant noted that the role of the Intervenor was based on prior Panel decisions and that it was the Intervenor who brought forward the proposal for its role. The Complainant did not support an amendment to the role of the Intervenor.

Respondent Position

[83] The Respondent stated it understood the difficult position the Intervenor considered it faced; however, the Respondent did not take a formal position.

Decision and Findings

[84] The Panel finds that the Intervenor was the party who suggested its role in this matter. It was based on a similar role of the Intervenor in a prior LPRT hearing.

[85] The Panel also finds the Panel Decision in ***Fort Hills Energy Corp. v Provincial Assessor, 2022 ABLPRT 1333*** was clear, and agreed to by the Intervenor. Accordingly, the Panel does not intend to stray from the agreed upon role of the Intervenor.

END OF PRELIMINARY AND PROCEDURAL MATTERS

APPENDIX "B"

EXHIBIT LIST FOR THE MERIT HEARING

LPRT Files: DIP19/FORT/WILS-01; DIP20/FORT/WILS-01; DIP21/FORT/WILS-01

Hearing Dates: July 18, 2023 to August 25, 2023 – Merit Hearing
Continued: September 12 – 15, 2023
October 4 – 6, 2023
November 6 – 10, 2023

Panel Members: Harold Williams (PO), Donald Roberts, Lana Yakimchuk, Bill Johnston, Dierdre Mullen

Exhibit #	Title/Author	Length (in pages)	Submission Date
1-C	Ryan Jackson Overview Report (Redacted)	195	2022-05-25
1-C	Ryan Jackson Overview Report (Unredacted)	195	"
1-C	Ryan Jackson Overview Report, Appendix 8 - Video	(mins)	"
2-C	Witness Report – Ryan Jackson SE (Redacted) (Secondary Extraction)	53	"
2-C	Witness Report – Ryan Jackson SE (Unredacted) (Secondary Extraction) (print – 3 volumes)	1033	"
3-C	Witness Report – Chris Woloshyn – OPP (Redacted) (Ore Processing Plant)	10	"
3-C	Witness Report – Chris Woloshyn – OPP (Unredacted) (Ore Processing Plant)	97	"
4-C	Design Changes – E&T – Chris Woloshyn (Redacted) (Extraction & Tailings)	12	"
4-C	Design Changes – E&T – Chris Woloshyn (Unredacted) (Extraction & Tailings)	257	"
5-C	Design Changes – F&CS – Chris Woloshyn (Redacted) (Facilities & Common Services)	6	"
5-C	Design Changes – F&CS – Chris Woloshyn (Unredacted) (Facilities & Common Services)	45	"
6-C	Witness Report – Matthew Colden – AET (Redacted) (Automation, Electrical, and Telecommunications)	17	"
6-C	Witness Report – Matthew Colden – AET (Unredacted) (Automation, Electrical, and Telecommunications)	335	"

7-C	Jeff Yarcky – Design Changes – U&C (Redacted) (Utilities and Cogeneration)	18	"
7-C	Jeff Yarcky – Design Changes – U&C (Unredacted) (Utilities and Cogeneration)	238	"
8-C	FH – SE Witness Report for Lubo Lliev (Fort Hills – Secondary Extraction)	38	"
9-C	FH – OPP Witness Report for Lubo Lliev (Fort Hills – Ore Processing Plant)	37	"
10-C	FH – U&C Witness Report for Lubo Lliev (Fort Hills – Utilities & Cogeneration)	38	"
11-C	FH – AET Witness Report for Lubo Lliev (Automation, Electrical, and Telecommunications)	39	"
12-C	FH – ET Witness Report for Lubo Lliev (Extraction and Tailings)	36	"
13-C	Soil Conditions Report - Parm Parmar (Redacted)	158	"
13-C	Soil Conditions Report - Parm Parmar (Unredacted)	158	"
14-C	Ben Matthews – Fort Hills Overview Witness Report (Redacted)	57	"
14-C	Ben Matthews – Fort Hills Overview Witness Report (Unredacted)	635	"
14-C Revised	Ben Matthews – Fort Hills Overview Witness Report (Unredacted) *(Appendix 31 Replaced)*		2023-09-29
14	Appendix 6 – Ben Matthews Witness Report – Secondary Extraction Rendition	Excel (3 sheets)	"
14	Appendix 7 – Ben Matthews Witness Report – Ore Preparation Plant Rendition Workbook	Excel (3 sheets)	"
14	Appendix 8 – Ben Matthews Witness Report – Utilities Cogen Rendition Workbook	Excel (4 sheets)	"
14	Appendix 9 – Ben Matthews Witness Report – Extraction and Tailings Rendition Workbook	Excel (3 sheets)	"
14	Appendix 10 – Ben Matthews Witness Report – Automation Electrical and Telecommunications Rend.	Excel (3 sheets)	"
14	Appendix 11 – Ben Matthews Witness Report – Facilities and Common Services Rendition	Excel (3 sheets)	"

14	Appendix 29 – Ben Matthews Witness Report – 2007 to 2018 reported projects	Excel (1 sheet)	"
14	Appendix 51 – Ben Matthews – Witness Report – Summary of Project Renditions	Excel (1 sheet)	"
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15b-C	Worley - Wong, Felix – CV, Feb 2022	4	"
16-C	Report of Fumio Otsu – Productivity Adjustments for Tax Assessment	64	"
17-C	Report of Ian Fluney, DMA – Witness Fort Hills	390	"
18-C	Legal Brief of the Complainant	42	"
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20-R	Witness Report of the Provincial Assessor, Michael Minard (print – 4 volumes)	1671	2023-01-13
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26-R	Report of Dr. Edward Thompson – Response to the Otsu Report	90	"
27-R	Legal Brief of the Respondent	70	"
28-R	Book of Authorities (print - 3 volumes)	1018	"
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30-C	Rebuttal Report of Ryan Jackson, with Schedule A	35	"

31-C	Rebuttal Report of Chris Woloshyn – OPP	59	"
32-C	Rebuttal Report of Chris Woloshyn – E&T	141	"
33-C	Rebuttal Report of Chris Woloshyn – F&CS	6	"
34-C	Rebuttal Report of Matthew Colden – AE&T	131	"
35-C	Rebuttal Report of Jeff Yarycky – Utilities & Cogen	124	"
36-C	Rebuttal Report of Lubo Iliev	25	"
37-C	Rebuttal Report of Ben Matthews	1111	"
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39-C	Rebuttal Report of Ian Fluney	18	"
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62-I	Intervenor's Position on Application to Strike Sur-Rebuttal Materials (as Ltr to D.Graham)	2 pages	2023-08-21
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65-C	Wilson Laycraft Ltr to LPRT re Suncor Settlement Agreement	2 pages	2023-11-02
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67-R	Summary of Respondent's Position	Excel – 1 sheet	2023-11-03
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APPENDIX "C"

COMMONLY USED ACRONYMS OR ABBREVIATIONS

3G	Third Generation Modularization
AET	Automation, Electrical and Telecommunications
APNS	Approved Non-Scope PCNs
bpd	Barrels Per Day
DBM	Design Basis Memorandum
E&T	Extractions and Tailings
EDS	Engineering Design Specification (same as FEED)
EPC	Engineering, Procurement, Fabrication& Construction
EPN	Electrical Protection Network
F&CS	Facilities and Common Services
FEED	Front End Execution and Design
FEL	Front End Loading
FHEC	Fort Hills Energy Corporation
ISBL	Inside Battery Limit (Inside the project boundary)
MAC	Main Automation Contractor
MEC	Main Electrical Contractor
MTC	Main Telecommunications Contractor
NDE	Non-destructive Testing
OAB	Quantity Adjusted Budget
OPP	Ore Processing Plant
OPTA	Out of Pit Tailings Aera
PCN	Project Change Notice
PFP	Passive Fire Protection'
PM0C	Project Management of Change
QAB	Quantity Adjusted Budget
QRA	Quantative Risk Assessment
RFI	Request for Information
SE	Secondary Extraction
U&C	Utilities and Cogeneration

COMPOSSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe Franco Canadienne de Calgary

Complainant

-and-

Foothill County Assessor

Respondent

Book of Authorities of the Complainant

La Societe Franco-Canadienne

Roll Number: 2004257520

Hearing Date: November 5th, 2024

WILSON LAYCRAFT
Barristers & Solicitors
#650, 211 – 11th Avenue SW
Calgary, AB T2R 0C6
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TAB 1

Province of Alberta

MUNICIPAL GOVERNMENT ACT

Revised Statutes of Alberta 2000
Chapter M-26

Current as of June 21, 2024

Office Consolidation

Alberta King's Printer
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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2022 c16 s9(63) amends s297; s9(64) amends s298(1)(y); s9(65) repeals and substitutes s354(3.1).

2024 c11 s2(24) amends s317(d); s2(25) amends s363.

2017 c13 s1(4) repeals Division 5 of Part 3; s1(39) repeals and substitutes Division 4 of Part 10 ss380.1 to 380.5; s1(40) amends s410(e); s1(41) amends s437(c); s1(61) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) amends s666; s1(62) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) amends s667; s1(63) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) amends s670(1); s1(64) (repealed by 2013 cS-19.3 s3 - effective December 31, 2023) adds s670.2.

2020 c35 s24 amends s596(1)(b).

2024 c11 s2 amends ss162, 168(1)(a); repeals and substitutes the heading preceding s169; amends ss169, 170; adds ss172.1 and 172.2; amends s175; adds s175.1; adds Part 5, Division 8.1 and s179.1; amends s199; repeals and substitutes s201.1(1) and (2); amends ss216.4, 240.1(2), 240.2(4)(a), 240.3(a), 240.7, 240.8; repeals and substitutes ss240.9 and 240.91(1) and (2); amends s240.92(1); adds s240.941; amends ss304(1), 364.2, 437(c)(iii), 540(d.1); adds ss603.01 and 615.11; amends ss670.1, 694(1).

Regulations

The following is a list of the regulations made under the *Municipal Government Act* that are filed as Alberta Regulations under the Regulations Act.

	Alta. Reg.	*Amendments*
Municipal Government Act		
Aeronautics Act Agreements	33/2014	*10/2016, 157/2020*
Airport Vicinity Protection Areas		
Calgary International	177/2009	*192/2010, 71/2014, 186/2017, 177/2018, 124/2019, 158/2020, 34/2021, 163/2021*
Edmonton International	55/2006	*86/2016, 185/2017, 83/2022, 22/2024*
Business Improvement Area	93/2016	*123/2021, 91/2024*
Calgary Metropolitan Region Board	190/2017	*102/2021, 53/2022, 218/2022*
Canmore Undermining Exemption from Liability	113/97	*221/2004*
Canmore Undermining Review	34/2020	
City of Airdrie Downtown Community Revitalization Levy	253/2022	
City of Calgary Charter, 2018	40/2018	*18/2019, 56/2019, 187/2019, 216/2022, 218/2022, 99/2024*
NOTE: Certain provisions of AR 18/2019 *come into force on later dates. See AR 40/2018.*		
City of Calgary Rivers District Community Revitalization Levy	232/2006	*181/2016, 266/2018, 85/2024*
City of Edmonton Belvedere Community Revitalization Levy	57/2010	*234/2020, 86/2024*
City of Edmonton Capital City Downtown Community Revitalization Levy	141/2013	*131/2023*
City of Edmonton Charter, 2018	39/2018	*19/2019, 56/2019, 187/2019, 216/2022, 218/2022, 100/2024*
NOTE: Certain provisions of AR 19/2019 come into force on later dates. See AR 39/2018.		
City of Edmonton the Quarters Downtown Community Revitalization Levy	173/2010	*235/2020, 87/2024*
Clean Energy Improvements	212/2018	*153/2020*
Cochrane Community Revitalization Levy	204/2012	*254/2022, 88/2024*
Code of Conduct for Elected Officials	200/2017	
Community Aggregate Payment Levy	263/2005	*187/2010, 175/2015, 196/2017, 205/2022*

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Crown Land Area Designation....239/2003 ..... *29/2013, 204/2017*
Debt Limit....255/2000 ..... *25/2005, 100/2006, 253/2009, 5/2010, 13/2013, 171/2015, 294/2020, 61/2022*
Edmonton Metropolitan Region Board....189/2017 ..... *103/2021, 218/2022*
Financial Information Return....158/2000 ..... *71/2004, 35/2007, 68/2008, 170/2009, 112/2014, 191/2018*
Matters Related to Subdivision and Development....84/2022 ..... *216/2022*
Matters Relating to Assessment Complaints, 2018....201/2017 ..... *218/2022, 258/2022*
Matters Relating to Assessment Sub-classes....202/2017 ..... *Rep. 92/2024*
NOTE: AR 92/2024 comes into force Jan 1, 2025
Matters Relating to Assessment Sub-classes Repeal....92/2024
NOTE: AR 92/2024 comes into force Jan 1, 2025
Matters Relating to Assessment and Taxation, 2018....203/2017 ..... *185/2018, 146/2019, 256/2022, 93/2024*
NOTE: AR 93/2024 comes into force Jan 1, 2025
Municipal Census....88/2023
Municipal Corporate Planning....192/2017
Municipal Gas Systems Core Market....93/2001 ..... *354/2003, 254/2007, 129/2008, 127/2013, 183/2017, 24/2020, 128/2024*
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MUNICIPAL GOVERNMENT ACT

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Preamble

WHEREAS Alberta's municipalities, governed by democratically elected officials, are established by the Province, and are empowered to provide responsible and accountable local governance in order to create and sustain safe and viable communities;

WHEREAS Alberta's municipalities play an important role in Alberta's economic, environmental and social prosperity today and in the future;

WHEREAS the Government of Alberta recognizes the importance of working together with Alberta's municipalities in a spirit of partnership to co-operatively and collaboratively advance the interests of Albertans generally; and

WHEREAS the Government of Alberta recognizes that Alberta's municipalities have varying interests and capacity levels that require flexible approaches to support local, intermunicipal and regional needs;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

(a) "ALSA regional plan" means a regional plan as defined in the *Alberta Land Stewardship Act*;

(a.1) "business" means

(i) a commercial, merchandising or industrial activity or undertaking,

(ii) a profession, trade, occupation, calling or employment, or

(iii) an activity providing goods or services,

whether or not for profit and however organized or formed, including a co-operative or association of persons;

(b) "by-election" means an election to fill a vacancy on a council other than at a general election;

(c) "chief administrative officer" means a person appointed to a position under section 205;

(d) "chief elected official" means the person elected or appointed as chief elected official under section 150;

(e) "council" means

(i) the council of a city, town, village, summer village, municipal district or specialized municipality,

(ii) repealed 1995 c24 s2,

(iii) the council of a town under the *Parks Towns Act*, or

(iv) the council of a municipality incorporated by a special Act;

(f) "council committee" means a committee, board or other body established by a council under this Act but does not include an assessment review board established under section 454 or a subdivision and development appeal board established under section 627;

(g) "councillor" includes the chief elected official;

(h) "designated officer" means a person appointed to a position established under section 210(1);

(i) "elector" means a person who is eligible to vote in the election for a councillor under the *Local Authorities Election Act*;

(j) "enactment" means

(i) an Act of the Legislature of Alberta and a regulation made under an Act of the Legislature of Alberta, and

(ii) an Act of the Parliament of Canada and a statutory instrument made under an Act of the Parliament of Canada,

but does not include a bylaw made by a council;

(k) "general election" means an election held to fill vacancies on council caused by the passage of time, and includes a first election;

(k.1) "growth management board" means a growth management board established under Part 17.1;

(k.2) "Indian band" means a band within the meaning of the *Indian Act* (Canada);

(k.3) "Indian reserve" means a reserve within the meaning of the *Indian Act* (Canada);

(l) "Land and Property Rights Tribunal" means the Land and Property Rights Tribunal established under the *Land and Property Rights Tribunal Act*;

(m) "local authority" means

(i) a municipal authority,

(ii) a provincial health agency or regional health authority under the *Provincial Health Agencies Act*,

(iii) a regional services commission, and

(iv) the board of trustees of a school division under the *Education Act*;

(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

(o) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(p) "municipal authority" means a municipality, improvement district and special area and, if the context requires, in the case of an improvement district and special area,

(i) the geographical area of the improvement district or special area, or

(ii) the Minister, where the improvement district or special area is authorized or required to act;

(q) repealed 2020 cL-2.3 s24(2);

(r) "municipal purposes" means the purposes set out in section 3;

(s) "municipality" means

(i) a city, town, village, summer village, municipal district or specialized municipality,

(ii) repealed 1995 c24 s2,

(iii) a town under the *Parks Towns Act*, or

(iv) a municipality formed by special Act,

or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iv);

(t) "natural person powers" means the capacity, rights, powers and privileges of a natural person;

(u) "owner" means

(i) in respect of unpatented land, the Crown,

(ii) in respect of other land, the person who is registered under the *Land Titles Act* as the owner of the fee simple estate in the land, and

(iii) in respect of any property other than land, the person in lawful possession of it;

(v) "parcel of land" means

(i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;

(ii) where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;

(iii) a quarter section of land according to the system of surveys under the *Surveys Act* or any other area of land described on a certificate of title;

(w) "pecuniary interest" means pecuniary interest within the meaning of Part 5, Division 6;

(x) "population" means population as determined by, and specified by order of, the Minister under section 604.1;

(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(i) water or steam;

(ii) sewage disposal;

(iii) public transportation operated by or on behalf of the municipality;

(iv) irrigation;

(v) drainage;

(vi) fuel;

(vii) electric power;

(viii) heat;

(ix) waste management;

(x) residential and commercial street lighting,

and includes the thing that is provided for public consumption, benefit, convenience or use;

(y.1) "regional services commission" means a regional services commission under Part 15.1;

(z) "road" means land

(i) shown as a road on a plan of survey that has been filed or registered in a land titles office, or

(ii) used as a public road,

and includes a bridge forming part of a public road and any structure incidental to a public road;

(z.1) "summer village residence" means a parcel of land having at least one building the whole or any part of which was designed or intended for, or is used as, a residence by one person or as a shared residence by 2 or more persons, whether on a permanent, seasonal or occasional basis;

(aa) "tax" means

(i) a property tax,

(ii) a business tax,

(iii) a business improvement area tax,

(iii.1) a community revitalization levy,

(iv) a special tax,

(v) a well drilling equipment tax,

(v.1) a clean energy improvement tax,

(vi) a local improvement tax, and

(vii) a community aggregate payment levy;

(bb) "taxpayer" means a person liable to pay a tax;

(cc) "whole council" means

(i) all of the councillors that comprise the council under section 143,

(ii) if there is a vacancy on council and the council is not required to hold a by-election under section 162 or 163, the remaining councillors, or

(iii) if there is a vacancy on council and the Minister orders that the remaining councillors constitute a quorum under section 160 or 168, the remaining councillors.

(1.1) Repealed 2019 c22 s10(2).

(1.2) In this Act, a reference to a body of water is to be interpreted as a reference to

(a) a permanent and naturally occurring water body, or

(b) a naturally occurring river, stream, watercourse or lake.

(2) For the purposes of this Act, a municipality or group of municipalities controls a corporation if

(a) the municipality or group of municipalities hold, other than by way of security only, securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation and, if exercised, are sufficient to elect a majority of the directors of the corporation, or

(b) all or a majority of its members or directors are appointed by the municipality or group of municipalities.

(2.1) For the purposes of the definition of "summer village residence" in subsection (1)(z.1), "building" includes

(a) a manufactured home, as defined in section 284(1)(m),

(b) a mobile home, as defined in section 284(1)(n.1),

(c) a modular home, as defined in section 284(1)(n.2), or

(d) a travel trailer, as defined in section 284(1)(w.1),

but does not include a tent.

(3) For the purposes of this Act, a meeting or part of a meeting is considered to be closed to the public if

(a) any members of the public are not permitted to attend the entire meeting or part of the meeting,

(b) the council, committee or other body holding the meeting instructs any member of the public to leave the meeting or part of the meeting, other than for improper conduct, or

(c) the council, committee or other body holding the meeting holds any discussions separate from the public during the meeting or part of the meeting.

RSA 2000 cM-26 s1;2005 c14 s2;2012 cE-0.3 s279;2013 c17 s2;2015 c8 s2;2016 c24 s4;2017 c13 s1(2);2017 c22 s38;2018 c6 s2;2019 c22 s10(2);2020 cL-2.3 s24(2);2022 c16 s9(2);2023 c9 s19(2) 2024 c10 s31

Application of Act

2(1) This Act applies to all municipalities and improvement districts.

(2) If there is an inconsistency between this Act and

(a) repealed 1995 c24 s3,

(b) the *Parks Towns Act*, or

(c) a special Act forming a municipality,

the other Act prevails.

1994 cM-26.1 s2;1995 c24 s3

(7) The Minister may make regulations respecting financial plans and capital plans, including, without limitation, regulations

(a) respecting the form and contents of financial plans and capital plans;

(b) specifying the first financial year required to be reflected in a financial plan;

(c) specifying the first financial year required to be reflected in a capital plan.

2015 c8 s40

Part 9
Assessment of Property

Interpretation provisions for Parts 9 to 12

284(1) In this Part and Parts 10, 11 and 12,

(a) "assessed person" means a person who is named on an assessment roll in accordance with section 304;

(b) "assessed property" means property in respect of which an assessment has been prepared;

(c) "assessment" means a value of property determined in accordance with this Part and the regulations;

(d) "assessor" means

(i) the provincial assessor, or

(ii) a municipal assessor,

and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);

(e) "council" includes

(i) a collecting board that is authorized under section 177 of the *Education Act* to impose and collect taxes in a school division as defined in that Act, and

(ii) the Minister, in respect of an improvement district or special area;

(f) "Crown" means the Crown in right of Alberta, and includes a Provincial agency as defined in the *Financial*

Administration Act and an agent of the Crown in right of Alberta;

(f.01) "designated industrial property" means

(i) facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator,

(ii) linear property,

(iii) property designated as a major plant by the regulations,

(iv) land and improvements in respect of a parcel of land where that parcel of land contains property described in subclause (i) or (iii), and

(v) land and improvements in respect of land in which a leasehold interest is held where the land is not registered in a land titles office and contains property described in subclause (i) or (iii);

(f.1) "designated manufactured home" means a manufactured home, mobile home, modular home or travel trailer;

(g) repealed 2016 c24 s21;

(g.1) "extended area network" has the meaning given to it in the regulations;

(h) "farm building" has the meaning given to it in the regulations;

(i) "farming operations" has the meaning given to it in the regulations;

(j) "improvement" means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home,

(iii.1) linear property, and

(iv) machinery and equipment;

(k) "linear property" means

(i) electric power systems, which has the meaning given to that term in the regulations,

(ii) street lighting systems, which has the meaning given to that term in the regulations,

(iii) telecommunication systems, which has the meaning given to that term in the regulations,

(iv) pipelines, which has the meaning given to that term in the regulations,

(v) railway property, which has the meaning given to that term in the regulations, and

(vi) wells, which has the meaning given to that term in the regulations;

(l) "machinery and equipment" has the meaning given to it in the regulations;

(m) "manufactured home" means any structure, whether ordinarily equipped with wheels or not, that is manufactured to meet or exceed the Canadian Standards Association standard CSA Z240 and that is used as a residence or for any other purpose;

(n) "manufactured home community" means a parcel of land that

(i) is designated in the land use bylaw of a municipality as a manufactured home community, and

(ii) includes at least 3 designated manufactured home sites that are rented or available for rent;

(n.1) "mobile home" means a structure that is designed to be towed or carried from place to place and that is used as a residence or for any other purpose, but that does not meet Canadian Standards Association standard CSA Z240;

(n.2) "modular home" means a home that is constructed from a number of pre-assembled units that are intended for delivery to and assembly at a residential site;

(n.3) "municipal assessment roll" means the assessment roll prepared by a municipality under section 302(1);

(n.4) "municipal assessor" means a designated officer appointed under section 284.2 to carry out the functions, duties and powers of a municipal assessor under this Act;

(o) "municipality" includes

(i) a school division, as defined in the *Education Act*, in which a collecting board is authorized under section 177 of that Act to impose and collect taxes or, where the school division is authorized or required to act, the collecting board, and

(ii) an improvement district and a special area or, where the improvement district or special area is authorized or required to act, the Minister;

(o.1) "operational" has the meaning given to it in the regulations;

(p) "operator" has the meaning given to it in the regulations;

(q) "owner", in respect of a designated manufactured home, means the owner of the designated manufactured home and not the person in lawful possession of it;

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

(r.1) "provincial assessment roll" means the assessment roll prepared by the provincial assessor under section 302(2);

(r.2) "provincial assessor" means the provincial assessor designated under section 284.1;

(s), (t) repealed 2016 c24 s21;

(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land;

(u.1) "SuperNet" has the meaning given to it in the regulations;

(v), (w) repealed 2016 c24 s21;

(w.1) "travel trailer" means a trailer intended to provide accommodation for vacation use and licensed and equipped to travel on a road;

(x) "year" means a 12-month period beginning on January 1 and ending on the next December 31.

(2) In this Part and Parts 10, 11 and 12, a reference to a parcel of land that is held under a lease, licence or permit from the Crown in right of Alberta or Canada includes a part of the parcel.

(2.1) For the purposes of subsection (1)(f.01)(i), a facility regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator includes all components of the facility, including any machinery and equipment, buildings and structures servicing or related to the facility and land on which the facility is located.

(3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.

(4) In this Part and Parts 11 and 12, "complaint deadline" means 60 days after the notice of assessment date set under section 308.1 or 324(2)(a.1).

RSA 2000 cM-26 s284; 2007 cA-37.2 s82(17);2007 c42 s3; 2009 c29 s2;2012 cE-0.3 s279;2015 c8 s41;2016 c24 ss21,140; 2017 c13 s1(20);2021 c22 s2;2022 c16 s9(62)

Provincial assessor

284.1(1) The Minister must designate a person having the qualifications set out in the regulations as the provincial assessor to carry out the functions, duties and powers of the provincial assessor under this Act.

(2) Subject to the regulations, the provincial assessor may delegate to any person any power or duty conferred or imposed on the provincial assessor by this Act.

(3) The provincial assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the provincial assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Municipal assessor

284.2(1) A municipality must appoint a person having the qualifications set out in the regulations to the position of designated

officer to carry out the functions, duties and powers of a municipal assessor under this Act.

(2) Subject to the regulations, a municipal assessor may delegate to any person any power or duty conferred or imposed on the municipal assessor by this Act.

(3) A municipal assessor is not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of the municipal assessor's functions, duties or powers under this Act or any other enactment.

2016 c24 s22

Division 1
Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except designated industrial property and the property listed in section 298.

RSA 2000 cM-26 s285;2002 c19 s2;2016 c24 s135

286 Repealed 1994 cM-26.1 s286.

287 Repealed 1994 cM-26.1 s287.

288 Repealed 1994 cM-26.1 s288.

Assessments for property other than designated industrial property

289(1) Assessments for all property in a municipality, other than designated industrial property, must be prepared by the municipal assessor.

(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

(2.1) If the provincial assessor and a municipal assessor assess the same property, the municipality in which the property is situated must rescind the municipal assessment and notify the assessed person.

(3), (4) Repealed 2016 c24 s23.

RSA 2000 cM-26 s289;2009 c29 s3;2016 c24 s23

Land to be assessed as a parcel

290(1) If a parcel of land is located in more than one municipality, the assessor must prepare an assessment for the part of the parcel that is located in the municipality in which the assessor has the authority to act, as if that part of the parcel is a separate parcel of land.

(2) Any area of land forming part of a right of way for a railway, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act* but used for purposes other than the operation of the railway, irrigation works or drainage works must be assessed as if it is a parcel of land.

(3) Any area of land that is owned by the Crown in right of Alberta or Canada and is the subject of a grazing lease or grazing permit granted by either Crown must be assessed as if it is a parcel of land.

(4) Repealed 1995 c24 s37.

1994 cM-26.1 s290;1995 c24 s37;1999 cI-11.7 s214

Assessment of condominium unit

290.1(1) Each unit and the share in the common property that is assigned to the unit must be assessed

(a) in the case of a bare land condominium, as if it is a parcel of land, or

(b) in any other case, as if it is a parcel of land and the improvements to it.

(2) In this section, "unit" and "share in the common property" have the meanings given to them in the *Condominium Property Act*.

1995 c24 s38

Assessment of strata space

290.2 Each strata space as defined in section 86 of the *Land Titles Act* must be assessed as if it is a parcel of land and the improvements to it.

1995 c24 s38

Rules for assessing improvements

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

(2) No assessment is to be prepared

(a) for new linear property that is not operational on or before October 31,

(b) for new improvements, other than designated industrial property improvements, that are intended to be used for or in connection with a manufacturing or processing operation and that are not operational on or before December 31,

(c) for new designated industrial property improvements, other than linear property, that are intended to be used for or in connection with a manufacturing or processing operation and that are not operational on or before October 31,

(d) for new improvements, other than designated industrial property improvements, that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (b), if the improvements referred to in clause (b) are not operational on or before December 31, or

(e) for new designated industrial property improvements, other than linear property, that are intended to be used for the storage of materials manufactured or processed by the improvements referred to in clause (c), if the improvements referred to in clause (c) are not operational on or before October 31.

(2.1) Notwithstanding subsection (2), an assessment must be prepared for new improvements, whether complete or not, on a property or a portion of a property where the improvements do not contain machinery and equipment intended to be used in connection with the manufacturing and processing operation even if another portion of the property contains a manufacturing or processing operation.

(3) to **(5)** Repealed 2016 c24 s24.

RSA 2000 cM-26 s291;2008 c24 s2;2016 c24 s24; 2019 c22 s10(8)

Assessments for designated industrial property

292(1) Assessments for designated industrial property must be prepared by the provincial assessor.

(2) Each assessment must reflect

(a) the valuation standard set out in the regulations for designated industrial property, and

(b) the specifications and characteristics of the designated industrial property as specified in the regulations.

(2.1) The specifications and characteristics of the designated industrial property referred to in subsection (2)(b) must reflect

(a) the records of the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator, as the case may be, on October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the designated industrial property, and

(b) any other source of information that the provincial assessor considers relevant, as at October 31 of the year prior to the year in which the tax is imposed under Part 10 in respect of the designated industrial property.

(2.2) Information received by the provincial assessor from the Alberta Energy Regulator, the Alberta Utilities Commission or the Canadian Energy Regulator is deemed to be correct for the purposes of preparing assessments.

(3) to **(5)** Repealed 2016 c24 s25.

RSA 2000 cM-26 s292;2007 cA-37.2 s82(17);
2008 c37 s2;2012 cR-17.3 s95;2016 c24 s25;
2022 c16 s9(62)

Duties of assessors

293(1) In preparing an assessment, an assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

(3) The municipal assessor must, in accordance with the regulations, provide the Minister or the provincial assessor with information that the Minister or the provincial assessor requires about property in the municipality.

RSA 2000 cM-26 s293;2002 c19 s3;2009 c29 s4;
2016 c24 s26

Right to enter on and inspect property

294(1) After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purpose of carrying out the duties and responsibilities of the assessor under Parts 9 to 12 and the regulations,

(a) enter on and inspect the property,

(b) request anything to be produced, and

(c) make copies of anything necessary to the inspection.

(2) When carrying out duties under subsection (1), an assessor must produce identification on request.

(3) An assessor must, in accordance with the regulations, inform the owner or occupier of any property of the purpose for which information is being collected under this section and section 295.

RSA 2000 cM-26 s294;2002 c19 s4;2017 c13 s1(21)

Duty to provide information

295(1) A person must provide, on request by an assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

(2) The Alberta Safety Codes Authority or an agency accredited under the *Safety Codes Act* must release, on request by an assessor, information or documents respecting a permit issued under the *Safety Codes Act*.

(3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.

(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of designated industrial property, under section 492(1) about an assessment if the person has failed to provide any information requested under subsection (1) within 60 days from the date of the request.

(5) Information collected under this section must be reported to the Minister on the Minister's request.

(6) Despite section 294(1) and subsection (1) of this section, where an assessment of property is the subject of a complaint under Part 11 or 12 by the person assessed in respect of that property,

(a) the assessed person is not obligated to provide information or produce anything to an assessor in respect of that assessment, and

(b) the assessor has no authority under section 294(1)(c) to make copies of anything the assessed person refuses to provide or produce relating to that assessment

until after the complaint has been heard and decided by the assessment review board or the Land and Property Rights Tribunal, as the case may be.

RSA 2000 cM-26 s295;2002 c19 s5;2016 c24 s27;
2017 c13 s2(6);2020 cL-2.3 24(41)

Assessor not bound by information received

295.1 An assessor is not bound by the information received under section 294 or 295 if the assessor has reasonable grounds to believe that the information is inaccurate.

2019 c22 s10(9)

Court authorized inspection and enforcement

296(1) The provincial assessor or a municipality may apply to the Court of King's Bench for an order under subsection (2) if any person

(a) refuses to allow or interferes with an entry or inspection by an assessor, or

(b) refuses to produce anything requested by an assessor to assist the assessor in preparing an assessment or determining if property is to be assessed.

(2) The Court may make an order

(a) restraining a person from preventing or interfering with an assessor's entry or inspection, or

(b) requiring a person to produce anything requested by an assessor under section 294 or 295.

(3) A copy of the application and each affidavit in support must be served at least 3 days before the day named in the application for the hearing.

RSA 2000 cM-26 s296;2009 c53 s119;2016 c24 s28;AR 217/2022

Assigning assessment classes to property

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

(a) class 1 - residential;

(b) class 2 - non-residential;

(c) class 3 - farm land;

(d) class 4 - machinery and equipment.

(2) A council may by bylaw divide class 1 into sub-classes on any basis it considers appropriate, and if the council does so, the assessor may assign one or more sub-classes to property in class 1.

(2.1) A council may by bylaw divide class 2 into the sub-classes prescribed by the regulations, and if the council does so, the assessor must assign one or more of the prescribed sub-classes to a property in class 2.

(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the portion of the assessment attributable to each assessment class or sub-class.

(4) In this section,

(a) "farm land" means land used for farming operations as defined in the regulations;

(a.1) "machinery and equipment" does not include

(i) any thing that falls within the definition of linear property as set out in section 284(1)(k), or

(ii) any component of a manufacturing or processing facility that is used for the cogeneration of power;

(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;

(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

RSA 2000 cM-26 s297;2002 c19 s6;
2016 c24 s29;2017 c13 s2(7)

Non-assessable property

298(1) No assessment is to be prepared for the following property:

(a) a facility, works or system for

(i) the collection, treatment, conveyance or disposal of sanitary sewage, or

(ii) storm sewer drainage,

that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

(b) a facility, works or system for the storage, conveyance, treatment, distribution or supply of water that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

(b.1) a water supply and distribution system, including metering facilities, that is owned or operated by an individual or a corporation and used primarily to provide a domestic water supply service;

(c) irrigation works as defined in the *Irrigation Districts Act* and the land on which they are located when they are held by an irrigation district, but not including any residence or the land attributable to the residence;

(d) canals, dams, dikes, weirs, breakwaters, ditches, basins, reservoirs, cribs and embankments;

(e) flood-gates, drains, tunnels, bridges, culverts, headworks, flumes, penstocks and aqueducts

(i) located at a dam,

(ii) used in the operation of a dam, and

(iii) used for water conservation or flood control, but not for the generation of electric power;

(f) land on which any property listed in clause (d) or (e) is located

(i) if the land is a dam site, and

(ii) whether or not the property located on the land is used for water conservation, flood control or the generation of electric power;

(g) a water conveyance system operated in connection with a manufacturing or processing plant, including any facilities designed and used to treat water to meet municipal standards, but not including any improvement designed and used for

(i) the further treatment of the water supply to meet specific water standards for a manufacturing or processing operation,

(ii) water reuse,

(iii) fire protection, or

(iv) the production or transmission of a natural resource;

(h) a sewage conveyance system operated in connection with a manufacturing or processing plant, including any facilities designed and used to treat and dispose of domestic sewage, but not including any improvement designed and used for the treatment of other effluent from the manufacturing or processing plant;

(i) roads, but not including a road right of way that is held under a lease, licence or permit from the Crown in right of Alberta or Canada or from a municipality and that is used for a purpose other than as a road;

(i.1) weigh scales, inspection stations and other improvements necessary to maintain the roads referred to in clause (i) and to keep those roads and users safe, but not including a street lighting system owned by a corporation, a municipality or a corporation controlled by a municipality;

(j) property held by the Crown in right of Alberta or Canada in a municipal district, improvement district, special area or specialized municipality that

(i) is not used or actively occupied by the Crown, or

(ii) is not occupied under an interest or right granted by the Crown,

unless the property is located in a hamlet or in an urban service area as defined in an order creating a specialized municipality;

(k) any provincial park or recreation area, including any campground, day use area or administration and maintenance facility held by the Crown in right of Alberta or operated under a facility operation contract or service contract with the Crown in right of Alberta, but not including the following:

(i) a residence and the land attributable to it;

(ii) property that is the subject of a disposition under the *Provincial Parks Act* or the *Public Lands Act*;

(iii) a downhill ski hill, golf course, food concession, store or restaurant, and the land attributable to it, operated under a facility operation contract or a service contract with the Crown in right of Alberta;

(k.1) any national park held by the Crown in right of Canada, but not including a parcel of land, an improvement, or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Canada;

(l) property held by the Crown in right of Alberta or Canada and forming part of an undertaking in respect of the conservation, reclamation, rehabilitation or reforestation of land, but not including any residence or the land attributable to the residence;

(m) property used for or in connection with a forestry tower that is not accessible by road;

(n) any interest under a timber disposition under the *Forests Act* and the timber harvest or cut authorized by the disposition;

(o) any interest under a permit or authorization for the grazing of stock under the *Forests Act* or the *Forest Reserves Act*;

(p) wheel loaders, wheel trucks and haulers, crawler type shovels, hoes and dozers;

(q) linear property used exclusively for farming operations;

(r) linear property forming part of a rural gas distribution system and gas conveyance pipelines situated in a rural municipality where that linear property is owned by a municipality or a rural gas co-operative association organized under the *Rural Utilities Act*, but not including gas conveyance pipelines owned by rural gas co-operative associations,

(i) from the regulating and metering station to an industrial customer consuming more than 10 000 gigajoules of gas during any period that starts on November 1 in one year and ends on October 31 in the next year and that precedes the year in which the assessment for those pipelines is to be used for the purpose of imposing a tax under Part 10, or

(ii) that serve or deliver gas to

(A) a city, town, village, summer village or hamlet, or

(B) an urban service area as defined in an order creating a specialized municipality

that has a population of more than 500 people;

(r.1) linear property forming part of a rural gas distribution system where that gas distribution system is subject to a franchise area approval under the *Gas Distribution Act*;

(s) cairns and monuments;

(t) property in Indian reserves;

(u) property in Metis settlements;

(v) minerals;

(w) growing crops;

(x) the following improvements owned or leased by a regional airports authority created under section 5(2) of the *Regional Airports Authorities Act*:

(i) runways;

(ii) paving;

(iii) roads and sidewalks;

(iv) reservoirs;

(v) water and sewer lines;

(vi) fencing;

(vii) conveyor belts, cranes, weigh scales, loading bridges and machinery and equipment;

(viii) pole lines, transmission lines, light standards and unenclosed communications towers;

(y) farm buildings, except to the extent prescribed in the regulations;

(z) machinery and equipment, except to the extent prescribed in the regulations;

(aa) designated manufactured homes held in storage and forming part of the inventory of a manufacturer of or dealer in designated manufactured homes;

(bb) travel trailers that are

(i) not connected to any utility services provided by a public utility, and

(ii) not attached or connected to any structure;

(cc) linear property in the extended area network that is used for SuperNet purposes.

(2) In subsection (1)(r)(i), "industrial customer" means a customer that operates a factory, plant, works or industrial process related to manufacturing and processing.

(3) Despite subsection (1)(cc), where linear property referred to in that provision is used for business, the linear property is, subject to the regulations, assessable to the extent the linear property is used for business.

RSA 2000 cM-26 s298;2005 c14 s4;2015 c8 s42

Access to municipal assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive information prescribed by the regulations that is in the municipal assessor's possession at the time of the request, showing how the municipal assessor prepared the assessment of that person's property.

(2) Subject to subsection (3) and the regulations, the municipality must comply with a request under subsection (1).

(3) Where a complaint is filed under section 461 by the person assessed in respect of property, a municipality is not obligated to respond to a request by that person for information under this section in respect of an assessment of that property until the complaint has been heard and decided by an assessment review board.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

RSA 2000 cM-26 s299;2009 c29 s5;2016 c24 s30;2017 c13 s2(8)

Access to provincial assessment record

299.1(1) An assessed person may ask the provincial assessor, in the manner required by the provincial assessor, to let the assessed

person see or receive information prescribed by the regulations in the provincial assessor's possession at the time of the request, showing how the provincial assessor prepared the assessment of that person's designated industrial property.

(2) Subject to subsection (3) and the regulations, the provincial assessor must comply with a request under subsection (1).

(3) Where a complaint described in section 492(1) is filed under section 491(1) by the person assessed in respect of designated industrial property, the provincial assessor is not obligated to respond to a request by that person for information under this section in respect of an assessment of that designated industrial property until the complaint has been heard and decided by the Land and Property Rights Tribunal.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

2016 c24 s30;2017 c13 s2(8);2020 cL-2.3 s24(41)

Municipal access to provincial assessment record

299.2(1) A municipality may ask the provincial assessor, in the manner required by the provincial assessor, to let the municipality see or receive information in the provincial assessor's possession at the time of the request, showing how the provincial assessor prepared the assessment of designated industrial property in the municipality.

(2) Subject to subsection (3) and the regulations, the provincial assessor must comply with a request under subsection (1).

(3) Where a complaint described in section 492(1) is filed under section 491(1) by a municipality in respect of designated industrial property, the provincial assessor is not obligated to respond to a request by that municipality for information under this section in respect of an assessment of that designated industrial property until the complaint has been heard and decided by the Land and Property Rights Tribunal.

(4) Subsection (3) does not apply if the request for information is in respect of an amended assessment and the amended assessment notice was issued during the complaint period.

(5) Information obtained by a municipality under this section must be used only for assessment purposes and must not be disclosed except at the hearing of a complaint before the Land and Property Rights Tribunal.

2016 c24 s30;2017 c13 s2(8);2020 cL-2.3 s24(41)

Access to summary of municipal assessment

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the most recent assessment of any assessed property in the municipality of which the assessed person is not the owner.

(2) For the purposes of subsection (1), a summary of the most recent assessment must include the following information that is in the municipal assessor's possession or under the municipal assessor's control at the time of the request:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size and measurements of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key attributes of any improvements to the parcel of land;

(e) the assessed value and any adjustments to the assessed value of the parcel of land;

(f) any other information prescribed or otherwise described in the regulations.

(3) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s300;2009 c29 s6;2016 c24 s31

Access to summary of provincial assessment

300.1(1) An assessed person may ask the provincial assessor, in the manner required by the provincial assessor, to let the assessed person see or receive a summary of the most recent assessment of any assessed designated industrial property of which the assessed person is not the owner or operator.

(2) For the purposes of subsection (1), a summary of the most recent assessment must include the following information that is in the provincial assessor's possession or under the provincial assessor's control at the time of the request:

(a) a description of the designated industrial property;

(b) the assessed value associated with the designated industrial property;

(c) any other information prescribed or otherwise described in the regulations.

(3) The provincial assessor must, in accordance with the regulations, comply with a request under subsection (1) if the provincial assessor is satisfied that necessary confidentiality will not be breached.

2016 c24 s31

Right to release assessment information

301(1) A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.

(2) The provincial assessor may provide information that is in the provincial assessor's possession about assessments if the provincial assessor is satisfied that necessary confidentiality will not be breached.

RSA 2000 cM-26 s301;2016 c24 s32

Relationship to Freedom of Information and Protection of Privacy Act

301.1 Sections 299 to 301 prevail despite the *Freedom of Information and Protection of Privacy Act*.

1994 cM-26.1 s738

Division 2
Assessment Roll

Preparation of roll

302(1) Each municipality must prepare annually, not later than February 28, an assessment roll for assessed property in the municipality other than designated industrial property.

(2) The provincial assessor must prepare annually, not later than February 28, an assessment roll for assessed designated industrial property.

(3) The provincial assessor must provide to each municipality a copy of that portion of the provincial assessment roll that relates to the designated industrial property situated in the municipality.

RSA 2000 cM-26 s302;2005 c14 s5;2016 c24 s33

Contents of roll

303 The assessment roll prepared by a municipality must show, for each assessed property, the following:

(a) a description sufficient to identify the location of the property;

(b) the name and mailing address of the assessed person;

(c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;

(d) if the property is an improvement, a description showing the type of improvement;

(e) the assessment;

(f) the assessment class or classes;

(f.1) repealed 2017 c13 s1(22);

(g) whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 147 or 148 of the *Education Act*;

(g.1) repealed 2016 c24 s34;

(h) if the property is fully or partially exempt from taxation under Part 10, a notation of that fact;

(h.1) if a deferral of the collection of tax under section 364.1 or 364.2 is in effect for the property, a notation of that fact;

(i) any other information considered appropriate by the municipality or required by the Minister, as the case may be.

RSA 2000 cM-26 s303;2002 c19 s7;2005 c14 s6;
2012 cE-0.3 s279;2016 c24 s34;2017 c13 s1(22);
2019 c6 s3

Contents of provincial assessment roll

303.1 The provincial assessment roll must show, for each assessed designated industrial property, the following:

(a) a description of the type of designated industrial property;

(b) a description sufficient to identify the location of the designated industrial property;

(c) the name and mailing address of the assessed person;

(d) the assessment;

(e) the assessment class or classes;

(f) repealed 2017 c13 s2(9);

(g) whether the designated industrial property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 147 or 148 of the *Education Act*;

(h) if the designated industrial property is exempt from taxation under Part 10, a notation of that fact;

(h.1) if a deferral of the collection of tax under section 364.2 is in effect for the property, a notation of that fact;

(i) any other information considered appropriate by the provincial assessor.

2012 cE-0.3 s279;2016 c24 s35;2017 c13 s2(9);2019 c6 s4

Recording assessed persons

304(1) The name of the person described in column 2 must be recorded on the assessment roll as the assessed person in respect of the assessed property described in column 1.

	Column 1 Assessed property		Column 2 Assessed person
(a)	a parcel of land, unless otherwise dealt with in this subsection;	(a)	the owner of the parcel of land;
(b)	a parcel of land and the improvements to it, unless otherwise dealt with in this subsection;	(b)	the owner of the parcel of land;
(c)	a parcel of land, an improvement or a parcel of land and the improvements to it held under a lease, licence or permit from the Crown in right of Alberta or Canada or a municipality;	(c)	the holder of the lease, licence or permit or, in the case of a parcel of land or a parcel of land and the improvements to it, the person who occupies the land with the consent of that holder or, if the land that was the subject of a lease, licence or permit has been sold under an agreement for sale, the purchaser under that agreement;

	Column 1 Assessed property		Column 2 Assessed person
(d)	a parcel of land forming part of the station grounds of, or of a right of way for, a railway other than railway property, or a right of way for, irrigation works as defined in the *Irrigation Districts Act* or drainage works as defined in the *Drainage Districts Act*, that is held under a lease, licence or permit from the person who operates the railway, or from the irrigation district or the board of trustees of the drainage district;	(d)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(d.1)	railway property;	(d.1)	the owner of the railway property;
(e)	a parcel of land and the improvements to it held under a lease, licence or permit from a regional airports authority, where the land and improvements are used in connection with the operation of an airport;	(e)	the holder of the lease, licence or permit or the person who occupies the land with the consent of that holder;
(f)	a parcel of land, or a part of a parcel of land, and the improvements to it held under a lease, licence or permit from the owner of the land where the land and the improvements are used for	(f)	the holder of the lease, licence or permit;

	Column 1 Assessed property		Column 2 Assessed person
	(i) drilling, treating, separating, refining or processing of natural gas, oil, coal, salt, brine or any combination, product or by-product of any of them, (ii) pipeline pumping or compressing, or (iii) working, excavating, transporting or storing any minerals in or under the land referred to in the lease, licence or permit or under land in the vicinity of that land.		
(g)	machinery and equipment used in the excavation or transportation of coal or oil sands as defined in the *Oil Sands Conservation Act*;	(g)	the owner of the machinery and equipment;
(h)	improvements to a parcel of land listed in section 298 for which no assessment is to be prepared;	(h)	the person who owns or has exclusive use of the improvements;
(i)	linear property;	(i)	the operator of the linear property;

	Column 1 Assessed property		Column 2 Assessed person
(j)	a designated manufactured home on a site in a manufactured home community and any other improvements located on the site and owned or occupied by the person occupying the designated manufactured home;	(j)	the owner of (i) the designated manufactured home, or (ii) the manufactured home community if the municipality passes a bylaw to that effect;
(k)	a designated manufactured home located on a parcel of land that is not owned by the owner of the designated manufactured home together with any other improvements located on the site that are owned or occupied by the person occupying the designated manufactured home.	(k)	the owner of the designated manufactured home if the municipality passes a bylaw to that effect.

(2) When land is occupied under the authority of a right of entry order as defined in the *Surface Rights Act* or an order made under any other Act, it is, for the purposes of subsection (1), considered to be occupied under a lease or licence from the owner of the land.

(3) A person who purchases property or in any other manner becomes liable to be shown on the assessment roll as an assessed person

(a) must provide to the provincial assessor, in the case of designated industrial property, or

(b) must provide to the municipality, in the case of property other than designated industrial property,

written notice of a mailing address to which notices under this Part and Part 10 may be sent.

(4) Despite subsection (1)(c), no individual who occupies housing accommodation under a lease, licence or permit from a management body under the *Alberta Housing Act* is to be recorded

as an assessed person if the sole purpose of the lease, licence or permit is to provide housing accommodation for that individual.

(5) Repealed 2016 c24 s36.

(6) A bylaw passed under subsection (1)(j)(ii)

(a) must be advertised,

(b) has no effect until the beginning of the year commencing at least 12 months after the bylaw is passed,

(c) must indicate the criteria used to designate the assessed person, and

(d) may apply to one or more manufactured home communities.

(7) When a bylaw is passed under subsection (1)(j)(ii), the owner of the designated manufactured home is the assessed person for the purpose of making a complaint under section 460(1) relating to the designated manufactured home.

RSA 2000 cM-26 s304;2005 c14 s7;2008 c37 s3;
2016 c24 s36;2017 c13 s1(23)

Correction of roll

305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,

(a) the assessor may correct the assessment roll for the current year only, and

(b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.

(1.1) Where an assessor corrects the assessment roll in respect of an assessment about which a complaint has been made, the assessor must send to the assessment review board or the Land and Property Rights Tribunal, as the case may be, no later than the time required by the regulations,

(a) a copy of the amended assessment notice, and

(b) a statement containing the following information:

(i) the reason for which the assessment roll was corrected;

(ii) what correction was made;

(iii) how the correction affected the amount of the assessment.

(1.2) Where the assessor sends a copy of an amended assessment notice under subsection (1.1) before the date of the hearing in respect of the complaint,

(a) the complaint is cancelled,

(b) the complainant's complaint fees must be returned, and

(c) the complainant has a new right of complaint in respect of the amended assessment notice.

(2) If it is discovered that no assessment has been prepared for a property and the property is not listed in section 298, an assessment for the current year only must be prepared and an assessment notice must be prepared and sent to the assessed person.

(3) If exempt property becomes taxable or taxable property becomes exempt under section 364.1, 364.2 or 368, the assessment roll must be corrected for the current year only and an amended assessment notice must be prepared and sent to the assessed person.

(3.1) If the collection of tax on property is deferred under section 364.1 or 364.2 or a deferral under one of those sections is cancelled, the assessment roll must be corrected and an amended assessment notice must be prepared and sent to the assessed person.

(4) The date of every entry made on the assessment roll under this section or section 477 or 517 must be shown on the roll.

(5), **(6)** Repealed 2016 c24 s37.

RSA 2000 cM-26 s305;2002 c19 s8;2009 c29 s7;2015 c8 s43; 2016 c24 s37;2017 c13 s1(24);2019 c6 s5;2020 cL-2.3 s24(41)

Report to Minister

305.1 If an assessment roll is corrected under section 305 or changed under section 477 or 517, the municipality must, in the form and within the time prescribed by the regulations, report the correction or change, as the case may be, to the Minister.

2002 c19 s9

Severability of roll

306 The fact that any information shown on the assessment roll contains an error, omission or misdescription does not invalidate any other information on the roll or the roll itself.

1994 cM-26.1 s306

Inspection of roll

307 Any person may inspect the municipal assessment roll during regular business hours on payment of the fee set by the council.

RSA 2000 cM-26 s307;2016 c24 s38

Division 3
Assessment Notices

Assessment notices

308(1) Each municipality must annually

(a) prepare assessment notices for all assessed property, other than designated industrial property, shown on the assessment roll referred to in section 302(1), and

(b) send the assessment notices to the assessed persons in accordance with the regulations.

(2) The provincial assessor must annually

(a) prepare assessment notices for all assessed designated industrial property shown on the provincial assessment roll,

(b) send the assessment notices to the assessed persons in accordance with the regulations, and

(c) send the municipality copies of the assessment notices.

(3) Repealed 2016 c24 s39.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

(5) Repealed 2016 c24 s39.

RSA 2000 cM-26 s308;2005 c14 s8;2016 c24 s39

Notice of assessment date

308.1(1) An assessor must annually set a notice of assessment date, which must be no earlier than January 1 and no later than July 1.

(2) An assessor must set additional notice of assessment dates for amended and supplementary assessment notices, but none of those notice of assessment dates may be later than the date that tax notices are required to be sent under Part 10.

2017 c13 s1(25)

Contents of assessment notice

309(1) An assessment notice or an amended assessment notice must show the following:

(a) the same information that is required to be shown on the assessment roll;

(b) the notice of assessment date;

(c) a statement that the assessed person may file a complaint not later than the complaint deadline;

(d) information respecting filing a complaint in accordance with the regulations.

(2) An assessment notice may be in respect of a number of assessed properties if the same person is the assessed person for all of them.

RSA 2000 cM-26 s309;2009 c29 s8; 2016 c24 s40;2017 c13 s2(10)

Sending assessment notices

310(1) Subject to subsections (1.1) and (3), assessment notices must be sent no later than July 1 of each year.

(1.1) An amended assessment notice must be sent no later than the date the tax notices are required to be sent under Part 10.

(2) If the mailing address of an assessed person is unknown,

(a) a copy of the assessment notice must be sent to the mailing address of the assessed property, and

(b) if the mailing address of the property is also unknown, the assessment notice must be retained by the municipality or the provincial assessor, as the case may be, and is deemed to have been sent to the assessed person.

(3) An assessment notice must be sent at least 7 days prior to the notice of assessment date.

(4) A designated officer must certify the date on which the assessment notice is sent.

(5) The certification of the date referred to in subsection (4) is evidence that the assessment notice has been sent.

RSA 2000 cM-26 s310;2009 c29 s9; 2016 c24 s41;2017 c13 s1(26)

Publication of notice

311(1) Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.

(2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

(3) The provincial assessor must publish in The Alberta Gazette a notice that the assessment notices in respect of designated industrial property have been sent.

(4) All assessed persons are deemed as a result of the publication referred to in subsection (3) to have received their assessment notices in respect of designated industrial property.

RSA 2000 cM-26 s311;2005 c14 s9;2016 c24 s42

Correction of notice

312 If it is discovered that there is an error, omission or misdescription in any of the information shown on an assessment notice, an amended assessment notice may be prepared and sent to the assessed person.

1994 cM-26.1 s312

Division 4
Preparation of Supplementary Assessments

Bylaw

313(1) If a municipality wishes to require the preparation of supplementary assessments for improvements, the council must pass a supplementary assessment bylaw authorizing the assessments to be prepared for the purpose of imposing a tax under Part 10 in the same year.

(2) A bylaw under subsection (1) must refer

(a) to all improvements, or

(b) to all designated manufactured homes in the municipality.

(3) A supplementary assessment bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year.

(4) A supplementary assessment bylaw must not authorize assessments to be prepared by the municipal assessor for designated industrial property.

RSA 2000 cM-26 s313;2016 c24 s135;2018 c11 s13

Supplementary assessment

314(1) The municipal assessor must prepare supplementary assessments for machinery and equipment used in manufacturing

and processing if those improvements are operational in the year in which they are to be taxed under Part 10.

(2) The municipal assessor must prepare supplementary assessments for other improvements if

(a) they are completed in the year in which they are to be taxed under Part 10,

(b) they are occupied during all or any part of the year in which they are to be taxed under Part 10, or

(c) they are moved into the municipality during the year in which they are to be taxed under Part 10 and they will not be taxed in that year by another municipality.

(2.1) The municipal assessor may prepare a supplementary assessment for a designated manufactured home that is moved into the municipality during the year in which it is to be taxed under Part 10 despite that the designated manufactured home will be taxed in that year by another municipality.

(3) A supplementary assessment must reflect

(a) the value of an improvement that has not been previously assessed, or

(b) the increase in the value of an improvement since it was last assessed.

(4) Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect only the number of months during which the improvement is complete, occupied, located in the municipality or in operation, including the whole of the first month in which the improvement was completed, was occupied, was moved into the municipality or began to operate.

RSA 2000 cM-26 s314;2016 c24 s43

Supplementary assessment re designated industrial property

314.1(1) Subject to the regulations, the provincial assessor must prepare supplementary assessments for new designated industrial property that becomes operational after October 31 of the year prior to the year in which the designated industrial property is to be taxed under Part 10.

(2) Supplementary assessments must reflect the valuation standard set out in the regulations for designated industrial property.

(3) Subject to the regulations, supplementary assessments for designated industrial property must be prorated to reflect only the number of months, including the whole of the first month, during which the property is operational.

(4) Despite subsections (1) to (3),

(a) a supplementary assessment must be prepared only for designated industrial property that has not been previously assessed, and only when it becomes operational;

(b) a supplementary assessment must not be prepared in respect of designated industrial property that ceases to operate during the tax year.

2016 c24 s44

Supplementary assessment roll

315(1) Before the end of the year in which supplementary assessments are prepared, the municipality must prepare a supplementary assessment roll.

(2) Before the end of the year in which supplementary assessments are prepared, the provincial assessor must prepare a supplementary assessment roll for designated industrial property.

(3) A supplementary assessment roll must show, for each assessed improvement or designated industrial property, the following:

(a) the same information that is required to be shown on the assessment roll;

(b) in the case of an improvement, the date that the improvement

(i) was completed, occupied or moved into the municipality, or

(ii) became operational.

(4) Sections 304, 305, 306 and 307 apply in respect of a supplementary assessment roll.

(5) The provincial assessor must provide a copy of the supplementary assessment roll for designated industrial property to the municipality.

RSA 2000 cM-26 s315;2016 c24 s45

Supplementary assessment notices

316(1) Before the end of the year in which supplementary assessments are prepared other than for designated industrial property, the municipality must

(a) prepare a supplementary assessment notice for every assessed improvement shown on the supplementary assessment roll referred to in section 315(1), and

(b) send the supplementary assessment notices to the assessed persons.

(2) Before the end of the year in which supplementary assessments for designated industrial property are prepared, the provincial assessor must

(a) prepare supplementary assessment notices for all assessed designated industrial property shown on the supplementary assessment roll referred to in section 315(2),

(b) send the supplementary assessment notices to the assessed persons in accordance with the regulations, and

(c) send the municipality copies of the supplementary assessment notices.

RSA 2000 cM-26 s316;2009 c29 s10;2016 c24 s45

Contents of supplementary assessment notice

316.1(1) A supplementary assessment notice must show, for each assessed improvement, the following:

(a) the same information that is required to be shown on the supplementary assessment roll;

(b) the notice of assessment date;

(c) a statement that the assessed person may file a complaint not later than the complaint deadline;

(d) information respecting filing a complaint in accordance with the regulations.

(2) Sections 308(2), 309(2), 310(1.1) and (3) and 312 apply in respect of supplementary assessment notices.

2016 c24 s45;2017 c13 s2(11)

Division 5
Equalized Assessments

Definition

317 In this Division, "equalized assessment" means an assessment that is prepared by the Minister in accordance with this Division for an entire municipality and reflects

(a) assessments of property in the municipality that is taxable under Part 10,

(b) repealed 2016 c24 s46,

(c) assessments of property in the municipality in respect of which a grant may be paid by the Crown in right of Canada under the *Payments in Lieu of Taxes Act* (Canada),

(d) assessments of property in the municipality made taxable or exempt as a result of a council passing a bylaw under Part 10, except any property made taxable under section 363(1)(d), and

(e) assessments of property in the municipality that is the subject of a tax agreement under section 333.1, 360 or 364.1,

from the year preceding the year in which the equalized assessment is effective.

RSA 2000 cM-26 s317;2015 c8 s44;2016 c24 s46

Supplementary assessments

317.1 Despite section 317, supplementary assessments prepared under a supplementary assessment bylaw under section 313 must not be included in the equalized assessment for a municipality.

1995 c24 s44

Preparation of equalized assessments

318 The Minister must prepare annually, in accordance with the regulations, an equalized assessment for each municipality.

1994 cM-26.1 s318

Duty to provide information

319(1) Each municipality must provide to the Minister annually, not later than the date required by regulations made under section 322(1) or guidelines made under section 322(2), a return containing the information requested by the Minister in the form required by the Minister.

(2) If a municipality does not provide the information requested by the Minister, the Minister must prepare the equalized assessment using whatever information is available about the municipality.

RSA 2000 cM-26 s319;2015 c8 s45

Sending equalized assessments to municipalities

320 The Minister must send to each municipality annually, not later than November 1, a report of all the equalized assessments prepared.

1994 cM-26.1 s320

Appeal of equalized assessment

321 A municipality may make a complaint regarding the amount of an equalized assessment to the Land and Property Rights Tribunal not later than 30 days from the date the Minister sends the municipality the report described in section 320.

RSA 2000 cM-26 s321;2002 c19 s12;2009 c29 s11;2015 c8 s46; 2020 cL-2.3 s24(41)

Division 6
General Powers of the Minister Relating to Assessments and Equalized Assessments

Regulations

322(1) The Minister may make regulations

(a) respecting qualifications to be met by persons authorized to carry out the duties and responsibilities of an assessor under this Act;

(b) defining "electric power systems", "facilities", "farming operations", "farm building", "machinery and equipment", "operator", "pipelines", "railway property", "street lighting systems", "telecommunication systems" and "wells";

(b.01) respecting when property is to be considered operational for the purposes of one or more provisions of this Part;

(b.1) defining "extended area network" and "SuperNet";

(c) respecting the extent to which farm buildings and machinery and equipment may be assessed under section 298;

(c.1) respecting the assessment of linear property referred to in section 298(3), including, without limitation, respecting information to be provided, and by whom it is to be provided, for preparing the assessment;

(d) establishing valuation standards for property;

(d.1) respecting the delegation of the powers, duties and functions of the provincial assessor under section 284.1 or of a municipal assessor under section 284.2;

(d.2) designating major plants and other property as designated industrial property;

(d.3) respecting designated industrial property, including, without limitation, regulations respecting the specifications and characteristics of designated industrial property;

(e) respecting processes and procedures for preparing assessments;

(e.1) respecting the manner in which an assessor must inform an owner or occupier of any property of the purpose for which information is being collected under sections 294 and 295;

(e.11) respecting the providing of information by the provincial assessor to a municipality under section 299.2, including, without limitation, regulations

(i) requiring the provincial assessor and the municipality to enter into a confidentiality agreement with respect to that information, and

(ii) respecting the terms and conditions of a confidentiality agreement;

(e.2) respecting assessment rolls and assessment notices including, without limitation, regulations

(i) respecting the information to be shown on an assessment roll and on an assessment notice;

(ii) providing for the method of determining the assessed person for the purposes of section 304(1);

(iii) respecting the sending of assessment notices;

(f) respecting the allowance of depreciation on machinery and equipment;

(g) prescribing standards to be met by assessors in the preparation of assessments;

(g.01) prescribing sub-classes for the purposes of section 297(2.1);

(g.1) prescribing or otherwise describing information for the purposes of sections 299(1), 299.1(1), 300(2)(f) and 300.1(2)(c);

(g.2) respecting procedures and time-lines to be followed by a municipality in dealing with a request for information under section 299 or a request for a summary of an assessment under section 300;

(g.3) respecting the imposition of penalties or other sanctions against a municipality for failing to comply with a request for information under section 299 or a request for a summary of an assessment under section 300;

(g.4) respecting the dates by which returns referred to in section 319(1) must be provided to the Minister;

(h) respecting equalized assessments;

(h.1) respecting the audit of any matters relating to assessments;

(h.2) respecting the providing of information to an assessor under section 295(1);

(h.3) respecting procedures and time-lines to be followed by a provincial assessor in dealing with a request for information under section 299.1 or 299.2 or a request for a summary of an assessment under section 300.1;

(h.4) respecting supplementary assessments;

(h.5) defining any term or expression that is used but not defined in this Part;

(i) respecting any other matter considered necessary to carry out the intent of this Act.

(2) Where the Minister considers it advisable to do so, the Minister may by order establish guidelines respecting any matter for which the Minister may make a regulation under subsection (1).

(3) A guideline established under subsection (2) is a regulation for the purposes of this Act, but is exempted from the application of the *Regulations Act*.

(4) The Minister must

(a) publish in The Alberta Gazette a notice of any guideline established under subsection (2) and information about

where copies of the guideline may be obtained or are available to the public;

(b) ensure that any guideline established under subsection (2) is published in a form and manner that the Minister considers appropriate.

(5) Subsection (4) applies only to guidelines established under subsection (2) on or after July 1, 2007.

(6) In designating by regulation a major plant as designated industrial property, the Minister may include as a major plant any parcel of land, improvements or other property.

(7) The inclusion of property pursuant to subsection (6) is not invalid even if the property is used for residential or agricultural purposes, or is vacant.

(8) If an application is made to a court in respect of the validity of a regulation designating a major plant as designated industrial property,

(a) the application shall be limited to whether a specific parcel of land, improvement or other property for which the applicant is the assessed person is or is not all or a part of a major plant;

(b) evidence of the inclusion of property pursuant to subsection (6) or of property not designated as a major plant pursuant to subsection (6) is not admissible to demonstrate the invalidity of the regulation or any part of it.

RSA 2000 cM-26 s322;2002 c19 s14;2005 c14 s10;
2007 c16 s2;2009 c29 s12;2015 c8 s47;
2016 c24 s47;2017 c13 ss1(27), 2(12)

Validation of Minister's Guidelines

322.1(1) In this section,

(a) "Minister's Guidelines" means

(i) the following guidelines referred to in the *Matters Relating to Assessment and Taxation Regulation* (AR 220/2004):

(A) Alberta Assessment Quality Minister's Guidelines;

(B) Alberta Farm Land Assessment Minister's Guidelines;

(C) Alberta Linear Property Assessment Minister's Guidelines;

(D) Alberta Machinery and Equipment Assessment Minister's Guidelines;

(E) Alberta Railway Assessment Minister's Guidelines,

(ii) any previous versions of the guidelines named in subclause (i) that are referred to in the previous regulations, and

(iii) the 2005 Construction Cost Reporting Guide established by the Minister and any previous versions of the Construction Cost Reporting Guide established by the Minister,

and includes any manuals, guides and handbooks referred to or incorporated into any of the guidelines or guides referred to in subclauses (i) to (iii);

(b) "previous regulations" means

(i) the *Matters Relating to Assessment and Taxation Regulation* (AR 289/99), and

(ii) the *Standards of Assessment Regulation* (AR 365/94).

(2) The Minister's Guidelines are declared valid as of the dates on which they were established, and no assessment prepared pursuant to the Minister's Guidelines shall be challenged on the basis of the validity of the Minister's Guidelines

(a) in any existing or future proceeding under this or any other Act, or

(b) in any existing or future action, matter or proceeding before a court.

(3) The Minister's Guidelines are deemed to be guidelines established under section 322(2).

2007 c16 s3

Minister's power to prepare assessments

323 If it appears to the Minister that in any year a council will be unable to carry out its obligation under section 285, the Minister may cause any or all of the assessments in the municipality to be prepared and the council is responsible for the costs.

1994 cM-26.1 s323

Minister's power to quash assessments

324(1) If, after an inspection under section 571 or an audit under the regulations is completed, the Minister is of the opinion that an assessment

(a) has not been prepared in accordance with the rules and procedures set out in this Part and the regulations,

(b) is not fair and equitable, taking into consideration assessments of similar property, or

(c) does not meet the standards required by the regulations,

the Minister may quash the assessment and direct that a new assessment be prepared.

(2) On quashing an assessment, the Minister must provide directions as to the manner and times in which

(a) the new assessment is to be prepared,

(a.1) a new notice of assessment date is to be established,

(b) the new assessment is to be placed on the assessment roll, and

(c) amended assessment notices are to be sent to the assessed persons.

(3) The Minister must specify the effective date of a new assessment prepared under this section.

RSA 2000 cM-26 s324;2002 c19 s15;2017 c13 s1(28)

Minister's power to alter an equalized assessment

325 Despite anything in this Act, the Minister may adjust an equalized assessment at any time.

Continuous bylaws — assessment

325.1 Bylaws enacted under section 297 or 313 remain in force after the year in which they are enacted and apply in respect of subsequent years until they are repealed.

2019 c22 s10(10)

Part 10
Taxation

Division 1
General Provisions

Definitions

326(1) In this Part,

(a) "requisition" means

(i) repealed 1995 c24 s45,

(ii) any part of the amount required to be paid into the Alberta School Foundation Fund under section 167 of the *Education Act* that is raised by imposing a rate referred to in section 167 of the *Education Act*,

(iii) any part of the requisition of school boards under Part 6, Division 3 of the *Education Act*,

(iv) repealed 2008 cE-6.6 s55,

(v) the amount required to be paid to a management body under section 7 of the *Alberta Housing Act*, or

(vi) the amount required to recover the costs incurred for matters related to

(A) the assessment of designated industrial property, and

(B) any other matters related to the provincial assessor's operations;

(b) "student dormitory" means a housing unit

(i) that is used in connection with a purpose referred to in section 362(1)(c), (d) or (e) or with a college incorporated under a private Act of the Legislature, and

(ii) the residents of which are students of a facility used in connection with a purpose referred to in section 362(1)(c), (d) or (e) or with a college incorporated under a private Act of the Legislature,

but does not include a single family residence and the land attributable to that residence;

(c) "tax arrears" means taxes that remain unpaid after December 31 of the year in which they are imposed.

(2) For purposes of Divisions 3 and 4, "business" does not include a constituency office of a Member of the Legislative Assembly or any other office used by one or more Members of the Legislative Assembly to carry out their duties and functions as Members.

RSA 2000 cM-26 s326;2008 cE-6.6 s55;2012 cE-0.3 s279; 2015 c8 s48;2016 c24 s48

Tax roll

327(1) Each municipality must prepare a tax roll annually.

(2) The tax roll may consist of one roll for all taxes imposed under this Part or a separate roll for each tax imposed under this Part.

(3) The tax roll for property tax may be a continuation of the assessment roll prepared under Part 9 or may be separate from the assessment roll.

(4) The fact that any information shown on the tax roll contains an error, omission or misdescription does not invalidate any other information on the roll or the roll itself.

1994 cM-26.1 s327

Duty to provide information

328 Taxpayers must provide, on request by the municipality, any information necessary for the municipality to prepare its tax roll.

1994 cM-26.1 s328

Contents of tax roll

329 The tax roll must show, for each taxable property or business, the following:

(a) a description sufficient to identify the location of the property or business;

(b) the name and mailing address of the taxpayer;

(c) the assessment;

(d) the name, tax rate and amount of each tax imposed in respect of the property or business;

(e) the total amount of all taxes imposed in respect of the property or business;

(f) the amount of tax arrears, if any;

(g) if any property in the municipality is the subject of an agreement between the taxpayer and the municipality under section 347(1) relating to tax arrears, a notation of that fact;

(g.1) if any property in the municipality is the subject of a bylaw or agreement under section 364.1 to defer the collection of tax, a notation of the amount deferred and the taxation year or years to which the amount relates;

(g.2) if any property in the municipality is the subject of a deferral granted under section 364.2, a notation of the amount deferred and the taxation year or years to which the amount relates;

(h) any other information considered appropriate by the municipality.

RSA 2000 cM-26 s329;2016 c24 s49;2019 c6 s6

Correction of roll

330(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the tax roll, the municipality may correct the tax roll for the current year only and on correcting the roll, it must prepare and send an amended tax notice to the taxpayer.

(2) If it is discovered that no tax has been imposed on a taxable property or business, the municipality may impose the tax for the current year only and prepare and send a tax notice to the taxpayer.

(3) If exempt property becomes taxable or taxable property becomes exempt under section 368, the municipality must correct the tax roll and on correcting the roll, it must send an amended tax notice to the taxpayer.

(4) The date of every entry made on the tax roll under this section must be shown on the roll.

1994 cM-26.1 s330

Person liable to pay taxes

331(1) Subject to subsection (3) and the regulations, the person liable to pay a property tax imposed under this Part is the person who

(a) at the time the assessment is prepared under Part 9, is the assessed person, or

(b) subsequently becomes the assessed person.

(2) The person liable to pay any other tax imposed under this Part is the person who

(a) at the time the tax is imposed, is liable in accordance with this Part or a regulation made under this Part to pay the tax, or

(b) subsequently becomes liable in accordance with this Part or a regulation made under this Part to pay it.

(3) If a tax on linear property or on machinery and equipment remains unpaid after the due date shown on the tax notice, the owner of the linear property or the machinery and equipment becomes liable, jointly and severally with the person who is the assessed person in respect of the linear property or machinery and equipment, to pay the tax debt.

RSA 2000 cM-26 s331;2005 c14 s11;2021 c22 s3

Taxes imposed on January 1

332 Taxes imposed under this Part, other than a supplementary property tax and a supplementary business tax, are deemed to have been imposed on January 1.

1994 cM-26.1 s332

Tax notices

333(1) Each municipality must annually

(a) prepare tax notices for all taxable property and businesses shown on the tax roll of the municipality, and

(b) send the tax notices to the taxpayers.

(2) A tax notice may include a number of taxable properties and taxable businesses if the same person is the taxpayer for all of them.

(3) A tax notice may consist of one notice for all taxes imposed under this Part, a separate notice for each tax or several notices showing one or more taxes.

(4) The assessment notice and the tax notice relating to the same property may be sent together or may be combined on one notice.

1994 cM-26.1 s333

Tax agreements

333.1(1) The council of a municipality may make a tax agreement with an assessed person who occupies or manages

(a) the municipality's property, including property under the direction, control and management of

(i) the municipality, or

(ii) a non-profit organization that holds the property on behalf of the municipality,

or

(b) property for the purpose of operating a professional sports franchise.

(2) A tax agreement may provide that, instead of paying the taxes imposed under this Part and any other fees or charges payable to the municipality, the assessed person may make an annual payment to the municipality calculated under the agreement.

(3) A tax agreement under this section must provide that the municipality accepts payment of the amount calculated under the agreement in place of the taxes and other fees or charges specified in the agreement.

1998 c24 s24

Contents of tax notice

334(1) A tax notice must show the following:

(a) the same information that is required to be shown on the tax roll;

(b) the date the tax notice is sent to the taxpayer;

(c) the amount of the requisitions, any one or more of which may be shown separately or as part of a combined total;

(d) except when the tax is a property tax, the date by which a complaint must be made, which date must not be less than 30 days after the tax notice is sent to the taxpayer;

(e) the name and address of the designated officer with whom a complaint must be filed;

(f) the dates on which penalties may be imposed if the taxes are not paid;

(f.1) information on how to request a receipt for taxes paid;

(g) any other information considered appropriate by the municipality.

(2) A tax notice may show

(a) one tax rate that combines all of the tax rates set by the property tax bylaw, or

(b) each of the tax rates set by the property tax bylaw.

(3) Despite subsection (2), a tax notice must show, separately from all other tax rates shown on the notice, the tax rates set by the

property tax bylaw to raise the revenue to pay the requisitions referred to in section 326(1)(a)(ii) or (vi).

RSA 2000 cM-26 s334;2016 c24 s50;2017 c13 s1(29)

Sending tax notices

335(1) The tax notices must be sent before the end of the year in which the taxes are imposed.

(2) If the mailing address of a taxpayer is unknown

(a) a copy of the tax notice must be sent to the mailing address of the taxable property or business, and

(b) if the mailing address of the taxable property or business is also unknown, the tax notice must be retained by the municipality and is deemed to have been sent to the taxpayer.

1994 cM-26.1 s335

Certification of date of sending tax notice

336(1) A designated officer must certify the date the tax notices are sent under section 335.

(2) The certification of the date referred to in subsection (1) is evidence that the tax notices have been sent and that the taxes have been imposed.

1994 cM-26.1 s336

Deemed receipt of tax notice

337 A tax notice is deemed to have been received 7 days after it is sent.

1994 cM-26.1 s337

Correction of tax notice

338 If it is discovered that there is an error, omission or misdescription in any of the information shown on a tax notice, the municipality may prepare and send an amended tax notice to the taxpayer.

1994 cM-26.1 s338

Incentives

339 A council may by bylaw provide incentives for payment of taxes by the dates set out in the bylaw.

1994 cM-26.1 s339

Instalments

340(1) A council may by bylaw permit taxes to be paid by instalments, at the option of the taxpayer.

(2) A person who wishes to pay taxes by instalments must make an agreement with the council authorizing that method of payment.

(3) When an agreement under subsection (2) is made, the tax notice, or a separate notice enclosed with the tax notice, must state

(a) the amount and due dates of the instalments to be paid in the remainder of the year, and

(b) what happens if an instalment is not paid.

1994 cM-26.1 s340

Deemed receipt of tax payment

341 A tax payment that is sent by mail to a municipality is deemed to have been received by the municipality on the date of the postmark stamped on the envelope.

1994 cM-26.1 s341

Receipt for payment of taxes

342 When taxes are paid to a municipality and the person who paid the tax requests a receipt, the municipality must provide a receipt.

RSA 2000 cM-26 s342;2017 c13 s1(30);2021 c22 s4

Application of tax payment

343(1) A tax payment must be applied first to tax arrears.

(2) If a person does not indicate to which taxable property or business a tax payment is to be applied, a designated officer must decide to which taxable property or business owned by the taxpayer the payment is to be applied.

1994 cM-26.1 s343

Penalty for non-payment in current year

344(1) A council may by bylaw impose penalties in the year in which a tax is imposed if the tax remains unpaid after the date shown on the tax notice.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than 30 days after the tax notice is sent out.

1994 cM-26.1 s344

Penalty for non-payment in other years

345(1) A council may by bylaw impose penalties in any year following the year in which a tax is imposed if the tax remains unpaid after December 31 of the year in which it is imposed.

(2) A penalty under this section is imposed at the rate set out in the bylaw.

(3) The penalty must not be imposed sooner than January 1 of the year following the year in which the tax was imposed or any later date specified in the bylaw.

1994 cM-26.1 s345

Penalties

346 A penalty imposed under section 344 or 345 is part of the tax in respect of which it is imposed.

1994 cM-26.1 s346

Cancellation, reduction, refund or deferral of taxes

347(1) If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

(a) cancel or reduce tax arrears;

(b) cancel or refund all or part of a tax;

(c) defer the collection of a tax.

(2) A council may phase in a tax increase or decrease resulting from the preparation of any new assessment.

1994 cM-26.1 s347

Tax becomes debt to municipality

348 Taxes due to a municipality

(a) are an amount owing to the municipality,

(b) are recoverable as a debt due to the municipality,

(c) take priority over the claims of every person except the Crown, and

(d) are a special lien

(i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy, or

(ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax

imposed in respect of a designated manufactured home in a manufactured home community.

RSA 2000 cM-26 s348;2005 c14 s12;2018 c6 s5

Special priority lien for tax debt on linear property or machinery and equipment

348.1(1) In this section,

(a) "assessable", in respect of property or improvements, means property or improvements that have been or are subject to being assessed under Part 9;

(b) "debtor" means a person who owes a debt to a municipality for tax on linear property or on machinery and equipment.

(2) Notwithstanding section 348(c) and (d), taxes due to a municipality on linear property or on machinery and equipment

(a) take priority over the claims of every person except the Crown, and

(b) are a special lien on all the debtor's assessable property located within the municipality, including any assessable improvements to that property.

(3) A lien referred to in subsection (2)(b)

(a) arises when the debtor fails to satisfy the debt when due, and

(b) expires on full satisfaction of the debt.

(4) This section applies to a debt for taxes referred to in subsection (2) regardless of whether the debt became due before or after the coming into force of this section.

2021 c22 s5

Fire insurance proceeds

349(1) Taxes that have been imposed in respect of improvements are a first charge on any money payable under a fire insurance policy for loss or damage to those improvements.

(2) Taxes that have been imposed in respect of a business are a first charge on any money payable under a fire insurance policy for loss or damage to any personal property

(a) that is located on the premises occupied for the purposes of the business, and

(b) that is used in connection with the business and belongs to the taxpayer.

1994 cM-26.1 s349

Tax certificates

350 On request, a designated officer must issue a tax certificate showing

(a) the amount of taxes imposed in the year in respect of the property or business specified on the certificate and the amount of taxes owing,

(b) the total amount of tax arrears, if any, and

(c) the total amount of tax, if any, in respect of which collection is deferred under this Part.

RSA 2000 cM-26 s350;2016 c24 s51

Non-taxable property

351(1) The following are exempt from taxation under this Part:

(a) property listed in section 298;

(b) any property or business in respect of which an exemption from assessment or taxation, or both, was granted before January 1, 1995

(i) by a private Act, or

(ii) by an order of the Lieutenant Governor in Council based on an order of the Local Authorities Board.

(2) A council may by bylaw cancel an exemption referred to in subsection (1)(b), with respect to any property or business.

(3) A council proposing to pass a bylaw under subsection (2) must notify the person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

(5) A copy of a bylaw under subsection (2) must be sent to the Minister and if the bylaw amends a private Act the Minister must send a copy to the clerk of the Legislative Assembly.

1994 cM-26.1 s351

Limitation on time for starting proceedings

352(1) An action, suit or other proceedings for the return by a municipality of any money paid to the municipality, whether under

protest or otherwise, as a result of a claim by the municipality, whether valid or invalid, for payment of taxes or tax arrears must be started within 6 months after the payment of the money to the municipality.

(2) If no action, suit or other proceeding is started within the period referred to in subsection (1), the payment made to the municipality is deemed to have been a voluntary payment.

1994 cM-26.1 s352

Division 2
Property Tax

Property tax bylaw

353(1) Each council must pass a property tax bylaw annually.

(2) The property tax bylaw authorizes the council to impose a tax in respect of property in the municipality to raise revenue to be used toward the payment of

(a) the expenditures and transfers set out in the budget of the municipality, and

(b) the requisitions.

(3) The tax must not be imposed in respect of property

(a) that is exempt under section 351, 361 or 362, or

(b) that is exempt under section 363 or 364, unless the bylaw passed under that section makes the property taxable.

1994 cM-26.1 s353

Tax rates

354(1) The property tax bylaw must set and show separately all of the tax rates that must be imposed under this Division to raise the revenue required under section 353(2).

(2) A tax rate must be set for each assessment class or sub-class referred to in section 297.

(3) The tax rate may be different for each assessment class or sub-class referred to in section 297.

(3.1) Despite subsection (3), the tax rate for the class referred to in section 297(1)(d) and the tax rate for the sub-classes referred to in section 297(2.1) must be set in accordance with the regulations.

(4) The tax rates set by the property tax bylaw must not be amended after the municipality sends the tax notices to the taxpayers unless subsection (5) applies.

(5) If after sending out the tax notices the municipality discovers an error or omission that relates to the tax rates set by the property tax bylaw, the municipality may

(a) amend the property tax bylaw to the extent necessary to correct the error or omission, and

(b) send out amended tax notices, if required as a result of the corrections to the property tax bylaw.

(6) A municipality must, within 30 days after passing a property tax bylaw amendment under subsection (5), provide the Minister with a copy of the amended bylaw.

RSA 2000 cM-26 s354;2016 c24 s52;2019 c22 s10(11)

Calculating tax rates

355 A tax rate is calculated by dividing the amount of revenue required by the total assessment of all property on which that tax rate is to be imposed.

1994 cM-26.1 s355;1995 c24 s47

Calculating amount of tax

356 The amount of tax to be imposed under this Division in respect of a property is calculated by multiplying the assessment for the property by the tax rate to be imposed on that property.

1994 cM-26.1 s356

Special provision of property tax bylaw

357(1) Despite anything in this Division, the property tax bylaw may specify a minimum amount payable as property tax.

(1.1) Despite section 353, a council may pass a bylaw separate from the property tax bylaw that provides for compulsory tax instalment payments for designated manufactured homes.

(2) If the property tax bylaw specifies a minimum amount payable as property tax, the tax notice must indicate the tax rates set by the property tax bylaw that raise the revenue required to pay the requisition referred to in section 326(1)(a)(ii).

RSA 2000 cM-26 s357;2016 c24 s53

Tax rate for residential property

357.1 The tax rate to be imposed by a municipality on residential property or on any sub-class of residential property must be greater than zero.

2016 c24 s54

358 Repealed 2016 c24 s55.

Maximum tax ratio

358.1(1) In this section,

(a) "non-conforming municipality" means a municipality that has a tax ratio greater than 5:1 as calculated using the property tax rates set out in its most recently enacted property tax bylaw as at May 31, 2016;

(b) "non-residential" means non-residential as defined in section 297(4);

(c) "tax ratio", in respect of a municipality, means the ratio of the highest non-residential tax rate set out in the municipality's property tax bylaw for a year to the lowest residential tax rate set out in the municipality's property tax bylaw for the same year.

(2) No municipality other than a non-conforming municipality shall in any year have a tax ratio greater than 5:1.

(3) A non-conforming municipality shall not in any year have a tax ratio that is greater than the tax ratio as calculated using the property tax rates set out in its most recently enacted property tax bylaw as at May 31, 2016.

(3.1) If in any year after 2016 a non-conforming municipality has a tax ratio that is greater than 5:1, the non-conforming municipality shall reduce its tax ratio for subsequent years in accordance with the regulations.

(4) If in any year after 2016 a non-conforming municipality has a tax ratio that is less than the tax ratio it had in the previous year but greater than 5:1, the non-conforming municipality shall not in any subsequent year have a tax ratio that is greater than that new tax ratio.

(5) If in any year after 2016 a non-conforming municipality has a tax ratio that is equal to or less than 5:1, the non-conforming municipality shall not in any subsequent year have a tax ratio greater than 5:1.

(6) Where an order to annex land to a municipality contains provisions respecting the tax rate or rates that apply to the annexed land, the tax rate or rates shall not be considered for the purposes of determining the municipality's tax ratio.

(7) For the purposes of this section,

(a) the tax set out in a municipality's property tax bylaw to raise revenue to be used toward the payment of

(i) the expenditures and transfers set out in the budget of the municipality, and

(ii) the requisitions,

shall be considered to be separate tax rates, and

(b) the tax rate for the requisitions shall not be considered for the purposes of determining the municipality's tax ratio.

(8) The Lieutenant Governor in Council may, for the purposes of subsection (3.1), make regulations establishing one or more ranges of tax ratios that must be reduced to 5:1 within a specified period.

2016 c24 s56;2017 c13 s1(31)

Requisitions

359(1) When a requisition applies to only part of a municipality, the revenue needed to pay it must be raised by imposing a tax under this Division in respect of property in that part of the municipality.

(2) In calculating the tax rate required to raise sufficient revenue to pay the requisitions, a municipality may include an allowance for non-collection of taxes at a rate not exceeding the actual rate of taxes uncollected from the previous year's tax levy as determined at the end of that year.

(3) If in any year the property tax imposed to pay the requisitions results in too much or too little revenue being raised for that purpose, the council must accordingly reduce or increase the amount of revenue to be raised for that purpose in the next year.

1994 cM-26.1 s359;1995 c24 s49

Alberta School Foundation Fund requisitions

359.1(1) In this section, "Alberta School Foundation Fund requisition" means a requisition referred to in section 326(1)(a)(ii).

(2) In 1995 and subsequent years, when an Alberta School Foundation Fund requisition applies only to

(a) one of the assessment classes referred to in section 297,

(b) a combination of the assessment classes referred to in section 297, or

(c) designated industrial property,

the revenue needed to pay it must be raised by imposing a tax under this Division only in respect of property to which that one assessment class has been assigned, property to which any assessment class in that combination has been assigned or designated industrial property, as the case may be.

(3) Despite subsection (2), if a council has passed bylaws under sections 364(1.1) and 371, the council may apply an appropriate amount received under the business tax to the payment of the Alberta School Foundation Fund requisition on the non-residential assessment class referred to in section 297 to offset the increase in the tax rate applicable to that class that would otherwise result.

(4) The tax rate required to raise the revenue needed to pay the Alberta School Foundation Fund requisition

(a) must be the same within the assessment class to which the requisition applies if it applies to only one class,

(b) must be the same for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes, and

(c) must be the same for all designated industrial property.

(5), **(6)** Repealed by Revision.

(7) In calculating the tax rate required to raise sufficient revenue to pay an Alberta School Foundation Fund requisition, a municipality

(a) must not include the allowances referred to in section 359(2),

(b) may impose a separate tax to raise the revenue to pay for the allowances referred to in section 359(2), and

(c) may include the amounts referred to in section 359(3).

(8) Section 354 does not apply to tax rates required to raise revenue needed to pay an Alberta School Foundation Fund requisition.

RSA 2000 cM-26 s359.1;2016 c24 s135;2017 c13 s1(32)

School board requisitions

359.2(1) In this section, "school board requisition" means a requisition referred to in section 326(1)(a)(iii).

(2) In 1995 and subsequent years, when a school board requisition applies only to

(a) one of the assessment classes referred to in section 297,

(b) a combination of the assessment classes referred to in section 297, or

(c) designated industrial property,

the revenue needed to pay it must be raised by imposing a tax under this Division only in respect of property to which that one assessment class has been assigned, property to which any assessment class in that combination has been assigned or designated industrial property, as the case may be.

(3) Despite subsection (2), if a council has passed bylaws under sections 364(1.1) and 371, the council may apply an appropriate amount received under the business tax to the payment of the school board requisition on the non-residential assessment class referred to in section 297 to offset the increase in the tax rate applicable to that class that would otherwise result.

(4) The tax rate required to raise the revenue needed to pay the school board requisitions

(a) must be the same within the assessment class to which the requisition applies if it applies to only one class,

(b) must be the same for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes, and

(c) must be the same for all designated industrial property.

(5), **(6)** Repealed by Revision.

(7) In calculating the tax rate required to raise sufficient revenue to pay a school board requisition, a municipality

(a) may include the allowances referred to in section 359(2), and

(b) may include the amounts referred to in section 359(3).

(8) Section 354 does not apply to tax rates required to raise revenue needed to pay school board requisitions.

RSA 2000 cM-26 s359.2;2016 c24 s135;2017 c13 s1(33)

Designated industrial property assessment requisitions

359.3(1) In this section, "designated industrial property requisition" means a requisition referred to in section 326(1)(a)(vi).

(2) The Minister must set the property tax rate for the designated industrial property requisition.

(3) The property tax rate for the designated industrial property requisition must be the same for all designated industrial property.

2016 c24 s57

Cancellation, reduction, refund or deferral of taxes

359.4 If the Minister considers it equitable to do so, the Minister may, generally or with respect to a particular municipality, cancel or reduce the amount of a requisition payable under section 326(1)(a)(vi).

2016 c24 s57

Tax agreement

360(1) In this section, "electric distribution system", "electricity" and "transmission system" have the meanings given to them in the *Electric Utilities Act*.

(1.1) A council may make a tax agreement with an operator of a public utility or of linear property who occupies the municipality's property, including property under the direction, control and management of the municipality.

(2) Instead of paying the tax imposed under this Division and any other fees or charges payable to the municipality, the tax agreement may provide for an annual payment to the municipality by the operator calculated as provided in the agreement.

(3) A tax agreement must provide that the municipality accepts payment of the amount calculated under the agreement in place of the tax and other fees or charges specified in the agreement.

(4) If a tax agreement with the operator of a public utility that supplies fuel provides for the calculation of the payment as a percentage of the gross revenue of the public utility, that gross revenue is the gross revenue of the public utility for the year.

(4.01) No tax agreement with an operator referred to in subsection (4) may provide for the use, in calculating the whole or part of the payment, of a price per gigajoule of fuel that varies periodically according to the market price for fuel.

(4.1) If a tax agreement with the operator of a public utility that transports electricity by way of a transmission system, an electric distribution system or both provides for the calculation of the payment as a percentage of the gross revenue of the public utility,

that gross revenue is the gross revenue received by the public utility under its distribution tariff for the year.

(4.2) No tax agreement with an operator referred to in subsection (4.1) may provide for the use, in calculating the whole or part of the payment, of a price per kilowatt hour of electricity that varies periodically according to the market price for electricity.

(5) An agreement under this section with an operator who is subject to regulation by the Alberta Utilities Commission is of no effect unless it is approved by the Alberta Utilities Commission.

(6) An agreement made under this section before the coming into force of this subsection, and that continues in effect after the coming into force of this subsection, with an operator referred to in subsection (4) or (4.1) who was not, before the coming into force of this subsection, subject to regulation by the Alberta Utilities Commission must be submitted to the Alberta Utilities Commission for approval by the Alberta Utilities Commission.

RSA 2000 cM-26 s360; 2007 cA-37.2 s82(17);2024 c8 s5

Exemptions based on use of property

361 The following are exempt from taxation under this Division:

(a) repealed 1996 c30 s27;

(b) residences and farm buildings to the extent prescribed in the regulations;

(c) environmental reserves, conservation reserves, municipal reserves, school reserves, municipal and school reserves and other undeveloped property reserved for public utilities.

RSA 2000 cM-26 s361;2017 c13 s1(34)

Exemptions for Government, churches and other bodies

362(1) The following are exempt from taxation under this Division:

(a) any interest held by the Crown in right of Alberta or Canada in property other than property that is held by a Provincial corporation as defined in the *Financial Administration Act*;

(b) property held by a municipality, except the following:

(i) property from which the municipality earns revenue and which is not operated as a public benefit;

(ii) property that is operated as a public benefit but that has annual revenue that exceeds the annual operating costs;

(iii) an electric power system;

(iv) a telecommunications system;

(v) a natural gas or propane system located in a hamlet, village, summer village, town or city or in a school division that is authorized under the *Education Act* to impose taxes and has a population in excess of 500 people;

(c) property, other than a student dormitory, used in connection with school purposes and held by

(i) the board of trustees of a school division,

(i.1) the Francophone regional authority of a Francophone education region established under the *Education Act*,

(i.2) the operator of a charter school established under the *Education Act*, or

(ii) the person responsible for the operation of a private school registered under the *Education Act*;

(d) property, other than a student dormitory, used in connection with educational purposes and held by any of the following:

(i) the board of governors of a university, polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(ii) the governing body of an educational institution affiliated with a university under the *Post-secondary Learning Act*;

(iii) a students association or graduate students association of a university under the *Post-secondary Learning Act*;

(iv) a students association of a polytechnic institution or comprehensive community college under the *Post-secondary Learning Act*;

(v) the board of governors of the Banff Centre under the *Post-secondary Learning Act*;

(e) property, other than a student dormitory, used in connection with hospital purposes and held by a hospital board that receives financial assistance from the Crown;

(f) property held by a regional services commission;

(g) repealed by RSA 2000;

(g.1) property used in connection with provincial health agency or regional health authority purposes and held by a provincial health agency or regional health authority under the *Provincial Health Agencies Act* that receives financial assistance from the Crown under any Act;

(h) property

(i) used in connection with the purposes of a continuing care home in respect of which a type A continuing care home licence has been issued under the *Continuing Care Act*, and

(ii) held by the owner or under a lease from the owner of a continuing care home referred to in subclause (i);

(i) repealed 1998 c24 s29;

(j) property used in connection with library purposes and held by a library board established under the *Libraries Act*;

(k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

(l) property consisting of any of the following:

(i) a parcel of land, to a maximum of 10 hectares, that is used as a cemetery as defined in the *Cemeteries Act*;

(ii) any additional land that has been conveyed by the owner of the cemetery to individuals to be used as burial sites;

(iii) any improvement on land described in subclause (i) or (ii) that is used for burial purposes;

(m) property held by

(i) a foundation constituted under the *Senior Citizens Housing Act*, RSA 1980 cS-13, before July 1, 1994, or

(ii) a management body established under the *Alberta Housing Act*,

and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*;

(n) property that is

(i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

(A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization,

(iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*, or

(v) held by and used in connection with a society as defined in the *Agricultural Societies Act* or with a community association as defined in the regulations,

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;

(o) property

(i) owned by a municipality and used solely for the operation of an airport by the municipality, or

(ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

(p) a municipal seed cleaning plant constructed under an agreement authorized by section 7 of the *Agricultural Service Board Act*, to the extent of 2/3 of the assessment prepared under Part 9 for the plant, but not including the land attributable to the plant.

(2) Except for properties described in subsection (1)(n)(i), (ii) or (iv), a council may by bylaw make any property that is exempt

from taxation under subsection (1)(n) subject to taxation under this Division to any extent the council considers appropriate.

(3) A council proposing to pass a bylaw under subsection (2) must notify, in writing, any person or group that will be affected of the proposed bylaw.

(4) A bylaw under subsection (2) has no effect until one year after it is passed.

RSA 2000 cM-26 s362;2003 cP-19.5 s142;2012 cE-0.3 s279; 2017 c13 s1(35);2018 c19 s71;2022 cC-26.7 s74.1;2024 c10 s31

Electric energy generation systems exemptions

362.1 Despite sections 359.1(4) and 359.2(4), the Minister may by order exempt, in respect of a taxation year, to any extent the Minister considers appropriate, one or more electric power systems used or intended for use in the generation or gathering of electricity from taxation for the purpose of raising the revenue needed to pay the requisitions referred to in section 326(1)(a)(ii) and (iii).

2017 c13 s1(36)

Exempt property that can be made taxable

363(1) The following are exempt from taxation under this Division:

(a) property held by and used in connection with Ducks Unlimited (Canada) under a lease, licence or permit from the Crown in right of Alberta or Canada;

(b) property held by and used in connection with

(i) the Canadian Hostelling Association -- Northern Alberta District,

(ii) the Southern Alberta Hostelling Association,

(iii) Hostelling International -- Canada -- Northern Alberta, or

(iv) Hostelling International -- Canada -- Southern Alberta,

unless the property is operated for profit or gain;

(c) property held by and used in connection with a branch or local unit of the Royal Canadian Legion, the Army, Navy and Air Force Veterans in Canada or other organization of former members of any allied forces;

(d) student dormitories.

(2) A council may by bylaw make any property listed in subsection (1)(a), (b) or (c) subject to taxation under this Division to any extent the council considers appropriate.

(3) A council may by bylaw make any property referred to in subsection (1)(d) subject to taxation to any extent the council considers appropriate other than for the purpose of raising revenue needed to pay the requisitions referred to in section 326(1)(a).

(4) A council proposing to pass a bylaw under subsection (2) must notify, in writing, the person or group that will be affected of the proposed bylaw.

(5) A bylaw under subsection (2) has no effect until the expiration of one year after it is passed.

RSA 2000 cM-26 s363;2017 c13 s1(37)

Exemptions granted by bylaw

364(1) A council may by bylaw exempt from taxation under this Division property held by a non-profit organization.

(1.1) A council may by bylaw exempt from taxation under this Division machinery and equipment used for manufacturing or processing.

(2) Property is exempt under this section to any extent the council considers appropriate.

1994 cM-26.1 s364;1995 c24 s53

Brownfield tax incentives

364.1(1) In this section, "brownfield property" means property, other than designated industrial property, that

(a) is a commercial or industrial property when a bylaw under subsection (2) is made or an agreement under subsection (11) is entered into in respect of the property, or was a commercial or industrial property at any earlier time, and

(b) in the opinion of the council making the bylaw,

(i) is, or possibly is, contaminated,

(ii) is vacant, derelict or under-utilized, and

(iii) is suitable for development or redevelopment for the general benefit of the municipality when a bylaw under subsection (2) is made or an agreement under subsection (11) is entered into in respect of the property.

(2) A council may by bylaw, for the purpose of encouraging development or redevelopment for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for brownfield properties, or

(b) deferrals of the collection of tax under this Division on brownfield properties.

(3) A bylaw under subsection (2)

(a) must identify the brownfield properties in respect of which an application may be made for a full or partial exemption or for a deferral,

(b) may set criteria to be met for a brownfield property to qualify for an exemption or deferral,

(c) must specify the taxation year or years for which the identified brownfield properties may qualify for an exemption or deferral, and

(d) must specify any conditions the breach of which cancels an exemption or deferral and the taxation year or years to which the condition applies.

(4) Before giving second reading to a bylaw proposed to be made under subsection (2), a council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

(5) An owner of brownfield property identified in a bylaw under subsection (2) may apply in the form and manner required by the municipality for an exemption or deferral in respect of the property.

(6) If after reviewing the application a designated officer of the municipality determines that the brownfield property meets the requirements of the bylaw for a full or partial exemption or for a deferral of the collection of tax under this Division, the designated officer may issue a certificate granting the exemption or deferral.

(7) The certificate must set out

(a) the taxation years to which the exemption or deferral applies, which must not include any tax year earlier than the tax year in which the certificate is issued,

(b) in the case of a partial exemption, the extent of the exemption, and

(c) all criteria, conditions and taxation years specified in the bylaw in accordance with subsection (3).

(8) If at any time after an exemption or deferral is granted under a bylaw under this section a designated officer of the municipality determines that the property did not meet or has ceased to meet a criterion referred to in subsection (3)(b) or that a condition referred to in subsection (3)(d) has been breached, the designated officer must cancel the exemption or deferral for the taxation year or years in which the criterion was not met or to which the condition applies.

(9) Where a designated officer refuses to grant an exemption or deferral, a written notice of the refusal must be sent to the applicant stating the reasons for the refusal and the date by which any complaint must be made, which date must be 60 days after the written notice of refusal is sent.

(10) An exemption or deferral granted under a bylaw under this section remains valid, subject to subsection (8) and the criteria and conditions on which it was granted, regardless of whether the bylaw is subsequently amended or repealed or otherwise ceases to have effect.

(11) Despite subsections (2) to (10), a council may enter into an agreement with the owner of a brownfield property

(a) exempting, either fully or partially, the brownfield property from taxation under this Division, or

(b) deferring the collection of tax under this Division on the brownfield property.

(12) The agreement must specify

(a) the taxation years to which the exemption or deferral applies, which must not include any tax year earlier than the one in which the agreement is entered into,

(b) the conditions on which the exemption or deferral is granted, and

(c) the consequences, rights and remedies arising in the event of any breach.

(13) Before voting on a resolution to enter into an agreement referred to in subsection (11), a council must hold a public hearing with respect to the proposed agreement in accordance with section 216.4 after giving notice of it in accordance with section 606.

2016 c24 s58;2022 c16 s9(83)

Tax incentives for non-residential property

364.2(1) In this section,

(a) "deferral" means a deferral under this section;

(b) "exemption" means an exemption under this section.

(c) repealed 2019 c21 s2.

(2) A council may, by bylaw, for the purpose of encouraging the development or revitalization of properties in an assessment class specified in section 297(1)(b) or (d) for the general benefit of the municipality, provide for

(a) full or partial exemptions from taxation under this Division for property in one or both of those assessment classes, or

(b) deferrals of the collection of tax under this Division on property referred to in clause (a).

(3) A bylaw under subsection (2)

(a) must set criteria to be met for property to qualify for an exemption or deferral,

(b) must establish a process for the submission and consideration of applications for an exemption or deferral,

(c) must not provide for an exemption or deferral to have effect in respect of a property for more than 15 consecutive taxation years, but may, if the council considers it appropriate, provide for subsequent exemptions or deferrals of 15 consecutive taxation years or less to be applied for and granted in respect of the property, and

(d) if the bylaw provides for any person other than the council, including a designated officer, to refuse to grant an exemption or deferral or to cancel an exemption or deferral, must establish a process for applications to the council for the review of those decisions and must specify the period of time within which the application must be made.

(4) If after reviewing an application the municipality determines that the property meets the requirements for a full or partial exemption or for a deferral, the municipality may grant the exemption or deferral.

(5) An exemption or deferral must be granted in a written form that specifies

(a) the taxation years to which the exemption or deferral applies, which must not include any taxation year earlier than the taxation year in which the exemption or deferral is granted,

(b) in the case of a partial exemption, the extent of the exemption, and

(c) any condition the breach of which will result in cancellation under subsection (6) and the taxation year or years to which the condition applies.

(6) If at any time after an exemption or deferral is granted under a bylaw under this section the municipality determines that the property did not meet or has ceased to meet a criterion referred to in subsection (3)(a) or that a condition referred to in subsection (5)(c) has been breached, the municipality may cancel the exemption or deferral for the taxation year or years in which the criterion was not met or to which the condition applies.

(7) Where a municipality refuses to grant or cancels an exemption or deferral, the municipality must send a written notice to the applicant stating the reasons for the refusal or cancellation and, if a review of the decision is available under subsection (3)(d), the date by which any application for that review must be made.

(8) Where a municipality grants or cancels an exemption or deferral in respect of designated industrial property, the municipality must notify the provincial assessor and provide any other information requested by the provincial assessor respecting the exemption, deferral or cancellation.

(9) Subject to subsection (6), any order referred to in section 127(1.1) and the criteria and conditions on which an exemption or deferral was granted, the exemption or deferral remains valid regardless of whether the bylaw under which it was granted is subsequently amended or repealed or otherwise ceases to have effect.

2019 c6 s7;2019 c21 s2

Judicial review of decision under section 364.2

364.3(1) Where a decision made under a bylaw under section 364.2 in respect of an exemption or deferral is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) No councillor, designated officer or other person who makes a decision under a bylaw under section 364.2 is liable for costs by reason of or in respect of a judicial review of the decision.

2019 c6 s7;AR 217/2022

Licensed premises

365(1) Property that is licensed under the *Gaming, Liquor and Cannabis Act* is not exempt from taxation under this Division, despite sections 351(1)(b) and 361 to 364.1 and any other Act.

(2) Despite subsection (1), property listed in section 362(1)(n) in respect of which a licence that is specified in the regulations has been issued is exempt from taxation under this Division.

RSA 2000 cM-26 s365;2016 c24 s59;2017 c21 s28

Grants in place of taxes

366(1) Each year a municipality may apply to the Crown for a grant if there is property in the municipality that the Crown has an interest in.

(2) The Crown may pay to the municipality a grant not exceeding the amount that would be recoverable by the municipality if the property that the Crown has an interest in were not exempt from taxation under this Division.

(3) When calculating a grant under this section, the following must not be considered as Crown property unless subsection (4) applies:

(a) property listed in section 298;

(b) museums and historical sites;

(c) public works reserves;

(d) property used in connection with academic, trade, forestry or agricultural schools, colleges or universities, including student dormitories;

(e) property used in connection with hospitals and institutions for mentally disabled persons;

(f) property owned by an agent of the Crown in respect of which another enactment provides for payment of a grant in place of a property tax;

(g) property in respect of which the Crown is not the assessed person.

(4) If any of the property listed in subsection (3) is a single family residence, the property must be considered as Crown property when calculating a grant under this section.

(5) The Crown may pay a grant under this section in respect of property referred to in subsection (3)(g) if in the Crown's opinion it is appropriate to do so.

1994 cM-26.1 s366;1996 c30 s31

Property that is partly exempt and partly taxable

367 A property may contain one or more parts that are exempt from taxation under this Division, but the taxes that are imposed against the taxable part of the property under this Division are recoverable against the entire property.

1994 cM-26.1 s367

Changes in taxable status of property

368(1) An exempt property or part of an exempt property becomes taxable if

(a) the use of the property changes to one that does not qualify for the exemption, or

(b) the occupant of the property changes to one who does not qualify for the exemption.

(2) A taxable property or part of a taxable property becomes exempt if

(a) the use of the property changes to one that qualifies for the exemption, or

(b) the occupant of the property changes to one who qualifies for the exemption.

(3) If the taxable status of property changes, a tax imposed in respect of it must be prorated so that the tax is payable only for the part of the year in which the property, or part of it, is not exempt.

(4) When a designated manufactured home is moved out of a municipality,

(a) it becomes exempt from taxation by that municipality when it is moved, and

(b) it becomes taxable by another municipality when it is located in that other municipality.

1994 cM-26.1 s368;1996 c30 s32;1998 c24 s31

Supplementary property tax bylaw

369(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of property, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of that property.

(2) A council that passes a bylaw referred to in subsection (1) must use the tax rates set by its property tax bylaw as the supplementary tax rates to be imposed.

(2.01) A council may pass a bylaw authorizing it to impose a supplementary tax for designated industrial property only if it passes a bylaw authorizing it to impose a supplementary tax in respect of all other property in the municipality.

(2.1) Despite subsection (2), the tax rates required to raise the revenue to pay requisitions referred to in section 175 of the *Education Act* must not be applied as supplementary tax rates.

(3) The municipality must prepare a supplementary property tax roll, which may be a continuation of the supplementary property assessment roll prepared under Part 9 or may be separate from that roll.

(4) A supplementary property tax roll must show

(a) the same information that is required to be shown on the property tax roll, and

(b) the date for determining the tax that may be imposed under the supplementary property tax bylaw.

(5) Sections 327(4), 328, 330 and 331 apply in respect of a supplementary property tax roll.

(6) The municipality must

(a) prepare supplementary property tax notices for all taxable property shown on the supplementary property tax roll of the municipality, and

(b) send the supplementary property tax notices to the persons liable to pay the taxes.

(7) Sections 333(4), 334, 335, 336, 337 and 338 apply in respect of supplementary property tax notices.

RSA 2000 cM-26 s369;2012 cE-0.3 s279;2016 c24 s60

Continuous tax bylaws — tax

369.1 Bylaws enacted under section 369(1), 371 or 379 remain in force after the year in which they are enacted and apply in respect of subsequent years until they are repealed.

2019 c22 s10(12)

Regulations

370 The Minister may make regulations

(a) prescribing the extent to which residences and farm buildings are exempt from taxation under this Division;

(b) respecting the calculation of a tax rate to be imposed on linear property;

(b.1) respecting the setting of tax rates referred to in section 354(3.1);

(c) describing other property that is exempt from taxation pursuant to section 362(1)(n), and respecting the qualifications and conditions required for the purposes of section 362(1)(n);

(c.1) respecting tax rolls and tax notices including, without limitation, regulations

(i) respecting the information to be shown on a tax roll and a tax notice;

(ii) providing for the method of determining the person liable to pay a property or other tax imposed under this Part;

(iii) respecting the sending of tax notices;

(c.2) respecting designated industrial property assessment requisitions and designated industrial property requisition tax bylaws, including, without limitation, regulations respecting the application of any provision of this Act, with or without modification, to a designated industrial property assessment requisition or a designated industrial property requisition tax bylaw, or both;

(c.3) respecting tax exemptions and deferrals under section 364.1;

(d) specifying licences for the purposes of section 365(2);

(e) defining a community association for the purposes of this Act;

(f) respecting the circumstances in which property is to be considered to be used in connection with a purpose, activity or other thing for the purposes of one or more provisions of this Part;

(g) respecting the circumstances in which property is to be considered to be held by a person or entity for the purposes of one or more provisions of this Part.

RSA 2000 cM-26 s370;2005 c14 s13;
2016 c24 s61;2017 c13 s1(38)

Division 3
Business Tax

Business tax bylaw

371(1) Each council may pass a business tax bylaw.

(2) A business tax bylaw or any amendment to it applies to the year in which it is passed, only if it is passed before May 1 of that year.

1994 cM-26.1 s371

Taxable business

372(1) The business tax bylaw authorizes the council to impose a tax in respect of all businesses operating in the municipality except businesses that are exempt in accordance with that bylaw.

(2) The tax must not be imposed in respect of a business that is exempt under section 351, 375 or 376.

1994 cM-26.1 s372

Person liable to pay business tax

373(1) A tax imposed under this Division must be paid by the person who operates the business.

(2) A person who purchases a business or in any other manner becomes liable to be shown on the tax roll as a taxpayer must give the municipality written notice of a mailing address to which notices under this Division may be sent.

1994 cM-26.1 s373

Contents of business tax bylaw

374(1) The business tax bylaw must

(a) require assessments of businesses operating in the municipality to be prepared and recorded on a business assessment roll;

(b) specify one or more of the following methods of assessment as the method or methods to be used to prepare the assessments:

(i) assessment based on a percentage of the gross annual rental value of the premises;

(i.1) assessment based on a percentage of the net annual rental value of the premises;

(ii) assessment based on storage capacity of the premises occupied for the purposes of the business;

(iii) assessment based on floor space, being the area of all of the floors in a building and the area outside the building that are occupied for the purposes of that business;

(iv) assessment based on a percentage of the assessment prepared under Part 9 for the premises occupied for the purposes of the business;

(c) specify the basis on which a business tax may be imposed by prescribing the following:

(i) for the assessment method referred to in clause (b)(i), the percentage of the gross annual rental value;

(i.1) for the assessment method referred to in clause (b)(i.1), the percentage of the net annual rental value;

(ii) for the assessment method referred to in clause (b)(ii), the dollar rate per unit of storage capacity;

(iii) for the assessment method referred to in clause (b)(iii), the dollar rate per unit of floor space;

(iv) for the assessment method referred to in clause (b)(iv), the percentage of the assessment;

(d) establish a procedure for prorating and rebating business taxes.

(2) A business tax bylaw may

(a) establish classes of business for the purpose of grouping businesses,

(b) specify classes of business that are exempt from taxation under this Division,

(c) require that taxes imposed under this Division be paid by instalments, or

(d) include any other information considered appropriate by the municipality.

(3) A business tax bylaw may provide that when a lessee who is liable to pay the tax imposed under this Division in respect of any leased premises sublets the whole or part of the premises, the municipality may require the lessee or the sub-lessee to pay the tax in respect of the whole or part of the premises.

1994 cM-26.1 s374;1999 c11 s19

Assessment not required

374.1 Despite section 374(1)(a), a municipality is not required to prepare an assessment for any business in a class of business that is exempt from taxation under the business tax bylaw.

1998 c24 s33

Exempt businesses

375 The following are exempt from taxation under this Division:

(a) a business operated by the Crown;

(b) an airport operated by a regional airports authority created under section 5(2) of the *Regional Airports Authorities Act*;

(c) property

(i) owned by a municipality and used solely for the operation of an airport by the municipality, or

(ii) held under a lease, licence or permit from a municipality and used solely for the operation of an airport by the lessee, licensee or permittee;

(d) a business operated by a non-profit organization on property that is exempt from taxation under section 362(1)(n).

1994 cM-26.1 s375;1995 c24 s57;1998 c24 s34

Exemption when tax is payable under Division 2

376(1) When machinery and equipment or linear property is located on premises occupied for the purposes of a business and a property tax has been imposed in respect of the machinery and equipment or linear property under Division 2 of this Part in any year, the premises on which that property is located are exempt from taxation under this Division in that year.

(2) If in any year the activities that result from the operation of the machinery and equipment or linear property are not the chief

business carried on at the premises, the premises on which that property is located are not exempt from taxation under this Division in that year.

1994 cM-26.1 s376

Business tax rate bylaw

377(1) Each council that has passed a business tax bylaw must pass a business tax rate bylaw annually.

(2) The business tax rate bylaw must set a business tax rate.

(3) If the business tax bylaw establishes classes of business, the business tax rate bylaw must set a business tax rate for each class.

(4) The business tax rate may be different for each class of business established by the business tax bylaw.

(5) The tax rates set by the business tax rate bylaw must not be amended after the municipality sends the tax notices to the taxpayers.

1994 cM-26.1 s377

Calculating amount of tax

378 The amount of tax to be imposed under this Division in respect of a business is calculated by multiplying the assessment for the business by the tax rate to be imposed on that business.

1994 cM-26.1 s378

Supplementary business tax bylaw

379(1) If in any year a council passes a bylaw authorizing supplementary assessments to be prepared in respect of businesses, the council must, in the same year, pass a bylaw authorizing it to impose a supplementary tax in respect of those businesses.

(2) A council that passes a bylaw referred to in subsection (1) must use the tax rates set by its business tax rate bylaw as the supplementary tax rates to be imposed.

(3) The supplementary business tax must be imposed

(a) on each person who operates a business for a temporary period and whose name is not entered on the business tax roll,

(b) on each person who moves into new premises or opens new premises or branches of an existing business, although the person's name is entered on the business tax roll,

(c) on each person who begins operating a business and whose name is not entered on the business tax roll, and

(d) on each person who increases the storage capacity or floor space of the premises occupied for the purposes of a business after the business tax roll has been prepared.

(4) The municipality must prepare a supplementary business tax roll, which may be a continuation of the supplementary business assessment roll or may be separate from that roll.

(5) A supplementary business tax roll must show

(a) the same information that is required to be shown on the business tax roll, and

(b) the date for determining the tax that may be imposed under the supplementary business tax bylaw.

(6) Sections 327(4), 328, 330 and 331 apply in respect of a supplementary business tax roll.

(7) The municipality must

(a) prepare supplementary business tax notices for all taxable businesses shown on the supplementary business tax roll of the municipality, and

(b) send the supplementary business tax notices to the persons liable to pay the taxes.

(8) Sections 333(4), 334, 335, 336, 337 and 338 apply in respect of supplementary business tax notices.

1994 cM-26.1 s379

Grants in place of taxes

380(1) Each year a municipality may apply to the Crown for a grant if there is a business in the municipality operated by the Crown.

(2) The Crown may pay to the municipality a grant not exceeding the amount that would be recoverable by the municipality if the business operated by the Crown were not exempt from taxation under this Division.

1994 cM-26.1 s380

Division 4
Business Improvement Area Tax

Regulations

381 The Minister may make regulations respecting a business improvement area tax.

RSA 2000 cM-26 s381;2015 c8 s50

Division 4.1
Community Revitalization Levy

Definitions

381.1 In this Division,

(a) "incremental assessed value" means the increase in the assessed value of property located in a community revitalization levy area after the date the community revitalization levy bylaw is approved by the Minister under section 381.2(3);

(b) "levy" means a community revitalization levy imposed under section 381.2(2).

2005 c14 s14;2022 c16 s9(66)

Community revitalization levy bylaw

381.2(1) Each council may pass a community revitalization levy bylaw.

(2) A community revitalization levy bylaw authorizes the council to impose a levy in respect of the incremental assessed value of property in a community revitalization levy area to raise revenue to be used toward the payment of infrastructure and other costs associated with the redevelopment of property in the community revitalization levy area.

(3) A community revitalization levy bylaw, or any amendment to it, has no effect unless it is approved by the Minister.

(4) The Minister may approve a community revitalization levy bylaw in whole or in part or with variations and subject to conditions.

2005 c14 s14;2022 c16 s9(67)

Person liable to pay levy

381.3 A levy imposed under this Division must be paid by the assessed persons of the property in the community revitalization levy area.

2005 c14 s14

Incremental assessed value not subject to equalized assessment or requisition

381.4(1) Subject to subsection (2), the incremental assessed value of property in a community revitalization levy area shall not be included for the purpose of calculating

(a) an equalized assessment under Part 9, or

(b) the amount of a requisition under Part 10.

(2) Subsection (1) applies in respect of property in a community revitalization levy area

(a) for a period of 20 years, or

(b) for such other period as determined by the Lieutenant Governor in Council under section 381.5(1)(e.1), which period may not exceed 40 years,

from the year in which the community revitalization levy bylaw is made.

2005 c14 s14;2018 c20 s12

Regulations

381.5(1) The Lieutenant Governor in Council may make regulations

(a) establishing any area in Alberta as a community revitalization levy area;

(b) respecting a levy including, without limitation, regulations respecting the minimum and maximum levy that may be imposed and the application of the levy;

(c) respecting the assessment of property, including identifying or otherwise describing the assessed person in respect of the property, in a community revitalization levy area;

(d) respecting assessment rolls, assessment notices, tax rolls and tax notices in respect of property in a community revitalization levy area;

(e) respecting the application of any provision of this Act, with or without modification, to a community revitalization levy bylaw or a community revitalization levy, or both;

(e.1) determining the period for which section 381.4(1) applies to a community revitalization levy area;

(f) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s14;2018 c20 s12

Division 5
Special Tax

Special tax bylaw

382(1) Each council may pass a special tax bylaw to raise revenue to pay for a specific service or purpose by imposing one or more of the following special taxes:

(a) a waterworks tax;

(b) a sewer tax;

(c) a boulevard tax;

(d) a dust treatment tax;

(e) a paving tax;

(f) a tax to cover the cost of repair and maintenance of roads, boulevards, sewer facilities and water facilities;

(g) repealed 2008 cE-6.6 s55;

(h) a tax to enable the municipality to provide incentives to health professionals to reside and practice their professions in the municipality;

(i) a fire protection area tax;

(j) a drainage ditch tax;

(k) a tax to provide a supply of water for the residents of a hamlet;

(l) a recreational services tax.

(2) A special tax bylaw must be passed annually.

RSA 2000 cM-26 s382;2008 cE-6.6 s55

Taxable property

383(1) The special tax bylaw authorizes the council to impose the tax in respect of property in any area of the municipality that will benefit from the specific service or purpose stated in the bylaw.

(2) The tax must not be imposed in respect of property that is exempt under section 351.

1994 cM-26.1 s383

Contents of special tax bylaw

384 The special tax bylaw must

(a) state the specific service or purpose for which the bylaw is passed,

(b) describe the area of the municipality that will benefit from the service or purpose and in which the special tax is to be imposed,

(c) state the estimated cost of the service or purpose, and

(d) state whether the tax rate is to be based on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

and set the tax rate to be imposed in each case.

1994 cM-26.1 s384

Condition

385 A special tax bylaw must not be passed unless the estimated cost of the specific service or purpose for which the tax is imposed is included in the budget of the municipality as an estimated expenditure.

1994 cM-26.1 s385

Use of revenue

386(1) The revenue raised by a special tax bylaw must be applied to the specific service or purpose stated in the bylaw.

(2) If there is any excess revenue, the municipality must advertise the use to which it proposes to put the excess revenue.

1994 cM-26.1 s386

Person liable to pay special tax

387 The person liable to pay the tax imposed in accordance with a special tax bylaw is the owner of the property in respect of which the tax is imposed.

1994 cM-26.1 s387;1999 c11 s20

Division 6
Well Drilling Equipment Tax

Well drilling equipment tax bylaw

388(1) Each council may pass a well drilling equipment tax bylaw.

(2) The well drilling equipment tax bylaw authorizes the council to impose a tax in respect of equipment used to drill a well for which a licence is required under the *Oil and Gas Conservation Act*.

1994 cM-26.1 s388

Person liable to pay the tax

389 A tax imposed under this Division must be paid by the person who holds the licence required under the *Oil and Gas Conservation Act* in respect of the well being drilled.

1994 cM-26.1 s389

Calculation of the tax

390(1) The Minister may make regulations prescribing the well drilling equipment tax rate.

(2) A tax imposed under this Division must be calculated in accordance with the tax rate prescribed under subsection (1).

1994 cM-26.1 s390

Division 6.1
Clean Energy Improvement Tax

Interpretation

390.1(1) In this Division, "clean energy improvement" means, subject to the regulations, a renovation, adaptation or installation on eligible private property that

(a) will increase energy efficiency or the use of renewable energy on that property, and

(b) will be paid for in whole or in part by a tax imposed under this Division,

but does not include improvements referred to in section 284(1)(j)(iii), (iii.1) or (iv).

(2) For the purposes of this Division, the amount required to recover the costs of a clean energy improvement may include

(a) the capital cost of undertaking the clean energy improvement,

(b) the cost of professional services needed for the clean energy improvement,

(c) a proportionate share of the costs associated with the administration of a clean energy improvement program,

(d) the cost of financing the clean energy improvement, and

(e) other expenses incidental to the undertaking of the clean energy improvement and to the raising of revenue to pay for it.

2018 c6 s6;2021 c22 s6

Eligibility of properties for clean energy improvements

390.2 Subject to section 390.3(4)(a), property is eligible for a clean energy improvement if the property is

(a) located in a municipality that has passed a clean energy improvement tax bylaw,

(b) one of the following types of private property:

(i) residential;

(ii) non-residential;

(iii) farm land,

and

(c) not designated industrial property.

2018 c6 s6

Clean energy improvement tax bylaw

390.3(1) Each council may pass a clean energy improvement tax bylaw

(a) to establish a clean energy improvement program,

(b) notwithstanding section 251, to authorize the municipality to make a borrowing for the purpose of financing clean energy improvements, and

(c) to enable clean energy improvements to be made to eligible properties.

(2) Before a clean energy improvement is made to any property, a council must pass a clean energy improvement tax bylaw.

(3) A clean energy improvement tax bylaw authorizes the council to impose a clean energy improvement tax in respect of each clean energy improvement made to a property to raise revenue to pay the amount required to recover the costs of those clean energy improvements.

(4) A clean energy improvement tax bylaw must, subject to the regulations,

(a) set out

(i) the types of private property that are eligible for a clean energy improvement, and

(ii) eligible clean energy improvements,

(b) set out

(i) the amount of money to be borrowed for the purpose of financing clean energy improvements,

(ii) the maximum rate of interest, the term and the terms of repayment of the borrowing, and

(iii) the source or sources of money to be used to pay the principal and interest owing under the borrowing,

(c) indicate that, where a municipality has entered into a clean energy improvement agreement with the owner of a property, a clean energy improvement tax will be charged based on the clean energy improvement agreement,

(d) identify the period over which the cost of each eligible clean energy improvement will be spread, which period may vary from improvement to improvement, but the period shall not exceed the probable lifetime of the improvement,

(e) indicate the process by which the owner of a property can apply to the municipality for a clean energy improvement,

(f) include any other information the council considers necessary or advisable, and

(g) include any requirements imposed by the regulations.

(5) Before giving second reading to a proposed clean energy improvement tax bylaw, the council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

2018 c6 s6;2022 c16 s9(83)

Clean energy improvement agreement

390.4(1) A municipality and the owner of a property shall enter into a clean energy improvement agreement before a clean energy improvement is made to that property.

(2) A clean energy improvement agreement must, subject to the regulations,

(a) describe the proposed clean energy improvement,

(b) identify the property in respect of which the clean energy improvement tax will be imposed,

(c) indicate that the owner of the property will be liable to pay the clean energy improvement tax,

(d) include the amount required to recover the costs of the clean energy improvement and the method of calculation used to determine that amount,

(e) state the period over which the amount required to recover the costs of the clean energy improvement will be paid,

(f) state the portion of the amount required to recover the costs of the clean energy improvement to be paid

(i) by the municipality,

(ii) from revenue raised by the clean energy improvement tax, and

(iii) from other sources of revenue,

(g) describe how the clean energy improvement tax will be revised in the event of a subdivision of the property or a consolidation of the property with any other property, and

(h) include any other information the municipality considers necessary or advisable.

2018 c6 s6

Person liable to pay clean energy improvement tax

390.5(1) The person liable to pay a tax imposed in accordance with a clean energy improvement tax bylaw is the owner of the property in respect of which the tax is imposed.

(2) Repealed 2023 c9 s19(6).

2018 c6 s6;2023 c9 s19(6)

Paying off a clean energy improvement tax

390.6 The owner of a property in respect of which a clean energy improvement tax is imposed may pay the tax at any time.

2018 c6 s6

Refinancing of debt by council

390.7 If, after a clean energy improvement agreement has been made, the council refinances the debt created to pay for the clean energy improvement that is the subject of that agreement at an

interest rate other than the rate estimated when the clean energy improvement agreement was made, the council, with respect to future years, may revise the amount required to recover the costs of the clean energy improvement included in that agreement to reflect the change in the interest rate.

2018 c6 s6

Petitions

390.8(1) Notwithstanding section 232(2), electors of a municipality may petition the municipality to

(a) pass a clean energy improvement tax bylaw, or

(b) amend or repeal a clean energy improvement tax bylaw.

(2) For greater certainty, the amendment or repeal of a clean energy improvement tax bylaw does not affect clean energy improvement agreements entered into prior to the passage of that bylaw or the imposition of a clean energy improvement tax in relation to a property where a clean energy improvement has been made.

2018 c6 s6

Regulations

390.9 The Minister may make regulations respecting clean energy improvements, including, without limitation, regulations

(a) respecting eligibility requirements for clean energy improvements;

(b) respecting clean energy improvement agreements;

(c) respecting clean energy improvement tax bylaws;

(d) respecting types of renovations, adaptations or installations for which clean energy improvement agreements may be made and types of renovations, adaptations or installations for which clean energy improvement agreements may not be made;

(e) respecting the disclosure of clean energy improvement agreements to prospective purchasers of property;

(f) respecting limits on the number of improvements to a single property or a type of eligible property for which a tax may be imposed under this Division;

(g) respecting limits on the capital costs of undertaking clean energy improvements on a single property or a type of eligible property under this Division;

(h) respecting clean energy improvement programs, including the administration of clean energy improvement programs.

2018 c6 s6

Division 7
Local Improvement Tax

Definition

391 In this Division, "local improvement" means a project

(a) that the council considers to be of greater benefit to an area of the municipality than to the whole municipality, and

(b) that is to be paid for in whole or in part by a tax imposed under this Division.

1994 cM-26.1 s391

Petitioning rules

392(1) Sections 222 to 226 apply to petitions under this Division, except as they are modified by this section.

(2) A petition is not a sufficient petition unless

(a) it is signed by 2/3 of the owners who would be liable to pay the local improvement tax, and

(b) the owners who sign the petition represent at least 1/2 of the value of the assessments prepared under Part 9 for the parcels of land in respect of which the tax will be imposed.

(3) If a parcel of land is owned by more than one owner, the owners are considered as one owner for the purpose of subsection (2).

(4) If a municipality, school division or provincial health agency or regional health authority under the *Provincial Health Agencies Act* is entitled to sign a petition under this Division, it may give notice to the council prior to or at the time the petition is presented to the council that its name and the assessment prepared for its land under Part 9 are not to be counted in determining the sufficiency of a petition under subsection (2), and the council must comply with the notice.

(5) If a corporation, church, organization, estate or other entity is entitled to sign a petition under this Division, the petition may be signed on its behalf by a person who

(a) is at least 18 years old, and

(b) produces on request a certificate authorizing the person to sign the petition.

RSA 2000 cM-26 s392;2012 cE-0.3 s279;2024 c10 s31

Proposal of local improvement

393(1) A council may on its own initiative propose a local improvement.

(2) A group of owners in a municipality may petition the council for a local improvement.

1994 cM-26.1 s393

Local improvement plan

394 If a local improvement is proposed, the municipality must prepare a local improvement plan.

1994 cM-26.1 s394

Contents of plan

395(1) A local improvement plan must

(a) describe the proposed local improvement and its location,

(b) identify

(i) the parcels of land in respect of which the local improvement tax will be imposed, and

(ii) the person who will be liable to pay the local improvement tax,

(c) state whether the tax rate is to be based on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

(d) include the estimated cost of the local improvement,

(e) state the period over which the cost of the local improvement will be spread,

(f) state the portion of the estimated cost of the local improvement proposed to be paid

(i) by the municipality,

(ii) from revenue raised by the local improvement tax, and

(iii) from other sources of revenue,

and

(g) include any other information the proponents of the local improvement consider necessary.

(2) The estimated cost of a local improvement may include

(a) the actual cost of buying land necessary for the local improvement,

(b) the capital cost of undertaking the local improvement,

(c) the cost of professional services needed for the local improvement,

(d) the cost of repaying any existing debt on a facility that is to be replaced or rehabilitated, and

(e) other expenses incidental to the undertaking of the local improvement and to the raising of revenue to pay for it.

1994 cM-26.1 s395

Procedure after plan is prepared

396(1) When a local improvement plan has been prepared, the municipality must send a notice to the persons who will be liable to pay the local improvement tax.

(2) A notice under subsection (1) must include a summary of the information included in the local improvement plan.

(3) Subject to subsection (3.1), if a petition objecting to the local improvement is filed with the chief administrative officer within 30 days from the notices' being sent under subsection (1) and the chief administrative officer declares the petition to be sufficient, the council must not proceed with the local improvement.

(3.1) The council may, after the expiry of one year after the petition is declared to be sufficient, re-notify in accordance with subsections (1) and (2) the persons who would be liable to pay the local improvement tax.

(4) If a sufficient petition objecting to the local improvement is not filed with the chief administrative officer within 30 days from sending the notices under subsection (1), the council may undertake the local improvement and impose the local improvement tax at any time in the 3 years following the sending of the notices.

(5) When a council is authorized under subsection (4) to undertake a local improvement and

(a) the project has not been started, or

(b) the project has been started but is not complete,

the council may impose the local improvement tax for one year, after which the tax must not be imposed until the local improvement has been completed or is operational.

1994 cM-26.1 s396;1995 c24 s58

Local improvement tax bylaw

397(1) A council must pass a local improvement tax bylaw in respect of each local improvement.

(2) A local improvement tax bylaw authorizes the council to impose a local improvement tax in respect of all land in a particular area of the municipality to raise revenue to pay for the local improvement that benefits that area of the municipality.

(2.1) Despite subsection (2), where the local improvement that is the subject of a local improvement tax bylaw of a council of a municipality is a road to benefit Crown land within an area of the municipality, the local improvement tax bylaw does not authorize the council to impose a local improvement tax to raise revenue to pay for the local improvement unless, before it receives second reading, the bylaw is approved by the Minister responsible for the administration of the Crown land.

(3) Despite section 351(1), no land is exempt from taxation under this section.

RSA 2000 cM-26 s397;2015 c8 s51

Contents of bylaw

398(1) A local improvement tax bylaw must

(a) include all of the information required to be included in the local improvement plan,

(b) provide for equal payments during each year in the period over which the cost of the local improvement will be spread,

(c) set a uniform tax rate to be imposed on

(i) the assessment prepared in accordance with Part 9,

(ii) each parcel of land,

(iii) each unit of frontage, or

(iv) each unit of area,

based on the cost of the local improvement less any financial assistance provided to the municipality by the Crown in right of Canada or Alberta, and

(d) include any other information the council considers necessary.

(2) The local improvement tax bylaw may set the uniform tax rate based on estimated average costs throughout the municipality for a similar type of local improvement and that rate applies whether the actual cost of the local improvement is greater or less than the uniform tax rate.

1994 cM-26.1 s398

Start-up of a local improvement

399 The undertaking of a local improvement may be started, the local improvement tax bylaw may be passed and debentures may be issued before or after the actual cost of the local improvement has been determined.

1994 cM-26.1 s399

Person liable to pay local improvement tax

400 The person liable to pay the tax imposed in accordance with a local improvement tax bylaw is the owner of the parcel of land in respect of which the tax is imposed.

1994 cM-26.1 s400

Paying off a local improvement tax

401(1) The owner of a parcel of land in respect of which a local improvement tax is imposed may pay the tax at any time.

(2) If the local improvement tax rate is subsequently reduced under section 402 or 403, the council must refund to the owner the appropriate portion of the tax paid.

1994 cM-26.1 s401

Variation of local improvement tax bylaw

402(1) If, after a local improvement tax has been imposed, there is

(a) a subdivision affecting a parcel of land, or

(b) a consolidation of 2 or more parcels of land,

in respect of which a local improvement tax is payable, the council, with respect to future years, must revise the local improvement tax bylaw so that each of the new parcels of land bears an appropriate share of the local improvement tax.

(2) If, after a local improvement tax has been imposed,

(a) there is a change in a plan of subdivision affecting an area that had not previously been subject to a local improvement tax, and

(b) the council is of the opinion that as a result of the change the new parcels of land receive a benefit from the local improvement,

the council, with respect to future years, must revise the local improvement tax bylaw so that each benefitting parcel of land bears an appropriate share of the local improvement tax.

1994 cM-26.1 s402

Variation of local improvement tax rate

403(1) If, after a local improvement tax rate has been set, the council

(a) receives financial assistance from the Crown in right of Canada or Alberta or from other sources that is greater than the amount estimated when the local improvement tax rate was set, or

(b) refinances the debt created to pay for the local improvement at an interest rate lower than the rate estimated when the local improvement tax rate was set,

the council, with respect to future years, may revise the rate so that each benefitting parcel of land bears an appropriate share of the actual cost of the local improvement.

(2) If, after a local improvement tax rate has been set, an alteration is necessary following a complaint under Part 11 or an appeal under Part 12 that is sufficient to reduce or increase the revenue raised by the local improvement tax bylaw in any year by more than 5%, the council, with respect to future years, may revise the rate so that the local improvement tax bylaw will raise the revenue originally anticipated for those years.

(3) If, after a local improvement tax rate has been set, it is discovered that the actual cost of the local improvement is higher than the estimated cost on which the local improvement tax rate is based, the council may revise, once only over the life of the local improvement, the rate with respect to future years so that the local improvement tax bylaw will raise sufficient revenue to pay the actual cost of the local improvement.

1994 cM-26.1 s403;1999 c11 s21

Unusual parcels

404 If some parcels of land in respect of which a local improvement tax is to be imposed appear to call for a smaller or larger proportionate share of the tax because they are corner lots or are differently sized or shaped from other parcels, those parcels may be assigned the number of units of measurement the council considers appropriate to ensure that they will bear a fair portion of the local improvement tax.

1994 cM-26.1 s404

Municipality's share of the cost

405(1) A council may by bylaw require the municipality to pay the cost of any part of a local improvement that the council considers to be of benefit to the whole municipality.

(2) A bylaw under subsection (1) must be advertised if the cost to be paid by the municipality exceeds 50% of the cost of the local improvement less any financial assistance provided to the municipality by the Crown in right of Canada or Alberta.

(3) If financial assistance is provided to the municipality by the Crown in right of Canada or Alberta for a local improvement, the council must apply the assistance to the cost of the local improvement.

1994 cM-26.1 s405

Land required for local improvement

406(1) If a parcel of land is required before a local improvement can be proceeded with, the council may agree with the owner of the parcel that in consideration of

(a) the dedication or gift to the municipality of the parcel of land required, or

(b) a release of or reduction in the owner's claim for compensation for the parcel of land,

the remainder of the owner's land is exempt from all or part of the local improvement tax that would otherwise be imposed.

(2) The tax roll referred to in section 327 must be prepared in accordance with an agreement under this section, despite anything to the contrary in this Act.

1994 cM-26.1 s406

Exemption from local improvement tax

407(1) If a sanitary or storm sewer or a water main is constructed along a road or constructed in addition to or as a replacement of an existing facility

(a) along which it would not have been constructed except to reach some other area of the municipality, or

(b) in order to provide capacity for future development and the existing sanitary and storm sewers and water mains are sufficient for the existing development in the area,

the council may exempt from taxation under the local improvement tax bylaw, to the extent the council considers fair, the parcels of land abutting the road or place.

(2) If a local improvement tax is imposed for a local improvement that replaces a similar type of local improvement,

(a) the balance owing on the existing local improvement tax must be added to the cost of the new local improvement, or

(b) the council must exempt the parcels of land in respect of which the existing local improvement tax is imposed from the tax that would be imposed for the new local improvement.

1994 cM-26.1 s407

Sewers

408(1) A municipality may construct a local improvement for sewer if

(a) the council approves the construction,

(b) the construction is recommended by the Minister of Health or the medical health officer, and

(c) the council considers it to be in the public interest to do so.

(2) The owners of the parcels of land that benefit from a local improvement for sewer have no right to petition against its construction.

RSA 2000 cM-26 s408;2013 c10 s37

Private connection to a local improvement

409(1) If a local improvement for sewer or water has been constructed, the municipality may construct private connections from the local improvement to the street line if the council approves the construction.

(2) The cost of constructing a private connection must be imposed against the parcel of land that benefits from it and the owner of the parcel has no right to petition against its construction.

1994 cM-26.1 s409

Division 7.1
Community Aggregate Payment Levy

Community aggregate payment levy bylaw

409.1(1) Each council may pass a community aggregate payment levy bylaw.

(2) A community aggregate payment levy bylaw authorizes the council to impose a levy in respect of all sand and gravel businesses operating in the municipality to raise revenue to be used toward the payment of infrastructure and other costs in the municipality.

2005 c14 s15

Person liable to pay levy

409.2 A levy imposed under this Division must be paid by the persons who operate sand and gravel operations in the municipality.

2005 c14 s15

Regulations

409.3(1) The Minister may make regulations

(a) respecting a levy referred to in section 409.1(2), including, without limitation, regulations respecting the maximum levy that may be imposed and the application of the levy;

(b) respecting the application of any provision of this Act, with or without modification, to a community aggregate payment levy bylaw or a community aggregate payment levy, or both;

(c) respecting any other matter necessary or advisable to carry out the intent and purpose of this Division.

(2) A regulation under subsection (1) may be specific to a municipality or general in its application.

2005 c14 s15

Division 8
Recovery of Taxes Related to Land

Definitions

410 In this Division,

(a) "encumbrance" means an encumbrance as defined in the *Land Titles Act*;

(b) "encumbrancee" means the owner of an encumbrance;

(b.1) "parcel of land" means a parcel of land and the improvements on it;

(c) "Registrar" means the Registrar, as defined in the *Land Titles Act*, of the appropriate Land Titles Office;

(c.1) "remedial costs" means all expenses incurred by the Government of Alberta to perform work under an environmental protection order or an enforcement order issued under the *Environmental Protection and Enhancement Act*;

(d) "reserve bid" means the minimum price at which a municipality is willing to sell a parcel of land at a public auction;

(e) "tax" means a property tax, a community revitalization levy, a special tax, a clean energy improvement tax, a local improvement tax or a community aggregate payment levy;

(f) "tax recovery notification" means a notice, in writing, that part or all of the taxes imposed in respect of a parcel of land by a municipality are in arrears.

RSA 2000 cM-26 s410;2005 c14 s16;2018 c6 s7

Methods of recovering taxes in arrears

411(1) A municipality may attempt to recover tax arrears in respect of a parcel of land

(a) in accordance with this Division, and

(b) subject to subsection (2), in accordance with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before

(a) the parcel is sold at a public auction under section 418, or

(b) the parcel is disposed of in accordance with section 425,

whichever occurs first.

1994 cM-26.1 s411

Tax arrears list

412(1) A municipality must annually, not later than March 31,

(a) prepare a tax arrears list showing the parcels of land in the municipality in respect of which there are tax arrears for more than one year,

(b) send 2 copies of the tax arrears list to the Registrar,

(b.1) send a copy of the tax arrears list to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*, and

(c) post a copy of the tax arrears list in a place that is accessible to the public during regular business hours.

(2) A tax arrears list must not include a parcel of land in respect of which there is in existence a tax recovery notification from previous years, unless that notification has been removed from the certificate of title for that parcel.

(3) The municipality must notify the persons who are liable to pay the tax arrears that a tax arrears list has been prepared and sent to the Registrar.

RSA 2000 cM-26 s412;2007 cU-1.5 s73

Tax recovery notification

413(1) The Registrar must endorse on the certificate of title for each parcel of land shown on the tax arrears list a tax recovery notification.

(2) The Registrar must certify, on a copy of the tax arrears list, that tax recovery notifications have been endorsed in accordance with subsection (1) and return the certified copy of the tax arrears list to the municipality with a statement of the costs payable to the Land Titles Office by the municipality.

(3) The municipality is responsible for the payment of the costs referred to in subsection (2) but may add the costs to the taxes owing in respect of the parcels of land shown on the tax arrears list.

(4) The Registrar must not remove a tax recovery notification from a certificate of title until the municipality at whose request it was endorsed on the certificate of title requests its removal.

1994 cM-26.1 s413

Removal of improvements

414 When a tax recovery notification has been endorsed on a certificate of title for a parcel of land, the person who is liable to pay the taxes must not remove from the parcel, unless the municipality at whose request the notification was endorsed on the certificate of title consents, any improvements for which that person is also liable to pay the taxes.

1994 cM-26.1 s414

Right to pay tax arrears

415(1) After a tax recovery notification has been endorsed on the certificate of title for a parcel of land, any person may pay the tax arrears in respect of the parcel.

(2) On payment of the tax arrears under subsection (1), the municipality must ask the Registrar to remove the tax recovery notification.

(3) Subject to section 423(3), a person may exercise the right under subsection (1) at any time before the municipality disposes of the parcel in accordance with section 425.

1994 cM-26.1 s415

Right to collect rent to pay tax arrears

416(1) After a tax recovery notification has been endorsed on the certificate of title for a parcel of land, the municipality may send a notice to any person who holds the parcel under a lease from the owner, requiring that person to pay the rent as it becomes due to the municipality until the tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the parcel of land advising the owner of the municipality's intention to proceed under subsection (1).

(2.1) When a parcel of land shown on a tax arrears list is land described in section 304(1)(c) in respect of another municipality, or in section 304(1)(d) or (e), the municipality may send a notice to any person who holds the parcel or a portion of it under a lease, licence or permit from the assessed person to pay the rent, licence fees or permit fees, as the case may be, to the municipality as they become due until the tax arrears have been paid.

(2.2) Not less than 14 days before a municipality sends a notice under subsection (2.1), it must send a notice to the assessed person advising the person of the municipality's intention to proceed under subsection (2.1).

(2.3) Where a parcel of land described in section 304(1)(c) is held under a lease, licence or permit from the Crown in right of Alberta,

(a) the Crown must, on a quarterly basis, notify the municipality in which the parcel is located of any changes in the status of the lease, licence or permit, as the case may be, and

(b) the municipality must send to the Crown that portion of the tax arrears list showing the parcels of land described in section 304(1)(c) that are held by the Crown.

(3) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

RSA 2000 cM-26 s416;2015 c8 s52

Warning of sale

417(1) Not later than the August 1 following receipt of a copy of the tax arrears list, the Registrar must, in respect of each parcel of land shown on the tax arrears list, send a notice to

(a) the owner of the parcel of land,

(b) any person who has an interest in the parcel that is evidenced by a caveat registered by the Registrar, and

(c) each encumbrancee shown on the certificate of title for the parcel.

(2) The notice must state

(a) that if the tax arrears in respect of the parcel of land are not paid before March 31 in the next year, the municipality will offer the parcel for sale at a public auction, and

(b) that the municipality may become the owner of the parcel after the public auction if the parcel is not sold at the public auction.

(3) The notice must be sent to the address shown on the records of the Land Titles Office for each person referred to in subsection (1).

1994 cM-26.1 s417;1995 c24 s61

Offer of parcel for sale

418(1) Each municipality must offer for sale at a public auction any parcel of land shown on its tax arrears list if the tax arrears are not paid.

(2) Unless subsection (4) applies, the public auction must be held in the period beginning on the date referred to in section 417(2)(a) and ending on March 31 of the year immediately following that date.

(3) Subsection (1) does not apply to a parcel in respect of which the municipality has started an action under section 411(2) to recover the tax arrears before the date of the public auction.

(4) The municipality may enter into an agreement with the owner of a parcel of land shown on its tax arrears list providing for the payment of the tax arrears over a period not exceeding 3 years, and in that event the parcel need not be offered for sale under subsection (1) until

(a) the agreement has expired, or

(b) the owner of the parcel breaches the agreement,

whichever occurs first.

1994 cM-26.1 s418;1995 c24 s62;1996 c30 s35

Reserve bid and conditions of sale

419 The council must set

(a) for each parcel of land to be offered for sale at a public auction, a reserve bid that is as close as reasonably possible to the market value of the parcel, and

(b) any conditions that apply to the sale.

1994 cM-26.1 s419

Right to possession

420(1) From the date on which a parcel of land is offered for sale at a public auction, the municipality is entitled to possession of the parcel.

(2) For the purposes of obtaining possession of a parcel of land, a designated officer may enter the parcel and take possession of it for and in the name of the municipality and, if in so doing resistance is encountered, the municipality may apply to the Court of King's Bench for an order for the possession of the parcel.

RSA 2000 cM-26 s420;2009 c53 s119;AR 217/2022

Advertisement of public auction

421(1) The municipality must advertise the public auction

(a) in one issue of The Alberta Gazette, not less than 40 days and not more than 90 days before the date on which the public auction is to be held, and

(b) in one issue of a newspaper having general circulation in the municipality, not less than 10 days and not more than 20 days before the date on which the public auction is to be held.

(2) The advertisement must specify the date, time and location of the public auction, the conditions of sale and a description of each parcel of land to be offered for sale.

(3) The advertisement must state that the municipality may, after the public auction, become the owner of any parcel of land not sold at the public auction.

(4) Not less than 30 days before the date of the public auction, the municipality must send a copy of the advertisement referred to in subsection (1)(a) to

(a) the owner of each parcel of land to be offered for sale,

(b) each person who has an interest in any parcel to be offered for sale that is evidenced by a caveat registered by the Registrar, and

(c) each encumbrancee shown on the certificate of title for each parcel to be offered for sale.

RSA 2000 cM-26 s421;2023 c9 s19(7)

Adjournment of auction

422(1) The municipality may adjourn the holding of a public auction to any date within 60 days after the advertised date.

(2) If a public auction is adjourned, the municipality must post a notice in a place that is accessible to the public during regular business hours, showing the new date on which the public auction is to be held.

(3) If a public auction is cancelled as a result of the tax arrears being paid, the municipality must post a notice in a place that is accessible to the public during regular business hours stating that the auction is cancelled.

RSA 2000 cM-26 s422;2023 c9 s19(8)

Right to a clear title

423(1) A person who purchases a parcel of land at a public auction acquires the land free of all encumbrances, except

(a) encumbrances arising from claims of the Crown in right of Canada,

(b) irrigation or drainage debentures,

(c) caveats referred to in section 39.2(11) of the *Condominium Property Act*,

(d) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,

(e) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,

(e.1) a caveat that, pursuant to section 3.1(6)(f)(iv) of the *New Home Buyer Protection Act*, remains registered against the certificate of title to the land,

(f) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,

(g) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and

(h) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

(2) A parcel of land is sold at a public auction when the person who is acting as the auctioneer declares the parcel sold.

(3) There is no right under section 415 to pay the tax arrears in respect of a parcel after it is declared sold.

RSA 2000 cM-26 s423;2014 c10 s59;2015 c8 s53

Transfer of parcel to municipality

424(1) The municipality at whose request a tax recovery notification was endorsed on the certificate of title for a parcel of land may become the owner of the parcel after the public auction, if the parcel is not sold at the public auction.

(2) If the municipality wishes to become the owner of the parcel of land, it must request the Registrar to cancel the existing certificate of title for the parcel of land and issue a certificate of title in the name of the municipality.

(3) A municipality that becomes the owner of a parcel of land pursuant to subsection (1) acquires the land free of all encumbrances, except

(a) encumbrances arising from claims of the Crown in right of Canada,

(b) irrigation or drainage debentures,

(c) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,

(d) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,

(e) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,

(f) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and

(g) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

(4) A certificate of title issued to the municipality under this section must be marked "Tax Forfeiture" by the Registrar.

1994 cM-26.1 s424;1995 c24 s64;1996 c30 s36;1998 c24 s38; 1999 c11 s23

Right to dispose of parcel

425(1) A municipality that becomes the owner of a parcel of land pursuant to section 424 may dispose of the parcel

(a) by selling it at a price that is as close as reasonably possible to the market value of the parcel, or

(b) by depositing in the account referred to in section 427(1)(a) an amount of money equal to the price at which the municipality would be willing to sell the parcel under clause (a).

(2) The municipality may grant a lease, licence or permit in respect of the parcel.

(3) Repealed 1995 c24 s65.

(4) If a parcel of land is disposed of under subsection (1), the municipality must request the Registrar to delete the words "Tax Forfeiture" from the certificate of title issued in the name of the municipality for the parcel.

1994 cM-26.1 s425;1995 c24 s65

Minister's authority to transfer parcel

425.1(1) The Minister may administer, transfer to another Minister, transfer to the municipality in which the land is situated or, subject to section 425, dispose of any parcel of land acquired by the Minister under this Part or a predecessor of this Part.

(2) The Minister may cancel the tax arrears on any land referred to in subsection (1) and require the Registrar to remove the tax recovery notification caveat respecting those tax arrears.

1995 c24 s66

Revival of title on payment of arrears

426(1) If the tax arrears in respect of a parcel of land are paid after the municipality becomes the owner of the parcel under section 424 but before the municipality disposes of the parcel under section 425(1), the municipality must notify the Registrar.

(2) The Registrar must cancel the certificate of title issued under section 424(2) and revive the certificate of title that was cancelled under section 424(2).

(3) A certificate of title revived by the Registrar is subject

(a) to the same notifications, charges and encumbrances to which it would have been subject if it had not been cancelled under section 424(2), and

(b) to any estate, interest or encumbrance created while the parcel was registered in the name of the municipality.

1994 cM-26.1 s426;1996 c30 s37

Separate account for sale proceeds

427(1) The money paid for a parcel of land at a public auction or pursuant to section 425

(a) must be deposited by the municipality in an account that is established solely for the purpose of depositing money from the sale or disposition of land under this Division, and

(b) must be paid out in accordance with this section and section 428.

(2) The following must be paid first and in the following order:

(a) any remedial costs relating to the parcel;

(a.1) the tax arrears in respect of the parcel;

(b) any lawful expenses of the municipality in respect of the parcel;

(c) any expenses owing to the Crown that have been charged against the parcel of land under section 553;

(d) an administration fee of 5% of the amount paid for the parcel, payable to the municipality.

(3) If there is any money remaining after payment of the tax arrears and costs listed in subsection (2), the municipality must notify the previous owner that there is money remaining.

(3.1) Subject to subsection (3.3), if the municipality is satisfied that there are no debts that are secured by an encumbrance on the certificate of title for the parcel of land, the municipality may pay the money remaining to the previous owner.

(3.2) If the municipality is not satisfied that there are no debts that are secured by an encumbrance on the certificate of title for the parcel of land, the municipality must notify the previous owner that an application may be made under section 428(1) to recover all or part of the money.

(3.3) For the purposes of this Division, "previous owner" includes the Crown in right of Alberta if the municipality has been notified by the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* that the land has vested in the Crown, and any money remaining after payment of the tax arrears and costs set out in subsection (2) must be paid to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*.

(4) Money paid to a municipality under a lease, licence or permit granted under section 425(2) must be placed in the account referred to in subsection (1) and distributed in accordance with this section and section 428.

RSA 2000 cM-26 s427;2007 cU-1.5 s73

Distribution of surplus sale proceeds

428(1) A person may apply to the Court of King's Bench for an order declaring that the person is entitled to a part of the money in the account referred to in section 427(1).

(2) An application under this section must be made within 10 years after

(a) the date of the public auction, if the parcel was sold at a public auction, or

(b) the date of a sale under section 425, if the parcel was sold at a sale under that section.

(3) The Court must decide if notice must be given to any person other than the applicant and in that event the hearing must be adjourned to allow notice to be given.

(4) In making an order, the Court must have regard to the priorities in which sale proceeds are distributed in a foreclosure action.

RSA 2000 cM-26 s428;2009 c53 s119;AR 217/2022

Payment of undistributed money to municipality

428.1 If no application is made under section 428 within the 10-year period referred to in section 428(2), the municipality may, for any purpose, use the money deposited in accordance with section 427 that remains undistributed.

1995 c24 s68

Transfer to municipality after 15 years

428.2(1) Despite anything in this Division, where a parcel of land has been offered for sale but not sold at a public auction and the certificate of title for the parcel has been marked "Tax Forfeiture" by the Registrar, the municipality may request the Registrar to cancel the existing certificate of title for the parcel of land and issue a certificate of title in the name of the municipality on the expiry of 15 years following the date of the public auction.

(1.1) This section does not apply to land respecting which the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* has notified the municipality that the land has vested in the Crown.

(2) On the issuance of a certificate of title in the name of the municipality, all responsibilities of the municipality under this Division to the previous owner of the parcel of land cease.

(3) Where a certificate of title is issued to a municipality under subsection (1) and there are remedial costs owing in respect of the parcel of land, the municipality must reimburse the Crown in right of Alberta the lesser of

(a) the fair market value of the parcel of land, and

(b) the amount of the remedial costs.

(4) A municipality that becomes the owner of a parcel of land pursuant to subsection (1) acquires the land free of all encumbrances, except

(a) encumbrances arising from claims of the Crown in right of Canada,

(b) irrigation or drainage debentures,

(c) registered easements and instruments registered pursuant to section 69 of the *Land Titles Act*,

(d) right of entry orders as defined in the *Surface Rights Act* registered under the *Land Titles Act*,

(e) a notice of lien filed pursuant to section 38 of the *Rural Utilities Act*,

(f) a notice of lien filed pursuant to section 20 of the *Rural Electrification Loan Act*, and

(g) liens registered pursuant to section 21 of the *Rural Electrification Long-term Financing Act*.

RSA 2000 cM-26 s428.2;2007 cU-1.5 s73;2019 c20 s23

Prohibited bidding and buying

429(1) When a municipality holds a public auction or another sale under section 425, the auctioneer, the councillors, the chief administrative officer and the designated officers and employees of the municipality must not bid for or buy, or act as an agent in buying, any parcel of land offered for sale, unless subsection (2) applies.

(2) A municipality may direct a designated officer or employee of the municipality to bid for or buy a parcel of land that the municipality wishes to become the owner of.

1994 cM-26.1 s429

Right to place tax arrears on new parcels of land

429.1 When there are tax arrears in respect of a parcel of land that is to be subdivided, the municipality may distribute the tax arrears and any taxes that may be imposed in respect of the parcel among the parcels of land that are created by the subdivision in a manner the municipality considers appropriate.

1995 c24 s69

Minerals

430 If, as a result of proceedings under this Act or any other Act providing for the forfeiture of land or minerals, or both, for arrears of taxes, minerals are vested in the Minister or in a municipality that later passed or passes to the control of the Minister, the minerals are the property of the Crown and no person has any claim to or interest in them, despite anything in this Act or the Act under which the minerals were forfeited.

1994 cM-26.1 s430

Acquisition of minerals

431(1) In respect of any parcel of land or minerals

(a) acquired by a municipality before or after March 5, 1948, pursuant to a tax recovery notification or caveat endorsed on the certificate of title by the Registrar, and

(b) subsequently registered in the name of the municipality,

the municipality is deemed to have taken or to take title only to those minerals that the municipality was authorized and empowered to assess at the time of the issuance of the certificate of title in the name of the municipality, and any corrections to the

records of any Land Titles Office made before March 5, 1948 to effect this purpose are hereby confirmed and validated.

(2) A municipality must not transfer, lease, mortgage or otherwise dispose of or deal in any minerals or any interest in minerals without first obtaining the written consent of the Minister, and any disposition or dealing made without the consent of the Minister has no effect.

(3) Any certificate of title issued in the name of a municipality before or after March 5, 1948 to or including any minerals, other than minerals that the municipality was authorized and empowered to assess at the time of the acquisition, may be corrected under the *Land Titles Act* to limit the certificate of title to the minerals the municipality was authorized and empowered to acquire, and all other necessary corrections may be made under the *Land Titles Act* on other certificates of title.

(4) This section does not affect an interest in minerals acquired by any person from a municipality before March 5, 1948.

1994 cM-26.1 s431

Right of way

432 After the date on which a municipality becomes the owner of a parcel of land under section 424, if an application is made to a municipality

(a) for a right of entry by an operator entitled to apply for a right of entry order under the *Surface Rights Act*, or

(b) for a right of way for a railway, pipeline, transmission line, pole line, conduit, irrigation or drainage ditch or other similar purpose, by an applicant entitled to expropriate for that purpose under any Act,

the municipality may grant the right of entry or right of way.

1994 cM-26.1 s432

When parcel becomes part of another municipality

433(1) If proceedings affecting a parcel of land have been started under this Division and the parcel of land later becomes part of another municipality, the proceedings must be continued by that municipality as if the parcel had always been included in it, and that municipality must pay to the municipality that started the proceedings, to the extent that municipality receives sufficient money to do so, the costs incurred by the original municipality in connection with the parcel.

(2) When a parcel of land becomes part of another municipality, the Registrar must, on receipt of an order of the Minister, issue a new certificate of title showing the parcel to be registered in the name of that municipality.

1994 cM-26.1 s433

Non-liability for condition of land

434 If the Minister becomes the owner of a parcel of land pursuant to this Division, the Minister is not liable in respect of the state and condition of the parcel or any improvements to it.

1994 cM-26.1 s434

Action for condition of land prohibited

434.1(1) No action for damages may be commenced against a municipality with respect to the state and condition of a parcel of land, or any improvements to it, shown on the tax arrears list of the municipality unless

(a) after the date on which the municipality is entitled to possession of the parcel under section 420, or

(b) after the date on which the municipality becomes the owner of the parcel under section 424,

the municipality releases on that parcel a new or additional substance into the environment that may cause, is causing or has caused an adverse effect or the municipality aggravates the adverse effect of the release of a substance into the environment on that parcel.

(2) Subsection (1) does not relieve a municipality of liability respecting a parcel of land, or any improvement to it, that was owned by the municipality before the parcel was placed on the municipality's tax arrears list.

1996 c30 s40

Continuation of proceedings

435(1) With respect to Edmonton, Calgary and Medicine Hat, all proceedings taken or that were required to be taken under any predecessor of this Act, as modified or varied by any special provisions of the charters of the respective cities, must be continued or taken, as the case may be, under this Division wherever possible.

(2) The Minister may make regulations or orders for the purpose of overcoming any procedural or other difficulty occasioned by the differences between this Division and the charters of Edmonton, Calgary and Medicine Hat.

1994 cM-26.1 s435

Deemed compliance with Act

436 Any municipality that acquired land under a predecessor of this Act is deemed to have complied with the requirements of that Act.

1994 cM-26.1 s436

Division 8.1
Recovery of Taxes Related to Designated Manufactured Homes

Definitions

436.01 In this Division,

(a) "financing change statement" means a financing change statement as defined in the *Personal Property Security Act*;

(b) "financing statement" means a financing statement as defined in the *Personal Property Security Act*;

(c) "register", except where the context otherwise requires, means to register by means of a financing statement in the Registry in accordance with the *Personal Property Security Act* and the regulations made under that Act;

(d) "Registry" means the Personal Property Registry;

(e) "reserve bid" means the minimum price at which a municipality is willing to sell a designated manufactured home at a public auction;

(f) "security interest" means a security interest as defined in the *Personal Property Security Act*;

(g) "tax" means a property tax or a community revitalization levy imposed in respect of property referred to in section 304(1)(j)(i) or (k);

(h) "tax arrears list" means a tax arrears list prepared by a municipality under section 436.03(1)(a);

(i) "tax recovery lien" means a charge to secure the amount of taxes owing to a municipality in respect of a designated manufactured home.

RSA 2000 cM-26 s436.01;2005 c14 s17

Methods of recovering taxes in arrears

436.02(1) A municipality may attempt to recover tax arrears in respect of a designated manufactured home

(a) in accordance with this Division, or

(b) subject to subsection (2), in accordance with Division 9 or with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before

(a) the designated manufactured home is sold at a public auction under section 436.09, or

(b) the designated manufactured home is disposed of in accordance with section 436.15(a),

whichever occurs first.

1998 c24 s40

Tax arrears list

436.03(1) A municipality must annually, not later than March 31,

(a) prepare a tax arrears list that shows the designated manufactured homes in the municipality in respect of which there are tax arrears for more than one year, and that may also show the designated manufactured homes in the municipality in respect of which there are tax arrears for less than one year,

(b) register a tax recovery lien against each designated manufactured home shown on the tax arrears list, and

(c) post a copy of the tax arrears list in a place that is accessible to the public during regular business hours.

(2) A municipality must not register a tax recovery lien against a designated manufactured home in respect of which there exists a tax recovery lien registered from previous years unless that lien has first been discharged.

(3) If a subsequent tax recovery lien is registered in error, it is deemed to be of no effect.

(4) The municipality must give written notice to the owner of each designated manufactured home shown on the tax arrears list that a tax recovery lien has been registered against the designated manufactured home.

(5) The municipality must give written notice to the owner of each manufactured home community containing one or more designated manufactured homes shown on the tax arrears list that a tax recovery lien has been registered against the designated manufactured home or homes.

1998 c24 s40

Costs of recovery

436.04(1) A municipality is responsible for the payment of the costs it incurs in carrying out the measures referred to in section 436.03, but it may add the costs to the tax roll in respect of the designated manufactured home shown on the tax arrears list.

(2) No person shall register a financing change statement to discharge the registration of a tax recovery lien against a designated manufactured home without the authorization of the municipality in whose favour the lien is registered.

(3) If a tax recovery lien is discharged in error, the municipality may, within 30 days after the discharge and without any administration fee charged by the Government of Alberta, re-register the tax recovery lien, which has the same effect as if the original tax recovery lien had not been discharged.

1998 c24 s40

Removal of designated manufactured home or improvements

436.05 When a tax recovery lien has been registered against a designated manufactured home, no person shall remove from the site the designated manufactured home or any other improvements located on the site for which the owner of the designated manufactured home is also liable to pay the taxes, unless the municipality that registered the lien consents.

1998 c24 s40

Right to pay tax arrears

436.06(1) When a tax recovery lien has been registered against a designated manufactured home, any person may pay the tax arrears in respect of that designated manufactured home.

(2) On payment of the tax arrears under subsection (1), the municipality must register a financing change statement to discharge the registration of the tax recovery lien.

(3) A person may exercise the right under subsection (1) at any time before

(a) the designated manufactured home is sold at a public auction under section 436.09, or

(b) the designated manufactured home is disposed of in accordance with section 436.15(a).

1998 c24 s40

Right to collect rent to pay tax arrears

436.07(1) When a tax recovery lien has been registered against a designated manufactured home, the municipality may send a

written notice to any person who rents or leases the designated manufactured home from the owner of the designated manufactured home, requiring that person to pay the rent or lease payments, as the case may be, to the municipality until the tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the designated manufactured home advising the owner of the municipality's intention to proceed under subsection (1).

(3) The municipality must send a copy of the notice under subsection (2) to the owner of the manufactured home community where the designated manufactured home is located.

(4) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

1998 c24 s40

Warning of sale

436.08(1) Not later than August 1 following preparation of the tax arrears list, the municipality must, in respect of each designated manufactured home shown on the tax arrears list, send a written notice to

(a) the owner of the designated manufactured home,

(b) the owner of the manufactured home community where the designated manufactured home is located, and

(c) each person who has a security interest in or a lien, writ, charge or other encumbrance against the designated manufactured home as disclosed by a search of the Registry using the serial number of the designated manufactured home.

(2) The notice must state that if the tax arrears in respect of the designated manufactured home are not paid before March 31 in the next year, the municipality will offer the designated manufactured home for sale at a public auction.

(3) The notice under subsection (1) must be sent to the address shown on the records of the Registry for each person referred to in subsection (1)(c).

1998 c24 s40;1999 c11 s25

Offer of designated manufactured home for sale

436.09(1) Each municipality must offer for sale at a public auction any designated manufactured home shown on its tax arrears list if the tax arrears are not paid.

(2) Unless subsection (4) applies, the public auction must be held in the period beginning on the date referred to in section 436.08(2) and ending on March 31 of the year immediately following that date.

(3) Subsection (1) does not apply to a designated manufactured home in respect of which the municipality has started an action under section 436.02(2) to recover the tax arrears before the date of the public auction.

(4) The municipality may enter into an agreement with the owner of a designated manufactured home shown on its tax arrears list providing for the payment of the tax arrears over a period not exceeding 3 years, and in that event the designated manufactured home need not be offered for sale under subsection (1) until

(a) the agreement has expired, or

(b) the owner of the designated manufactured home breaches the agreement,

whichever occurs first.

1998 c24 s40

Reserve bid and conditions for sale

436.1 The council must set for each designated manufactured home to be offered for sale at a public auction,

(a) a reserve bid that is as close as reasonably possible to the market value of the designated manufactured home, and

(b) any conditions that apply to the sale.

1998 c24 s40

Right to possession

436.11(1) From the date on which a designated manufactured home is offered for sale at a public auction, the municipality is entitled to possession of the designated manufactured home.

(2) For the purpose of obtaining possession of a designated manufactured home, a designated officer may enter the designated manufactured home and take possession of it for and in the name of the municipality, and if in so doing the designated officer encounters resistance, the municipality may apply to the Court of King's Bench for an order for possession of the designated manufactured home.

RSA 2000 cM-26 s436.11;2009 c53 s119;AR 217/2022

Advertisement of public auction

436.12(1) The municipality must advertise the public auction in at least one issue of a newspaper having general circulation in the municipality, not less than 10 days and not more than 30 days before the date on which the public auction is to be held.

(2) The advertisement must specify the date, time and location of the public auction, the conditions of sale and a description of each designated manufactured home to be offered for sale.

(3) Not less than 30 days before the date of the public auction, the municipality must send a copy of the advertisement referred to in subsection (1) to each person referred to in section 436.08(1).

RSA 2000 cM-26 s436.12;2023 c9 s19(9)

Adjournment of auction

436.13(1) The municipality may adjourn the holding of a public auction to any date within 60 days after the advertised date.

(2) If a public auction is adjourned, the municipality must

(a) post a notice in a place that is accessible to the public during regular business hours, showing the new date on which the public auction is to be held, and

(b) send a copy of the notice to each person referred to in section 436.08(1).

(3) If a public auction is cancelled as a result of the payment of the tax arrears, the municipality must

(a) post a notice in a place that is accessible to the public during regular business hours stating that the auction is cancelled, and

(b) send a copy of the notice to each person referred to in section 436.08(1).

RSA 2000 cM-26 s436.13;2023 c9 s19(10)

Unencumbered ownership

436.14(1) A person who purchases a designated manufactured home at a public auction or pursuant to section 436.15(a) acquires the designated manufactured home free of all security interests, liens, writs, charges and other encumbrances, except encumbrances arising from claims of the Crown in right of Canada, and all obligations secured by the security interests, liens, writs, charges and other encumbrances are, as regards the purchaser, deemed performed.

(2) When a person purchases a designated manufactured home at a public auction or pursuant to section 436.15(a), the municipality must, in respect of any security interest in or lien, writ, charge or other encumbrance against the designated manufactured home that exists on the date of sale as disclosed by a search of the Registry using the serial number of the designated manufactured home, register a financing change statement

(a) to amend the collateral description in the registration to exclude the designated manufactured home, or

(b) if the designated manufactured home is the only collateral described in the registration, to discharge the registration.

(3) Subsection (2) does not apply to a registration for which the purchaser is named as a debtor in a registered financing statement.

(4) Subsection (2) operates despite section 68 of the *Personal Property Security Act*.

(5) A designated manufactured home is sold at a public auction when the person who is acting as the auctioneer declares the designated manufactured home sold.

1998 c24 s40

Right to sell or dispose of designated manufactured home

436.15 If a designated manufactured home is not sold at a public auction under section 436.09, the municipality may

(a) dispose of it

(i) by selling it at a price that is as close as reasonably possible to the market value of the designated manufactured home, or

(ii) by depositing in the account referred to in section 436.17(1)(a) an amount of money equal to the price at which the municipality would be willing to sell the designated manufactured home under subclause (i),

or

(b) grant a lease in respect of it.

1998 c24 s40

Payment of tax arrears

436.16(1) If the tax arrears in respect of a designated manufactured home are paid before the municipality disposes of it under section 436.15(a) or while the designated manufactured

home is being leased under section 436.15(b), the municipality must return the designated manufactured home to its owner.

(2) Before returning the designated manufactured home to its owner under subsection (1), the municipality must send a written notice

(a) to each person referred to in section 436.08(1), and

(b) if the municipality has leased the designated manufactured home under section 436.15(b), to the person leasing it.

(3) The notice must state that

(a) the designated manufactured home will be returned to the owner after 30 days from the date of the notice, and

(b) despite any provision to the contrary in a lease agreement in respect of the designated manufactured home, the lease expires 30 days after the date of the notice.

(4) Subsection (3) applies despite anything contained in the *Residential Tenancies Act*.

1998 c24 s40

Separate account for sale proceeds

436.17(1) The money paid for a designated manufactured home at a public auction or pursuant to section 436.15(a)

(a) must be deposited by the municipality in an account that is established solely for the purpose of depositing money from the sale or disposition of designated manufactured homes under this Division, and

(b) must be paid out in accordance with this section and section 436.18.

(2) Money paid to a municipality as rent under a lease granted under section 436.15(b) must be placed in the account referred to in subsection (1) and distributed in accordance with this section and section 436.18.

(3) The following must be paid first and in the following order:

(a) the tax arrears in respect of the designated manufactured home;

(b) any lawful expenses of the municipality in respect of the designated manufactured home;

(c) an administration fee of 5% of the amount deposited in respect of the designated manufactured home pursuant to subsection (1), payable to the municipality.

(4) If there is any money remaining after payment of the tax arrears and costs listed in subsection (3), the municipality must notify the previous owner of the designated manufactured home that there is money remaining.

(5) If the municipality is satisfied after a search of the Registry using the serial number of the designated manufactured home that there are no security interests in or liens, writs, charges or other encumbrances against the designated manufactured home, the municipality may pay the money remaining after the payments under subsection (3) to the previous owner of the designated manufactured home.

(6) If the municipality is not satisfied after a search of the Registry using the serial number of the designated manufactured home that there are no security interests in or liens, writs, charges or other encumbrances against the designated manufactured home, the municipality must notify the previous owner that an application may be made under section 436.18 to recover all or part of the money.

1998 c24 s40

Distribution of surplus sale proceeds

436.18(1) A person may apply to the Court of King's Bench for an order declaring that the person is entitled to a part of the money in the account referred to in section 436.17(1).

(2) An application under this section must be made within 5 years after

(a) the date of the public auction, if the designated manufactured home was sold at a public auction, or

(b) the date of a sale under section 436.15(a), if the designated manufactured home was sold under that section.

(3) The Court must decide if notice must be given to any person other than the applicant and in that event the hearing must be adjourned to allow notice to be given.

RSA 2000 cM-26 s436.18;2009 c53 s119;AR 217/2022

Payment of undistributed money to municipality

436.19 If no application is made under section 436.18 within the 5-year period referred to in section 436.18, the municipality may,

for any purpose, use the money deposited in accordance with section 436.17 that remains undistributed.

1998 c24 s40

Transfer to municipality after 10 years

436.2(1) Despite anything in this Division, where a designated manufactured home has been offered for sale but not sold at a public auction and the municipality has not disposed of it under section 436.15(a) within 10 years following the date of the public auction,

(a) sections 436.16, 436.17 and 436.18 cease to apply with respect to that designated manufactured home, and

(b) the municipality becomes the owner of the designated manufactured home free of all security interests, liens, writs, charges and other encumbrances, except encumbrances arising from claims of the Crown in right of Canada, and all obligations secured by the security interests, liens, writs, charges or encumbrances are, as regards the municipality, deemed performed.

(2) When the municipality becomes the owner of a designated manufactured home under subsection (1), the municipality may, in respect of any security interest in or lien, writ, charge or other encumbrance against the designated manufactured home as disclosed by a search of the Registry using the serial number of the designated manufactured home, register a financing change statement

(a) to amend the collateral description in the registration to exclude the designated manufactured home, or

(b) if the designated manufactured home is the only collateral described in the registration, to discharge the registration.

(3) Subsection (2) operates despite section 68 of the *Personal Property Security Act*.

1998 c24 s40

Prohibited bidding and buying

436.21(1) When a municipality holds a public auction under section 436.09 or a sale under section 436.15(a), the auctioneer, the councillors, the chief administrative officer and the designated officers and employees of the municipality must not bid for or buy, or act as an agent in buying, any designated manufactured home offered for sale, unless subsection (2) applies.

(2) A municipality may direct a designated officer or employee of the municipality to bid for or buy a designated manufactured home of which the municipality wishes to become the owner.

1998 c24 s40

Manufactured home moved to another municipality

436.22 If, after tax recovery proceedings affecting a designated manufactured home are started under this Division, the designated manufactured home is moved to another municipality or its site becomes part of another municipality,

(a) the proceedings must be continued by that other municipality as if the designated manufactured home had always been included in it, and

(b) the other municipality must pay to the municipality that commenced the proceedings, to the extent that the other municipality receives sufficient money to do so, the costs incurred by the original municipality in connection with the tax recovery proceedings.

1998 c24 s40

Regulations

436.23 The Minister may make regulations

(a) respecting the rights and obligations of a municipality in relation to its possession of a designated manufactured home under this Division;

(b) respecting any other matter related to the recovery of taxes under this Division that the Minister considers necessary to carry out the intent of this Division.

1998 c24 s40

Reporting requirements

436.24(1) Unless a municipality passes a bylaw to the contrary, the owner of a manufactured home community must provide monthly reports to the chief administrative officer or a designated officer of the municipality regarding

(a) the ownership of all designated manufactured homes in the manufactured home community, including the serial numbers of the designated manufactured homes, and

(b) the movement of all designated manufactured homes in and out of the manufactured home community.

(2) Despite subsection (1), a municipality may pass a bylaw requiring the owner of the manufactured home community to provide the reports required under subsection (1) to the

municipality on the dates specified by the municipality, but not more than once a month.

1998 c24 s40

Division 9
Recovery of Taxes Not Related to Land

Definitions

437 In this Division,

(a) "distress warrant" means a written instruction to seize goods of the person named in the warrant;

(b) "period for payment" means,

(i) in respect of tax imposed on linear property, machinery and equipment or property referred to in section 304(1)(f), the 120 days following the sending of the tax notice by the municipality, or

(ii) in respect of tax imposed on any other property,

(A) if the person liable to pay the tax is a resident of the municipality, the 14 days following the sending of the tax notice by the municipality, or

(B) if the person liable to pay the tax is not a resident of the municipality, the 30 days following the sending of the tax notice by the municipality;

(c) "tax" means

(i) a business tax,

(ii) a well drilling equipment tax,

(ii.1) a community aggregate payment levy, or

(iii) a property tax or community revitalization levy imposed in respect of property referred to in section 304(1)(c), (f), (g), (h), (i), (j)(i) or (k);

(d) "tax arrears" means taxes that remain unpaid after the expiry of the period for payment.

RSA 2000 cM-26 s437;2005 c14 s18;2021 c22 s7

Methods of recovering taxes in arrears

438(1) A municipality may attempt to recover tax arrears

(a) in accordance with this Division, and

(b) subject to subsection (2), in accordance with any other Act or common law right.

(2) A municipality may start an action under subsection (1)(b) at any time before the goods are sold at a public auction or the municipality becomes the owner of the goods under section 448, whichever occurs first.

1994 cM-26.1 s438

Right to issue distress warrant

439(1) A municipality wishing to recover tax arrears pursuant to this Division may issue a distress warrant.

(2) Each municipality may, in writing, authorize a designated officer or appoint a person to the position of designated officer to prepare and issue distress warrants and seize goods pursuant to distress warrants on behalf of the municipality.

1994 cM-26.1 s439

Seizure of goods

440(1) When a distress warrant has been issued, a civil enforcement agency or a person referred to in section 439(2) must place sufficient goods under seizure to satisfy the amount of the claim shown in the warrant.

(2) The person placing goods under seizure may ask the person who owns or has possession of the seized goods to sign a bailee's undertaking agreeing to hold the seized goods for the municipality.

(3) If a person refuses to sign a bailee's undertaking, the person placing goods under seizure may remove the goods from the premises.

(4) When a bailee's undertaking has been signed under subsection (2), the goods specified in it are deemed to have been seized.

(5) A seizure under this section continues until the municipality

(a) abandons the seizure by written notice, or

(b) sells the goods.

(6) The municipality is not liable for wrongful or illegal seizure or for loss of or damage to goods held under a seizure under this section if a bailee's undertaking relating to the seized goods has been signed pursuant to subsection (2).

1994 cM-26.1 s440;1994 cC-10.5 s146;1997 c19 s3

Goods affected by distress warrant

441(1) A person may seize the following goods pursuant to a distress warrant:

(a) goods belonging to the person who is liable to pay the tax arrears or in which that person has an interest;

(b) goods of a business that is liable to pay business tax arrears, even if the goods have been sold to a purchaser of the business;

(c) goods of a corporation that are in the hands of

(i) a receiver appointed for the benefit of creditors,

(ii) an authorized trustee in bankruptcy, or

(iii) a liquidator appointed under a winding-up order.

(2) If a person who is liable to pay tax arrears is in possession of goods belonging to others for the purpose of storing the goods, those goods must not be seized pursuant to the distress warrant.

1994 cM-26.1 s441

Date for issuing distress warrant

442(1) A distress warrant must not be issued until the period for payment expires, unless subsection (2) applies.

(2) If, before the period for payment expires, a municipality has reason to believe that a person is about to move out of the municipality goods that are to be seized under a distress warrant, the municipality may apply to a justice of the peace for an order authorizing the municipality to issue the distress warrant before the period for payment expires.

1994 cM-26.1 s442

Right to pay tax arrears

443(1) After goods have been seized under a distress warrant, any person may pay the tax arrears.

(2) On payment of the tax arrears under subsection (1), the municipality must release the goods from seizure.

(3) A person may exercise the right under subsection (1) at any time before the municipality sells the goods at a public auction or becomes the owner of the goods under section 448.

1994 cM-26.1 s443

Right to collect rent to pay tax arrears

444(1) If a distress warrant has been issued to recover tax arrears in respect of a business and the person who is liable to pay the business tax arrears owns property that is leased to one or more tenants, the municipality may send a notice to each tenant requiring the tenant to pay the rent as it becomes due to the municipality until the business tax arrears have been paid.

(2) Not less than 14 days before a municipality sends a notice under subsection (1), it must send a notice to the owner of the property advising the owner of the municipality's intention to proceed under subsection (1).

(3) This section does not prevent the municipality from exercising any other right it has to collect the tax arrears.

1994 cM-26.1 s444

Sale of property

445(1) The municipality must offer for sale at a public auction goods that have been seized under a distress warrant if the tax arrears are not paid, unless the municipality starts an action under section 438(2) to recover the tax arrears before the date of the public auction.

(2) The municipality must advertise a public auction by posting a notice in at least 3 public places in the municipality near the goods to be sold not less than 10 days before the date of the auction.

(3) The advertisement must specify the date, time and location of the public auction, the conditions of sale, a description of the goods to be sold and the name of the person whose goods are to be sold.

(4) The advertisement must state that the municipality will become the owner of any goods not sold at the public auction, immediately after the public auction.

1994 cM-26.1 s445

Date of public auction

446(1) The public auction must be held not more than 60 days after the goods are seized under the distress warrant.

(2) The municipality may adjourn the holding of a public auction but must post a notice in accordance with section 445(2) showing the new date on which the public auction is to be held.

1994 cM-26.1 s446

Exception to sale at auction

447 Despite section 445(1), a municipality may have grain seized under a distress warrant hauled to the nearest elevator or other

convenient place of storage and may dispose of the grain at the current market price.

1994 cM-26.1 s447

Transfer to municipality

448 The municipality becomes the owner of any goods offered for sale but not sold at a public auction, immediately after the public auction and may dispose of the goods by selling them.

1994 cM-26.1 s448

Separate account for sale proceeds

449(1) The money paid for goods at a public auction or pursuant to section 448

(a) must be deposited by the municipality in an account that is established solely for the purpose of depositing money from the sale of goods under this Division, and

(b) must be paid out in accordance with this section and section 450.

(2) The following must be paid first and in the following order:

(a) the tax arrears;

(b) any lawful expenses of the municipality in respect of the goods.

(3) If there is any money remaining after payment of the tax arrears and expenses listed in subsection (2), the municipality must notify the previous owner that there is money remaining and that an application may be made under section 450 to recover all or part of the money.

1994 cM-26.1 s449

Distribution of surplus sale proceeds

450(1) A person may apply to the Court of King's Bench for an order declaring that the person is entitled to a part of the money in the account referred to in section 449(1).

(2) An application under this section may be made within 5 years after the date of the public auction.

(3) The Court must decide if notice must be given to any person other than the applicant and in that event the hearing must be adjourned to allow notice to be given.

RSA 2000 cM-26 s450;2009 c53 s119;AR 217/2022

Seizure of designated manufactured home

451 Part 10 of the *Civil Enforcement Act* does not apply to a designated manufactured home in a manufactured home community that has been seized under a distress warrant.

1994 cM-26.1 s451;1994 cC-10.5 s146;1998 c24 s41

Regulations

452 The Minister may make regulations respecting any other matter related to the recovery of taxes under this Division that is considered necessary to carry out the intent of this Division.

1994 cM-26.1 s452

Part 11
Assessment Review Boards

Division 1
Establishment and Function of Assessment Review Boards

Interpretation

453(1) In this Part,

(a) "assessment notice" includes an amended assessment notice and a supplementary assessment notice;

(b) "assessment roll" includes a supplementary assessment roll;

(c) "chair" means the member of an assessment review board designated as chair under section 454.1(2), 454.2(2) or 455(2);

(d) "clerk", in respect of a local assessment review board or composite assessment review board having jurisdiction in one or more municipalities, means the clerk appointed under section 456;

(e) "composite assessment review board" means a composite assessment review board established by a council under section 454(b) or jointly established by 2 or more councils under section 455;

(f) "local assessment review board" means a local assessment review board established by a council under section 454(a) or jointly established by 2 or more councils under section 455;

(g) "provincial member" means a person appointed by the Minister under section 454.21(2);

(h) "tax notice" includes a supplementary tax notice;

(i) "tax roll" includes a supplementary tax roll.

(2) In this Part, a reference to an assessment review board

(a) means a local assessment review board or a composite assessment review board, as the case requires, and

(b) includes a panel of the board convened under section 454.11 or 454.21.

2016 c24 s62;2019 c22 s10(13)

Assessment review boards to be established

454 A council must by bylaw establish

(a) a local assessment review board to hear complaints referred to in section 460.1(1), and

(b) a composite assessment review board to hear complaints referred to in section 460.1(2).

2016 c24 s62

Appointment of members to local assessment review board

454.1(1) A council must

(a) appoint at least 3 persons as members of the local assessment review board,

(b) prescribe the term of office of each member appointed under clause (a), and

(c) prescribe the remuneration and expenses, if any, payable to each member appointed under clause (a).

(2) The council must designate one of the members appointed under subsection (1) as the chair of the local assessment review board and must prescribe the chair's term of office and the remuneration and expenses, if any, payable to the chair.

(3) The chair may delegate to any other member appointed under subsection (1) any of the powers, duties or functions of the chair.

2016 c24 s62

Panels of local assessment review board

454.11(1) Where a hearing is to be held in respect of a complaint referred to in section 460.1(1), the chair of the local assessment review board must convene a panel of 3 of its members to hear the complaint.

(2) Despite subsection (1) but subject to subsection (3)(b) and any conditions prescribed by the regulations under section 484.1(c), a panel of a local assessment review board may consist of only one member appointed by the chair.

(3) Unless an order of the Minister authorizes otherwise, the chair must not appoint

(a) more than one councillor to a 3-member panel, or

(b) a councillor as the only member of a one-member panel.

(4) Where a panel consists of 3 members, the panel members must choose a presiding officer from among themselves.

(5) Where a panel has only one member, that member is the presiding officer.

2016 c24 s62;2018 c11 s13

Appointment of members to composite assessment review board

454.2(1) A council must

(a) appoint at least 2 persons as members of the composite assessment review board,

(b) prescribe the term of office of each member appointed under clause (a), and

(c) prescribe the remuneration and expenses, if any, payable to each member appointed under clause (a).

(2) The council must designate one of the members appointed under subsection (1) as the chair of the composite assessment review board and must prescribe the chair's term of office and the remuneration and expenses, if any, payable to the chair.

(3) The chair may delegate to another member appointed under subsection (1) any of the powers, duties or functions of the chair.

2016 c24 s62

Panels of composite assessment review board

454.21(1) Where a hearing is to be held in respect of a complaint referred to in section 460.1(2), the chair of the composite assessment review board must convene a panel to hear the complaint.

(2) The panel must consist of 2 members of the composite assessment review board appointed by the chair and one provincial

member appointed by the Minister in accordance with the regulations.

(3) Unless an order of the Minister authorizes otherwise, the chair must not appoint more than one councillor to a panel.

(4) Despite subsection (2) but subject to any conditions prescribed by the regulations under section 484.1(d), a panel of a composite assessment review board may consist of only the provincial member.

(5) The provincial member is the presiding officer of every panel of a composite assessment review board.

2016 c24 s62

Qualifications of members

454.3 A member of an assessment review board may not participate in a hearing of the board unless the member is qualified as provided for in the regulations.

2016 c24 s62

Joint establishment of assessment review boards

455(1) Two or more councils may agree to jointly establish the local assessment review board or the composite assessment review board, or both, to have jurisdiction in their municipalities.

(2) Where an assessment review board is jointly established,

(a) the councils must jointly designate one of the board members as chair and must jointly prescribe the chair's term of office and the remuneration and expenses, if any, payable to the chair, and

(b) the chair may delegate any of the powers, duties or functions of the chair to another board member but not to the provincial member of a panel of the board.

2016 c24 s62

Clerk

456(1) The council of a municipality must appoint a person as the clerk of the assessment review boards having jurisdiction in the municipality.

(2) Where an assessment review board is jointly established, the councils must jointly appoint the clerk.

(3) The clerk must not be an assessor or a designated officer having authority to grant or cancel tax exemptions or deferrals under section 364.1.

(4) The council or councils appointing the clerk must prescribe the clerk's remuneration and duties.

2016 c24 s62;2019 c22 s10(14)

Replacement of panel members

457 In circumstances provided for by the regulations, the chair of an assessment review board may replace a member of a panel.

2016 c24 s62

Quorum

458(1) Where a panel of a local assessment review board consists of 3 members, a quorum is 2 members.

(2) Where a panel of a composite assessment review board consists of 3 members, a quorum is 2 members, one of whom must be the provincial member.

2016 c24 s62

Decision

459 A decision of a panel of an assessment review board is the decision of the assessment review board.

2016 c24 s62

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

(a) the description of a property or business;

(b) the name and mailing address of an assessed person or taxpayer;

(c) an assessment;

(d) an assessment class;

(e) an assessment sub-class;

(f) the type of property;

(g) the type of improvement;

(h) school support;

(i) whether the property is assessable;

(j) whether the property or business is exempt from taxation under Part 10;

(k) any extent to which the property is exempt from taxation under a bylaw under section 364.1;

(l) whether the collection of tax on the property is deferred under a bylaw under section 364.1.

(6) A complaint may be made about a designated officer's refusal to grant an exemption or deferral under a bylaw under section 364.1.

(7) Despite subsection (5)(j),

(a) there is no right to make a complaint about an exemption or deferral given by agreement under section 364.1(11) unless the agreement expressly provides for that right, and

(b) there is no right to make a complaint about a decision made under a bylaw under section 364.2 in respect of an exemption or deferral.

(8) There is no right to make a complaint about any tax rate.

(9) A complaint under subsection (5) must

(a) indicate what information shown on an assessment notice or tax notice is incorrect,

(b) explain in what respect that information is incorrect,

(c) indicate what the correct information is, and

(d) identify the requested assessed value, if the complaint relates to an assessment.

(9.1) A complaint about a tax imposed in accordance with a clean energy improvement tax bylaw must be made within one year after the tax is first imposed.

(10) A complaint about a local improvement tax must be made within one year after it is first imposed.

(11) Despite subsection (10), where a local improvement tax rate has been revised under section 403(3), a complaint may be made about the revised local improvement tax whether or not a complaint was made about the tax within the year after it was first imposed.

(12) A complaint under subsection (11) must be made within one year after the local improvement tax rate is revised.

(13) A complaint must include the mailing address of the complainant except where, in the case of a complaint under subsection (5), the correct mailing address of the complainant is shown on the assessment notice or tax notice.

(14) An assessment review board has no jurisdiction to deal with a complaint about designated industrial property or an amount prepared by the Minister under Part 9 as the equalized assessment for a municipality.

(15) An assessment review board has no jurisdiction to deal with a complaint about any matter relating to an exemption or deferral under section 364.2, including a refusal to grant an exemption or deferral or a cancellation of an exemption or deferral under that section.

2016 c24 s62;2019 c6 s8;2023 c9 s19(11)

Jurisdiction of assessment review boards

460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

(a) an assessment notice for

(i) residential property with 3 or fewer dwelling units, or

(ii) farm land,

or

(b) a tax notice other than a property tax notice, business tax notice or improvement tax notice.

(2) Subject to section 460(14) and (15), a composite assessment review board has jurisdiction to hear complaints about

(a) any matter referred to in section 460(5) that is shown on

(i) an assessment notice for property other than property described in subsection (1)(a), or

(ii) a business tax notice or an improvement tax notice,

or

(b) a designated officer's decision to refuse to grant an exemption or deferral under section 364.1.

(3) In this section, a reference to "improvement tax" includes a business improvement area tax in Part 10, Division 4 and a local improvement tax in Part 10, Division 7.

2016 c24 s62;2017 c22 s37;2019 c6 s9

Address to which a complaint is sent

461(1) A complaint must be filed with the assessment review board at the address shown on the assessment or tax notice for the property

(a) in the case of a complaint about a designated officer's decision to refuse to grant an exemption or deferral under section 364.1, not later than the date stated on the written notice of refusal under section 364.1(9), or

(b) in any other case, not later than the complaint deadline.

(1.1) A complaint filed after the complaint deadline is invalid.

(2) The applicable filing fee must be paid when a complaint is filed.

(3) On receiving a complaint, the clerk must set a date, time and location for a hearing before an assessment review board in accordance with the regulations.

2016 c24 s62;2017 c13 s2(13)

Notice of assessment review board hearing

462(1) If a complaint is to be heard by a local assessment review board, the clerk must

(a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and

(b) within the time prescribed by the regulations, notify the municipality, the complainant and any assessed person other than the complainant who is directly affected by the complaint of the date, time and location of the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the clerk must

(a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and

(b) within the time prescribed by the regulations, notify the Minister, the municipality, the complainant and any assessed person other than the complainant who is directly affected by the complaint of the date, time and location of the hearing.

2016 c24 s62

Absence from hearing

463 If any person who is given notice of the hearing does not attend, the assessment review board must proceed to deal with the complaint if

(a) all persons required to be notified were given notice of the hearing, and

(b) no request for a postponement or an adjournment was received by the board or, if a request was received, no postponement or adjournment was granted by the board.

2016 c24 s62

Proceedings before assessment review board

464(1) Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.

(2) Assessment review boards may require any person giving evidence before them to do so under oath.

(3) Members of assessment review boards, including provincial members of panels of composite assessment review boards, are commissioners for oaths while acting in their official capacities.

2016 c24 s62

Hearings open to public

464.1(1) Subject to subsections (2) and (3), all hearings by an assessment review board are open to the public.

(2) If an assessment review board considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the assessment review board may conduct all or part of the hearing in private.

(3) If all or any part of a hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.

(4) Subject to subsection (5), all documents filed in respect of a matter before an assessment review board must be placed on the public record.

(5) An assessment review board may exclude a document from the public record

(a) if the assessment review board is of the opinion that disclosure of the document could reasonably be expected to disclose intimate personal, financial or commercial matters or other matters, and

(b) the assessment review board considers that a person's interest in confidentiality outweighs the public interest in the disclosure of the document.

(6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

2016 c24 s62

Notice to attend or produce

465(1) If, in the opinion of an assessment review board hearing a complaint,

(a) the attendance of a person, or

(b) the production of a document or thing,

is required for the purpose of the hearing, the board may, on application, cause a notice to be served on a person requiring a person to attend or to attend and produce the document or thing.

(2) An application under subsection (1) must be made in accordance with the regulations made under section 484.1(n.1).

(3) If a person fails or refuses to comply with a notice served under subsection (1), the assessment review board may apply to the Court of King's Bench and the Court may issue a warrant requiring the attendance of the person or the attendance of the person to produce a document or thing.

2016 c24 s62;AR 217/2022

Protection of witnesses

466 A witness may be examined under oath on anything relevant to a matter that is before an assessment review board and is not

excused from answering any question on the ground that the answer might tend to

(a) incriminate the witness,

(b) subject the witness to punishment under this or any other Act, or

(c) establish liability of the witness

(i) to a civil proceeding at the instance of the Crown or of any other person, or

(ii) to prosecution under any Act,

but if the answer so given tends to incriminate the witness, subject the witness to punishment or establish liability of the witness, it must not be used or received against the witness in any civil proceedings or in any other proceedings under this or any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

2016 c24 s62

Division 2
Decisions of Assessment Review Boards

Decisions of assessment review board

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(1.1) For greater certainty, the power to make a change under subsection (1) includes the power to increase or decrease an assessed value shown on an assessment roll or tax roll.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(9).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

(4) An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.

RSA 2000 cM-26 s467;2009 c29 s24;2018 c11 s13; 2019 c22 s10(15)

Appeal to composite assessment review board

467.1 A complaint about a designated officer's decision to refuse to grant an exemption or deferral under section 364.1 is an appeal of the decision and a composite assessment review board may, after hearing the complaint, confirm the designated officer's decision or replace it with the board's decision.

2016 c24 s63

Assessment review board decisions

468(1) Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) before the end of the taxation year to which the complaint that is the subject of the hearing applies,

whichever is earlier.

(2) Despite subsection (1), in the case of a complaint about a supplementary assessment notice, an amended assessment notice or any tax notice other than a property tax notice, an assessment review board must render its decision in writing in accordance with the regulations.

RSA 2000 cM-26 s468;2009 c29 s25

Costs of proceedings

468.1 A composite assessment review board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

2009 c29 s26

Effect of order relating to costs

468.2 An order of the composite assessment review board under section 468.1 may be registered in the Personal Property Registry and at any land titles office and, on registration, has the same effect as if it were a registered writ of enforcement issued after judgment has been entered in an action by the Court of King's Bench.

2009 c29 s26;AR 217/2022

Notice of decision

469 The clerk must, within 7 days after an assessment review board renders a decision, send the board's written decision and reasons, including any dissenting reasons, to the persons notified of the hearing under section 462(1)(b) or (2)(b), as the case may be.

RSA 2000 cM-26 s469;2009 c29 s27;2016 c24 s64

Judicial review

470(1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) Notice of an application for judicial review must be given to

(a) the assessment review board that made the decision,

(b) the complainant, other than an applicant for the judicial review,

(c) an assessed person who is directly affected by the decision, other than the complainant,

(d) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.

(3) If an applicant for judicial review of an assessment review board decision makes a written request for materials to the assessment review board for the purposes of the application, the assessment review board must provide the materials requested within 14 days from the date on which the written request is served.

(4) An assessment review board whose decision is the subject of an application for judicial review must, within 30 days from the date on which the board is served with the application, forward to the clerk of the Court of King's Bench the certified record of proceedings prepared under Part 3 of the Alberta Rules of Court.

(5) Documents excluded from the public record of a hearing by an assessment review board remain excluded from the public record on judicial review unless otherwise ordered by the Court of King's Bench.

(6) No member of an assessment review board, including a provincial member appointed to a panel of a composite assessment

review board, is liable for costs by reason of or in respect of a judicial review under this Act.

RSA 2000 cM-26 s470;2009 c29 s28;2014 c13 s35;2016 c24 s65; AR 217/2022

470.1 Repealed 2016 c24 s65.

Technical irregularities

471(1) If there has been substantial compliance with this Part, the decision of an assessment review board is not invalid because of a defect in form, a technical irregularity or informality.

(2) An assessment review board may correct any error or omission in its decision.

1994 cM-26.1 s471;1996 c30 s44

472 to **476** Repealed 1995 c24 s73.

Division 4
General Matters

Referral of unfair assessment to Minister

476.1 An assessment review board may refer any assessment that it considers unfair and inequitable to the Minister and the Minister may deal with it under sections 324 and 571.

2009 c29 s29

Required changes to rolls

477 The municipality must make any changes to its assessment roll or tax roll, or both, that are necessary to reflect the decision of an assessment review board.

1994 cM-26.1 s477;1995 c24 s74

Right to continue proceedings

478 A person who becomes an assessed person or taxpayer in respect of a property or business when a complaint about the property or business is being dealt with under this Part may become a party to any proceedings started by the previous assessed person or taxpayer.

1994 cM-26.1 s478

Obligation to pay taxes

479 Making a complaint under this Part does not relieve any person from the obligation to pay any taxes owing on any property or business or any penalties imposed for late payment of taxes.

1994 cM-26.1 s479

Prohibition

480(1) A member of an assessment review board must not hear or vote on any decision that relates to a matter in respect of which the member has a pecuniary interest.

(2) For the purposes of subsection (1), a member of an assessment review board has a pecuniary interest in a matter to the same extent that a councillor would have a pecuniary interest in the matter as determined in accordance with section 170.

RSA 2000 cM-26 s480;2009 c29 s30

Fees

481(1) Subject to the regulations made pursuant to section 484.1(q), the council may set fees payable by persons wishing to make complaints or to be involved as a party or intervenor in a hearing before an assessment review board and for obtaining copies of an assessment review board's decisions and other documents.

(2) If the assessment review board makes a decision in favour of the complainant, the fees paid by the complainant under subsection (1) must be refunded.

(3) If

(a) the assessment review board makes a decision that is not in favour of the complainant, and

(b) on judicial review, the Court of King's Bench makes a decision in favour of the complainant,

the fees paid by the complainant under subsection (1) must be refunded.

RSA 2000 cM-26 s481;2009 c29 s31;2016 c24 s66;AR 217/2022

Admissible evidence at hearing

482(1) A copy of

(a) an assessment roll or tax roll or part of it, or

(b) an assessment notice or tax notice,

that is certified by a designated officer as being a true copy of the original roll, part of the roll or notice is proof, in the absence of evidence to the contrary, of the existence and validity of the roll, part of the roll or notice and is admissible in evidence without proof of the appointment or signature of the designated officer.

(2) A statutory declaration signed by a designated officer is admissible in evidence as proof, in the absence of evidence to the contrary, that

(a) an assessment notice was sent at least 7 days prior to the notice of assessment date, or

(b) a tax notice was sent on the date shown on the tax notice.

RSA 2000 cM-26 s482;2017 c13 s1(42)

Decision admissible on judicial review

483 A copy of a decision of an assessment review board that is certified by the clerk as being a true copy of the original decision is proof, in the absence of evidence to the contrary, of the decision and is admissible in evidence without proof of the appointment or signature of the clerk.

RSA 2000 cM-26 s483;2016 c24 s67

Immunity

484 The members of an assessment review board, including a provincial member appointed to a panel of a composite assessment review board, are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty or function under this Part.

RSA 2000 cM-26 s484; 2016 c24 s68

Regulations

484.1 The Minister may make regulations

(a) respecting the eligibility of persons to be provincial members;

(b) respecting the appointment of provincial members to panels of composite assessment review boards;

(c) prescribing the conditions under which a chair may convene a panel of a local assessment review board consisting of only one member;

(d) prescribing the conditions under which a chair may convene a panel of a composite assessment review board consisting of only a provincial member;

(e) respecting the training and qualifications of members of assessment review boards and clerks;

(f) respecting the setting by the clerk of the date, time and location of a hearing before an assessment review board;

(g) prescribing the period of time for purposes of section 462(1)(b) and (2)(b);

(h) respecting the procedures and functions of assessment review boards;

(h.1) respecting the replacement of members of a panel of an assessment review board;

(i) governing the disclosure of evidence in a hearing before an assessment review board;

(i.1) governing hearings held in private before an assessment review board;

(i.2) governing the excluding of documents from the public record by an assessment review board;

(j) respecting the jurisdiction of assessment review boards;

(k) respecting the authority of assessment review boards to hear complaints and the manner in which the boards are to hear complaints;

(l) respecting costs that may or must be imposed by a composite assessment review board in respect of a hearing, including, without limitation, regulations respecting

(i) the circumstances in which costs must be imposed, and

(ii) the amount of costs;

(m) respecting the rendering of decisions by assessment review boards;

(n) respecting the circumstances under which a person may act as an agent for an assessed person or taxpayer at a hearing before an assessment review board;

(n.1) respecting applications referred to in section 465(1);

(o) respecting any other matter relating to assessment review boards;

(p) respecting applications for judicial review referred to in section 470;

(q) setting amounts for any fees that a council may set pursuant to section 481(1).

RSA 2000 cM-26 s484.1;2009 c29 s32;2016 c24 s69

Part 12
Land and Property Rights Tribunal

Definitions

485 In this Part,

(a) "chair" means the chair of the Tribunal;

(b) "Tribunal" means the Land and Property Rights Tribunal.

RSA 2000 cM-26 s485;2016 c24 s70;2020 cL-2.3 s24(9)

Division 1
Jurisdiction of the Land and Property Rights Tribunal

486 and **487** Repealed 2020 cL-2.3 s24(11).

Hearing related to assessment

487.1 A member or a panel of the Tribunal may not participate in a hearing related to assessment matters unless the member is or the members of the panel are qualified to do so in accordance with the regulations.

2009 c29 s33;2020 cL-2.3 s24(12)

487.2 Repealed 2020 cL-2.3 s24(13).

Jurisdiction of the Tribunal

488(1) The Tribunal has jurisdiction

(a) to hear complaints about assessments for designated industrial property,

(b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,

(c) repealed 2009 c29 s34,

(d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the *Alberta Housing Act*,

(e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,

(e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,

(f) to deal with annexations in accordance with Part 4,

(g) to decide disputes involving regional services commissions under section 602.2,

(h) to hear appeals pursuant to section 619,

(i) to hear appeals from subdivision decisions pursuant to section 678(2)(a),

(i.1) to hear appeals from development permit decisions pursuant to section 685(2.1)(a),

(j) to decide intermunicipal disputes pursuant to section 690,

(k) to hear appeals pursuant to section 648.1, and

(l) to hear appeals from decisions made under an appeal mechanism or dispute resolution mechanism established by a growth management board under section 708.08.

(2) The Tribunal must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).

(3) Sections 495 to 498, 501 to 504 and 507 apply when the Tribunal holds a hearing to decide a dispute, or to hear an appeal, referred to in subsection (1).

RSA 2000 cM-26 s488;2009 c29 s34;2015 c8 s54;2016 c24 s74;2020 c25 s11;2020 cL-2.3 s24(14);2020 c39 s10(2);2022 c16 s9(68)

ALSA regional plans

488.01 In carrying out its functions and in exercising its jurisdiction under this Act and other enactments, the Tribunal must act in accordance with any applicable ALSA regional plan.

2009 cA-26.8 s83;2020 cL-2.3 s24(39)

Limit on Tribunal's jurisdiction

488.1(1) The Tribunal has no jurisdiction under section 488(1) to hear a complaint relating to an equalized assessment set by the Minister under Part 9 if the reason for the complaint is

(a) that the equalized assessment fails to reflect a loss in value where the loss in value has not been reflected in the assessments referred to in section 317,

(b) that information provided to the Minister by a municipality in accordance with section 319(1) does not properly reflect the relationship between assessments and the value of property in the municipality for the year preceding the year in which the assessments were used for the purpose of imposing a tax under Part 10, or

(c) that information relied on by the Minister pursuant to section 319(2) is incorrect.

(2) The Tribunal must not hear a complaint about any issue regarding the validity of a regulation or guideline under this Act as it relates to property.

RSA 2000 cM-26 s488.1;2009 c29 s35;2016 c24 s75; 2020 cL-2.3 s24(39)

489 and **490** Repealed 2020 cL-2.3 s24(15).

Division 2
Hearings Before the Tribunal

Form of complaint

491(1) A complaint about an assessment for designated industrial property or relating to the amount of an equalized assessment that is to be dealt with by a hearing before the Tribunal must be in the form prescribed by the regulations and must be filed with the chair within the following periods:

(a) for a complaint about an assessment for designated industrial property, not later than the complaint deadline;

(b) for a complaint relating to the amount of an equalized assessment, not later than 30 days from the date the Minister sends the municipality the report described in section 320.

(1.1) The form referred to in subsection (1) must be accompanied with the fee, if any, set by regulation under section 527.1.

(2) The form referred to in subsection (1) must include

(a) the reason the matter is being referred to the Tribunal,

(b) a brief explanation of the issues to be decided by the Tribunal, and

(c) an address to which any notice or decision of the Tribunal is to be sent.

(3) In addition to the information described in subsection (2), in respect of a complaint about an assessment for designated industrial property, the form referred to in subsection (1) must

(a) indicate what information on an assessment notice is incorrect,

(b) explain in what respect that information is incorrect,

(c) indicate what the correct information is, and

(d) identify the requested assessed value, if the complaint relates to an assessment.

(4) In addition to the information described in subsection (2), in respect of a complaint about an amount of an equalized assessment, the form referred to in subsection (1) must

(a) explain in what respect the amount is incorrect, and

(b) indicate what the correct amount should be.

RSA 2000 cM-26 s491;2009 c29 s36;2016 c24 s76;
2017 c13 s1(43);2020 cL-2.3 s24(17)

Complaints about designated industrial property

492(1) A complaint about an assessment for designated industrial property may be about any of the following matters, as shown on the assessment notice:

(a) the description of any designated industrial property;

(b) the name and mailing address of an assessed person;

(c) an assessment;

(c.1) an assessment class;

(d) the type of improvement;

(e) school support;

(f) whether the designated industrial property is assessable;

(g) whether the designated industrial property is exempt from taxation under Part 10.

(1.1) Any of the following may make a complaint about an assessment for designated industrial property:

(a) an assessed person;

(b) a municipality, if the complaint relates to property that is within the boundaries of that municipality.

(2) Repealed 1995 c24 s76.

RSA 2000 cM-26 s492;2016 c24 s77

Duty of chair on receiving a form

493(1) On receiving a form referred to in section 491(1), the chair must set a date, time and location for a hearing before the Tribunal in accordance with the regulations.

(2) If the form relates to a complaint about an assessment for designated industrial property, the chair must advise the provincial assessor that the form has been received.

RSA 2000 cM-26 s493;2009 c29 s37;2016 c24 s78;2017 c13 ss1(44),2(14);2020 cL-2.3 s24(39)

Notice of hearing before the Tribunal

494(1) If a matter is to be heard by the Tribunal, the chair must

(a) within 30 days after receiving a form under section 491(1), provide the municipality with a copy of the form, and

(b) within the time prescribed by the regulations, notify

(i) the municipality,

(ii) the person who sent the form to the chair,

(iii) the provincial assessor, and

(iv) any assessed person who is directly affected by the matter

of the date, time and location of the hearing.

(2) Repealed 2009 c29 s38.

RSA 2000 cM-26 s494;2009 c29 s38;2016 c24 s79;2017 c13 ss1(45),2(15);2020 cL-2.3 s24(39)

Absence from hearing

495(1) If any person who is given notice of the hearing does not attend, the Tribunal must proceed to deal with the matter if

(a) all persons required to be notified were given notice of the hearing, and

(b) no request for a postponement or an adjournment was received by the Tribunal or, if a request was received, no postponement or adjournment was granted by the Tribunal.

RSA 2000 cM-26 s495;2009 c29 s39;2020 cL-2.3 s24(18)

496 to **498** Repealed 2020 cL-2.3 s24(19).

Decisions of the Tribunal

499(1) On concluding a hearing, the Tribunal may make any of the following decisions:

(a) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for designated industrial property;

(b) make a change to any equalized assessment, if the hearing relates to an equalized assessment;

(c) decide that no change to an equalized assessment or an assessment roll is required;

(d) decide that a property is not designated industrial property and direct the municipality to appoint an assessor to assess the property.

(2) The Tribunal must dismiss a complaint that was not made within the proper time or that does not comply with section 491(1), (2) or (3).

(3) The Tribunal must not alter

(a) any assessment of designated industrial property that has been prepared correctly in accordance with the regulations, and

(b) any equalized assessment that is fair and equitable, taking into consideration equalized assessments in similar municipalities.

(4) The Tribunal may, in its decision,

(a) include terms and conditions, and

(b) make the decision effective on a future date or for a limited time.

RSA 2000 cM-26 s499;2009 c29 s40;2016 c24 s80;
2020 cL-2.3 s24(39)

Tribunal decisions

500(1) Subject to the regulations, if the hearing relates to a complaint about an assessment for designated industrial property, the Tribunal must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) before the end of the taxation year to which the assessment that is the subject of the hearing applies,

whichever is earlier.

(2) Subject to the regulations, if the hearing relates to a complaint about the amount of an equalized assessment, the Tribunal must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) within 150 days from the date the Minister sends the municipality the report described in section 320,

whichever is earlier.

RSA 2000 cM-26 s500;2002 c19 s18;2009 c29 s41; 2016 c24 s135;2020 cL-2.3 s24(39)

Costs of proceedings

501 The Tribunal may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

RSA 2000 cM-26 s501;2009 c29 s42;2020 cL-2.3 s24(39)

Effect of decision relating to costs

502 An order of the Tribunal under section 501 may be registered in the Personal Property Registry and at any land titles office and, on registration, has the same effect as if it were a registered writ of enforcement issued after judgment has been entered in an action by the Court of King's Bench.

RSA 2000 cM-26 s502;2009 c29 s43;2020 cL-2.3 s24(39);AR 217/2022

503 Repealed 2020 cL-2.3 s24(19).

Rehearing

504 The Tribunal may rehear any matter before making its decision, and may review, rescind or vary any decision made by it.

RSA 2000 cM-26 s504;2020 cL-2.3 s24(39)

Notice of decision

505 The Tribunal must, within 7 days after it renders a decision, send its written decision and reasons, including any dissenting reasons, to the persons notified of the hearing under section 494(1)(b).

RSA 2000 cM-26 s505;2009 c29 s44;2020 cL-2.3 s24(39)

506 and **506.1** Repealed 2016 c24 s81.

507 Repealed 2020 cL-2.3 s24(19).

Intervention by municipality

508(1) When the council of a municipality considers that the interests of the public in the municipality or in a major part of the municipality are sufficiently concerned, the council may authorize

the municipality to become a complainant or intervenor in a hearing before the Tribunal.

(2) For the purposes of subsection (1), a council may take any steps, incur any expense and take any proceedings necessary to place the question in dispute before the Tribunal for a decision.

RSA 2000 cM-26 s508;2020 cL-2.3 s24(39)

Division 3 Repealed 2020 cL-2.3 s24(20).

Division 4
Inquiries by the Tribunal

Referrals to the Tribunal

514(1) The Lieutenant Governor in Council may refer any matter to the Tribunal for its recommendations.

(2) The Minister may by order refer any question or other matter to the Tribunal for its recommendations.

RSA 2000 cM-26 s514;2020 cL-2.3 s24(39)

Report

515(1) On concluding an inquiry, the Tribunal must prepare a report that includes its recommendations.

(2) The Tribunal may make any recommendations it considers appropriate.

(3) The report must be delivered to the Minister.

RSA 2000 cM-26 s515;2020 cL-2.3 s24(39)

Division 5
General Matters

Referral of unfair assessment to Minister

516 The Tribunal may refer any assessment that it considers unfair and inequitable to the Minister and the Minister may deal with it under sections 571 and 324.

RSA 2000 cM-26 s516;2020 cL-2.3 s24(39)

Required changes to rolls

517(1) The municipality must make any changes to its assessment roll or tax roll, or both, that are necessary to reflect the decision of the Tribunal.

(2) The Minister must make any changes to the Minister's assessment roll for designated industrial property that are necessary to reflect the decision of the Tribunal.

RSA 2000 cM-26 s517;2009 c29 s46;2016 c24 s135; 2020 cL-2.3 s24(39)

Right to continue proceedings

518 A person who becomes an assessed person or taxpayer in respect of a property or business when a complaint or an appeal about the property or business is being dealt with under this Part may become a party to any proceedings started by the previous assessed person or taxpayer.

1994 cM-26.1 s518

Obligation to pay taxes

519 Sending a form to the Tribunal under section 491(1) does not relieve any person from the obligation to pay any taxes owing on the property or business or any penalties imposed for late payment of taxes.

RSA 2000 cM-26 s519;2017 c13 s1(46);2020 cL-2.3 s24(39)

520 and **521** Repealed 2020 cL-2.3 s24(22).

522 Repealed 2009 c29 s48.

523 Repealed 2020 cL-2.3 s24(22).

Powers of the Tribunal

524(1) The Tribunal may request copies of statements, reports, documents or information of any kind from the designated officers of any local authority.

(2) The Tribunal may request, in writing, copies of any certificates or certified copies of documents from the Registrars of Titles in the different land registration districts, the Minister responsible for this Act or the Minister of Transportation and Economic Corridors.

(3) The Tribunal or any member of the Tribunal may at any time search the public records of the Land Titles Offices.

RSA 2000 cM-26 s524;2007 c16 s5;2013 c10 s21;2020 cL-2.3 s24(23); 2022 c21 s57

Admissible evidence at hearing

525(1) A document purporting to have been issued by a corporation or any officer, agent or employee of a corporation, or by any other person for or on its behalf, may be considered by the Tribunal as proof, in the absence of evidence to the contrary, that the document was issued by the corporation.

(2) A copy of

(a) an assessment roll or tax roll or part of it, or

(b) an assessment notice or tax notice,

that is certified by a designated officer as being a true copy of the original roll, part of the roll or notice is proof, in the absence of evidence to the contrary, of the existence and validity of the roll, part of the roll or notice and is admissible in evidence without proof of the appointment or signature of the designated officer.

(3) A statutory declaration signed by a designated officer is admissible in evidence as proof, in the absence of evidence to the contrary, that

(a) an assessment notice was sent at least 7 days prior to the notice of assessment date, or

(b) a tax notice was sent on the date shown on the tax notice.

RSA 2000 cM-26 s525;2017 c13 s1(47);2020 cL-2.3 s24(39)

Hearings open to public

525.1(1) Subject to subsections (2) and (3), all hearings are open to the public.

(2) If the Tribunal considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the Tribunal may conduct all or part of the hearing in private.

(3) If all or any part of a hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.

(4) Subject to subsection (5), all documents filed in respect of a matter before the Tribunal must be placed on the public record.

(5) The Tribunal may exclude a document from the public record

(a) if the Tribunal is of the opinion that disclosure of the document could reasonably be expected to disclose intimate personal, financial or commercial matters or other matters, and

(b) the Tribunal considers that a person's interest in confidentiality outweighs the public interest in the disclosure of the document.

(6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

2016 c24 s83;2020 cL-2.3 s24(24)

526 and **527** Repealed 2020 cL-2.3 s24(25).

Regulations

527.1 The Minister may make regulations

(a) prescribing the period of time for the purposes of section 494(1)(b);

(b) respecting costs that may or must be imposed by the Tribunal in respect of a hearing, including, without limitation, regulations respecting

(i) the circumstances in which costs must be imposed, and

(ii) the amount of costs;

(c) respecting the circumstances under which a person may act as an agent for an assessed person or taxpayer at a hearing before the Tribunal;

(d) setting fees payable by complainants, or by parties, intervenors or others who appear at hearings before the Tribunal or at inquiries conducted by the Tribunal, and for obtaining copies of the Tribunal's decisions and other documents.

RSA 2000 cM-26 s527.1;2009 c29 s49;2016 c24 s84; 2020 cL-2.3 s24(26)

Part 13
Liability of Municipalities, Enforcement of Municipal Law and Other Legal Matters

Division 1
Liability of Municipalities

Acting in accordance with statutory authority

527.2 Subject to this and any other enactment, a municipality is not liable for damage caused by any thing done or not done by the municipality in accordance with the authority of this or any other enactment unless the cause of action is negligence or any other tort.

1999 c11 s29

Non-negligence actions

528 A municipality is not liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence, if the damage arises, directly or indirectly, from roads or from the operation or non-operation of

(a) a public utility, or

(b) a dike, ditch or dam.

1994 cM-26.1 s528

Exercise of discretion

529 A municipality that has the discretion to do something is not liable for deciding not to do that thing in good faith or for not doing that thing.

1994 cM-26.1 s529

Inspections and maintenance

530(1) A municipality is not liable for damage caused by

(a) a system of inspection, or the manner in which inspections are to be performed, or the frequency, infrequency or absence of inspections, and

(b) a system of maintenance, or the manner in which maintenance is to be performed, or the frequency, infrequency or absence of maintenance.

(2) Repealed 1995 c24 s80.

1994 cM-26.1 s530;1995 c24 s80

Snow on roads

531(1) A municipality is only liable for an injury to a person or damage to property caused by snow, ice or slush on roads or sidewalks in the municipality if the municipality is grossly negligent.

(2) A person who brings an action claiming gross negligence described in subsection (1) must notify the municipality of the event that gives rise to the action within 21 days after the occurrence of the event.

(3) Failure to notify the municipality bars the action unless

(a) there is a reasonable excuse for the lack of notice, and the municipality is not prejudiced by the lack of notice,

(b) death is the result of the event complained of, or

(c) the municipality waives in writing the requirement for notice.

1994 cM-26.1 s531;1996 c30 s49

Repair of roads, public places and public works

532(1) Every road or other public place that is subject to the direction, control and management of the municipality, including all public works in, on or above the roads or public place put there by the municipality or by any other person with the permission of the municipality, must be kept in a reasonable state of repair by the municipality, having regard to

(a) the character of the road, public place or public work, and

(b) the area of the municipality in which it is located.

(2) The municipality is liable for damage caused by the municipality failing to perform its duty under subsection (1).

(3) This section does not apply to any road made or laid out by a private person or any work made or done on a road or place by a private person until the road or work is subject to the direction, control and management of the municipality.

(4) A municipality is not liable under this section unless the claimant has suffered by reason of the default of the municipality a particular loss or damage beyond what is suffered by the claimant in common with all other persons affected by the state of repair.

(5) A municipality is not liable under this section in respect of acts done or omitted to be done by persons exercising powers or authorities conferred on them by law, and over which the municipality has no control, if the municipality is not a party to those acts or omissions.

(6) A municipality is liable under this section only if the municipality knew or should have known of the state of repair.

(7) A municipality is not liable under this section if the municipality proves that it took reasonable steps to prevent the disrepair from arising.

(8) When a traffic control device has been defaced, removed or destroyed by someone other than a designated officer or employee or agent of the municipality, the municipality is liable under this section only if the municipality

(a) had actual notice of the defacement, removal or destruction, and

(b) failed to restore, repair or replace the traffic control device in a reasonable period of time.

(9) A person who brings an action under this section must notify the municipality of the event that gives rise to the action within 30 days after the occurrence of the event.

(10) Failure to notify the municipality bars the action unless

(a) there is a reasonable excuse for the lack of notice, and the municipality is not prejudiced by the lack of notice,

(b) death is the result of the event complained of, or

(c) the municipality waives in writing the requirement for notice.

1994 cM-26.1 s532

Things on or adjacent to roads

533 A municipality is not liable for damage caused

(a) by the presence, absence or type of any wall, fence, guardrail, railing, curb, pavement markings, traffic control device, illumination device or barrier adjacent to or in, along or on a road, or

(b) by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or on a road that is not on the travelled portion of the road.

1994 cM-26.1 s533

Public works affecting land

534(1) In this section, "injurious affection" means, in respect of land, the permanent reduction in the appraised value of land as a result of the existence, but not the construction, erection or use, of a public work or structure for which the municipality would be liable if the existence of the public work or structure were not under the authority of an enactment.

(2) Within one year after the construction or erection of a public work or structure is completed, as signified by the construction completion certificate, the municipality must deliver or mail to every owner of land that abuts land on which the public work or structure is situated, and place in a newspaper circulating in the municipality, a notice that

(a) identifies the public work or structure,

(b) gives the date of completion, and

(c) states that claims for compensation under this section must be received within 60 days after the notice is published in the newspaper.

(3) Subject to subsection (4), an owner of land that abuts land on which a public work or structure is situated is entitled to compensation from the municipality for injurious affection to the owner's land.

(4) An owner of land described in subsection (3) is entitled to compensation under this section only if the owner files with the municipality a claim within 60 days after notice of the completion of the public work or structure is published in the newspaper.

(5) A claim must state the amount claimed and the particulars of the claim to prove the claim.

(6) The value of any advantage to a claimant's land derived from the existence of the public work or structure must be set off against the amount otherwise payable as compensation for injurious affection.

(7) No compensation is payable for injurious affection caused by

(a) the existence of boulevards or dividers on a road for the purpose of channelling traffic, or

(b) the restriction of traffic to one direction only on any road.

(8) No action or claim for injurious affection may be made except under this section.

(9) If the claimant and the municipality are not able to agree on the amount of compensation for injurious affection, the claimant and the municipality may agree to have the amount determined by binding arbitration under the *Arbitration Act*.

(10) If the claimant and the municipality do not agree to have the amount of compensation for injurious affection determined by binding arbitration, the amount of compensation for injurious affection must be determined by the Land and Property Rights Tribunal.

(11) Subject to the regulations made under subsection (15), the Land and Property Rights Tribunal may follow the practices and procedures used under the *Expropriation Act*.

(12) Except in exceptional circumstances, the Land and Property Rights Tribunal may not award legal costs on a solicitor-client basis in respect of a proceeding under this section.

(13) An appeal lies to the Court of Appeal from any determination or order of the Land and Property Rights Tribunal under this section.

(14) Section 37 of the *Expropriation Act* applies to an appeal under subsection (13).

(15) The Minister may make regulations

(a) respecting the practice and procedure of a proceeding before the Land and Property Rights Tribunal under this section;

(b) subject to subsection (12), respecting costs that may be awarded by the Land and Property Rights Tribunal in respect of a proceeding under this section.

(16) This section applies only in respect of public works and structures for which a construction completion certificate is issued after this section comes into force.

RSA 2000 cM-26 s534;2007 c16 s4;2020 cL-2.3 s24(40)

Division 2
Liability of Councillors and Others

Protection of councillors and municipal officers

535(1) In this section,

(a) "municipal officers" means

(i) the chief administrative officer and designated officers, and

(ii) employees of the municipality;

(b) "volunteer worker" means a volunteer member of a fire or ambulance service or emergency measures organization established by a municipality, or any other volunteer performing duties under the direction of a municipality.

(2) Councillors, council committee members, municipal officers and volunteer workers are not liable for loss or damage caused by anything said or done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers under this Act or any other enactment.

(3) Subsection (2) is not a defence if the cause of action is defamation.

(4) This section does not affect the legal liability of a municipality.

RSA 2000 cM-26 s535;2002 c19 s19

Protection of sporting commissions

535.1(1) In this section, "commission" means a commission established by bylaw for controlling and regulating any of the following:

(a) boxing;

(b) wrestling;

(c) full contact karate;

(d) kickboxing;

(e) any other sport that holds contests where opponents strike each other with a hand, foot, knee, elbow or other part of the body.

(2) A commission and its members, officers, employees and any volunteers and officials performing duties under the direction of any of them are not liable for anything said or done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers under this Act or any other enactment.

(3) Subsection (2) is not a defence if the cause of action is defamation.

2002 c19 s19;2003 c43 s2

Protection of fire service organizations

535.2(1) In this section,

(a) "fire service organization" means

(i) a municipality that provides, through a department, branch or other part of the municipality, fire services for that municipality or on behalf of one or more municipal authorities;

(ii) a regional services commission that provides fire services within its service area;

(iii) a special areas board or the Minister, in the case of a special area or an improvement district, who provides fire services for the special area or improvement district or on behalf of one or more municipal authorities;

(iv) a corporation or other entity, other than a municipal authority or regional services commission, that provides fire services in one or more municipal authorities in

accordance with an agreement with, or at the request of, the municipal authority or municipal authorities;

(b) "firefighter" means a member, including a volunteer, of a fire service organization whose functions, duties or powers are to carry out fire services, notwithstanding that the member may carry out other functions, duties or powers for the fire service organization;

(c) "fire services" means services related to the suppression or prevention of fires, rescue and emergency services and other activities of a firefighter.

(2) Fire service organizations, members of a regional services commission and firefighters are not liable for loss or damage caused by anything done or omitted to be done in good faith in the performance or intended performance of their functions, duties or powers in providing or carrying out fire services.

(3) Subsection (2) does not apply in the case of an accident involving a motor vehicle.

2009 c49 s2

Division 3
Challenging Bylaws and Resolutions

Application to the Court of King's Bench

536(1) A person may apply to the Court of King's Bench for

(a) a declaration that a bylaw or resolution is invalid, or

(b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.

(2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.

RSA 2000 cM-26 s536;2009 c53 s119;AR 217/2022

Procedure

537 A person who wishes to have a bylaw or resolution declared invalid on the basis that

(a) the proceedings prior to the passing of the bylaw or resolution, or

(b) the manner of passing the bylaw or resolution

does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed.

1994 cM-26.1 s537

Validity relating to public participation

538 Despite section 537, a person may apply at any time

(a) for a declaration that a bylaw is invalid if

(i) the bylaw is required to be put to a vote of electors and the vote has not been conducted or if the bylaw was not given the required approval in such a vote,

(ii) the bylaw is required to be advertised and it was not advertised, or

(iii) a public hearing is required to be held in respect of the bylaw and the public hearing was not held,

or

(b) for an order requiring a council to pass a bylaw as a result of a vote by the electors.

1994 cM-26.1 s538

Reasonableness

539 No bylaw or resolution may be challenged on the ground that it is unreasonable.

1994 cM-26.1 s539

Effect of councillor being disqualified

540 No bylaw, resolution or proceeding of a council and no resolution or proceeding of a council committee may be challenged on the ground that

(a) a person sitting or voting as a councillor

(i) is not qualified to be on council,

(ii) was not qualified when the person was elected, or

(iii) after the election, ceased to be qualified, or became disqualified,

(b) the election of one or more councillors is invalid,

(c) a councillor has resigned because of disqualification,

(d) a person has been declared disqualified from being a councillor,

(d.1) a councillor is no longer a member of the council as the result of a recall petition declared to be sufficient in accordance with section 240.8(2),

(e) a councillor did not take the oath of office,

(f) a person sitting or voting as a member of a council committee

(i) is not qualified to be on the committee,

(ii) was not qualified when the person was appointed, or

(iii) after being appointed, ceased to be qualified, or became disqualified,

or

(g) there was a defect in the appointment of a councillor or other person to a council committee.

RSA 2000 cM-26 s540;2021 cR-5.7 s71

Division 4
Enforcement of Municipal Law

Definitions

541 In this Division,

(a) "emergency" includes a situation in which there is imminent danger to public safety or of serious harm to property;

(b) "structure" means a structure as defined in section 284;

(c) "unsightly condition",

(i) in respect of a structure, includes a structure whose exterior shows signs of significant physical deterioration, and

(ii) in respect of land, includes land that shows signs of a serious disregard for general maintenance or upkeep.

RSA 2000 cM-26 s541;2023 c9 s19(12)

Municipal inspections and enforcement

542(1) If this or any other enactment or a bylaw authorizes or requires anything to be inspected, remedied, enforced or done by a municipality, a designated officer of the municipality may, after giving reasonable notice to the owner or occupier of land or the structure to be entered to carry out the inspection, remedy, enforcement or action,

(a) enter on that land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the enactment or bylaw,

(b) request anything to be produced to assist in the inspection, remedy, enforcement or action, and

(c) make copies of anything related to the inspection, remedy, enforcement or action.

(1.1) A consent signed under section 653 is deemed to be a reasonable notice for the purposes of subsection (1).

(2) The designated officer must display or produce on request identification showing that the person is authorized to make the entry.

(3) In an emergency or in extraordinary circumstances, the designated officer need not give reasonable notice or enter at a reasonable hour and may do the things in subsection (1)(a) and (c) without the consent of the owner or occupant.

(4) Nothing in this section authorizes the municipality to remedy the contravention of an enactment or bylaw.

1994 cM-26.1 s542;1995 c24 s81

Court authorized inspections and enforcement

543(1) If a person

(a) refuses to allow or interferes with the entry, inspection, enforcement or action referred to in section 542, or

(b) refuses to produce anything to assist in the inspection, remedy, enforcement or action referred to in section 542,

the municipality may apply to the Court of King's Bench for an order under subsection (2).

(2) The Court may issue an order

(a) restraining a person from preventing or interfering with the entry, inspection, enforcement or action, or

(b) requiring the production of anything to assist in the inspection, remedy, enforcement or action.

(3) A copy of the application and a copy of each affidavit in support must be served at least 3 days before the day named in the application for the hearing.

(4) In an emergency or in extraordinary circumstances, the Court may hear the application without notice to any person.

RSA 2000 cM-26 s543;2009 c53 s119;AR 217/2022

Inspecting meters

544(1) If a designated officer of a municipality believes that a meter that measures a public utility has been tampered with, the designated officer may apply to a judge of the Court of Justice for an order authorizing one or more employees of the municipality

(a) to enter on any land or structure in which the meter is located, and

(b) to inspect and test the meter.

(2) The judge of the Court of Justice may issue the order on being satisfied by evidence of the designated officer under oath that there are reasonable grounds to believe the meter has been tampered with.

(3) The judge of the Court of Justice may hear the application without notice to any person.

RSA 2000 cM-26 s544;2008 c32 s21;AR 75/2023

Order to remedy contraventions

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

(2) The order may

(a) direct a person to stop doing something, or to change the way in which the person is doing it;

(b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;

(c) state a time within which the person must comply with the directions;

(d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

1994 cM-26.1 s545

Order to remedy dangers and unsightly property

546(0.1) In this section, "detrimental to the surrounding area" includes causing the decline of the market value of property in the surrounding area.

(1) If, in the opinion of a designated officer, a structure, excavation or hole is dangerous to public safety or property, because of its unsightly condition, is detrimental to the surrounding area, the designated officer may by written order

(a) require the owner of the structure to

(i) eliminate the danger to public safety in the manner specified, or

(ii) remove or demolish the structure and level the site;

(b) require the owner of the land that contains the excavation or hole to

(i) eliminate the danger to public safety in the manner specified, or

(ii) fill in the excavation or hole and level the site;

(c) require the owner of the property that is in an unsightly condition to

(i) improve the appearance of the property in the manner specified, or

(ii) if the property is a structure, remove or demolish the structure and level the site.

(2) The order may

(a) state a time within which the person must comply with the order;

(b) state that if the person does not comply with the order within a specified time, the municipality will take the action or measure at the expense of the person.

RSA 2000 cM-26 s546;2023 c9 s19(13)

Caveat

546.1(1) A municipality may register a caveat under the *Land Titles Act* in respect of an order made under section 545 or 546 dealing with a dangerous structure, excavation or hole or unsightly property against the certificate of title for the land that is the subject of the order.

(2) If a municipality registers a caveat under subsection (1), the municipality must discharge the caveat when the order has been complied with or when the municipality has performed the actions or measures referred to in the order.

1999 c11 s32

Review by council

547(1) A person who receives a written order under section 545 or 546 may by written notice request council to review the order within

(a) 14 days after the date the order is received, in the case of an order under section 545, and

(b) 7 days after the date the order is received, in the case of an order under section 546,

or any longer period as specified by bylaw.

(2) After reviewing the order, the council may confirm, vary, substitute or cancel the order.

1994 cM-26.1 s547;1999 c11 s33

Appeal to Court of King's Bench

548(1) A person affected by the decision of a council under section 547 may appeal to the Court of King's Bench if

(a) the procedure required to be followed by this Act is not followed, or

(b) the decision is patently unreasonable.

(1.1) The appeal must be made,

(a) in the case of an appeal of an order under section 545, within 30 days after the date the decision under section 547 is served on the person affected by the decision, and

(b) in the case of an appeal of an order under section 546, within 15 days after the date the decision under section 547 is served on the person affected by the decision.

(2) The application for the appeal must state the reasons for the appeal.

(3) The Court may

(a) confirm the decision, or

(b) declare the decision invalid and send the matter back to the council with directions.

RSA 2000 cM-26 s548;AR 217/2022

Municipality remedying contraventions, dangers and unsightly property

549(1) Subject to subsection (2), a municipality may take whatever actions or measures are necessary to

(a) remedy a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw or to prevent a reoccurrence of the contravention, or

(b) eliminate the danger to public safety caused by a structure, excavation or hole or to deal with the unsightly condition of property.

(2) No action or measure shall be taken under subsection (1) unless

(a) the municipality has first given a written order under section 545 or 546 that contains a statement referred to in section 545(2)(d) or 546(2)(b), as the case may be,

(b) the person to whom the order is directed has not complied with the order within the time specified in the order, and

(c) the appeal periods respecting the order have expired or, if an appeal has been made, the appeal has been decided and the decision allows the municipality to take the action or measures.

(3) If an order under section 545(1) directed that premises be put and maintained in a sanitary condition, the municipality may, under this section, close the premises and use reasonable force to remove any occupants.

(4) If a structure is being removed or demolished by a municipality under subsection (1)(b), the municipality may use reasonable force to remove any occupants.

(5) The expenses and costs of an action or measure taken by a municipality under this section are an amount owing to the municipality

(a) in the case of an action or measure taken under subsection (1)(a), by the person who contravened the enactment or bylaw, or

(b) in the case of an action or measure taken under subsection (1)(b), by the person who did not comply with the order under section 546(1) within the time specified in the order.

(6) If the municipality sells all or a part of a structure that has been removed under subsection (1)(b), the proceeds of the sale must be used to pay the expenses and costs of the removal and any excess proceeds must be paid to the person entitled to them.

RSA 2000 cM-26 s549;2022 c16 s9(69)

550 Repealed 2022 c16 s9(70).

Emergencies

551(1) Despite section 549, in an emergency a municipality may take whatever actions or measures are necessary to eliminate the emergency.

(2) This section applies whether or not the emergency involves a contravention of this Act, an enactment that the municipality is authorized to enforce or a bylaw.

(3) A person who receives an oral or written order under this section requiring the person to provide labour, services, equipment or materials must comply with the order.

(4) Any person who provides labour, services, equipment or materials under this section who did not cause the emergency is entitled to reasonable remuneration from the municipality.

(5) The expenses and costs of the actions or measures, including the remuneration referred to in subsection (4), are an amount owing to the municipality by the person who caused the emergency.

RSA 2000 cM-26 s551;2022 c16 s9(71)

Recovery of amounts owing by civil action

552 Except as provided in this or any other enactment, an amount owing to a municipality may be collected by civil action for debt in a court of competent jurisdiction.

1994 cM-26.1 s552

Adding amounts owing to tax roll

553(1) A council may add the following amounts to the tax roll of a parcel of land:

(a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;

(b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;

(c) unpaid expenses and costs referred to in section 549(5)(a), if the parcel's owner contravened the enactment or bylaw and the contravention occurred on all or a part of the parcel;

(d), (e) repealed 1999 c11 s35;

(f) costs associated with tax recovery proceedings related to the parcel;

(g) if the municipality has passed a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel, unpaid costs and expenses for extinguishing fires on the parcel;

(g.1) if the municipality has passed a bylaw requiring the owner or occupant of a parcel to keep the sidewalks adjacent to the parcel clear of snow and ice, unpaid expenses and costs incurred by the municipality for removing the snow and ice in respect of the parcel;

(h) unpaid costs awarded by a composite assessment review board under section 468.1 or the Land and Property Rights Tribunal under section 501, if the composite assessment review board or the Land and Property Rights Tribunal has awarded costs against the owner of the parcel in favour of the municipality and the matter before the composite assessment review board or the Land and Property Rights Tribunal was related to the parcel;

(h.1) the expenses and costs of carrying out an order under section 646;

(i) any other amount that may be added to the tax roll under an enactment.

(2) Subject to section 659, when an amount is added to the tax roll of a parcel of land under subsection (1), the amount

(a) is deemed for all purposes to be a tax imposed under Division 2 of Part 10 from the date it was added to the tax roll, and

(b) forms a special lien against the parcel of land in favour of the municipality from the date it was added to the tax roll.

RSA 2000 cM-26 s553;2009 c29 s50;2020 cL-2.3 s24(27); 2022 c16 s9(72)

Adding amounts owing to property tax roll

553.1(1) If a person described in any of the following clauses owes money to a municipality in any of the circumstances described in the following clauses, the municipality may add the amount owing to the tax roll of any property for which the person is the assessed person:

(a) a person who was a licensee under a licence of occupation granted by the municipality and who, under the licence, owes the municipality for the costs incurred by the municipality in restoring the land used under the licence;

(b) an agreement holder referred to in section 27.2(2) who owes money to the municipality under section 27.2(2);

(c) a person who owes money to the municipality under section 549(5)(b) or 551(5).

(2) Subject to section 659, when an amount is added to the tax roll of property under subsection (1), the amount

(a) is deemed for all purposes to be a tax imposed under Division 2 of Part 10 from the date it was added to the tax roll, and

(b) forms a special lien against the property in favour of the municipality from the date it was added to the tax roll.

RSA 2000 cM-26 s553.1;2022 c16 s9(73);2023 c5 s8

Adding amounts owing to business tax roll

553.2(1) In this section, "business tax roll" means the portion of a municipality's tax roll for taxable businesses.

(2) If a person described in any of the following clauses owes money to a municipality in any of the circumstances described in the following clauses, the municipality may add the amount owing to the business tax roll against any business operated by the person:

(a) a person who was a licensee under a licence of occupation granted by the municipality and who, under the licence, owes the municipality for the costs incurred by the municipality in restoring the land used under the licence;

(b) a person who owes money to the municipality under section 549(5)(b) or 551(5).

(3) Subject to section 659, when an amount is added to the business tax roll under subsection (2) against a business, the

amount is deemed for all purposes to be a tax imposed under Division 3 of Part 10 from the date it was added to the tax roll.

RSA 2000 cM-26 s553.2;2022 c16 s9(74)

Injunction

554(1) When

(a) a structure is being constructed in contravention of an enactment that a municipality is authorized to enforce or a bylaw,

(b) a contravention of this Act, another enactment that a municipality is authorized to enforce or a bylaw is of a continuing nature, or

(c) any person is carrying on business or is doing any act, matter or thing without having paid money required to be paid by a bylaw,

in addition to any other remedy and penalty imposed by this or any other enactment or a bylaw, the municipality may apply to the Court of King's Bench for an injunction or other order.

(2) The Court may grant or refuse the injunction or other order or may make any other order that in its opinion the justice of the case requires.

RSA 2000 cM-26 s554;2009 c53 s119;AR 217/2022

Municipality's costs in actions

554.1(1) A municipality is entitled to collect lawful costs in all actions and proceedings to which the municipality is a party.

(2) The costs of a municipality in an action or proceeding in which the municipality is a party are not to be disallowed or reduced because the municipality's lawyer in the action or proceeding is an employee of the municipality.

RSA 2000 cM-26 s554.1;2009 c53 s119

Bylaw enforcement officers

555(1) A person who is appointed as a bylaw enforcement officer is, in the execution of enforcement duties, responsible for the preservation and maintenance of the public peace.

(2) Bylaw enforcement officers must take the official oath prescribed by the *Oaths of Office Act* before starting their duties.

1994 cM-26.1 s555

Powers and duties of bylaw enforcement officers

556 Every council must by bylaw

(a) specify the powers and duties of bylaw enforcement officers, and

(b) establish disciplinary procedures for misuse of power, including penalties and an appeal process applicable to misuse of power by bylaw enforcement officers.

1994 cM-26.1 s556

Division 5
Offences and Penalties

General offences

557 A person who contravenes or does not comply with

(a) a provision of this Division,

(a.1) a provision of Part 17 or the regulations under Part 17,

(a.2) a land use bylaw as defined in Part 17,

(a.3) an order under section 645,

(a.4) a development permit or subdivision approval or a condition of a permit or approval under Part 17,

(a.5) a decision of a subdivision and development appeal board or the Land and Property Rights Tribunal under Part 17,

(a.6) section 436.24,

(b) a direction or order of the Minister,

(c) an order under section 545, 546, 551 or 567, or

(d) section 436.05,

or who obstructs or hinders any person in the exercise or performance of the person's powers under Part 17 or the regulations under Part 17, is guilty of an offence.

RSA 2000 cM-26 s557;2020 cL-2.3 s24(41)

Offences applicable to officials

558 No chief administrative officer or designated officer may

(a) fail to discharge the duties of office imposed by this or any other enactment or bylaw,

(b) sign any statement, report or return required by this or any other enactment or bylaw knowing that it contains a false statement, or

(c) fail to hand over to a successor in office, or to the persons designated in writing by the council or the Minister, all money, books, papers and other property of a municipality.

1994 cM-26.1 s558

Unauthorized use of heraldic emblems

559 No person may use the heraldic emblem of the municipality or anything that is intended to resemble the heraldic emblem without the permission of council.

1994 cM-26.1 s559

Documents used to enforce bylaws

560(1) No person may issue a form that a municipality uses to enforce its bylaws unless the person has the authority to enforce those bylaws.

(2) No person may use a form that resembles a form that a municipality uses to enforce its bylaws with the intent of making others think that the form was issued by the municipality.

1994 cM-26.1 s560

561 Repealed 1994 cM-26.1 s738.

Obstructing construction of public work or utilities

562 No person may interfere with the construction, maintenance, operation or repair of a public work or public utility.

1994 cM-26.1 s562

Stop-cock

563 If a municipality has placed a stop-cock in a building as part of a municipal public utility, no owner or occupant of the building may use the stop-cock except to prevent damage to the building or the system or works of the public utility or to prevent or stop the flooding of the building.

1994 cM-26.1 s563

Operating a business without a licence

564 In a prosecution for contravention of a bylaw against engaging in or operating a business without a licence, proof of one transaction in the business or that the business has been advertised is sufficient to establish that a person is engaged in or operates the business.

1994 cM-26.1 s564

Prosecutions

565 A prosecution under this Act or a bylaw may be commenced within 2 years after the date of the alleged offence, but not afterwards.

1994 cM-26.1 s565

Penalty

566(1) Subject to subsection (2), a person who is found guilty of an offence under this Act is liable to a fine of not more than $10 000 or to imprisonment for not more than one year, or to both fine and imprisonment.

(2) The minimum fine for a person who is found guilty of contravening or not complying with an order under section 546 or 551 is $300.

1994 cM-26.1 s566

Order for compliance

567 If a person is found guilty of an offence under this Act or a bylaw, the court may, in addition to any other penalty imposed, order the person to comply with this Act or bylaw or a licence, permit or other authorization issued under the bylaw, or a condition of any of them.

1994 cM-26.1 s567

Fines and penalties

568 Fines and penalties imposed on a conviction for an offence under this Act or a bylaw are an amount owing to the municipality in which the offence occurred.

1994 cM-26.1 s568

Civil liability not affected

569 A person who is guilty of an offence under this Act may also be liable in a civil proceeding.

1994 cM-26.1 s569

Part 14
General Ministerial Powers

Intermunicipal disagreements

570 If a disagreement between municipalities is referred to the Minister by a council of a municipality or if the Minister is satisfied that it is desirable for the Minister to become involved in a disagreement between municipalities, the Minister may do one or more of the following:

(a) conduct any investigation or inquiry that the Minister considers to be appropriate;

(b) appoint a mediator to assist the municipalities in resolving the disagreement;

(c) make a decision to settle the disagreement and order the municipalities to implement the decision.

1994 cM-26.1 s570;1996 c30 s50

Measures to ensure compliance with ALSA regional plans

570.01(1) If the Minister considers that a municipal authority, regional services commission or growth management board has not complied with an ALSA regional plan, the Minister may take any necessary measures to ensure that the municipal authority, regional services commission or growth management board, as the case may be, complies with the ALSA regional plan.

(2) In subsection (1), all necessary measures includes, without limitation, an order by the Minister

(a) suspending the authority of a council to make bylaws in respect of any matter specified in the order;

(b) exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) removing a suspension of bylaw-making authority, with or without conditions;

(d) withholding money otherwise payable by the Government to the municipal authority, regional services commission or growth management board pending compliance with an order of the Minister;

(e) repealing, amending and making policies and procedures with respect to the municipal authority, regional services commission or growth management board;

(f) suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) requiring or prohibiting any other action as necessary to ensure an ALSA regional plan is complied with.

2009 cA-26.8 s83;2013 c17 s3

Information

570.1 The Minister may provide a municipality with any information on the assessment of property the Minister may have whether the property is located in the municipality or elsewhere.

1995 c24 s85

Inspection

571(1) The Minister may require any matter connected with the management, administration or operation of any municipality or any assessment prepared under Part 9 to be inspected

(a) on the Minister's initiative,

(b) on the request of the council of the municipality, or

(c) if the Minister receives a sufficient petition requesting the inspection that is signed,

(i) in the case of a municipality other than a summer village, by electors of the municipality equal in number to at least 20% of the population, and

(ii) in the case of a summer village, by a number of electors of the summer village equal to at least 30% of the number of summer village residences in the summer village.

(1.1) For the purposes of subsection (1), the management, administration or operation of a municipality includes

(a) the affairs of the municipality,

(b) the conduct of a councillor or of an employee or agent of the municipality, and

(c) the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality or the person under the agreement.

(2) The Minister may appoint one or more persons as inspectors for the purpose of carrying out inspections under this section.

(3) An inspector

(a) may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection, and

(b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

(4) When required to do so by an inspector, the chief administrative officer of the municipality must produce for examination and inspection all books and records of the municipality.

(5) After the completion of the inspection, the inspector must make a report to the Minister and, if the inspection was made at the request of a council, to the council.

RSA 2000 cM-26 s571;2016 c24 s85

Inquiry

572(1) The Minister may, on the Minister's initiative, order an inquiry described in subsection (2).

(2) An inquiry may be conducted into

(a) the affairs of the municipality,

(b) the conduct of a councillor, or an employee or agent of the municipality, or

(c) the conduct of a person who has an agreement with the municipality relating to the duties or obligations of the municipality or a person under the agreement.

(3) The Minister may appoint one or more persons to conduct an inquiry under this section.

(4) The person or persons appointed to conduct an inquiry are entitled to the fees and expenses specified by the Minister and the Minister may direct who is to pay for the inquiry.

(5) The person or persons appointed to conduct an inquiry have all the powers and duties of a commissioner appointed under the *Public Inquiries Act*.

(6) The person or persons appointed to conduct an inquiry must report to the Minister and the council.

RSA 2000 cM-26 s572;2016 c24 s86

Bank accounts

573 A bank, an agency of a bank or any other financial institution carrying on business in Alberta must, on request of the Minister, furnish the Minister with a statement showing the balance or condition of the accounts of any municipality having an account with the bank, agency or institution, together with any particulars of the accounts that may be required.

1994 cM-26.1 s573

Directions and dismissal

574(1) If, because of an inspection under section 571, a report of an official administrator under section 575.1, an inquiry under section 572 or an investigation by the Ombudsman, the Minister considers that a municipality is managed in an irregular, improper or improvident manner, the Minister may by order direct the council, the chief administrative officer or a designated officer of the municipality to take any action that the Minister considers proper in the circumstances.

(2) If an order of the Minister under subsection (1) is not carried out to the satisfaction of the Minister and the Minister considers that the municipality continues to be managed in an irregular, improper or improvident manner or if an order of the Minister under section 570(c) is not carried out to the satisfaction of the Minister, and all reasonable efforts to resolve the situation have been attempted and have been unsuccessful, the Minister may make one or more of the following orders:

(a) an order suspending the authority of the council to make bylaws in respect of any matter specified in the order;

(b) an order exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) an order removing a suspension of bylaw-making authority, with or without conditions;

(d) an order withholding money otherwise payable by the Government to the municipal authority pending compliance with an order of the Minister;

(e) an order repealing, amending and making policies and procedures with respect to the municipal authority;

(f) an order suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) an order requiring or prohibiting any other action as necessary to ensure an order is complied with;

(h) an order dismissing the council or any member of it or the chief administrative officer.

(2.1) Before making an order under subsection (2), the Minister must give the municipal authority notice of the intended order and at least 14 days in which to respond.

(3) On the dismissal of the council or of any member of it, the Minister may direct the election of a new council or of a member of council to take the place of any member that has been dismissed.

(4) On the dismissal of the chief administrative officer, the Minister may appoint another officer and specify the remuneration that is payable to the officer by the municipality.

(5) The Minister may appoint an official administrator

(a) on the dismissal of a council, or

(b) on the dismissal of one or more councillors if the remaining councillors do not constitute a quorum.

(6) An official administrator appointed under subsection (5) has all the powers and duties of the council.

RSA 2000 cM-26 s574;2016 c24 s87;2017 c13 s1(48);
2022 c16 s9(75)

Official administrator as supervisor

575(1) The Minister may at any time appoint an official administrator to supervise a municipality and its council.

(2) So long as the appointment of an official administrator under this section continues,

(a) no bylaw or resolution that authorizes the municipality to incur a liability or to dispose of its money or property has any effect until the bylaw or resolution has been approved in writing by the official administrator, and

(b) the official administrator may at any time within 30 days after the passing of any bylaw or resolution disallow it, and the bylaw or resolution so disallowed becomes and is deemed to have always been void.

1994 cM-26.1 s575

Reports of official administrators

575.1 An official administrator appointed under this Part shall on request of the Minister, and may at any other time, report to the Minister on any matter respecting the municipality or its council or administration or any intermunicipal matter.

2017 c13 s1(49)

Enforcement where municipality under supervision

575.2(1) If the Minister considers that a municipality has, while under the supervision of an official administrator,

(a) incurred a liability or disposed of money or property without the written approval of the official administrator required by section 575(2)(a), or

(b) acted on a bylaw or resolution that has been disallowed by the official administrator under section 575(2)(b),

the Minister may take any necessary measures to address the situation, including, without limitation, making one or more orders referred to in section 574(2)(a) to (h).

(2) Before making an order under subsection (1), the Minister must give the municipal authority notice of the intended order and at least 14 days in which to respond.

2017 c13 s1(49)

Remuneration for official administrator

576 When an official administrator is appointed for a municipality by the Minister under this Act, the remuneration and expenses of the official administrator as set by the Minister must, if required by the Minister, be paid by the municipality.

1994 cM-26.1 s576

Providing Minister with copies and information

577(1) The Minister may direct a municipality to provide a copy of any document in the possession of the municipality to the Minister within the time specified by the Minister.

(2) The Minister may direct a municipality to provide information or statistics respecting the municipality to the Minister within the time specified by the Minister.

(3) A municipality must comply with a direction of the Minister under this section and provide the copy, information or statistics to the Minister without charge.

(4) This section does not apply to documents that have been prepared or information acquired by a municipality that is subject to any type of legal privilege, including solicitor-client privilege.

1994 cM-26.1 s577

Delegation

578(1) The Minister may delegate in writing to any person any power, duty or function of the Minister under this Act, including any power, duty or function that involves the Minister forming an opinion or belief.

(2) Subsection (1) does not apply to any power or duty to make regulations.

1994 cM-26.1 s578

Fees

579(1) The Minister may charge fees in connection with any service, program or other thing done by or under the authority of the Minister under this Act or the regulations.

(2) A person who receives a service, program or other thing done by or under the authority of the Minister is liable to pay the fee established under subsection (1) to the Government of Alberta and

the fee may be collected by civil action for debt in a court of competent jurisdiction.

1994 cM-26.1 s579

Minister's decisions

579.1(1) An applicant seeking injunctive relief from a court against any order, decision or direction of the Minister under this Part must give the Minister at least 10 days' notice of the application.

(2) An order, decision or direction of the Minister under this Part is not stayed by an application for judicial review but remains in effect pending the court's decision on the judicial review application.

2017 c13 s1(50)

Regulations

580 The Minister may make regulations requiring a municipality to publish in a specified manner any information respecting the municipality that is specified in the regulations.

1994 cM-26.1 s580

Part 15
Improvement Districts

Formation order

581 The Lieutenant Governor in Council, on the recommendation of the Minister, may by order form an improvement district.

1994 cM-26.1 s581

Contents of order

582 The formation order must

(a) describe the boundaries of the improvement district, and

(b) give the improvement district an official name.

1994 cM-26.1 s582

Changes to improvement districts

583(1) The Minister may by order

(a) amalgamate 2 or more improvement districts;

(b) divide an improvement district into 2 or more improvement districts;

(c) annex land from an improvement district to another improvement district;

(d) change the name of an improvement district;

(e) establish industrial improvement areas within improvement districts;

(f) dissolve an improvement district.

(2) An order under this section may contain terms and conditions and provisions dealing with transitional matters that the Minister considers to be appropriate that operate despite this or any other enactment.

1994 cM-26.1 s583

Orders published

584 An order of the Lieutenant Governor in Council under section 581 and the Minister under section 583 must be published in The Alberta Gazette.

1994 cM-26.1 s584

Regulations Act

585 The *Regulations Act* does not apply to an order of the Lieutenant Governor in Council under section 581 or to an order of the Minister under this Part.

1994 cM-26.1 s585

Application of other enactments

586 The Minister may by order

(a) provide that provisions of this or any other enactment do not apply to an improvement district,

(b) provide that provisions of this or any other enactment apply to an improvement district with or without modifications, and

(c) specify provisions that are to be added to or replace the provisions of this or any other enactment in respect of an improvement district.

1994 cM-26.1 s586

General power of Minister

587 The Minister may by order do anything in respect of an improvement district that a council of a municipality may do under this or another enactment.

1994 cM-26.1 s587

Council

588(1) The Minister may establish a council for an improvement district.

(2) Unless subsection (3) applies, a council is composed of one or more councillors appointed by the Minister.

(3) The Minister may by order

(a) direct that some or all of the councillors are to be elected,

(b) establish wards for the elected councillors, and

(c) provide for any matter dealing with the transition from an appointed council to a council with some or all elected members.

(4) If the Minister orders that some or all of the councillors are to be elected, the *Local Authorities Election Act* applies to the election as modified by directions given by the Minister.

1994 cM-26.1 s588

588.1 Repealed 2020 c25 s11.

Delegation by Minister

589(1) The Minister may, in writing, delegate to any person or to a council of an improvement district any of the powers, duties and functions of the Minister under this or any other enactment relating to an improvement district, including the powers, duties and functions of being a trustee under section 595.

(2) The Minister may not delegate the power or duty to make a regulation as defined in the *Regulations Act*.

1994 cM-26.1 s589

Hamlets

590(1) The Minister may designate an unincorporated community that is within the boundaries of an improvement district to be a hamlet.

(2) The designation of a hamlet must specify the hamlet's name and boundaries.

1994 cM-26.1 s590

Employees

591 In accordance with the *Public Service Act*, there may be appointed any person necessary for the administration of an improvement district.

1994 cM-26.1 s591

Roads

592(1) The Minister of Transportation and Economic Corridors and the Minister responsible for this Act may enter into an agreement providing that all or part of the direction, control and management of roads within an improvement district is transferred to the Minister responsible for this Act.

(2) An agreement under subsection (1) may provide for the payment of costs with respect to roads within the improvement district.

RSA 2000 cM-26 s592;2013 c10 s21;2022 c21 s57

Estimate of expenditures

593 Before January 1 in each year, every Minister charged with the duty of expending any part of the taxes collected in an improvement district must send to the Minister responsible for this Act a statement, with reference to each improvement district, of the estimated amount required to be expended by the expending Minister in each improvement district during the current year.

1994 cM-26.1 s593

Machinery and equipment and designated industrial property

594(1) The definitions of "designated industrial property" and "machinery and equipment" in Part 9 apply to this section.

(2) The Minister may by order impose, in addition to any other taxes imposed under Part 10, an additional tax on machinery and equipment and designated industrial property located in an industrial improvement area.

(3) The provisions in Parts 9 to 12 relating to machinery and equipment and designated industrial property apply to the additional tax imposed under this section.

RSA 2000 cM-26 s594;2016 c24 s135

Trust account for revenue

595 The taxes and all other revenues collected on behalf of an improvement district must be deposited in a treasury branch, bank or other similar institution to be held in trust by the Minister.

1994 cM-26.1 s595

Expenditures

596(1) The taxes and all other revenues collected on behalf of an improvement district may be expended under the direction of the Minister

(a) to meet the requirements of the improvement district,

(b) to pay requisitions made under the *Education Act*, the *Hospitals Act* and the *Provincial Health Agencies Act*,

(c) to pay the estimated amounts referred to in section 593 or an equally proportionate part of those amounts if the taxes and revenues collected on behalf of the improvement district are not sufficient to cover all of the improvement district's expenditures, or

(d) to pay to other municipalities any portion of the taxes levied and collected that the Minister may by order determine.

(2) The expenses incidental to the assessment and collection of taxes on behalf of an improvement district and any other necessary expenses in connection with the administration of affairs in an improvement district are a first charge on the taxes and other revenue collected on behalf of the district.

RSA 2000 cM-26 s596;2012 cE-0.3 s279;2017 c13 s1(51); 2024 c10 s31

Public accounts

597 The details of expenditures for an improvement district must be published in the public accounts annually submitted to the Legislative Assembly.

1994 cM-26.1 s597

Settlement of accounts

598 If the Minister considers it equitable, the Minister may settle in whole or in part any amounts owing to the Crown or to the Minister under this Act or any other Act relating to an improvement district for rentals, fees or other charges, other than taxes imposed under Part 10.

1994 cM-26.1 s598

Investments

599 With the consent of the President of Treasury Board and Minister of Finance, the Minister may invest any taxes or revenue collected on behalf of an improvement district in investments that the President of Treasury Board and Minister of Finance is authorized to invest in under section 43(1) of the *Financial Administration Act*.

RSA 2000 cM-26 s599;2006 c23 s57;2013 c10 s21

Borrowing

600 The Minister may borrow on the security of the taxes and other revenues of an improvement district any sums required to meet the requirements of the district under this or any other enactment.

1994 cM-26.1 s600

Acquisition of land

601 The Minister may purchase, expropriate or otherwise acquire land required for or in connection with the administration of an improvement district or for the purposes of an agreement entered into under section 602 and the Minister may encumber, lease or otherwise dispose of the land as the circumstances require.

1994 cM-26.1 s601

Agreements for services

602 The Minister may enter into agreements with the Government of Canada or its agencies or with any other public body or person for the purpose of obtaining any service, benefit or other advantages for the whole or part of an improvement district or for its residents.

1994 cM-26.1 s602

Part 15.1
Regional Services Commissions

Interpretation

602.01(1) In this Part,

(a) "board" means the board of directors of a commission;

(b) "borrowing" means a borrowing as defined in section 241(a.1);

(c) "bylaws" means the bylaws of a commission;

(d) "capital property" means capital property as defined in section 241(c);

(e) "commission" means a regional services commission;

(e.1) "debt limit" means the debt limit for a commission determined in accordance with the regulations under section 602.32;

(f) "member" means, in respect of a commission, a municipal authority that is a member of the commission;

(g) "municipal authority" means a municipal authority as defined in section 1(1)(p), and includes a Metis settlement, an Indian reserve and an armed forces base;

(h) "public utility" means a public utility as defined in section 1(1)(y), excluding public transportation operated by or on behalf of a municipality;

(i) "resolution" means a resolution passed by a municipal authority or commission under this Part;

(j) "service" means, in respect of a commission, a service that the bylaws authorize the commission to provide;

(k) "transportation service" means a service to transport people or goods by vehicle, including a vehicle that runs on rails.

(2) A reference to a bylaw or resolution in this Act outside this Part does not include a bylaw or resolution passed by a commission.

RSA 2000 cM-26 s602.1;2020 c25 s11;2023 c9 s19(14)

Division 1
Establishment and Operation

Establishing commissions

602.02(1) Two or more municipal authorities may agree to jointly establish a commission by passing resolutions.

(2) Before being passed under subsection (1), the proposed resolutions must be advertised in accordance with section 606.

(3) Within 60 days of the resolutions being passed under subsection (1), the Minister must be notified of the resolutions.

(4) A notification under subsection (3) must include copies of all the resolutions passed under subsection (1) and provide the commission's office location and contact information.

(5) A commission is not established until an order listing the commission is issued by the Minister under section 602.04.

RSA 2000 cM-26 s602.02;2016 c24 s88;2020 c25 s11

Resolution and notification

602.03(1) A resolution establishing a commission must specify

(a) the name of the commission, and

(b) the names of the members, the first board of directors and the first chair of the commission.

(2) The commission must notify the Minister within 60 days of any change to any of the information provided under section 602.02(4).

(3) If a commission is to be disestablished under section 602.09(1)(g), the commission must notify the Minister within 60 days of the commission's being disestablished.

2020 c25 s11

List of commissions

602.04 The Minister may issue an order listing or updating the list of the names of all the commissions established or disestablished each time the Minister receives a notification under section 602.02(3) or 602.03(2) or (3), as the case may be.

2020 c25 s11

Corporation

602.05 A commission is a corporation.

RSA 2000 cM-26 s602.03;2020 c25 s11

Board of directors

602.06(1) A commission is governed by a board.

(2) Subject to sections 602.03(1)(b) and 602.07, the directors of the board are to be appointed and the chair of the commission designated in accordance with the commission's bylaws.

RSA 2000 cM-26 s602.04;2020 c25 s11

Directors representing Province

602.07(1) If, in the Minister's opinion, a service that a commission is authorized to provide is a service that is provided by the Government of Alberta or that may affect a service provided by the Government of Alberta, the Minister may, despite the bylaws, appoint as many directors of the commission as the Minister considers necessary.

(2) A director appointed under this section has the powers, duties and functions of a director appointed in accordance with the commission's bylaws.

RSA 2000 cM-26 s602.05;2020 c25 s11

Delegation

602.08(1) Subject to subsection (2), a board may delegate any of its or the commission's powers, duties or functions under this Act or any other enactment.

(2) A board may not delegate

(a) the power or duty to pass bylaws,

(b) the power to expropriate,

(c) the power to authorize a borrowing,

(d) the power to adopt budgets, and

(e) the power to approve financial statements.

RSA 2000 cM-26 s602.06;2020 c25 s11

Bylaws

602.09(1) Each board must pass bylaws

(a) respecting the provision of the commission's services;

(b) respecting the administration of the commission;

(c) respecting the process for changing the directors of the board and the chair of the commission and for setting the terms of office of the board and the chair;

(d) respecting the process for adding or removing members;

(e) respecting the fees to be charged by the commission for services provided to its customers or to any class of its customers;

(f) respecting the disposal of assets by the commission;

(g) respecting the process for disestablishment of the commission, including the treatment of assets and liabilities on disestablishment.

(2) The *Regulations Act* does not apply to the bylaws passed under subsection (1).

RSA 2000 cM-26 s602.07;2020 c25 s11

Meetings

602.1(1) Subject to subsection (2), sections 197 and 199 apply to the meetings of a commission.

(2) Notwithstanding sections 197 and 199, for the purposes of this Part, a reference in sections 197 and 199 to a council, councils and council committees shall be read as a reference to a board, boards and board committees, respectively.

RSA 2000 cM-26 s602.08;2015 c8 s55;2019 c22 s10(16);2020 c25 s11

Compliance with growth plan and ALSA regional plan

602.11 In carrying out its functions and in exercising its jurisdiction under this Act and other enactments, a commission must act in accordance with any applicable growth plan under Part 17.1 and any applicable ALSA regional plan.

RSA 2000 cM-26 s602.021;2020 c25 s11

Control of profit corporations

602.12 Division 9 of Part 3 does not apply to a commission.

RSA 2000 cM-26 s602.09;2016 c24 s89;2020 c25 s11

Division 2
Powers and Duties

Natural person powers

602.13 A commission has natural person powers, except to the extent that they are limited by this Act or any other enactment.

RSA 2000 cM-26 s602.1;2020 c25 s11

Service area

602.14 A commission may, as authorized by its bylaws, provide services

(a) within the boundaries of its members, and

(b) outside the boundaries of its members with approval

(i) from the other municipal authority within whose boundaries the services are to be provided, and

(ii) in the case of services to be provided in a part of a province or territory adjoining Alberta, the authority from that province or territory whose jurisdiction includes the provision of the services in that part of the province or territory.

RSA 2000 cM-26 s602.11;2020 c25 s11

Profit and surpluses

602.15 A commission may not

(a) operate for the purposes of making a profit, or

(b) distribute any of its surpluses to its members.

2020 c25 s11

Traffic Safety Act

602.16 A commission that is authorized by its bylaws to provide transportation services is subject to the *Traffic Safety Act*.

RSA 2000 cM-26 s602.12;RSA 2000 cT-6 s205;2020 c25 s11

Acquisition of land

602.17(1) A commission may acquire an estate or interest in land in a province or territory adjoining Alberta if the local government within whose boundaries the land is located consents in writing to the acquisition.

(2) This section does not apply until the commission exercises the right of acquisition under subsection (1).

RSA 2000 cM-26 s602.125;2020 c25 s11

Expropriation

602.18(1) A commission may acquire by expropriation under the *Expropriation Act* an estate or interest in land for the purpose of providing a public utility or a transportation service.

(2) A commission may acquire by expropriation an estate or interest under subsection (1) in land that is outside the boundaries of its members only if the municipal authority in whose boundaries the land is located consents in writing to the acquisition.

RSA 2000 cM-26 s602.13;2020 c25 s11

Public utility disputes

602.19 If there is a dispute between a commission and another commission or a commission and any municipal authority with respect to

(a) rates, tolls or charges for a service that is a public utility,

(b) compensation for the acquisition by the commission of facilities used to provide a service that is a public utility, or

(c) the use of any road, square, bridge, subway or watercourse by the commission to provide a service that is a public utility,

any party involved in the dispute may submit the dispute to the Alberta Utilities Commission, and the Alberta Utilities Commission may issue an order on any terms and conditions that the Alberta Utilities Commission considers appropriate.

RSA 2000 cM-26 s602.14;2007 cA-37.2 s82(17);2020 c25 s11

Other disputes

602.2(1) If

(a) there is a dispute between a commission and another commission or a commission and any municipal authority and the matter in dispute is not under the jurisdiction of the Alberta Utilities Commission or any other board or tribunal created by an enactment, or

(b) there is a dispute between a commission and a municipal authority, other than an improvement district or special area, in respect of an expropriation that requires the consent of the municipal authority under section 602.18(2),

any party involved in the dispute may submit the dispute to the Land and Property Rights Tribunal.

(2) If a dispute is submitted to the Land and Property Rights Tribunal, each party involved in the dispute must submit a written statement to the Tribunal and to the other parties involved in the dispute that sets out

(a) a summary of the facts and its position in the dispute, and

(b) an address to which any notice or decision of the Tribunal is to be sent.

(3) The Land and Property Rights Tribunal must hold a hearing after the written statements have been submitted, or after the expiry of a time period established by the Tribunal for submission of the statements, whichever occurs first.

RSA 2000 cM-26 s602.15;RSA 2000 cT-6 s205;
2007 cA-37.2 s82(17);2020 cL-2.3 s24(28);2020 c25 s11;
2023 c9 s19(15)

Order of Land and Property Rights Tribunal

602.21(1) After hearing a dispute under section 602.2(3), the Land and Property Rights Tribunal may make any order it considers appropriate.

(2) The order under subsection (1) may

(a) include terms and conditions, and

(b) be effective on a future date or for a limited time.

(3) The Land and Property Rights Tribunal must send its order, and its reasons if requested, to the parties involved in the dispute.

(4) An order of the Land and Property Rights Tribunal under this section is binding on the parties involved in the dispute.

RSA 2000 cM-26 s602.16;2020 cL-2.3 s24(41);2020 c25 s11

Division 3
Financial Matters

Financial year

602.22 The financial year of a commission is the calendar year.

RSA 2000 cM-26 s602.18;2020 c25 s11

Operating budget

602.23(1) A commission must adopt an operating budget for each calendar year.

(2) An operating budget must include the estimated amount of each of the following expenditures and transfers:

(a) the amount needed to enable the commission to provide its services;

(b) the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property;

(c) if necessary, the amount needed to provide for a depreciation or depletion allowance, or both, for any public utility the commission is authorized to provide;

(d) the amount to be transferred to reserves;

(e) the amount to be transferred to the capital budget;

(f) the amount needed to recover any shortfall as required under section 602.24.

(3) An operating budget must include the estimated amount of each of the following sources of revenue and transfers:

(a) fees for services provided;

(b) grants;

(c) transfers from the commission's accumulated surplus funds or reserves;

(d) any other source of revenue.

(4) The estimated revenue and transfers under subsection (3) must be at least sufficient to pay the estimated expenditures and transfers under subsection (2).

(5) The Minister may make regulations respecting budgets and that define terms used in this section that are not defined in section 602.01.

RSA 2000 cM-26 ss602.19,602.2;2020 c25 s11

Financial shortfall

602.24(1) Subject to subsection (2), section 244 applies to a commission.

(2) Notwithstanding section 244, for the purposes of this Part, a reference in section 244 to a municipality shall be read as a reference to a commission.

RSA 2000 cM-26 s602.21;2020 c25 s11

Capital budget

602.25(1) Subject to subsection (2), sections 245 and 246 apply to a commission.

(2) Notwithstanding sections 245 and 246, for the purposes of this Part, a reference in section 245 to each council shall be read as a reference to each board.

RSA 2000 cM-26 s602.22;2020 c25 s11

Expenditure of money

602.26(1) A commission may make an expenditure only if it is

(a) included in the commission's operating budget or capital budget or otherwise authorized by its board,

(b) for an emergency, or

(c) legally required to be paid.

(2) Each board must establish procedures to authorize and verify expenditures that are not included in a budget.

(3) If the Minister establishes a budget for a commission by virtue of section 244(3), the commission may not make an expenditure that is not included in the budget unless the expenditure is

(a) authorized by the Minister,

(b) for an emergency, or

(c) legally required to be paid.

RSA 2000 cM-26 s602.24;2020 c25 s11

Annual budget

602.27(1) For the purpose of this section, "annual budget" means an annual budget as defined in section 241(a.02).

(2) A commission may adopt an annual budget in a format that is consistent with its financial statements.

(3) For the purpose of section 602.26, the adoption of an annual budget is equivalent to the adoption of an operating budget under section 602.23 or the adoption of a capital budget under section 602.25.

2020 c25 s11

Civil liability of directors re expenditure

602.28(1) Subject to subsection (2), a director of a board who

(a) makes an expenditure that is not authorized under section 602.26,

(b) votes to spend money that has been obtained under a borrowing on something that is not within the purpose for which the money was borrowed, or

(c) votes to spend money that has been obtained under a grant on something that is not within the purpose for which the grant was given

is liable to the commission for the expenditure or amount spent.

(2) A director is not liable under subsection (1)(b) if spending the money is allowed under section 602.3.

(3) If more than one director of the board is liable to the commission under this section in respect of a particular expenditure or amount spent, the directors are jointly and severally liable to the commission for the expenditure or amount spent.

(4) The liability under this section may be enforced by action by

(a) the commission,

(b) a member of the commission,

(c) a taxpayer of a member of the commission, or

(d) a person who holds a security under a borrowing made by the commission.

RSA 2000 cM-26 s602.3;2020 c25 s11

Authorized investments

602.29 A commission may invest its money only in the investments referred to in section 250(2)(a) to (d).

RSA 2000 cM-26 s602.26;2020 c25 s11

Use of borrowed money

602.3(1) Subject to subsection (2), section 253 applies to a commission.

(2) Notwithstanding section 253, for the purposes of this Part, a reference in section 253 to a municipality shall be read as a reference to a commission.

RSA 2000 cM-26 s602.27;2020 c25 s11

Borrowing

602.31 No commission may make a borrowing if the borrowing will cause the commission to exceed its debt limit, unless the borrowing is approved by the Minister.

RSA 2000 cM-26 s602.28;2020 c25 s11

Debt limit regulations

602.32(1) The Minister may make regulations

(a) respecting how a debt limit for a commission is determined;

(b) defining debt for the purposes of determining whether a commission has exceeded its debt limit, and the definition may include anything related to a commission's finances.

(2) The regulations made under this section may establish different methods of determining debt limits and different definitions of debt for different commissions.

RSA 2000 cM-26 s602.29;2020 c25 s11

Civil liability of directors re borrowing

602.33(1) When a commission makes a borrowing that causes the commission to exceed its debt limit, a director of the board who voted to authorize the borrowing is liable to the commission for the amount borrowed, unless the borrowing has been approved by the Minister.

(2) If subsection (1) applies to more than one director of the board, the directors are jointly and severally liable to the commission for the amount borrowed.

(3) The liability under this section may be enforced by action by

(a) the commission,

(b) a member of the commission,

(c) a taxpayer of a member of the commission, or

(d) a person who holds a security under a borrowing made by the commission.

RSA 2000 cM-26 s602.3;2020 c25 s11

Loans and guarantees

602.34 A commission may not lend money or guarantee the repayment of a loan.

RSA 2000 cM-26 s602.31;2020 c25 s11

Financial information return

602.35(1) Each commission must prepare a financial information return respecting the financial affairs of the commission for the immediately preceding calendar year.

(2) The Minister may establish requirements respecting the financial information return, including requirements respecting the accounting principles and standards to be used in preparing the return.

RSA 2000 cM-26 s602.32;2020 c25 s11

Audited financial statements

602.36 Each commission must prepare audited annual financial statements for the immediately preceding calendar year.

RSA 2000 cM-26 s602.33;2020 c25 s11

Distribution of returns and statements

602.37 Each commission must submit its financial information return and audited annual financial statements to the Minister and each member of the commission by May 1 of the year following the year for which the return and statements have been prepared.

RSA 2000 cM-26 s602.34;2020 c25 s11

Division 4
Minister's Powers

Inspection

602.38(1) The Minister may require any matter connected with the management, administration or operation of any commission to be inspected

(a) on the Minister's initiative, or

(b) on the request of a member of the commission.

(2) For the purposes of subsection (1), the management, administration or operation of a commission includes

(a) the affairs of the commission,

(b) the conduct of a director of the board or of an employee or agent of the commission, and

(c) the conduct of a person who has an agreement with the commission relating to the duties or obligations of the commission or the person under the agreement.

(3) The Minister may appoint one or more persons as inspectors for the purposes of carrying out inspections under this section.

(4) An inspector

(a) may require the attendance of any director of the board, any officer of the commission or any other person whose presence the inspector considers necessary during the course of an inspection, and

(b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

(5) When required to do so by an inspector, a commission must produce for examination and inspection all the books and records of the commission.

(6) After the completion of an inspection, the inspector must make a report to the Minister and, if the inspection was made at the request of a member of the commission, to the member and the commission.

RSA 2000 cM-26 s602.35;2020 c25 s11

Directions and dismissal

602.39(1) If because of an inspection under section 602.38 or a report of an official administrator under section 602.41 the Minister considers that a commission is managed in an irregular, improper or improvident manner, the Minister may by order direct the board to take any action that the Minister considers proper in the circumstances.

(2) If an order of the Minister under this section is not carried out to the satisfaction of the Minister and the Minister considers that the commission continues to be managed in an irregular, improper or improvident manner, and all reasonable efforts to resolve the situation have been attempted and have been unsuccessful, the Minister may make one or more of the following orders:

(a) an order suspending the authority of the board to make bylaws in respect of any matter specified in the order;

(b) an order exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) an order removing a suspension of bylaw-making authority, with or without conditions;

(d) an order withholding money otherwise payable by the Government to the commission pending compliance with an order of the Minister;

(e) an order repealing, amending and making policies and procedures with respect to the commission;

(f) an order requiring or prohibiting any other action as necessary to ensure an order is complied with;

(g) an order dismissing the board or any director of the board.

(3) Before making an order under subsection (2), the Minister must give the commission notice of the intended order and at least 14 days in which to respond.

(4) If an order of the Minister under this section is not carried out to the satisfaction of the Minister, the Minister may dismiss the board or any director of the board.

(5) On the dismissal of the board or of any director of the board, the Minister may direct that a new board or director be appointed or may appoint a new board or director.

(6) The Minister may appoint an official administrator

(a) on the dismissal of a board, or

(b) on the dismissal of one or more directors of the board if the remaining directors do not constitute a quorum.

(7) An official administrator appointed under subsection (6) has all the powers and duties of the board.

RSA 2000 cM-26 s602.36;2017 c13 s1(52);2020 c25 s11

Official administrator as supervisor

602.4(1) The Minister may at any time appoint an official administrator to supervise a commission and the board.

(2) As long as the appointment of an official administrator under this section continues,

(a) no bylaw or resolution that authorizes the commission to incur a liability or to dispose of the money or property of the commission has any effect until the bylaw or resolution has been approved in writing by the official administrator, and

(b) the official administrator may at any time within 30 days after the passing of any bylaw or resolution disallow it, and the bylaw or resolution so disallowed becomes and is deemed to have always been void.

RSA 2000 cM-26 s602.37;2020 c25 s11

Reports of official administrators

602.41 An official administrator appointed under section 602.39(6) or 602.4 shall on request of the Minister, and may at any other time, report to the Minister on

(a) any matter respecting the commission, or the board or the administration of the commission,

(b) any matter respecting the provision of services by the commission, or

(c) any other matter that the Minister may consider necessary.

2017 c13 s1(53);2020 c25 s11

Enforcement when commission under supervision

602.42(1) If the Minister considers that a commission has, while under the supervision of an official administrator,

(a) incurred a liability or disposed of money or property without the written approval of the official administrator required by section 602.4(2)(a), or

(b) acted on a bylaw or resolution that has been disallowed by the official administrator under section 602.4(2)(b),

the Minister may take any necessary measures to address the situation, including, without limitation, making one or more orders referred to in section 602.39(2)(a) to (g).

(2) Before making an order under subsection (1), the Minister must give the commission notice of the intended order and at least 14 days in which to respond.

2017 c13 s1(53);2020 c25 s11

Remuneration for official administrator

602.43 When an official administrator is appointed for a commission by the Minister under this Part, the remuneration and expenses of the official administrator as set by the Minister must, if required by the Minister, be paid by the commission.

RSA 2000 cM-26 s602.38;2020 c25 s11

Providing Minister with copies and information

602.44(1) The Minister may direct a commission to provide

(a) a copy of any document in its possession, or

(b) any information or statistics respecting the commission

to the Minister within the time specified by the Minister.

(2) A commission must comply with a direction of the Minister under this section and provide any copy, information or statistics to the Minister without charge.

(3) This section does not apply to documents prepared or information acquired by a commission that is subject to any type of legal privilege, including solicitor-client privilege.

RSA 2000 cM-26 s602.381;2020 c25 s11

Ministerial orders

602.45(1) In addition to any other orders that the Minister may make under this Part, the Minister may

(a) by order take any action that a commission or a board may or must take under this Part, or

(b) make an order providing for any other matter that the Minister considers necessary for carrying out the purposes of this Part.

(2) If there is a conflict or inconsistency between an order made by the Minister under subsection (1) and an action taken by a commission or a board, the Minister's order prevails to the extent of the conflict or inconsistency.

(3) The *Regulations Act* does not apply to an order made by the Minister under this Part.

2020 c25 s11

Ministerial regulations

602.46(1) The Minister may make regulations

(a) authorizing and respecting the use of electronic, telephonic or other communication methods to conduct meetings of a regional services commission;

(b) to remedy any confusion or inconsistency in applying the provisions of this Part.

(2) Regulations under subsection (1)(a) may apply generally or specifically and may modify the requirements in this Part to any extent the Minister considers necessary or appropriate to give effect to the regulations.

2020 c25 s11;2022 c16 s9(76)

Division 5
Transitional Provisions and Ministerial Regulations

Transitional provisions

602.47(1) In this Division,

(a) "continued commissions" means the regional services commissions established and existing under the former provisions before this Part comes into force;

(b) "former provisions" means the provisions in Part 15.1 of this Act in force immediately before the coming into force of this Division.

(2) Continued commissions continue as regional services commissions as if the continued commissions are established under this Part.

(3) The bylaws and resolutions of the continued commissions continue until repealed, amended or replaced by the boards of the continued commissions.

(4) The members, the boards and the chairs of the continued commissions continue until changed according to the bylaws amended or replaced under subsection (3).

(5) On the coming into force of this Part, all liabilities, assets, rights, duties, functions and obligations of continued commissions

continue to have effect until expired or amended under this Part or any other enactment.

(6) A reference to commissions in any enactment, regulation, order, bylaw, certificate of title, agreement or any other instrument is continued.

(7) Within one year after the coming into force of this Part, all continued commissions must ensure that the bylaws of the continued commissions conform to the requirements in section 602.09.

(8) The Minister may issue an order listing all the continued commissions continued under this section.

2020 c25 s11

Ministerial regulations

602.48 The Minister may make regulations to deal with any difficulty or impossibility resulting from transitioning to this Part from the former provisions.

2020 c25 s11

Part 16
Miscellaneous

Lieutenant Governor in Council regulations

603(1) The Lieutenant Governor in Council may make regulations

(a) for any matter that the Minister considers is not provided for or is insufficiently provided for in this Act;

(b) restricting the power or duty of a council to pass bylaws.

(2) A regulation made under subsection (1) is repealed on the earliest of

(a) the coming into force of an amendment that adds the matter to this Act;

(b) the coming into force of a regulation that repeals the regulation made under subsection (1);

(c) two years after the regulation comes into force.

(3) The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

1994 cM-26.1 s603

Validation of regulations

603.1(1) Despite any decision of a court to the contrary made before or after the coming into force of this section,

(a) a regulation made under section 603(1) before the coming into force of this section, including a new regulation described in clause (c), is validated and declared for all purposes to have been validly made as of the date on which the regulation was made,

(b) everything done under a regulation referred to in clause (a) is validated and declared for all purposes to have been validly done, and

(c) where a regulation made under section 603(1) before the coming into force of this section (in this clause called the "former regulation") is repealed and another regulation made under section 603(1) (in this clause called the "new regulation") was substituted for it, the new regulation operates as a continuation of the former regulation except to the extent that the provisions of the new regulation are not in substance the same as those of the former regulation.

(2) For greater certainty and without limiting the generality of subsection (1)(b) and (c),

(a) the Minister's approval of the Capital Region Growth Plan under section 13(1) of the *Capital Region Board Regulation* (AR 49/2008)

(i) is validated and declared for all purposes to have been validly approved, and

(ii) continues to be valid as if it had been approved under section 13(1) of the *Capital Region Board Regulation* (AR 38/2012),

(b) the Minister's establishment of the Transitional Regional Evaluation Framework under section 20 of the *Capital Region Board Regulation* (AR 49/2008) is validated and declared for all purposes to have been validly established, and

(c) the Minister's establishment of the Regional Evaluation Framework under section 21 of the *Capital Region Board Regulation* (AR 17/2010)

(i) is validated and declared for all purposes to have been validly established, and

(ii) continues to be valid as if it had been established under section 21 of the *Capital Region Board Regulation* (AR 38/2012).

(3) Despite section 603(2), a regulation referred to in subsection (1) of this section that is in force on the coming into force of this section is repealed on the earliest of

(a) the coming into force of an amendment that adds the matter to this Act;

(b) the coming into force of a regulation that repeals the regulation;

(c) subject to subsection (3.1), June 30, 2017.

(3.1) For the purposes of the following regulations, subsection (3)(c) shall be read as June 30, 2018:

(a) *Alberta Central East Water Corporation Regulation* (AR 137/2013);

(b) *Aquatera Utilities Inc. Regulation* (AR 205/2013);

(c) *Aqueduct Utilities Corporation Regulation* (AR 92/2012);

(d) *Chestermere Utilities Incorporated Regulation* (AR 163/2013);

(e) *Extension of Linear Property Regulation* (AR 207/2012);

(f) *NEW water Ltd. Regulation* (AR 159/2012);

(g) *Newell Regional Services Corporation Regulation* (AR 153/2012);

(h) *Peace Regional Waste Management Company Regulation* (AR 41/2011).

(4) Subsection (3) does not apply to the following regulations:

(a) *Proceedings Before the Board Clarification Regulation* (AR 176/2011);

(b) *Equalized Assessment Variance Regulation, 2012* (AR 195/2011);

(c) *Capital Region Board Regulation* (AR 38/2012);

(d) *Municipal Emergency Exemption Regulation* (AR 142/2013).

2013 c17 s4;2017 c13 s1(54)

Ministerial regulations

604 The Minister may make regulations

(a) repealed 2022 c16 s9(77);

(b) respecting the determination of the population of a municipality or other geographic area and establishing requirements for a municipality to conduct a census and provide information concerning population to the Minister;

(c) respecting the administration, operation and management of specialized municipalities;

(d) prescribing forms for the purposes of this Act;

(e) respecting the content or form of anything required to be done by a municipality under this Act.

RSA 2000 cM-26 s604;2022 c16 s9(77)

Determining population

604.1(1) The Minister may determine and by order specify the population of a municipal authority or other geographic area for any purpose under this Act.

(2) Where the Minister considers it appropriate to do so, the Minister may adopt a determination of the population of a municipal authority or other geographic area made by another person or entity, and where the Minister does so the adoption of that determination is to be considered the Minister's determination of that population for the purposes of subsection (1).

2022 c16 s9(78)

Altering dates and time periods

605(1) When this Act, the regulations or a bylaw specifies a certain number of days or a day on or by which

(a) something is to be done, or

(b) certain proceedings are to be taken,

and the day that the thing is to be done or proceedings are to be taken is a holiday, the thing or proceedings must be done or taken on or by the next day that is not a holiday.

(2) When this Act or the regulations specify a certain number of days or a day on or by which

(a) something is to be done, or

(b) proceedings are to be taken,

the Minister may by order specify another number of days or another day for doing it or taking proceedings.

(3) An order under subsection (2) may be made at any time before or after the day that the thing is to be done or proceedings are to be taken and the time for doing any other thing that is determined in relation to that day is subject to a like delay.

(4) Anything done or proceedings taken within the number of days or by the day specified in an order under subsection (2) is as valid as if it had been done or taken within the number of days or by the day specified in this Act or the regulations.

1994 cM-26.1 s605

Requirements for advertising

606(1) The requirements of this section apply when this or another enactment requires a bylaw, resolution, meeting, public hearing or something else to be advertised by a municipality, unless this or another enactment specifies otherwise.

(2) Notice of the bylaw, resolution, meeting, public hearing or other thing must be

(a) published at least once a week for 2 consecutive weeks in at least one newspaper or other publication circulating in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held,

(b) mailed or delivered to every residence in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held, or

(c) given by a method provided for in a bylaw under section 606.1.

(3) A notice of a proposed bylaw must be advertised under subsection (2) before second reading.

(4) A notice of a proposed resolution must be advertised under subsection (2) before it is voted on by council.

(5) A notice of a meeting, public hearing or other thing must be advertised under subsection (2) at least 5 days before the meeting, public hearing or thing occurs.

(6) A notice must contain

(a) a statement of the general purpose of the proposed bylaw, resolution, meeting, public hearing or other thing,

(b) the address where a copy of the proposed bylaw, resolution or other thing, and any document relating to it or to the meeting or public hearing may be inspected,

(c) in the case of a bylaw or resolution, an outline of the procedure to be followed by anyone wishing to file a petition in respect of it, and

(d) in the case of a meeting or public hearing, the date, time and place where it will be held.

(7) A certificate of a designated officer certifying that something has been advertised in accordance with this section is proof, in the absence of evidence to the contrary, of the matters set out in the certificate.

(8) The certificate is admissible in evidence without proof of the appointment or signature of the person who signed the certificate.

RSA 2000 cM-26 s606;2015 c8 s56;2017 c13 s3

Advertisement bylaw

606.1(1) A council may by bylaw provide for one or more methods, which may include electronic means, for advertising proposed bylaws, resolutions, meetings, public hearings and other things referred to in section 606.

(2) Before making a bylaw under subsection (1), council must be satisfied that the method the bylaw would provide for is likely to bring proposed bylaws, resolutions, meetings, public hearings and other things advertised by that method to the attention of substantially all residents in the area to which the bylaw, resolution or other thing relates or in which the meeting or hearing is to be held.

(3) Council must conduct a public hearing before making a bylaw under subsection (1).

(4) A notice of a bylaw proposed to be made under subsection (1) must be advertised in a manner described in section 606(2)(a) or (b) or by a method provided for in a bylaw made under this section.

(5) A notice of a bylaw proposed to be made under subsection (1) must contain

(a) a statement of the general purpose of the proposed bylaw,

(b) the address or website where a copy of the proposed bylaw may be examined, and

(c) an outline of the procedure to be followed by anyone wishing to file a petition in respect of the proposed bylaw.

(6) A bylaw passed under this section must be made available for public inspection.

2015 c8 s57;2017 c13 s3

Service of documents

607 The service of a document on a municipality is sufficient if

(a) the document is served personally on the chief administrative officer or a person working for the municipality in the office of the chief administrative officer,

(b) the document is sent by certified or registered mail to the chief administrative officer at the municipality's office and the document is delivered to the municipality's office, or

(c) the document is sent to the municipality by electronic means in accordance with a bylaw made by the municipality.

RSA 2000 cM-26 s607;2015 c8 s58

Sending documents

608(1) Where this Act or a regulation or bylaw made under this Act requires a document to be sent to a person, the document may be sent by electronic means if

(a) the recipient has consented to receive documents from the sender by those electronic means and has provided an e-mail address, website or other electronic address to the sender for that purpose, and

(b) it is possible to make a copy of the document from the electronic transmission.

(2) In the absence of evidence to the contrary, a document sent by electronic means in accordance with subsection (1) is presumed to have been received 7 days after it was sent unless the regulations under subsection (4) provide otherwise.

(3) For greater certainty, a reference in this Act to a mailing address is to be interpreted as including an electronic address referred to in subsection (1)(a) if the requirements of subsection (1) are met.

(4) The Minister may make regulations respecting the circumstances in which the presumption in subsection (2) does not apply.

RSA 2000 cM-26 s608;2016 c24 s90

Bylaws for sending certain documents electronically

608.1(1) Despite section 608, a council may by bylaw establish a process for sending assessment notices, tax notices and other notices, documents and information under Part 9, 10 or 11 or the regulations under Part 9, 10 or 11 by electronic means.

(2) A council may by bylaw establish a process for sending forms of notice under section 149(2) or (3) of the *Education Act* by electronic means.

(3) Before making a bylaw under this section, the council must be satisfied that the proposed bylaw includes appropriate measures to ensure the security and confidentiality of the notices, documents and information being sent.

(4) Before making a bylaw under this section, the council must give notice of the proposed bylaw in a manner the council considers is likely to bring the proposed bylaw to the attention of substantially all persons that would be affected by it.

(5) A bylaw under subsection (1) or (2) must provide for a method by which persons may opt to receive the notice, document or information by electronic means.

(6) The sending by electronic means of any notice, document or information referred to in subsection (1) or (2) is valid only if the person to whom it is sent has opted under the bylaw to receive it by those means.

2019 c22 s10(17)

Adverse possession of land

609 No person can acquire an estate or interest in land owned by a municipality by adverse or unauthorized possession, occupation, enjoyment or use of the land.

1994 cM-26.1 s609

Lost or unclaimed property

610(1) Lost or unclaimed property coming into the possession of a municipality must be retained for at least 30 days from the date it comes into possession of the municipality unless it is unsafe, unsanitary or perishable, in which case it may be disposed of at any time.

(2) If property is not claimed within 30 days, it becomes the property of the municipality and the municipality may dispose of the property by public auction or as the council directs.

(3) The purchaser of lost or unclaimed property is the absolute owner of it.

(4) A prior owner of lost or unclaimed property is entitled to the proceeds of the sale less all expenses incurred by the municipality if the prior owner makes a claim to the municipality within 90 days after the date of the sale.

(5) If the sale proceeds are not claimed within 90 days from the date of sale, the rights of any prior owner to the sale proceeds are extinguished and the sale proceeds belong to the municipality.

1994 cM-26.1 s610

Unclaimed utility deposits

611(1) If money is deposited with a municipality as a deposit for the payment of an account for a service or product and remains unclaimed for one year after the depositor's account is discontinued, the amount of the deposit may be transferred to the general revenue of the municipality.

(2) The municipality is liable to repay the amount of the deposit to the person lawfully entitled to it for a period of 7 years following the discontinuance of the account.

1994 cM-26.1 s611

Certified copies

612(1) A copy of a bylaw, resolution or record of a municipality certified by a designated officer as a true copy of the original is proof, in the absence of evidence to the contrary, of the bylaw, resolution or record.

(2) The certificate of the designated officer is admissible in evidence without proof of the appointment or signature of the person who signed the certificate.

(3) When a copy of a bylaw or resolution certified in accordance with this section is filed with the clerk of a court, the court must take judicial notice of it when an action is brought in the court.

1994 cM-26.1 s612

Calgary Charter

613 The provisions of the Calgary Charter relating to the land, buildings, plants and equipment of the water supply and distribution system commonly known as the Glenmore Dam, and the provisions of the Calgary Charter relating in particular to the

assessment and taxation of it by the Municipal District of Springbank, continue to apply.

1994 cM-26.1 s613

614 Repealed 1994 cR-9.07 s25(24).

615 Repealed 2023 c9 s19(16).

Municipal emergency exemption

615.1(1) In this section,

(a) "disaster" means a disaster as defined in section 1(e) of the *Emergency Management Act*;

(b) "emergency" means an emergency as defined in section 1(f) of the *Emergency Management Act*.

(2) Where it appears to the Minister that a disaster or an emergency exists in a municipal authority, the Minister may by order, with respect to that municipal authority or an adjacent municipal authority,

(a) modify one or more provisions of this Act as they apply to the municipal authority,

(b) exempt the municipal authority from one or more provisions of this Act or bylaws made pursuant to this Act, or

(c) provide the municipal authority with specified authority in addition to that set out in this Act.

(3) The Minister may, in an order made under subsection (2),

(a) impose terms, conditions and timelines on the modification or exemption of a provision of this Act or a bylaw or the exercise of additional authority, and

(b) specify a date on which the order or any provision of it expires.

(4) The *Regulations Act* does not apply to an order made under subsection (2).

2013 c21 s2

Agreements under Aeronautics Act (Canada)

615.2(1) A municipality may, if authorized by regulation, enter into an agreement under section 5.81 of the *Aeronautics Act* (Canada).

(2) The Lieutenant Governor in Council may make regulations

(a) authorizing a municipality to enter into an agreement under section 5.81 of the *Aeronautics Act* (Canada);

(b) specifying the terms and conditions under which a municipality may enter into the agreement.

(3) The *Aeronautics Act Agreements (City of Medicine Hat and Cypress County) Regulation* (AR 33/2014) is deemed to have been made under this section.

2015 c8 s60

Part 17
Planning and Development

Definitions

616 In this Part,

(a) "adjacent land" means land that is contiguous to a parcel of land that is being subdivided or redesignated and includes

(i) land that would be contiguous if not for a highway, road, river or stream, and

(ii) any other land identified in a land use bylaw as adjacent land for the purpose of notification under sections 653, 679, 680 and 692;

(a.01) "agricultural operation" means an agricultural operation as defined in the *Agricultural Operation Practices Act*;

(a.1) "building" includes anything constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road;

(a.11) "community recreation facilities" means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities;

(a.2) "community services reserve" means the land designated as community services reserve under Division 9;

(a.3) "conservation reserve" means the land designated as conservation reserve under Division 8;

(b) "development" means

(i) an excavation or stockpile and the creation of either of them,

(ii) a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,

(iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or

(iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;

(c) "development authority" means a development authority established pursuant to Division 3;

(d) "development permit" means a document that is issued under a land use bylaw and authorizes a development;

(e) "environmental reserve" means the land designated as environmental reserve under Division 8;

(f) "environmental reserve easement" means an easement created under Division 8;

(g) "former Act" means the *Planning Act*, RSA 1980 cP-9, *The Planning Act, 1977*, SA 1977 c89, *The Planning Act*, RSA 1970 c276 or *The Planning Act*, SA 1963 c43;

(h) "highway" means a provincial highway under the *Highways Development and Protection Act*;

(i) "instrument" means a plan of subdivision and an instrument as defined in the *Land Titles Act*;

(j) "intermunicipal service agency" means an intermunicipal service agency established under Division 3;

(j.1) "joint use and planning agreement" means an agreement under section 670.1;

(k) "land use bylaw" means a bylaw made under Division 5 and a bylaw made under section 27 of the *Historical Resources Act*;

(l) "land use policies" means the policies referred to in section 618.4;

(m) "lot" means

(i) a quarter section,

(ii) a river lot shown on an official plan, as defined in the *Surveys Act,* that is filed or lodged in a land titles office,

(iii) a settlement lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office,

(iv) a part of a parcel of land described in a certificate of title if the boundaries of the part are described in the certificate of title other than by reference to a legal subdivision, or

(v) a part of a parcel of land described in a certificate of title if the boundaries of the part are described in a certificate of title by reference to a plan of subdivision;

(m.1) "mediation" means a process involving a neutral person as a mediator who assists the parties to a matter that may be appealed under this Part and any other person brought in with the agreement of the parties to reach their own mutually acceptable settlement of the matter by structuring negotiations, facilitating communication and identifying the issues and interests of the parties;

(n) "municipal planning commission" means a municipal planning commission established under Division 3;

(o) "municipal reserve" means the land designated as municipal reserve under Division 8;

(p) "municipal and school reserve" means the land designated as municipal and school reserve under Division 8;

(q) "non-conforming building" means a building

(i) that is lawfully constructed or lawfully under construction at the date a land use bylaw affecting the building or the land on which the building is situated becomes effective, and

(ii) that on the date the land use bylaw becomes effective does not, or when constructed will not, comply with the land use bylaw;

(r) "non-conforming use" means a lawful specific use

(i) being made of land or a building or intended to be made of a building lawfully under construction at the date a

land use bylaw affecting the land or building becomes effective, and

(ii) that on the date the land use bylaw becomes effective does not, or in the case of a building under construction will not, comply with the land use bylaw;

(r.1) "non-profit", in respect of a day care, senior citizens or special needs facility, means that the facility is owned or operated by a corporation or other entity established under a law of Canada or Alberta for a purpose other than to make a profit;

(r.2) "off-site levy" means a levy referred to in subsection 648(1.1)(a);

(s) "parcel of land" means the aggregate of the one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan filed or registered in a land titles office;

(t) "*Planning Act*" means the *Planning Act*, RSA 1980 cP-9;

(u) "plan of subdivision" means a plan of survey prepared in accordance with the *Land Titles Act* for the purpose of effecting a subdivision;

(v) "public utility" means a public utility as defined in section 1(1)(y), excluding residential and commercial street lighting, and includes telecommunications;

(w) "public utility lot" means land required to be given under Division 8 for public utilities;

(x) "redevelopment area" means an area of land that is the subject of an area redevelopment plan;

(y) "Registrar" means Registrar as defined in the *Land Titles Act*;

(z) "reserve land" means environmental reserve, conservation reserve, municipal reserve, community services reserve, school reserve or municipal and school reserve;

(aa) "road" means road as defined in section 1(1), but does not include highway as defined in this Part;

(bb) "school board" means the board of trustees of a school division;

(cc) "school reserve" means the land designated as school reserve under Division 8;

(dd) "statutory plan" means an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4;

(ee) "subdivision" means the division of a parcel of land by an instrument and "subdivide" has a corresponding meaning;

(ff) "subdivision authority" means a subdivision authority established under Division 3;

(gg) "subdivision and development appeal board" means a subdivision and development appeal board established under Division 3;

(hh) "subdivision and development regulations" mean regulations made under section 694(1).

RSA 2000 cM-26 s616;RSA 2000 c21(Supp) s3;2004 cH-8.5 s69; 2008 c37 s4;2012 cE-0.3 s279;2016 c24 s91;2019 c22 s10; 2020 c39 s10(3);2023 c9 s19(17)

Purpose of this Part

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

1995 c24 s95

Non-application of this Part

618(1) This Part and the regulations and bylaws under this Part do not apply when a development or a subdivision is effected only for the purpose of

(a) a highway or road,

(b) a well or battery within the meaning of the *Oil and Gas Conservation Act*, or

(c) a pipeline or an installation or structure incidental to the operation of a pipeline.

(2) This Part and the regulations and bylaws under this Part do not apply to

(a) the geographic area of a Metis settlement, or

(b) a designated area of Crown land in a municipal district or specialized municipality.

(2.1) This Part and the regulations and bylaws under this Part respecting development permits do not apply to a confined feeding operation or manure storage facility within the meaning of the *Agricultural Operation Practices Act* if the confined feeding operation or manure storage facility is the subject of an approval, registration or authorization under Part 2 of the *Agricultural Operation Practices Act*.

(3) The Minister responsible for the *Public Lands Act* may make regulations designating one or more areas of Crown land under that Minister's administration for the purposes of subsection (2)(b).

(4) The Lieutenant Governor in Council may, by regulation, exempt an action, person or thing from the application of all of or any provision of this Part or of the regulations or bylaws under this Part.

(5) The Lieutenant Governor in Council may include terms and conditions in a regulation under subsection (4).

RSA 2000 cM-26 s618;2020 c39 s10(4)

618.1 Repealed 2020 c39 s10(5).

Bylaws binding

618.2 No bylaw is binding in respect of a matter governed by this Part unless that bylaw is passed in accordance with this Part.

2016 c24 s92

ALSA regional plans

618.3(1) Anything done by any of the following under a provision in this Part or a regulation under this Part must be done in accordance with any applicable ALSA regional plan:

(a) a municipality;

(b) a council;

(c) a municipal planning commission;

(d) a subdivision authority;

(e) a development authority;

(f) a subdivision and development appeal board;

(g) the Land and Property Rights Tribunal;

(h) an entity to which authority is delegated under section 625(4).

(2) If there is a conflict or an inconsistency between anything that is done under a provision of this Part or a regulation under this Part and an applicable ALSA regional plan, the ALSA regional plan prevails to the extent of the conflict or the inconsistency.

2020 cL-2.3 s24(41);2020 c39 s10(6)

Land use policies

618.4(1) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Land and Property Rights Tribunal must be consistent with the land use policies established under subsection (2).

(2) The Lieutenant Governor in Council, on the recommendation of the Minister, may by regulation establish land use policies.

2020 cL-2.3 s24(41);2020 c39 s10(6)

Division 1
Other Authorizations, Compensation

NRCB, ERCB, AER, AEUB or AUC authorizations

619(1) A licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC prevails, in accordance with this section, over any statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Land and Property Rights Tribunal or any other authorization under this Part.

(2) When an application is received by a municipality for a statutory plan amendment, land use bylaw amendment, subdivision approval, development permit or other authorization under this Part and the application is consistent with a licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC, the municipality must approve the application to the extent

that it complies with the licence, permit, approval or other authorization granted under subsection (1).

(3) An approval of a statutory plan amendment or land use bylaw amendment under subsection (2)

(a) must be granted within 90 days after the application or a longer time agreed on by the applicant and the municipality, and

(b) is not subject to the requirements of section 692 unless, in the opinion of the municipality, the statutory plan amendment or land use bylaw amendment relates to matters not included in the licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC.

(4) If a municipality that is considering an application under subsection (2) holds a hearing, the hearing may not address matters already decided by the NRCB, ERCB, AER, AEUB or AUC except as necessary to determine whether an amendment to a statutory plan or land use bylaw is required.

(5) If a municipality does not approve an application under subsection (2) to amend a statutory plan or land use bylaw or the municipality does not comply with subsection (3), the applicant may appeal to the Land and Property Rights Tribunal by filing with the Tribunal

(a) a notice of appeal, and

(b) a statutory declaration stating why mediation was unsuccessful or why the applicant believes that the municipality was unwilling to attempt to use mediation.

(6) The Land and Property Rights Tribunal, on receiving a notice of appeal and statutory declaration under subsection (5),

(a) must commence a hearing within 60 days after receiving the notice of appeal and statutory declaration and give a written decision within 30 days after concluding the hearing, and

(b) is not required to notify or hear from any person other than the applicant and the municipality against whom the appeal is launched.

(7) The Land and Property Rights Tribunal, in hearing an appeal under subsection (6), may only hear matters relating to whether the proposed statutory plan or land use bylaw amendment is consistent

with the licence, permit, approval or other authorization granted under subsection (1).

(8) In an appeal under this section, the Land and Property Rights Tribunal may

(a) order the municipality to amend the statutory plan or land use bylaw in order to comply with a licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC, or

(b) dismiss the appeal.

(9) Section 692 does not apply when the statutory plan or land use bylaw is amended pursuant to a decision of the Land and Property Rights Tribunal under subsection (8)(a).

(10) A decision under subsection (8) is final but may be appealed by the applicant or the municipality in accordance with section 688.

(11) In this section, "NRCB, ERCB, AER, AEUB or AUC" means the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission.

(12) Repealed 2020 c39 s10(7).

RSA 2000 cM-26 s619;2007 cA-37.2 s82(14);2009 cA-26.8 s83; 2012 cR-17.3 s95;2020 cL-2.3 s24(29);2020 c39 s10(7)

Conditions prevail

620 A condition of a licence, permit, approval or other authorization granted pursuant to an enactment by the Lieutenant Governor in Council, a Minister, a Provincial agency or Crown-controlled organization as defined in the *Financial Administration Act* or a delegated person as defined in Schedule 10 to the *Government Organization Act* prevails over any condition of a development permit that conflicts with it.

1995 c24 s95

Compensation

621(1) Except as provided in this Part and in section 28 of the *Historical Resources Act*, nothing in this Part or the regulations or bylaws under this Part gives a person a right to compensation.

(2) Subsection (1) applies only to this Part and does not create, extinguish or affect rights created, extinguished or affected by the rest of this Act.

1995 c24 s95

622 Repealed 2020 c39 s10(8).

Division 3
Planning Authorities

Subdivision authority and development authority

623 A council must, by bylaw, provide for

(a) a subdivision authority to exercise subdivision powers and duties on behalf of the municipality, and

(b) subject to section 641, a development authority to exercise development powers and perform duties on behalf of the municipality.

RSA 2000 cM-26 s623;2020 c39 s10(9)

624 Repealed 2020 c39 s10(10).

Planning authorities

625(1) The council of a municipality may, by bylaw,

(a) establish a municipal planning commission, or

(b) authorize the municipality to enter into an agreement with one or more municipalities to establish

(i) an intermunicipal planning commission, or

(ii) an intermunicipal service agency.

(2) An intermunicipal planning commission is deemed to be a municipal planning commission for the purposes of this Part.

(3) The bylaw establishing a municipal planning commission and the agreement establishing an intermunicipal planning commission must

(a) provide for the applicable matters described in section 145(3),

(b) prescribe the functions and duties of the commission, including but not limited to subdivision and development powers and duties, and

(c) in the case of an intermunicipal planning commission, provide for its dissolution.

(4) The council of a municipality may make a bylaw authorizing a municipality to delegate, by agreement, any of its subdivision authority or development authority powers, duties or functions to

(a) a municipal planning commission,

(b) a regional services commission, or

(c) an intermunicipal service agency.

RSA 2000 cM-26 s625;2020 c39 s10(11);2023 c9 s19(19)

626 Repealed 2020 c39 s10(12).

Appeal board established

627(1) A council must by bylaw

(a) establish a subdivision and development appeal board, or

(b) authorize the municipality to enter into an agreement with one or more municipalities to establish an intermunicipal subdivision and development appeal board,

or both.

(2) An intermunicipal subdivision and development appeal board is a subdivision and development appeal board for the purposes of this Part.

(3) Unless an order of the Minister authorizes otherwise, a panel of a subdivision and development appeal board hearing an appeal must not have more than one councillor as a member.

(4) The following persons may not be appointed as members of a subdivision and development appeal board:

(a) an employee of the municipality;

(b) a person who carries out subdivision or development powers, duties and functions on behalf of the municipality;

(c) a member of a municipal planning commission.

(5) A member of a subdivision and development appeal board may not participate in a hearing of the subdivision and development appeal board unless the member is qualified to do so in accordance with the regulations made under section 627.3(b).

RSA 2000 cM-26 s627;2016 c24 s94;2020 c39 s10(13)

Clerks

627.1(1) A council that establishes or authorizes the establishment of a subdivision and development appeal board, including an intermunicipal subdivision and development appeal board, must

appoint or authorize the appointment of one or more clerks of the subdivision and development appeal board.

(2) A person appointed as a clerk of a subdivision and development appeal board may also hold an appointment under section 456 as a clerk of an assessment review board.

(3) No person is eligible for appointment as a clerk of a subdivision and development appeal board unless that person has successfully completed a training program in accordance with the regulations made under section 627.3(a).

(4) No subdivision authority or development authority is eligible for appointment under this section.

2015 c8 s61;2017 c13 s3;2019 c22 s10(19);2020 c39 s10(14)

627.2 Repealed 2020 c39 s10(15).

Regulations

627.3(1) The Minister may make regulations

(a) respecting training programs for the purposes of section 627.1(3);

(b) respecting qualifications for the purposes of section 627(5);

(c) authorizing and respecting the use of electronic, telephonic or other communication methods to conduct hearings of a subdivision and development appeal board.

(2) Regulations under subsection (1)(c) may apply generally or specifically and may modify the requirements in this Division to any extent the Minister considers necessary or appropriate to give effect to the regulations.

2015 c8 s61;2020 c39 s10(16);2022 c16 s9(79)

628 Repealed 2020 c39 s10(17).

Immunity

628.1(1) The members of a subdivision and development appeal board are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty or function under this Part.

(2) No member of a subdivision and development appeal board is liable for costs by reason of or in respect of an application for permission to appeal or an appeal under this Part.

2016 c24 s96

Appeal board evidence

629 A subdivision and development appeal board

(a) may, while carrying out its powers, duties and responsibilities, accept any oral or written evidence that it considers proper, whether admissible in a court of law or not, and is not bound by the laws of evidence applicable to judicial proceedings, and

(b) must make and keep a record of its proceedings, which may be in the form of a summary of the evidence presented at a hearing.

1995 c24 s95

Signature evidence

630(1) An order, decision, approval, notice or other thing made or given by a subdivision authority, development authority or subdivision and development appeal board may be signed on its behalf by a designated officer.

(2) An order, decision, approval, notice or other thing purporting to be signed by a designated officer pursuant to subsection (1) may be admitted in evidence as proof

(a) of the order, decision, approval, notice or other thing, and

(b) that the designated officer signing it was authorized to do so,

without proof of the signature or of the designation.

1995 c24 s95

Fees

630.1 A council may establish and charge fees for matters under this Part.

1996 c30 s55

630.2 Repealed 2020 c39 s10(18).

Division 4
Statutory Plans

Intermunicipal Development Plans

Intermunicipal development plans

631(1) Subject to subsections (2) and (3), 2 or more councils of municipalities that have common boundaries and that are not members of a growth region as defined in section 708.01 must, by each passing a bylaw in accordance with this Part or in accordance

with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(2) Subsection (1) does not require municipalities to adopt an intermunicipal development plan with each other if they agree that they do not require one, but any of the municipalities may revoke its agreement at any time by giving written notice to the other or others, and where that notice is given the municipalities must comply with subsection (1) within one year from the date of the notice unless an exemption is ordered under subsection (3).

(3) The Minister may, by order, exempt one or more councils from the requirement to adopt an intermunicipal development plan, and the order may contain any terms and conditions that the Minister considers necessary.

(4) Municipalities that are required under subsection (1) to adopt an intermunicipal development plan must have an intermunicipal development plan providing for all of the matters referred to in subsection (8) in place by April 1, 2020.

(5) If 2 or more councils that are required to adopt an intermunicipal development plan under subsection (1) do not have an intermunicipal development plan in place by April 1, 2020 because they have been unable to agree on a plan, they must immediately notify the Minister and the Minister must, by order, refer the matter to the Land and Property Rights Tribunal for its recommendations in accordance with Part 12.

(6) Where the Minister refers a matter to the Land and Property Rights Tribunal under this section, Part 12 applies as if the matter had been referred to the Tribunal under section 514(2).

(7) Two or more councils of municipalities that are not otherwise required to adopt an intermunicipal development plan under subsection (1) may, by each passing a bylaw in accordance with this Part or in accordance with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(8) An intermunicipal development plan

(a) must address

(i) the future land use within the area,

(ii) the manner of and the proposals for future development in the area,

(iii) the provision of transportation systems for the area, either generally or specifically,

(iv) the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area,

(v) environmental matters within the area, either generally or specifically, and

(vi) any other matter related to the physical, social or economic development of the area that the councils consider necessary,

and

(b) must include

(i) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan,

(ii) a procedure to be used, by one or more municipalities, to amend or repeal the plan, and

(iii) provisions relating to the administration of the plan.

(9) Despite subsection (8), to the extent that a matter is dealt with in a framework under Part 17.2, the matter does not need to be included in an intermunicipal development plan.

(10) In creating an intermunicipal development plan, municipalities must negotiate in good faith.

RSA 2000 cM-26 s631;2016 c24 s97;2019 c22 s10(20); 2020 cL-2.3 s24(30)

Order for intermunicipal development plan

631.1(1) The Minister may make regulations

(a) repealed 2019 c22 s10(21);

(b) respecting the matters to be included in an intermunicipal development plan.

(c) repealed 2019 c22 s10(21).

(1.1) After considering the recommendations of the Land and Property Rights Tribunal respecting a matter referred to the Tribunal under section 631(5), the Minister may, by order, require 2 or more municipal authorities to establish an intermunicipal development plan in accordance with the order by a date specified in the order.

(1.2) If the municipal authorities to whom an order under subsection (1.1) applies do not comply with the order, the Minister may make a further order establishing an intermunicipal development plan that is binding on the municipal authorities.

(2) Repealed 2019 c22 s10(21).

2009 cA-26.8 s83;2019 c22 s10(21);2020 cL-2.3 s24(31)

Municipal Development Plans

Municipal development plans

632(1) Every council of a municipality must by bylaw adopt a municipal development plan.

(2) Repealed 2016 c24 s98.

(2.1) Within 3 years after the coming into force of this subsection, a council of a municipality that does not have a municipal development plan must by bylaw adopt a municipal development plan.

(3) A municipal development plan

(a) must address

(i) the future land use within the municipality,

(ii) the manner of and the proposals for future development in the municipality,

(iii) the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities,

(iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and

(v) the provision of municipal services and facilities either generally or specifically,

(b) may address

(i) proposals for the financing and programming of municipal infrastructure,

(ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,

(iii) environmental matters within the municipality,

(iv) the financial resources of the municipality,

(v) the economic development of the municipality, and

(vi) any other matter relating to the physical, social or economic development of the municipality,

(c) may contain statements regarding the municipality's development constraints, including the results of any development studies and impact analysis, and goals, objectives, targets, planning policies and corporate strategies,

(d) must contain policies compatible with the subdivision and development regulations to provide guidance on the type and location of land uses adjacent to sour gas facilities,

(e) must contain policies respecting the provision of municipal, school or municipal and school reserves, including but not limited to the need for, amount of and allocation of those reserves and the identification of school requirements in consultation with affected school boards,

(f) must contain policies respecting the protection of agricultural operations, and

(g) may contain policies respecting the provision of conservation reserve in accordance with section 664.2(1)(a) to (d).

(4) Repealed 2020 c39 s10(19).

RSA 2000 cM-26 s632;RSA 2000 c21(Supp) s4;2008 c37 s11; 2015 c8 s62;2016 c24 s98;2017 c13 s2(16);2020 c39 s10(19)

Area Structure Plans

Area structure plan

633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.

(2) An area structure plan

(a) must describe

(i) the sequence of development proposed for the area,

(ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,

(iii) the density of population proposed for the area either generally or with respect to specific parts of the area, and

(iv) the general location of major transportation routes and public utilities,

and

(b) may contain any other matters, including matters relating to reserves, as the council considers necessary.

(3) Repealed 2020 c39 s10(20).

RSA 2000 cM-26 s633;2015 c8 s63;2017 c13 s1(56); 2020 c39 s10(20)

Area Redevelopment Plans

Area redevelopment plans

634(1) A council may

(a) designate an area of the municipality as a redevelopment area for the purpose of any or all of the following:

(i) preserving or improving land and buildings in the area;

(ii) rehabilitating buildings in the area;

(iii) removing buildings from the area;

(iv) constructing or replacing buildings in the area;

(v) establishing, improving or relocating roads, public utilities or other services in the area;

(vi) facilitating any other development in the area,

(b) adopt, by bylaw, an area redevelopment plan,

(c) in accordance with this section and Division 6, provide for the imposition and collection of a levy to be known as a "redevelopment levy", and

(d) authorize a designated officer, with or without conditions, to perform any function with respect to the imposition and collection of that redevelopment levy.

(2) Repealed 2020 c39 s10(21).

RSA 2000 cM-26 s634;2015 c8 s64;2020 c39 s10(21)

Plan contents

635 An area redevelopment plan

(a) must describe

(i) the objectives of the plan and how they are proposed to be achieved,

(ii) the proposed land uses for the redevelopment area,

(iii) if a redevelopment levy is to be imposed, the reasons for imposing it, and

(iv) any proposals for the acquisition of land for any municipal use, school facilities, parks and recreation facilities or any other purposes the council considers necessary,

and

(b) may contain any other proposals that the council considers necessary.

1995 c24 s95

General Provisions

Statutory plan preparation

636(1) While preparing a statutory plan, a municipality must notify the following and provide a means for suggestions and representations to be made:

(a) any members of the public who may be affected by the plan;

(b) the school boards with jurisdiction in the area to which the plan preparation applies;

(c) in the case of a municipal development plan,

(i) any adjacent municipalities,

(ii) the Indian band of any adjacent Indian reserve, and

(iii) any adjacent Metis settlement;

(d) in the case of an area structure plan,

(i) where the land that is the subject of the plan is adjacent to another municipality, that municipality,

(ii) where the land that is the subject of the plan is within 1.6 kilometres of a provincial highway, the Minister responsible for the *Highways Development and Protection Act*, and

(iii) where the land that is the subject of the plan is adjacent to an Indian reserve or Metis settlement, the Indian band or Metis settlement.

(2) Subsection (1) does not apply to amendments to statutory plans.

RSA 2000 cM-26 s636;2008 c37 s11;2017 c13 s1(57);2020 c39 s10(22)

Effect of plans

637 The adoption by a council of a statutory plan does not require the municipality to undertake any of the projects referred to in it.

1995 c24 s95

Consistency of plans

638(1) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.

(2) An area structure plan and an area redevelopment plan must be consistent with

(a) any intermunicipal development plan in respect of land that is identified in both the area structure plan or area redevelopment plan, as applicable, and the intermunicipal development plan, and

(b) any municipal development plan.

(3) An intermunicipal development plan prevails to the extent of any conflict or inconsistency between

(a) a municipal development plan, an area structure plan or an area redevelopment plan, and

(b) the intermunicipal development plan

in respect of the development of the land to which the conflicting or inconsistent plans apply.

(4) A municipal development plan prevails to the extent of any conflict or inconsistency between

(a) an area structure plan or an area redevelopment plan, and

(b) the municipal development plan.

RSA 2000 cM-26 s638;2015 c8 s65;2020 c39 s10(23)

638.1 Repealed 2020 c39 s10(24).

Listing and publishing of policies

638.2(1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part

(a) that have been approved by council by resolution or bylaw, or

(b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209,

and that do not form part of a bylaw made under this Part.

(2) The municipality must publish the following on the municipality's website:

(a) the list of the policies referred to in subsection (1);

(b) the policies described in subsection (1);

(c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part;

(d) any documents incorporated by reference in any bylaws passed in accordance with this Part.

(3) A development authority, subdivision authority, subdivision and development appeal board, the Land and Property Rights Tribunal or a court shall not have regard to any policy approved by a council or by a person or body referred to in subsection (1)(b) unless the policy is set out in the list prepared and maintained under subsection (1) and published in accordance with subsection (2).

(4) Repealed 2020 c39 s10(25).

2016 c24 s99;2020 cL-2.3 s24(41);2020 c39 s10(25)

Division 5
Land Use

639 Repealed 2020 c39 s10(26).

639.1 Repealed 2020 c39 s10(27).

Land use bylaw

640(1) Every municipality must pass a land use bylaw.

(1.1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality, including, without limitation, by

(a) imposing design standards,

(b) determining population density,

(c) regulating the development of buildings,

(d) providing for the protection of agricultural land, and

(e) providing for any other matter council considers necessary to regulate land use within the municipality.

(2) A land use bylaw

(a) must divide the municipality into districts of the number and area the council considers appropriate;

(b) must, unless the district is designated as a direct control district pursuant to section 641, prescribe with respect to each district,

(i) the one or more uses of land or buildings that are permitted in the district, with or without conditions, or

(ii) the one or more uses of land or buildings that may be permitted in the district at the discretion of the development authority, with or without conditions,

or both;

(c) must establish a method of making decisions on applications for development permits and issuing development permits for any development, including provision for

(i) the types of development permit that may be issued,

(ii) applying for a development permit,

(iii) processing an application for, or issuing, cancelling, suspending or refusing to issue, a development permit,

(iv) the conditions that are to be attached, or that the development authority may attach, to a development permit, either generally or with respect to a specific type of permit,

(v) how long any type of development permit remains in effect,

(vi) the discretion that the development authority may exercise with respect to development permits, and

(vii) any other matters necessary to regulate and control the issue of development permits that to the council appear necessary;

(d) must provide for how and to whom notice of the issuance of a development permit is to be given;

(e) must establish the number of dwelling units permitted on a parcel of land.

(3) A land use bylaw may identify additional land as adjacent land for the purpose of notification under sections 653, 679, 680 and 692.

(4) Repealed 2020 c39 s10(28).

(5) A land use bylaw may provide that when an application for a development permit or change in land use designation is refused another application with respect to the same lot

(a) for a development permit for the same or a similar use, or

(b) for a change in land use designation

may not be made by the same or any other applicant until the time stated in the land use bylaw has expired.

(6) A land use bylaw may authorize a development authority to decide on an application for a development permit even though the proposed development does not comply with the land use bylaw or is a non-conforming building if, in the opinion of the development authority,

(a) the proposed development would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

(7) A land use bylaw must be consistent with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

(8) Despite this section or any other provision of this Act, the authority to pass a land use bylaw does not include the authority to pass a bylaw in respect of the use of a building or part of a building for residential purposes that has the effect of distinguishing between any individuals on the basis of whether they are related or unrelated to each other.

(9) The Minister may by order direct a municipality to amend its land use bylaw in respect of the use of a building or part of a building for residential purposes if the land use bylaw has the effect of distinguishing between senior citizens on the basis of whether they are related or unrelated to each other.

RSA 2000 cM-26 s640;2016 c24 s100;2017 c21 s28;
2020 c39 s10(28)

640.1 Repealed 2020 c39 s10(29).

Transitional — alternative time period in land use bylaw

640.2(1) In this section, "alternative time period" means an alternative time period authorized by section 640.1 of this Act as it read immediately before the coming into force of this section.

(2) Where, on the coming into force of this section, a land use bylaw providing for an alternative time period is in force, the provisions of the bylaw providing for the alternative time period continue to have effect for a period of 6 months beginning on the day this section comes into force.

2020 c39 s10(30)

Designation of direct control districts

641(1) The council of a municipality that has adopted a municipal development plan, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

(2) If a direct control district is designated in a land use bylaw, the council may, subject to any applicable statutory plan, regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

(3) In respect of a direct control district, the council may decide on a development permit application or may delegate the decision to a development authority with directions that it considers appropriate.

(4) Repealed 2015 c8 s66.

RSA 2000 cM-26 s641;2015 c8 s66

Permitted and discretionary uses

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the written decision was given and containing any other information required by the regulations, must be given or sent to the applicant on the same day the written decision is given.

(4) If a development authority refuses an application for a development permit, the development authority must issue to the applicant a notice, in the form and manner provided for in the land use bylaw, that the application has been refused and provide the reasons for the refusal.

(5) Despite subsections (1) and (2), a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

RSA 2000 cM-26 s642;2016 cs24 s102;2017 c13 s1(58) ; 2017 c21 s28;2018 c11 s13;2020 c39 s10(31)

Non-conforming use and non-conforming buildings

643(1) If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

(a) to make it a conforming building,

(b) for routine maintenance of the building, if the development authority considers it necessary, or

(c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

1995 c24 s95

Acquisition of land designated for public use

644(1) If land is designated under a land use bylaw for use or intended use as a municipal public building, school facility, park or recreation facility and the municipality does not own the land, the municipality must within 6 months from the date the land is designated do one of the following:

(a) acquire the land or require the land to be provided as reserve land;

(b) commence proceedings to acquire the land or to require the land to be provided as reserve land and then acquire that land within a reasonable time;

(c) amend the land use bylaw to designate the land for another use or intended use.

(2) Subsection (1) does not apply if the Crown in right of Canada, the Crown in right of Alberta, an irrigation district, a board of a drainage district or a local authority, within 6 months from the date the land is designated under that subsection,

(a) acquires that land, or

(b) commences proceedings to acquire that land or requires that land to be provided as reserve land and then acquires it within a reasonable time.

(3) Subsection (1) does not apply to land designated by the municipality as conservation reserve.

RSA 2000 cM-26 s644;2016 cs24 s103

Stop order

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

(a) this Part or a land use bylaw or regulations under this Part, or

(b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land

or building or the person responsible for the contravention, or any or all of them, to

(a) stop the development or use of the land or building in whole or in part as directed by the notice,

(b) demolish, remove or replace the development, or

(c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

(3) A person who receives a notice referred to in subsection (2) may appeal the order in the notice in accordance with section 685.

RSA 2000 cM-26 s645;2017 c13 s1(59);2022 c16 s9(80)

Enforcement of stop order

646(1) If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

1995 c24 s95

Division 6
Development Levies and Conditions

Redevelopment levies

647(1) If a person applies for a development permit in respect of development in a redevelopment area and the area redevelopment plan contains proposals for residential, commercial or industrial development, a redevelopment levy may be imposed on the

applicant in accordance with the bylaw adopting the area redevelopment plan.

(2) A redevelopment levy imposed and collected must be used to provide, in respect of the redevelopment area,

(a) land for a park or land for school buildings designed for the instruction or accommodation of students, or

(b) land for new or expanded recreation facilities,

or both.

(3) On September 1, 1995 a redevelopment levy under the former Act continues as a redevelopment levy under this Part.

(4) A redevelopment levy imposed and collected under this Part or the former Act may be imposed and collected only once in respect of a development.

(5) A redevelopment levy imposed pursuant to this Part may vary between one class of development and another in a redevelopment area.

(6) If a redevelopment levy is collected, the municipality must pay that portion of the levy imposed to provide land for school buildings designed for the instruction or accommodation of students to the one or more school boards.

RSA 2000 cM-26 s647;2008 c37 s11

Off-site levy

648(1) In this section and sections 648.01 to 648.4,

(a) "facility" includes the facility, the associated infrastructure, the land necessary for the facility and related appurtenances referred to in subsection (2.1);

(b) "infrastructure" means the infrastructure, facilities and land required for the purposes referred to in subsection (2)(a) to (c.1);

(c) "stakeholder" means any person that will be required to pay an off-site levy when the bylaw is passed, or any other person the municipality considers is affected.

(1.1) For the purposes referred to in subsections (2) and (2.1), a council may by bylaw

(a) provide for the imposition and payment of a levy in respect of land that is to be developed or subdivided, and

(b) authorize an agreement to be entered into in respect of the payment of the levy.

(1.2) A bylaw may not impose an off-site levy on land owned by a school board that is to be developed for a school building project within the meaning of the *Education Act*.

(2) An off-site levy may be used only to pay for all or part of the capital cost of any or all of the following:

(a) new or expanded facilities for the storage, transmission, treatment or supplying of water;

(b) new or expanded facilities for the treatment, movement or disposal of sanitary sewage;

(c) new or expanded storm sewer drainage facilities;

(c.1) new or expanded roads required for or impacted by a subdivision or development;

(c.2) subject to the regulations, new or expanded transportation infrastructure required to connect, or to improve the connection of, municipal roads to provincial highways resulting from a subdivision or development;

(d) land required for or in connection with any facilities described in clauses (a) to (c.2).

(2.1) In addition to the capital cost of facilities described in subsection (2), an off-site levy may be used to pay for all or part of the capital cost for any of the following purposes, including the cost of any related appurtenances and any land required for or in connection with the purpose:

(a) new or expanded community recreation facilities;

(b) new or expanded fire hall facilities;

(c) new or expanded police station facilities;

(d) new or expanded libraries.

(2.2) Subject to an appeal under section 648.1, an off-site levy may be imposed and collected for a purpose referred to in subsection (2.1) only if no off-site levy has been previously imposed under subsection (1) for the same purpose with respect to the land on which the off-site levy is being imposed.

(3) On September 1, 1995 an off-site levy under the former Act continues as an off-site levy under this Part.

(4) An off-site levy imposed under this section or the former Act may be collected once for each purpose described in subsection (2) or (2.1), in respect of land that is the subject of a development or subdivision, if

(a) the purpose of the off-site levy is authorized in the bylaw referred to in subsection (1), and

(b) the collection of the off-site levy for the purpose authorized in the bylaw is specified in the agreement referred to in subsection (1).

(4.1) Nothing in subsection (4) prohibits the collection of an off-site levy by instalments or otherwise over time.

(5) An off-site levy collected under this section, and any interest earned from the investment of the levy,

(a) must be accounted for separately from other levies collected under this section, and

(b) must be used only for the specific purpose described in subsection (2)(a) to (c.2) or (2.1)(a) to (d) for which it is collected or for the land required for or in connection with that purpose.

(6) A bylaw under subsection (1) must be advertised in accordance with section 606 unless

(a) the bylaw is passed before January 1, 2004, or

(b) the bylaw is passed on or after January 1, 2004 but at least one reading was given to the proposed bylaw before that date.

(7) Where after March 1, 1978 and before January 1, 2004 a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for the purpose described in subsection (2)(c.1), that fee or charge is deemed

(a) to have been imposed pursuant to a bylaw under this section, and

(b) to have been validly imposed and collected

effective from the date the fee or charge was imposed.

(8) If, before the coming into force of this subsection, a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for one or more purposes described in subsection (2) or (2.1), that fee or charge is deemed

(a) to have been imposed pursuant to a bylaw under this section, and

(b) to have been validly imposed and collected effective from the date the fee or charge was imposed.

(9) If, before the coming into force of this subsection, a bylaw was made that purported to impose a fee or other charge on a developer for a purpose described in subsection (2) or (2.1),

(a) that bylaw is deemed to have been valid and enforceable to the extent that it imposed a fee or charge for a purpose described in subsection (2) or (2.1) before the coming into force of this subsection, and

(b) any fee or charge imposed pursuant to the bylaw before the coming into force of this subsection is deemed to have been validly imposed and collected effective from the date the fee or charge was imposed.

RSA 2000 cM-26 s648;2003 c43 s3;2012 cE-0.3 s279; 2015 c8 s67; 2016 c24 s104;2017 c13 ss1(60),2(17); 2020 c39 s10(32)

Intermunicipal off-site levy

648.01(1) For the purpose of section 648(1) and subject to the requirements of section 12, 2 or more municipalities may provide for an off-site levy to be imposed on an intermunicipal basis.

(2) Where 2 or more municipalities provide for an off-site levy to be imposed on an intermunicipal basis, the municipalities shall enter into such agreements as are necessary to attain the purposes described in section 648(2) or (2.1) that are to be funded by an off-site levy under section 648(1), by a framework made under Part 17.2 or by any other agreement.

(3) Repealed 2020 c39 s10(33).

(4) If a bylaw providing for an off-site levy to be imposed on an intermunicipal basis is appealed under section 648.1, the corresponding bylaws of the other participating municipalities are deemed to also be appealed.

2016 c24 s105;2020 c39 s10(33)

Appeal of off-site levy

648.1(1) Any person may, subject to and in accordance with the regulations, appeal any of the provisions of an off-site levy bylaw relating to an off-site levy for a purpose referred to in section 648(2) or (2.1) to the Land and Property Rights Tribunal on any of the following grounds:

(a) that the purpose for which the off-site levy is to be imposed is unlikely to benefit future occupants of the land who may be subject to the off-site levy to the extent required by the regulations;

(b) that the principles and criteria referred to in regulations made under section 694(4)(b) that must be applied by a municipality when passing the off-site levy bylaw have not been complied with;

(c) that the determination of the benefitting area was not determined in accordance with regulations made under section 694(4)(c);

(d) that the off-site levy or any portion of it is not for the payment of the capital costs of the purposes set out in section 648(2) or (2.1), as applicable;

(e) that the calculation of the off-site levy is inconsistent with regulations made under section 694(4) or is incorrect;

(f) that an off-site levy for the same purpose has already been imposed and collected with respect to the proposed development or subdivision.

(2) After hearing the appeal, the Land and Property Rights Tribunal may

(a) dismiss the appeal in whole or in part, or

(b) declare the off-site levy bylaw or a portion of the bylaw to be invalid and provide that the bylaw may be repassed or amended in a manner determined by the Tribunal.

(3) Where an off-site levy bylaw amends the amount of an off-site levy referred to in subsection (1), an appeal under this section may only be brought with respect to that amendment.

2016 c24 s105;2017 c13 s2(18);2020 cL-2.3 s24(32);2020 c39 s10(34)

Calculation of off-site levy

648.2(1) Subject to subsection (2), a municipality may determine the methodology on which to base the calculation of an off-site levy.

(2) Subject to subsection (7), the methodology on which a municipality bases its calculation of an off-site levy must

(a) take into account criteria such as area, density or intensity of use,

(b) recognize variation among infrastructure, facility and transportation infrastructure types,

(c) be consistent across the municipality for that type of infrastructure, facility or transportation infrastructure, and

(d) be clear and reasonable.

(3) Notwithstanding subsection (2)(c), the methodology used in determining the calculation of an off-site levy may be different for each specific type of infrastructure, facility or transportation infrastructure.

(4) The information that a municipality uses in the calculation of an off-site levy must be current.

(5) A bylaw imposing an off-site levy must include a requirement for a periodic review of the calculation of the off-site levy.

(6) A municipality that imposes an off-site levy must make the following publicly available:

(a) any information or data the municipality relied upon and any assumptions the municipality made in calculating the levy, including, without limitation, any information, data or assumptions the municipality used in models to complete calculations;

(b) the calculations that were performed in order to determine the amount of the levy;

(c) anything else that would be required in order to replicate the determination of the levy.

(7) Subsection (2) does not apply to the City of Calgary or the City of Edmonton.

2020 c39 s10(35)

Consultation with stakeholders

648.3(1) A municipality must consult, in good faith, with stakeholders

(a) before making a final determination on defining and addressing existing and future infrastructure, transportation infrastructure and facility requirements, and

(b) when determining the methodology on which to base an off-site levy.

(2) Before passing or amending a bylaw imposing an off-site levy, a municipality must consult, in good faith, on the calculation of the levy with stakeholders in the benefitting area where the off-site levy will apply.

(3) A consultation referred to in this section must begin at the earliest opportunity and must provide stakeholders with the ability to provide input on an ongoing basis.

(4) During a consultation referred to in this section, a municipality must make publicly available any calculations the municipality has made and any information the municipality has relied upon including, without limitation, any assumptions and data the municipality has used in models to complete calculations.

2020 c39 s10(35)

Annual report

648.4(1) A municipality must provide full and open disclosure of all off-site levy costs and payments.

(2) A municipality must, on an annual basis, make a report on an off-site levy publicly available and include in the report

(a) the details of all off-site levies received by each contributor for each type of facility and infrastructure within each benefitting area,

(b) the uses for each type of facility and infrastructure within each benefitting area for each capital project, and

(c) the balances retained for each type of facility and infrastructure within each benefitting area.

2020 c39 s10(35)

Levy bylaws

649 A bylaw that authorizes a redevelopment levy or an off-site levy must set out the purpose of each levy and indicate how the amount of the levy was determined.

RSA 2000 cM-26 s649;2015 c8 s68

Condition of issuing development permit

650(1) A council may in a land use bylaw require that, as a condition of a development permit's being issued, the applicant enter into an agreement with the municipality to do any or all of the following:

(a) to construct or pay for the construction of a road required to give access to the development;

(b) to construct or pay for the construction of

(i) a pedestrian walkway system to serve the development, or

(ii) pedestrian walkways to connect the pedestrian walkway system serving the development with a pedestrian walkway system that serves or is proposed to serve an adjacent development,

or both;

(c) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the development, whether or not the public utility is, or will be, located on the land that is the subject of the development;

(d) to construct or pay for the construction of

(i) off-street or other parking facilities, and

(ii) loading and unloading facilities;

(e) to pay an off-site levy or redevelopment levy imposed by bylaw;

(f) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under this section against the certificate of title for the land that is the subject of the development.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where, prior to the coming into force of this subsection, an agreement referred to in subsection (1) required the applicant to install a public utility or pay an amount for a public utility referred

to in subsection (1)(c), that requirement is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the development.

RSA 2000 cM-26 s650;2015 c8 s69

Agreements re oversize improvements

651(1) An agreement referred to in section 648, 650 or 655 may require the applicant for a development permit or subdivision approval

(a) to pay for all or a portion of the cost of an improvement constructed or paid for in whole or in part by a municipality at any time prior to the date of approval of the development permit or subdivision approval application, or

(b) to construct or pay for all or a portion of an improvement with an excess capacity.

(2) An agreement referred to in subsection (1)(b) or (3) that obliges an applicant for a development permit or subdivision approval to construct or pay for an improvement with an excess capacity may also provide for the reimbursement of the cost incurred or payment made in respect of the excess capacity together with interest calculated at the rate fixed pursuant to subsection (4) on the amount of the cost until the land that benefits from the excess capacity is developed or subdivided.

(3) If a municipality has at any time, either before or after this section comes into force, or before or after section 77.1 of the *Planning Act* was deemed to come into force, entered into an agreement providing for reimbursement of payments made or costs incurred in respect of the excess capacity of an improvement by an applicant for a development permit or subdivision approval, the municipality must, when other land that benefits from the improvement is developed or subdivided, enter into an agreement with the applicant for a development permit or subdivision approval for the other land, and that agreement may require the applicant to pay an amount in respect of the improvement, as determined by the municipality, which may be in excess of the cost of the improvement required for the proposed development or subdivision.

(4) An agreement made in accordance with subsection (1)(a) or (3) may require that, in addition to paying for all or part of the cost of an improvement, an applicant for a development permit or subdivision approval must pay reasonable interest on the cost in an amount to be fixed by the municipality.

(5) In this section,

(a) "excess capacity" means any capacity in excess of that required for a proposed development or subdivision;

(b) "improvement" means

(i) a facility or land referred to in section 648(2), or

(ii) a road, pedestrian walkway, utility or facility referred to in section 650(1) or 655(1)(b),

whether or not located on the land to be developed or subdivided and whether or not constructed at the time of development or subdivision approval.

1995 c24 s95

Restrictive covenant

651.1(1) In this section, "restrictive covenant" means a condition or covenant under which land, or any specified portion of land, is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land.

(2) Despite the *Land Titles Act* or any other enactment, a municipality may register a caveat under the *Land Titles Act* in respect of any restrictive covenant granted by the registered owner of a parcel of land to the municipality for the benefit of land that is under the direction, control and management of the municipality whether or not the municipality has been issued a certificate of title to that land.

(3) A caveat registered pursuant to subsection (2)

(a) shall be registered against the certificate of title to the parcel of land

(i) that is subject to the restrictive covenant, and

(ii) that was issued to the person who granted the restrictive covenant,

(b) has the same force and effect as if it had been a condition or covenant registered under section 48 of the *Land Titles Act*,

(c) may be discharged only by the municipality or an order of a court, and

(d) does not lapse pursuant to the provisions of the *Land Titles Act* governing the lapsing of caveats.

1999 c11 s43

Encroachment agreements

651.2(1) In this section, "encroachment agreement" means an agreement under which a municipality permits the encroachment onto a road that is under the direction, control and management of the municipality of improvements made on land that is adjoining that road.

(2) Despite the *Land Titles Act* or any other enactment, a municipality may register a caveat under the *Land Titles Act* in respect of any encroachment agreement entered into by the municipality with the registered owner of a parcel of land that adjoins a road that is under the direction, control and management of the municipality.

(3) A caveat registered pursuant to subsection (2)

(a) shall be registered against the certificate of title to the parcel of land

(i) that is adjoining the road, and

(ii) that was issued to the person who entered into the encroachment agreement with the municipality,

(b) has the same force and effect as if it had been an encroachment agreement registered under section 72 of the *Land Titles Act*,

(c) may be discharged only by the municipality or an order of a court, and

(d) does not lapse pursuant to the provisions of the *Land Titles Act* governing the lapsing of caveats.

1999 c11 s43

Division 7
Subdivision of Land

Subdivision approval required

652(1) A Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land unless the subdivision has been approved by a subdivision authority.

(2) Despite subsection (1) and subject to subsection (4), a Registrar may accept for registration without subdivision approval an instrument that has the effect or may have the effect of subdividing a parcel of land described in a certificate of title if registration of the instrument results in the issuing of one or more

certificates of title and the parcel of land described in each certificate of title so issued would consist only of any or all of the following:

(a) a quarter section;

(b) a river lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office;

(c) a lake lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office;

(d) a settlement lot shown on an official plan, as defined in the *Surveys Act*, that is filed or lodged in a land titles office;

(e) a part of the parcel of land described in the existing title if the boundaries of the part are shown and delineated on a plan of subdivision;

(f) a parcel of land created pursuant to a bylaw passed by a municipality under section 665.

(3) For the purpose of subsection (2), a parcel of land is deemed to be a quarter section, river lot, lake lot or settlement lot if the parcel of land would consist of a quarter section, river lot, lake lot or settlement lot except that land has been removed from the parcel of land by a subdivision effected only for a purpose referred to in section 618(1) or by a plan of subdivision or any other instrument that effected a subdivision.

(4) Unless the subdivision of the parcel of land has been approved by a subdivision authority, the Registrar may not accept for registration an instrument that has the effect or may have the effect of subdividing a parcel of land

(a) if the parcel of land is described in a plan of subdivision that was registered in a land titles office before July 1, 1950, and

(b) if the parcel of land contains 2 or more lots one or more of which is less than 8.0 hectares in area.

(5) A Registrar may not accept a caveat for registration that relates to an instrument that has the effect or may have the effect of subdividing a parcel of land unless

(a) subdivision approval is not required in respect of that subdivision pursuant to subsection (2), or

(b) subdivision approval has been granted in respect of that subdivision.

1995 c24 s95

Application for subdivision approval

653(1) An application to a subdivision authority for subdivision approval

(a) must be in accordance with the subdivision and development regulations, and

(b) must include a proposed plan of subdivision or other instrument that describes the subdivision.

(2) If a subdivision application includes the signed consent of the applicant to the municipality or its delegate carrying out an inspection, at a reasonable time, of the land that is the subject of the application, a notice of inspection is not required to be given under section 542(1).

(2.1) On receipt of an application, the subdivision authority must, in accordance with section 653.1, determine whether the application is complete.

(3) On receipt of an acknowledgment under section 653.1(5) or (7) that the application for subdivision approval is complete, or if the application is deemed to be complete under section 653.1(4), the subdivision authority must

(a) give a copy of the application to the Government departments, persons and local authorities required by the subdivision and development regulations, and

(b) give notice of the application to owners of adjacent land.

(4) Repealed 2016 c24 s107.

(4.1) Despite subsection (3)(b), a subdivision authority is not required to give notice to owners of adjacent lands if the land that is the subject of the application is contained within an area structure plan or a conceptual scheme and a public hearing has been held with respect to that plan or scheme.

(4.2) A notice under subsection (3)(b) must be given by at least one of the following methods:

(a) mailing the notice to each owner of adjacent land;

(b) posting the notice on the land that is the subject of the application;

(c) publishing a notice in a newspaper that has general circulation in the municipality that contains the land that is the subject of the application.

(4.3) A notice under subsection (3)(b) must include

(a) the municipal address, if any, and the legal address of the parcel of land, and

(b) a map showing the location of the parcel of land.

(4.4) Repealed 2020 c39 s10(36).

(5) A notice under subsection (3)(b) must describe the nature of the application, the method of obtaining further information about the application and the manner in which and time within which written submissions may be made for the consideration of the subdivision authority.

(6) When considering an application under this section, a subdivision authority is not required to hold a hearing.

(6.1) For the purposes of this section,

(a) "conceptual scheme" means a conceptual scheme adopted by the municipality that

(i) relates a subdivision application to the future subdivision and development of adjacent areas, and

(ii) has been referred to the persons to whom the subdivision authority must send a copy of the complete application for subdivision pursuant to the subdivision and development regulations;

(b) "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

(7) Repealed 1996 c30 s60.

RSA 2000 cM-26 s653;2016 c24 s107;2020 c39 s10(36)

Subdivision applications

653.1(1) A subdivision authority must, within 20 days after the receipt of an application for subdivision approval under section 653(1), determine whether the application is complete.

(2) An application is complete if, in the opinion of the subdivision authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the subdivision authority.

(4) If the subdivision authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a subdivision authority determines that the application is complete, the subdivision authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the subdivision authority determines that the application is incomplete, the subdivision authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the subdivision authority in order for the application to be considered complete.

(7) If the subdivision authority determines that the information and documents submitted under subsection (6) are complete, the subdivision authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the subdivision authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the subdivision authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the subdivision authority may request additional information or documentation from the applicant that the subdivision authority considers necessary to review the application.

(11) Repealed 2020 c39 s10(37).

2016 c24 s108;2020 c39 s10(37)

Approval of application

654(1) A subdivision authority must not approve an application for subdivision approval unless

(a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,

(b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,

(c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and

(d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.

(1.1) Repealed 2018 c11 s13.

(1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.

(2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,

(a) the proposed subdivision would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.

(3) A subdivision authority may approve or refuse an application for subdivision approval.

RSA 2000 cM-26 s654;2016 c24 s109;2018 c11 s13

Conditions of subdivision approval

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

(a) any conditions to ensure that this Part, including section 618.3(1), and the statutory plans and land use bylaws and the regulations under this Part affecting the land proposed to be subdivided are complied with;

(b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:

(i) to construct or pay for the construction of a road required to give access to the subdivision;

(ii) to construct or pay for the construction of

(A) a pedestrian walkway system to serve the subdivision, or

(B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision,

or both;

(iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;

(iv) to construct or pay for the construction of

(A) off-street or other parking facilities, and

(B) loading and unloading facilities;

(v) to pay an off-site levy or redevelopment levy imposed by bylaw;

(vi) to give security to ensure that the terms of the agreement under this section are carried out.

(2) A municipality may register a caveat under the *Land Titles Act* in respect of an agreement under subsection (1)(b) against the certificate of title for the parcel of land that is the subject of the subdivision.

(3) If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the agreement has been complied with.

(4) Where a condition on a subdivision approval has, prior to the coming into force of this subsection, required the applicant to install a public utility or pay an amount for a public utility referred to in subsection (1)(b)(iii), that condition is deemed to have been validly imposed, whether or not the public utility was located on the land that was the subject of the subdivision approval.

RSA 2000 cM-26 s655;2009 cA-26.8 s83;2015 c8 s71; 2020 c39 s10(38)

Decision

656(1) A decision of a subdivision authority must be given in writing to the applicant and to the Government departments, persons and local authorities to which the subdivision authority is required by the subdivision and development regulations to give a copy of the application.

(2) A decision of a subdivision authority must state

(a) whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal, and

(b) if an application for subdivision approval is refused, the reasons for the refusal.

(3) If an application for subdivision approval is refused, the subdivision authority may refuse to accept for consideration, with respect to the same land or part of the same land, a further application for subdivision approval submitted to it within the 6-month period after the date of the subdivision authority's decision to refuse the application.

(4) Subsection (3) does not apply in the case of an application that was deemed to be refused under section 653.1(8).

RSA 2000 cM-26 s656;2016 c24 s111;2018 c11 s13; 2020 cL-2.3 s24(41)

Subdivision registration

657(1) An applicant for subdivision approval must submit to the subdivision authority the plan of subdivision or other instrument that effects the subdivision within one year from the latest of the following dates:

(a) the date on which the subdivision approval is given to the application;

(b) if there is an appeal to the subdivision and development appeal board or the Land and Property Rights Tribunal, the date of the decision of the appeal board or the Tribunal, as the case may be, or the date on which the appeal is discontinued;

(c) if there is an appeal to the Court of Appeal under section 688, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.

(2) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval and that any conditions imposed have been met, the subdivision authority must endorse the plan or other instrument in accordance with the subdivision and development regulations.

(3) On being satisfied that a plan of subdivision or other instrument complies with a subdivision approval but conditions to which the approval is subject have not been met, a subdivision authority may endorse the plan or other instrument in accordance with the subdivision and development regulations if the subdivision authority is satisfied that the conditions will be met.

(4) If the plan of subdivision or other instrument is not submitted to the subdivision authority within the time prescribed by subsection (1) or any longer period authorized by the council, the subdivision approval is void.

(5) If the plan of subdivision or other instrument is not registered in a land titles office within one year after the date on which it is endorsed pursuant to this section or within the extended period prescribed under subsection (6), the subdivision approval of the plan or instrument and the endorsement are void and the plan or instrument may not be accepted by a Registrar for registration.

(6) The council may grant one or more extensions of

(a) the one-year period referred to in subsection (1), or

(b) the one-year period referred to in subsection (5),

whether or not the time period under those subsections has expired.

RSA 2000 cM-26 s657;2020 cL-2.3 s24(33);2020 c39 s10(39)

Cancellation of plan of subdivision

658(1) On the application of one or more owners of a parcel of land in a plan of subdivision, a council may by bylaw order the plan cancelled, in whole or in part.

(2) A council may pass a bylaw under subsection (1) only with the consent of

(a) the owners of the parcel of land in the plan of subdivision,

(b) every person shown on the certificate of title of the land in the plan of subdivision as having an estate or interest in it, and

(c) the Crown in right of Alberta, if the plan of subdivision shows a highway or road or other right of way vested in the Crown for which no certificate of title has been issued.

(3) A plan cancellation may not be effected only or primarily for the purpose of disposing of reserves.

(3.1) If all of a plan is cancelled, deferred reserve caveats and environmental reserve easements are also cancelled.

(4) If all reserve land has been cancelled from a plan of subdivision, the resulting parcel of land, if it is subsequently subdivided, is subject to Division 8.

(5) If a plan is cancelled in part, a deferred reserve caveat may be placed against the consolidated certificate of title reflecting any reserve land that was cancelled and that will be owing if the parcel is subsequently subdivided.

RSA 2000 cM-26 s658;2016 c24 s112

Collection of taxes

659 When a plan of subdivision or part of it has been cancelled, all taxes, assessments or rates in arrears or due on the separate lots or blocks within the area of which the plan has been cancelled become taxes, assessments or rates on or in respect of the area, and all the remedies for the enforcement and collection of taxes, assessments and rates formerly applicable for the recovery of the taxes, assessments or rates on the separate lots or blocks apply as if the taxes, assessments or rates had been levied against the whole area of the cancelled plan.

1995 c24 s95

Cancellation registered

660 On receipt of a copy of a bylaw under section 658 and on payment of the applicable fees, the Registrar must

(a) cancel the plan of subdivision in whole or in part in accordance with the bylaw,

(b) cancel the certificate of title issued according to the original plan and issue any new certificates of title required by the bylaw, and

(c) make any other cancellations and registrations and do all things necessary to give effect to the bylaw.

1995 c24 s95

Division 8
Reserve Land, Land for Roads and Utilities

Land dedication

661 The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,

(a) to the Crown in right of Alberta or a municipality, land for roads and public utilities,

(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and

(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,

as required by the subdivision authority pursuant to this Division.

RSA 2000 cM-26 s661;2008 c37 s11;2016 c24 s113

Land for conservation reserve

661.1 The owner of a parcel of land that is the subject of a proposed subdivision must provide to a municipality land for conservation reserve as required by the subdivision authority pursuant to this Division.

2016 c24 s114

Roads, utilities, etc.

662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.

(2) The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.

(3) If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

1995 c24 s95

Reserves not required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if

(a) one lot is to be created from a quarter section of land,

(b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,

(c) the land to be subdivided is 0.8 hectares or less, or

(d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

1995 c24 s95;1996 c30 s62

Environmental reserve

664(1) Subject to section 663 and subsection (2), a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

(a) a swamp, gully, ravine, coulee or natural drainage course,

(b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or

(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water.

(1.1) A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:

(a) to preserve the natural features of land referred to in subsection (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved;

(b) to prevent pollution of the land or of the bed and shore of an adjacent body of water;

(c) to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;

(d) to prevent development of the land where, in the opinion of the subdivision authority, the natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

(1.2) For the purposes of subsections (1)(c) and (1.1)(b) and (c), "bed and shore" means the natural bed and shore as determined under the *Surveys Act*.

(2) If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.

(3) The environmental reserve easement

(a) must identify which part of the parcel of land the easement applies to,

(b) must require that land that is subject to the easement remain in a natural state as if it were owned by the municipality, whether or not the municipality has an interest in land that would be benefitted by the easement,

(c) runs with the land on any disposition of the land,

(d) constitutes an interest in land in the municipality, and

(e) may be enforced by the municipality.

(4) An environmental reserve easement does not lapse by reason only of

(a) non-enforcement of it,

(b) the use of the land that is the subject of the easement for a purpose that is inconsistent with the purposes of the easement, or

(c) a change in the use of land that surrounds or is adjacent to the land that is the subject of the easement.

(5) When an easement is presented for registration under subsection (2), the Registrar must endorse a memorandum of the

environmental reserve easement on any certificate of title relating to the land.

(6) Despite section 48(4) of the *Land Titles Act*, an easement registered under subsection (2) may be removed only pursuant to section 658(3.1).

(7) An environmental reserve easement is deemed to be a condition or covenant for the purposes of section 48(4) and (6) of the *Land Titles Act*.

(8) Subject to subsection (7), this section applies despite section 48 of the *Land Titles Act*.

(9) A caveat registered under this section prior to April 30, 1998 is deemed to be an environmental reserve easement registered under this section.

RSA 2000 cM-26 s664;2016 c24 s115;2023 c9 s19(20)

Agreement respecting environmental reserve

664.1(1) In this section, "subdivision approval application" means an application under section 653 for approval to subdivide a parcel of land referred to in subsection (2).

(2) A municipality and an owner of a parcel of land may, before a subdivision approval application is made or after it is made but before it is decided, enter into a written agreement

(a) providing that the owner will not be required to provide any part of the parcel of land to the municipality as environmental reserve as a condition of subdivision approval, or

(b) providing that the owner will be required to provide part of the parcel of land to the municipality as environmental reserve as a condition of subdivision approval, and specifying the boundaries of that part.

(3) Where the agreement provides that the owner will not be required to provide any part of the parcel of land to the municipality as environmental reserve, the subdivision authority must not require the owner to provide any part of the parcel as environmental reserve as a condition of approving a subdivision approval application.

(4) Where the agreement specifies the boundaries of the part of the parcel of land that the owner will be required to provide to the municipality as environmental reserve, the subdivision authority must not require the owner to provide any other part of the parcel

as environmental reserve as a condition of approving a subdivision approval application.

(5) Subsections (3) and (4) do not apply on a subdivision approval application where either party to the agreement demonstrates that a material change affecting the parcel of land occurred after the agreement was made.

2016 c24 s116

Conservation reserve

664.2(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land to the municipality as conservation reserve if

(a) in the opinion of the subdivision authority, the land has environmentally significant features,

(b) the land is not land that could be required to be provided as environmental reserve,

(c) the purpose of taking the conservation reserve is to enable the municipality to protect and conserve the land, and

(d) the taking of the land as conservation reserve is consistent with the municipality's municipal development plan and area structure plan.

(2) Within 30 days after the Registrar issues a new certificate of title under section 665(2) for a conservation reserve, the municipality must pay compensation to the landowner in an amount equal to the market value of the land at the time the application for subdivision approval was received by the subdivision authority.

(3) If the municipality and the landowner disagree on the market value of the land, the matter must be determined by the Land and Property Rights Tribunal.

2016 c24 s116;2017 c13 s2(19);2020 cL-2.3 s24(40)

Designation of municipal land

665(1) A council may by bylaw require that a parcel of land or a part of a parcel of land that it owns or that it is in the process of acquiring be designated as municipal reserve, school reserve, municipal and school reserve, environmental reserve, conservation reserve or public utility lot.

(2) Subject to subsection (3), on receipt of a copy of a bylaw under this section and the applicable fees, the Registrar must do all things necessary to give effect to the order, including cancelling the

existing certificate of title and issuing a new certificate of title for each newly created parcel of land with the designation of

(a) municipal reserve, which must be identified by a number suffixed by the letters "MR",

(b) public utility lot, which must be identified by a number suffixed by the letters "PUL",

(c) environmental reserve, which must be identified by a number suffixed by the letters "ER",

(c.1) conservation reserve, which must be identified by a number suffixed by the letters "CR",

(d) school reserve, which must be identified by a number suffixed by the letters "SR",

(e) municipal and school reserve, which must be identified by a number suffixed by the letters "MSR", or

(f) a lot, which must be identified by a number.

(3) The certificate of title for a municipal reserve, school reserve, municipal and school reserve, environmental reserve, conservation reserve or public utility lot under this section must be free of all encumbrances, as defined in the *Land Titles Act*.

(4) For greater certainty, where a bylaw of the council requires that land be designated as environmental reserve, the designation becomes effective on the day the Registrar issues a new certificate of title for the land under subsection (2)(c).

RSA 2000 cM-26 s665;2016 c24 s117;2019 c22 s10(22)

Municipal and school reserves

666(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision

(a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,

(b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or

(c) to provide any combination of land or money referred to in clauses (a) and (b).

(2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the

municipal development plan, which may not exceed 10% of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3) The total amount of money that may be required to be provided under subsection (1) may not exceed 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3.1) For greater certainty, for the purposes of calculating the 10% under subsection (2) or (3), the parcel of land includes any land required to be provided under section 662.

(4) When a combination of land and money is required to be provided, the sum of

(a) the percentage of land required under subsection (2), and

(b) the percentage of the appraised market value of the land required under subsection (3)

may not exceed 10% or a lesser percentage set out in the municipal development plan.

RSA 2000 cM-26 s666;2016 c24 s118

Money in place of municipal, school reserve

667(1) If money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the applicant must provide

(a) a market value appraisal of the existing parcel of land as of a specified date occurring within the 35-day period following the date on which the application for subdivision approval is made

(i) as if the use proposed for the land that is the subject of the proposed subdivision conforms with any use prescribed in a statutory plan or land use bylaw for that land, and

(ii) on the basis of what might be expected to be realized if the land were in an unsubdivided state and sold in the open market by a willing seller to a willing buyer on the date on which the appraisal is made,

or

(b) if the applicant and the subdivision authority agree, a land value based on a method other than that described in clause (a).

(2) If money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the subdivision authority must specify the amount of money required to be provided at the same time that subdivision approval is given.

1995 c24 s95

668 Repealed 2020 c39 s10(40).

Deferment of municipal and school reserves

669(1) Despite sections 661(b) and 666, instead of requiring municipal reserve, school reserve or municipal and school reserve or money in place of any of them, a subdivision authority may direct that the requirement to provide all or part of those reserves be deferred against

(a) the remainder of the parcel that is the subject of the proposed subdivision approval, or

(b) other land of the person applying for subdivision approval that is within the same municipality as that parcel of land,

or both.

(2) If a deferment is directed under subsection (1), the subdivision authority must file a caveat in a land titles office against the title of the land to which the direction relates.

(3) The direction for a deferment under subsection (1) must

(a) state the name of the applicant for subdivision approval,

(b) describe the land that is the subject of the application for subdivision approval,

(c) describe the land to which the deferment relates,

(d) state the area of the land referred to in clause (b), and

(e) state whether the deferment is in respect of municipal reserve, school reserve or municipal and school reserve.

(4) If an application for subdivision approval is made in respect of land against the title of which is filed a deferred reserve caveat under this section or a former Act, the subdivision authority may, in addition to requiring municipal reserve, school reserve or

municipal and school reserve to be provided in accordance with this Division or a former Act, require to be provided all or part of the reserve land in respect of which a deferment was directed or required under this section or a former Act.

(5) If deferred reserve is provided in accordance with subsection (4), the caveat must be discharged or amended accordingly.

(6) If a deferred reserve caveat was registered in a land titles office under a former Act in respect of land in respect of which under section 663 no reserve land could be required to be provided, the registered owner may apply to the Registrar to endorse the certificate of title with a memorandum cancelling the registration of the caveat.

(7) On being satisfied that subsection (6) applies to the deferred reserve caveat, the Registrar must endorse a memorandum on the certificate of title cancelling the registration of the caveat.

1995 c24 s95;1996 c30 s64

Allocation of municipal and school reserve

670(1) When reserve land is required to be provided, the subdivision authority must specify the amount, type and location of reserve land that is to be provided, regardless of whether money is also required to be provided, and allocate the municipal reserve, school reserve and municipal and school reserve between the municipality and each school board concerned as joint owners or as separate owners

(a) in accordance with an agreement made between the municipality and the school boards, or

(b) in the absence of an agreement, in accordance with the needs of each of them as those needs are determined by the subdivision authority.

(2) When money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the subdivision authority must allocate the money between the municipality and each school board concerned either jointly or separately

(a) in accordance with an agreement made between the municipality and the school boards, or

(b) in the absence of an agreement, in accordance with the needs of each of them as determined by the subdivision authority.

(3) When a combination of land and money is required to be provided, the subdivision authority must

(a) specify the amount, type and location of reserve land that is to be provided, and

(b) allocate the municipal reserve, school reserve or municipal and school reserve or money in place of any or all of them between the municipality and each school board concerned

in accordance with an agreement made between the municipality and the school boards, or in the absence of an agreement, in accordance with the needs of the municipality and the school boards as determined by the subdivision authority.

(4) A decision concerning the allocation of municipal reserve, school reserve, municipal and school reserve or money in place of any or all of them must be made before an application for subdivision approval is granted.

RSA 2000 cM-26 s670;2008 c37 ss10,11

Joint use and planning agreements

670.1(1) Where on the coming into force of this section a school board is operating within the municipal boundaries of a municipality, the municipality must, within 3 years after this section comes into force, enter into an agreement under this section with the school board.

(2) Where after the coming into force of this section a school board commences operating within the municipal boundaries of a municipality, the municipality must, within 3 years after the school board commences operating in the municipality, enter into an agreement under this section with the school board.

(3) An agreement under this section must contain provisions

(a) establishing a process for discussing matters relating to

(i) the planning, development and use of school sites on municipal reserves, school reserves and municipal and school reserves in the municipality,

(ii) transfers under section 672 or 673 of municipal reserves, school reserves and municipal and school reserves in the municipality,

(iii) disposal of school sites,

(iv) the servicing of school sites on municipal reserves, school reserves and municipal and school reserves in the municipality, and

(v) the use of school facilities, municipal facilities and playing fields on municipal reserves, school reserves and municipal and school reserves in the municipality, including matters relating to the maintenance of the facilities and fields and the payment of fees and other liabilities associated with them,

(b) respecting how the municipality and the school board will work collaboratively,

(c) establishing a process for resolving disputes, and

(d) establishing a time frame for regular review of the agreement,

and may, subject to this Act, the regulations, the *Education Act* and the regulations under that Act, contain any other provisions the parties consider necessary or advisable.

(4) More than one municipality may be a party to a joint use and planning agreement.

(5) A joint use and planning agreement may be amended from time to time as the parties consider necessary or advisable.

2019 c22 s10

Division 9
Use and Disposal of Reserve Land

Use of reserve land, money

671(1) Subject to section 676(1), environmental reserve must be left in its natural state or be used as a public park.

(2) Municipal reserve, school reserve or municipal and school reserve may be used by a municipality or school board or by them jointly only for any or all of the following purposes:

(a) a public park;

(b) a public recreation area;

(c) school board purposes;

(d) to separate areas of land that are used for different purposes.

(2.1) Community services reserve may be used by a municipality for any or all of the following purposes:

(a) a public library;

(b) a police station, a fire station or an ambulance services facility, or a combination of them;

(c) a non-profit day care facility;

(d) a non-profit senior citizens facility;

(e) a non-profit special needs facility;

(f) a municipal facility providing service directly to the public;

(g) affordable housing.

(3) Despite that land is designated as municipal reserve, school reserve or municipal and school reserve, the municipality and one or more school boards may enter into any agreement they consider necessary with respect to a use referred to in subsection (2) or for any matter related to the use.

(4) Money provided in place of municipal reserve, school reserve or municipal and school reserve and the interest earned on that money

(a) must be accounted for separately, and

(b) may be used only for any or all of the purposes referred to in subsection (2).

(5) For the purposes of subsection (2)(c), "school board purposes" means those purposes as determined by the Minister of Education under subsection (6).

(6) The Minister of Education may, by order, determine school board purposes for the purposes of subsection (5).

(7) An order made under subsection (6) is exempt from the application of the *Regulations Act*.

(8) The Minister of Education must publish in The Alberta Gazette a notice of any order made under subsection (6) and information about where copies of the order may be obtained or are available to the public.

RSA 2000 cM-26 s671;2008 c37 ss5,10,11

Transfer of school and other reserves to municipality

672(1) If a school board holds an interest in a school reserve, municipal and school reserve or municipal reserve under this Part or the former Act and declares that the reserve is surplus to the school board's needs, the school board must transfer its interest in the land to the municipality where the reserve is located, for the consideration agreed on between them.

(2) On the registration in a land titles office of a transfer of land or an interest in land under subsection (1), the Registrar must designate the land as municipal reserve.

(3) Despite subsection (2), the council of a municipality may by bylaw require the school building footprint of the school reserve, municipal and school reserve or municipal reserve referred to in subsection (1) to be designated as community services reserve, in which case the Registrar, on receipt of a copy of the bylaw and a survey plan on which the school building footprint is outlined, must

(a) issue a new certificate of title for the school building footprint with the designation of community services reserve, which must be identified by a number suffixed by the letters "CSR", and

(b) issue a new certificate of title for the remaining land with the designation of municipal reserve, which must be identified in accordance with section 665(2)(a).

(4) The certificate of title for a community services reserve or a municipal reserve under this section must be free of all encumbrances as defined in the *Land Titles Act*.

(5) In subsection (3), "school building footprint" means

(a) the portion of the reserve on which a school building and accompanying parking lot is situated, or

(b) if no school building is situated on the reserve, the area of land on which a school and accompanying parking lot would be located if they had been built as determined by the municipality.

RSA 2000 cM-26 s672;2008 c37 s6;2016 c24 s119

Transfer to school authority

673(1) A municipality may transfer municipal reserve or its interest in municipal and school reserve to a school board.

(2) On the registration in a land titles office of a transfer of land or an interest in land under subsection (1), the Registrar must designate the land as school reserve.

(3) If a transfer of land or an interest in land is effected pursuant to this section, the requirements of sections 674 and 675 do not apply to the transfer.

RSA 2000 cM-26 s673;2008 c37 s10

Requirement for hearing

674(1) Before any of the following occurs, a public hearing must be held in accordance with section 216.4 and advertised in accordance with section 606:

(a) the sale, lease or other disposal of

(i) municipal reserve, community services reserve or municipal and school reserve by a council, or

(ii) municipal and school reserve by a council and a school board;

(b) the making of a bylaw requiring the school building footprint of a school reserve, municipal and school reserve or municipal reserve referred to in section 672(1) to be designated as community services reserve;

(c) the disposal of conservation reserve by a municipality as permitted by section 674.1.

(2) Section 70 does not apply to a sale, lease or other disposal referred to in subsection (1)(a).

(3) In addition to the advertising requirement in subsection (1), notices containing the information required under section 606 must be posted on or near the municipal reserve, school reserve, municipal and school reserve or community services reserve that is the subject of the hearing.

RSA 2000 cM-26 s674;2008 c37 ss7,10;2020 c39 s10(41); 2022 c16 s9(83)

Disposal of conservation reserve

674.1(1) Subject to this section, a municipality must not sell, lease or otherwise dispose of conservation reserve and must ensure that the land remains in its natural state.

(2) A municipality may dispose of conservation reserve if all of the features referred to in section 664.2(1)(a) are wholly or substantially destroyed by fire, flood or another event beyond the municipality's control with the result that, in the opinion of

council, there is no remaining purpose in protecting or conserving the land.

(3) Repealed 2020 c39 s10(42).

(4) Despite subsection (2),

(a) if a municipality receives a notice under section 103 of a proposed amalgamation, the municipality must not dispose of conservation reserve lying within the municipality until after the report under section 106 is submitted to the Minister and the amalgamation proceedings, if any, are complete, and

(b) if a municipality receives a notice under section 116 of a proposed annexation of land, the municipality must not dispose of conservation reserve lying within the proposed annexation area until after the report under section 118 is submitted to the Land and Property Rights Tribunal and the annexation proceedings, if any, are complete.

2016 c24 s120;2020 cL-2.3 24(41);2020 c39 s10(42)

674.2 Repealed 2020 c39 s10(43).

Removal of designation

675(1) After taking into consideration the representations made at a public hearing under section 674(1),

(a) a council may direct a designated officer to notify the Registrar that the provisions of this Division have been complied with and request the Registrar to remove a designation of

(i) municipal reserve,

(ii) community services reserve, or

(ii) conservation reserve,

and

(b) a council and a school board may direct a designated officer to notify the Registrar that the provisions of this Division have been complied with and request the Registrar to remove a designation of municipal and school reserve.

(2) If the Registrar is satisfied that this Part has been complied with, the Registrar must remove the designation in accordance with the request made under subsection (1).

(3) On removal of the designation, the municipality, or the municipality and the school board, may sell, lease or otherwise dispose of the land, but the proceeds from the sale, lease or other disposition may only be used

(a) in the case of a municipal reserve or a municipal and school reserve, for any or all of the purposes referred to in section 671(2) or for any matter connected to those purposes,

(b) in the case of a community services reserve, for any or all of the purposes referred to in section 671(2.1) or for any matter connected to those purposes, and

(c) in the case of a conservation reserve, for the purpose of enabling the municipality to protect and conserve land that, in the opinion of council, has environmentally significant features or for a matter connected to that purpose.

RSA 2000 cM-26 s675;2008 c37 ss8,10;2020 c39 s10(44)

Changes to environmental reserve's use or boundaries

676(1) A council may by bylaw, after giving notice in accordance with section 606 and holding a public hearing in accordance with section 216.4,

(a) use an environmental reserve for a purpose not specified in section 671(1),

(b) transfer an environmental reserve to the Crown or an agent of the Crown for consideration, as agreed,

(c) lease or dispose of an environmental reserve other than by a sale for a term of not more than 3 years, and

(d) change the boundaries of an environmental reserve or environmental reserve easement in order to correct an omission, error or other defect in the certificate of title, or to rectify an encroachment problem or other concern.

(2) A council may include terms and conditions in a bylaw under subsection (1).

(3) Any proceeds from a lease or other disposition under subsection (1) may be used only to provide land for any or all of the purposes referred to in section 671(2).

(4) On receipt of a bylaw under subsection (1)(b) or (d), the Registrar must cancel the existing certificates of title or amend an environmental reserve easement affected by the bylaw and issue any new certificates of title required by the bylaw.

RSA 2000 cM-26 s676;2022 c16 s9(83)

Road, etc., over reserve land

677 Despite section 671, a municipality or a municipality and a school board may authorize

(a) the construction, installation and maintenance, or any of them, of a roadway, public utility, pipeline as defined in the *Oil and Gas Conservation Act* or transmission line as defined in the *Hydro and Electric Energy Act* on, in, over or under reserve land, or

(b) the maintenance and protection of reserve land,

if the interests of the public will not be adversely affected.

RSA 2000 cM-26 s677;2008 c37 s10

Division 10
Subdivision and Development Appeals

Appeal board bylaw

677.1(1) A bylaw or agreement under section 627 establishing a subdivision and development appeal board must

(a) provide for the applicable matters described in section 145(3), and

(b) prescribe the functions and duties of the subdivision and development appeal board.

(2) A bylaw or agreement referred to in subsection (1) may provide

(a) for the members of the subdivision and development appeal board to meet in panels,

(b) for 2 or more panels to meet simultaneously,

(c) that the panels have any or all the powers, duties and responsibilities of the subdivision and development appeal board, and

(d) that a decision of a panel is a decision of the subdivision and development appeal board.

2020 c39 s10(45);2023 c9 s19(21)

Subdivision Appeals

Appeals

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

(a) by the applicant for the approval,

(b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,

(c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or

(d) by a school board with respect to

(i) the allocation of municipal reserve and school reserve or money in place of the reserve,

(ii) the location of school reserve allocated to it, or

(iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

(a) with the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the *Public Lands Act*,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission, or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

(3) For the purpose of subsection (2), the date of receipt of the decision is deemed to be 7 days from the date the decision is mailed.

(4) A notice of appeal under this section must contain

(a) the legal description and municipal location, if applicable, of the land proposed to be subdivided, and

(b) the reasons for appeal, including the issues in the decision or the conditions imposed in the approval that are the subject of the appeal.

(5) If the applicant files a notice of appeal within 14 days after receipt of the written decision or the deemed refusal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board.

RSA 2000 cM-26 s678;2008 c37 s10;2016 c24 s121;
2020 cL-2.3 s24(41);2020 c39 s10(46);2022 c21 s57

Notice of hearing

679(1) The board hearing an appeal under section 678 must give at least 5 days' written notice of the hearing to

(a) the applicant for subdivision approval,

(b) the subdivision authority that made the decision,

(c) if land that is the subject of the application is adjacent to the boundaries of another municipality, that municipality,

(d) any school board to whom the application was referred, and

(e) repealed 1996 c30 s66,

(f) every Government department that was given a copy of the application pursuant to the subdivision and development regulations.

(2) The board hearing an appeal under section 678 must give at least 5 days' notice of the hearing in accordance with subsection (3) to owners of adjacent land.

(3) A notice under subsection (2) must be given in accordance with section 653(4.2).

(3.1) Subsections (1)(c), (d) and (f) and (2) do not apply to an appeal of the deemed refusal of an application under section 653.1(8).

(4) For the purposes of this section, "owner" has the same meaning as in section 653.

RSA 2000 cM-26 s679;2008 c37 s10;2016 c24 s122;
2020 c39 s10(47)

Hearing and decision

680(1) The board hearing an appeal under section 678 is not required to hear from any person or entity other than

(a) a person or entity that was notified pursuant to section 679(1), and

(b) each owner of adjacent land to the land that is the subject of the appeal,

or a person acting on any of those persons' behalf.

(1.1) For the purposes of subsection (1), "owner" has the same meaning as in section 653.

(2) In determining an appeal, the board hearing the appeal

(a) repealed 2020 c39 s10(48);

(a.1) must have regard to any statutory plan;

(b) must conform with the uses of land referred to in a land use bylaw;

(c) must be consistent with the land use policies;

(d) must have regard to but is not bound by the subdivision and development regulations;

(e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;

(f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

(2.1) In the case of an appeal of the deemed refusal of an application under section 653.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 653.1(2).

(2.2) Subsection (1)(b) does not apply to an appeal of the deemed refusal of an application under section 653.1(8).

(3) A subdivision and development appeal board hearing an appeal under section 678 must hold the hearing within 30 days after receiving a notice of appeal and give a written decision together with the reasons for the decision within 15 days after concluding the hearing.

(4) The Land and Property Rights Tribunal hearing an appeal under section 678 must hold the hearing within 60 days after receiving a notice of appeal and give a written decision together with the reasons for the decision within 15 days after concluding the hearing.

RSA 2000 cM-26 s680;2009 cA-26.8 s83;2016 c24 s123;
2020 cL-2.3 s24(41);2020 c39 s10(48)

Failure to make decision

681(1) If a subdivision authority fails or refuses to make a decision on an application for subdivision approval within the time prescribed by the subdivision and development regulations, the applicant may, within 14 days after the expiration of the time prescribed,

(a) treat the application as refused and appeal it in accordance with section 678, or

(b) enter into a written agreement with the subdivision authority to extend the time prescribed in the subdivision and development regulations.

(2) If an agreement to extend is entered into pursuant to subsection (1)(b) and the subdivision authority fails or refuses to make a decision within the time prescribed in the agreement, the applicant may, within 14 days after the expiration of the extended period,

treat the application as refused and appeal it in accordance with section 678.

(3) A subdivision authority may not deal with an application for subdivision approval after the expiration of the period of time prescribed in the subdivision and development regulations for making the decision unless an agreement is entered into pursuant to subsection (1)(b).

RSA 2000 cM-26 s681;2015 c8 s72

Endorsement of subdivision plan

682(1) When on an appeal the Land and Property Rights Tribunal or the subdivision and development appeal board approves an application for subdivision approval, the applicant must submit the plan of subdivision or other instrument to the subdivision authority from whom the appeal was made for endorsement by it.

(2) If a subdivision authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it pursuant to subsection (1), the member of the subdivision and development appeal board or Land and Property Rights Tribunal, as the case may be, that heard the appeal who is authorized to endorse the instrument may do so.

RSA 2000 cM-26 s682;2020 cL-2.3 s24(34)

Development Permits

Permit

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

1995 c24 s95

Development applications

683.1(1) A development authority must, within 20 days after the receipt of an application for a development permit, determine whether the application is complete.

(2) An application is complete if, in the opinion of the development authority, the application contains the documents and other information necessary to review the application.

(3) The time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(a).

(4) If the development authority does not make a determination referred to in subsection (1) within the time required under subsection (1) or (3), the application is deemed to be complete.

(5) If a development authority determines that the application is complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(6) If the development authority determines that the application is incomplete, the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application is incomplete and that any outstanding documents and information referred to in the notice must be submitted by a date set out in the notice or a later date agreed on between the applicant and the development authority in order for the application to be considered complete.

(7) If the development authority determines that the information and documents submitted under subsection (6) are complete, the development authority must issue to the applicant an acknowledgment in the form and manner provided for in the land use bylaw that the application is complete.

(8) If the applicant fails to submit all the outstanding information and documents on or before the date referred to in subsection (6), the application is deemed to be refused.

(9) If an application is deemed to be refused under subsection (8), the development authority must issue to the applicant a notice in the form and manner provided for in the land use bylaw that the application has been refused and the reason for the refusal.

(10) Despite that the development authority has issued an acknowledgment under subsection (5) or (7), in the course of reviewing the application, the development authority may request additional information or documentation from the applicant that the development authority considers necessary to review the application.

(11) Repealed 2020 c39 s10(49).

2016 c24 s125;2020 c39 s10(49)

Development Appeals

Permit deemed refused

684(1) The development authority must make a decision on the application for a development permit within 40 days after the receipt by the applicant of an acknowledgment under section

683.1(5) or (7) or, if applicable, in accordance with a land use bylaw made pursuant to section 640.1(b).

(2) A time period referred to in subsection (1) may be extended by an agreement in writing between the applicant and the development authority.

(3) If the development authority does not make a decision referred to in subsection (1) within the time required under subsection (1) or (2), the application is, at the option of the applicant, deemed to be refused.

(4) Section 640(5) does not apply in the case of an application that was deemed to be refused under section 683.1(8).

RSA 2000 cM-26 s684;2016 c24 s126;2018 c11 s13

Grounds for appeal

685(1) If a development authority

(a) fails or refuses to issue a development permit to a person,

(b) issues a development permit subject to conditions, or

(c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).

(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Land and Property Rights Tribunal.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

(a) to the Land and Property Rights Tribunal

(i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application

(A) is within the Green Area as classified by the Minister responsible for the *Public Lands Act*,

(B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,

(C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission, or

(D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Protected Areas or the Minister of Forestry, Parks and Tourism,

or

(ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, to the subdivision and development appeal board.

(3) Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

(4) Despite subsections (1), (2), (2.1) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(b) is made by a development authority, the appeal may only be made to the subdivision and development appeal board and is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

RSA 2000 cM-26 s685;2015 c8 s73;2016 c24 s127;
2020 cL-2.3 s24(41);2020 c39 s10(50);
2022 c16 s9(81);2022 c21 s57

Appeals

686(1) A development appeal is commenced by filing a notice of the appeal, containing reasons, with the board hearing the appeal

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made,

or

(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(1.1) Where a person files a notice of appeal with the wrong board, that board must refer the appeal to the appropriate board and the appropriate board must hear the appeal as if the notice of appeal had been filed with it and it is deemed to have received the notice of appeal from the applicant on the date it receives the notice of appeal from the first board, if

(a) in the case of a person referred to in subsection (1), the person files the notice with the wrong board within 21 days after receipt of the written decision or the deemed refusal, or

(b) in the case of a person referred to in subsection (2), the person files the notice with the wrong board within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

(2) The board hearing an appeal referred to in subsection (1) must hold an appeal hearing within 30 days after receipt of a notice of appeal.

(3) The board hearing an appeal referred to in subsection (1) must give at least 5 days' notice in writing of the hearing

(a) to the appellant,

(b) to the development authority whose order, decision or development permit is the subject of the appeal, and

(c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

(4) The board hearing an appeal referred to in subsection (1) must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including

(a) the application for the development permit, the decision and the notice of appeal, or

(b) the order under section 645.

(4.1) Subsections (1)(b) and (3)(c) do not apply to an appeal of a deemed refusal under section 683.1(8).

(5) In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

RSA 2000 cM-26 s686;2016 c24 s128;2017 c13 s1(65);
2018 c11 s13;2020 c39 s10(51)

Hearing and decision

687(1) At a hearing under section 686, the board hearing the appeal must hear

(a) the appellant or any person acting on behalf of the appellant,

(b) the development authority from whose order, decision or development permit the appeal is made, or a person acting on behalf of the development authority,

(c) any other person who was given notice of the hearing and who wishes to be heard, or a person acting on behalf of that person, and

(d) any other person who claims to be affected by the order, decision or permit and that the subdivision and development appeal board agrees to hear, or a person acting on behalf of that person.

(2) The board hearing the appeal referred to in subsection (1) must give its decision in writing together with reasons for the decision within 15 days after concluding the hearing.

(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

(a) repealed 2020 c39 s10(52);

(a.1) must comply with any applicable land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

(b) must have regard to but is not bound by the subdivision and development regulations;

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

(4) In the case of an appeal of the deemed refusal of an application under section 683.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 683.1(2).

RSA 2000 cM-26 s687;2009 cA-26.8 s83;2015 c8 s74;2017 c21 s28;2018 c11 s13;2020 c39 s10(52)

Court of Appeal

Law, jurisdiction appeals

688(1) An appeal lies to the Court of Appeal on a question of law or jurisdiction with respect to

(a) a decision of the subdivision and development appeal board, and

(b) a decision made by the Land and Property Rights Tribunal

(i) under section 619 respecting whether a proposed statutory plan or land use bylaw amendment is consistent with a licence, permit, approval or other authorization granted under that section,

(ii) under section 648.1 respecting the imposition of an off-site levy or the amount of the levy,

(iii) under section 678(2)(a) respecting a decision of a subdivision authority,

(iii.1) under section 685(2.1)(a) respecting a decision of a development authority, or

(iv) under section 690 respecting an intermunicipal dispute.

(2) An application for permission to appeal must be filed and served within 30 days after the issue of the decision sought to be appealed, and notice of the application for permission to appeal must be given to

(a) the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, and

(b) any other persons that the judge directs.

(2.1) If an applicant makes a written request for materials to the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, for the purposes of the application for permission to appeal under subsection (2), the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be, must provide the materials requested within 14 days from the date on which the written request is served.

(2.2) An applicant's written request under subsection (2.1) must not include a request for a transcript of the hearing, but if a transcript is available and the Court of Appeal is satisfied that the transcript is necessary for the purpose of determining the application, the Court may, on application or on its own motion, direct that the Land and Property Rights Tribunal or the subdivision and development appeal board provide the transcript within the time provided by the Court.

(3) On hearing the application and the representations of those persons who are, in the opinion of the judge, affected by the application, the judge may grant permission to appeal if the judge is of the opinion that the appeal involves a question of law of sufficient importance to merit a further appeal and has a reasonable chance of success.

(4) If a judge grants permission to appeal, the judge may

(a) direct which persons or other bodies must be named as respondents to the appeal,

(b) specify the questions of law or the questions of jurisdiction to be appealed, and

(c) make any order as to the costs of the application that the judge considers appropriate.

(4.1) On permission to appeal being granted by a judge of the Court of Appeal, the appeal must proceed in accordance with the practice and procedure of the Court of Appeal.

(4.2) The notice of appeal must be given to the parties affected by the appeal and to the Land and Property Rights Tribunal or the subdivision and development appeal board, as the case may be.

(4.3) Repealed 2020 c39 s10(53).

(4.4) Within 30 days from the date that permission is granted to appeal a decision of the Land and Property Rights Tribunal or the subdivision and development appeal board, the Land and Property Rights Tribunal or subdivision and development appeal board, as applicable, must forward to the Registrar of the Court of Appeal the transcript, if any, and record of the hearing, its findings and reasons for the decision.

(5) If an appeal is from a decision of a subdivision and development appeal board, the municipality must be given notice of the application for permission to appeal and the board and the municipality

(a) are respondents in the application and, if permission to appeal is granted, in the appeal, and

(b) are entitled to be represented by counsel at the application and, if permission to appeal is granted, at the appeal.

(6) The Land and Property Rights Tribunal

(a) is a respondent in any application for permission to appeal a decision of the Tribunal and, if permission to appeal is granted, in the appeal, and

(b) is entitled to be represented by counsel at any application for permission to appeal a decision of the Tribunal and, if permission to appeal is granted, at the appeal.

RSA 2000 cM-26 s688;2007 c3 s5;2014 c13 s35;2016 c24 s130; 2020 cL-2.3 s24(35);2020 c25 s11;2020 c39 s10(53)

Decision on appeal

689(1) On the hearing of the appeal,

(a) no evidence other than the evidence that was submitted to the Land and Property Rights Tribunal or the subdivision and development appeal board may be admitted, but the Court may draw any inferences

(i) that are not inconsistent with the facts expressly found by the Land and Property Rights Tribunal or the subdivision and development appeal board, and

(ii) that are necessary for determining the question of law or the question of jurisdiction,

and

(b) the Court may confirm, vary, reverse or cancel the decision.

(2) In the event that the Court cancels a decision, the Court must refer the matter back to the Land and Property Rights Tribunal or the subdivision and development appeal board, and the relevant board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or the question of jurisdiction.

(3) No member of the Land and Property Rights Tribunal or a subdivision and development appeal board is liable to costs by reason or in respect of an application for permission to appeal or an appeal under this Act.

(4) If the Court finds that the only ground for appeal established is a defect in form or technical irregularity and that no substantial wrong or miscarriage of justice has occurred, the Court may deny the appeal, confirm the decision of the Land and Property Rights Tribunal or a subdivision and development appeal board despite the defect and order that the decision takes effect from the time and on the terms that the Court considers proper.

RSA 2000 cM-26 s689;2014 c13 s35;2020 cL-2.3 s24(36)

Division 11
Intermunicipal Disputes

Intermunicipal disputes

690(1) A municipality that

(a) is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it,

(b) has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and

(c) has, as soon as practicable after second reading of the bylaw, attempted to use mediation to resolve the matter,

may appeal the matter to the Land and Property Rights Tribunal.

(1.1) An appeal under subsection (1) is to be brought by

(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Land and Property Rights Tribunal, and

(b) giving a copy of the notice of appeal and statutory declaration to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw.

(2) When appealing a matter to the Land and Property Rights Tribunal, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1.1)(b), must, within 30 days, submit to the Land and Property Rights Tribunal and the municipality that filed the notice of appeal a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that if the mediation is not successful a further response will be provided within 30 days of its completion.

(4) When a notice of appeal and statutory declaration are filed under subsection (1.1)(a) with the Land and Property Rights Tribunal, the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the notice of appeal and statutory declaration are filed with the Tribunal under subsection (1.1)(a) until the date the Tribunal makes a decision under subsection (5).

(5) If the Land and Property Rights Tribunal receives a notice of appeal and statutory declaration under subsection (1.1)(a), it must, in accordance with subsection (5.1), decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

(a) dismiss the appeal if it decides that the provision is not detrimental, or

(b) order the adjacent municipality to amend or repeal the provision, if it is of the opinion that the provision is detrimental.

(5.1) In determining under subsection (5) whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal, the Land and Property Rights Tribunal must disregard section 638.

(6) A provision with respect to which the Land and Property Rights Tribunal has made a decision under subsection (5) is,

(a) if the Tribunal has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and

(b) if the Tribunal has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

(6.1) Any decision made by the Land and Property Rights Tribunal under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan under Part 17.1 pertaining to that municipality.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Tribunal under this section.

(8) The Land and Property Rights Tribunal's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

RSA 2000 cM-26 s690;2009 cA-26.8 s83;2013 c17 s5;
2015 c8 s75;2020 cL-2.3 s24(37);2020 c39 s10(54)

Tribunal hearing

691(1) The Land and Property Rights Tribunal, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must

(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and

(b) give a written decision within 30 days after concluding the hearing.

(2) The Land and Property Rights Tribunal is not required to give notice to or hear from any person other than the municipality

making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

RSA 2000 cM-26 s691;2020 cL-2.3 s24(41)

Division 12
Bylaws, Regulations

Planning bylaws

692(1) Before giving second reading to

(a) a proposed bylaw to adopt an intermunicipal development plan,

(b) a proposed bylaw to adopt a municipal development plan,

(c) a proposed bylaw to adopt an area structure plan,

(d) a proposed bylaw to adopt an area redevelopment plan,

(e) a proposed land use bylaw, or

(f) a proposed bylaw amending a statutory plan or land use bylaw referred to in clauses (a) to (e),

a council must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

(2) Despite subsection (1), if a proposed development relates to more than one proposed bylaw referred to in subsection (1), the council may hold a single public hearing.

(3) Despite subsection (1), in the case of a public hearing for a proposed bylaw adopting or amending an intermunicipal development plan,

(a) councils may hold a joint public hearing to which section 184 does not apply, and

(b) municipalities may act jointly to satisfy the advertising requirements of section 606.

(4) In the case of an amendment to a land use bylaw to change the district designation of a parcel of land, the municipality must, in addition to the requirements of subsection (1),

(a) include in the notice described in section 606(2)

(i) the municipal address, if any, and the legal address of the parcel of land, and

(ii) a map showing the location of the parcel of land,

(b) give written notice containing the information described in clause (a) and in section 606(6) to the assessed owner of that parcel of land at the name and address shown on the assessment roll of the municipality, and

(c) give a written notice containing the information described in clause (a) and in section 606(6) to each owner of adjacent land at the name and address shown for each owner on the assessment roll of the municipality.

(5) If the land referred to in subsection (4)(c) is in another municipality, the written notice must be given to that municipality and to each owner of adjacent land at the name and address shown for each owner on the tax roll of that municipality.

(6) Despite subsection (1), a bylaw referred to in subsection (1) may be amended without giving notice or holding a public hearing if the amendment corrects clerical, technical, grammatical or typographical errors and does not materially affect the bylaw in principle or substance.

(6.1) Subsection (1)(f) does not apply in respect of a proposed bylaw amending a statutory plan or land use bylaw to specify the purposes of a community services reserve.

(7) In this section,

(a) "adjacent land" means land that is contiguous to the parcel of land that is being redesignated and includes

(i) land that would be contiguous if not for a highway, road, river or stream, and

(ii) any other land identified in the land use bylaw as adjacent land for the purpose of notifications under this section;

(b) "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

(8) If an ALSA regional plan requires a council to pass a bylaw referred to in this section, the council must

(a) consider whether, in view of the requirement in the ALSA regional plan, consultation is necessary, desirable or beneficial, and

(b) decide whether or not to proceed with consultation.

(9) If a council decides under subsection (8) that consultation is neither necessary nor desirable or would not be beneficial, subsections (1) to (7) do not apply to the council in respect of the bylaw concerned.

RSA 2000 cM-26 s692;2008 c37 s9;2009 cA-26.8 s83; 2022 c16 s9(83)

Airport vicinity regulations

693(1) The Minister may make regulations

(a) establishing airport vicinity protection areas surrounding airports;

(b) controlling, regulating or prohibiting any use and development of land within an airport vicinity protection area.

(2) Unless the contrary is expressed in regulations made under subsection (1), those regulations

(a) operate despite any statutory plan, land use bylaw or other regulations under this Part, and

(b) are binding on any subdivision authority, development authority and subdivision and development appeal board and the Land and Property Rights Tribunal.

(3) If a municipality is affected by a regulation under subsection (1), the municipality must amend the statutory plan relating to that area and its land use bylaw to conform with the regulation.

(4) Section 692 does not apply to an amendment pursuant to subsection (3).

(5) A regulation under subsection (1) may apply generally or specifically in Alberta.

RSA 2000 cM-26 s693;2020 cL-2.3 s24(41);2020 c39 s10(55)

Development in floodways

693.1(1) The Lieutenant Governor in Council may make regulations

(a) controlling, regulating or prohibiting any use or development of land that is located in a floodway within a municipal authority, including, without limitation, regulations specifying the types of developments that are authorized in a floodway;

(b) exempting a municipal authority or class of municipal authorities from the application of all or part of this section or the regulations made under this subsection, or both;

(c) modifying or suspending the application or operation of any provision of this Act for the purposes of giving effect to this section;

(d) defining, or respecting the meaning of, "floodway" for the purposes of this section and the regulations made under this subsection.

(2) Unless the contrary is expressed in regulations made under subsection (1), those regulations

(a) operate despite any statutory plan, land use bylaw or other regulations under this Part, and

(b) are binding on any subdivision authority, development authority and subdivision and development appeal board and the Land and Property Rights Tribunal.

(3) If a municipal authority is affected by a regulation made under subsection (1), the municipal authority must amend any relevant statutory plan and its land use bylaw to conform with the regulation.

(4) Section 692 does not apply to an amendment pursuant to subsection (3).

2013 c21 s2;2020 cL-2.3 s24(41)

Regulations

694(1) The Minister may make regulations

(a) respecting applications for the subdivision and development of land;

(a.1) providing for an alternative period of time for the subdivision authority or the development authority to review the completeness of an application or make a decision on an application under this Part or under the regulations;

(b) respecting subdivision and development standards and requirements;

(b.1) repealed 2019 c22 s10(24);

(c) respecting the information to be contained in a subdivision authority's and a development authority's notice of a decision;

(c.1) repealed 2020 c39 s10(56);

(d) respecting the additional municipal reserve, school reserve or municipal and school reserve that a subdivision authority may require to be provided under this Part;

(e) respecting the records to be kept by a subdivision authority and a development authority;

(f) prescribing the conditions that a subdivision authority and a development authority are permitted to impose when granting subdivision or development approval in addition to those conditions permitted to be imposed under this Part;

(g) conferring or imposing, with or without conditions, any power or duty under the regulations on the Land and Property Rights Tribunal, a subdivision authority or a development authority;

(h) prescribing distances for the purpose of sections 678(2)(a)(i)(B) and 685(2.1)(a)(i)(B);

(h.1) defining "historical site" for the purpose of sections 678(2)(a)(i)(B) and 685(2.1)(a)(i)(B);

(h.2) for the purpose of sections 678(2)(a) and 685(2.1)(a),

(i) removing or modifying the circumstances listed in section 678(2)(a)(i) or 685(2.1)(a)(i) where a notice of appeal may be filed with the Land and Property Rights Tribunal, and

(ii) setting out additional circumstances where a notice of appeal may be filed with the Land and Property Rights Tribunal for the purpose of section 678(2)(a)(ii) or 685(2.1)(a)(ii);

(i) providing, either generally or specifically, that all or part of the regulations under this subsection do not apply to all or part of Alberta.

(2) A regulation under subsection (1)

(a) repealed 2020 c39 s10(56),

(b) may apply generally or specifically in Alberta, and

(c) operates despite any other regulation or bylaw pursuant to this Part.

(3) The *Regulations Act* does not apply to orders under subsection (1)(i).

(4) The Lieutenant Governor in Council may make regulations

(a) respecting additional requirements for the calculation of an off-site levy in a bylaw for a purpose referred to in section 648(2.1) and the maximum amount that a municipality may establish or impose and collect as a redevelopment levy or an off-site levy, either generally or specifically;

(b) respecting additional principles and criteria that must be applied by a municipality when passing an off-site levy bylaw;

(c) respecting the determination of the benefitting area for a purpose under section 648(2) or 648(2.1) and the extent of the anticipated benefit to the future occupants of the land on which the off-site levy is being imposed;

(d) respecting appeals to the Land and Property Rights Tribunal under section 648.1, including, without limitation,

(i) the filing of a notice of an appeal,

(ii) the time within which an appeal may be brought, and

(iii) the process and procedures of an appeal;

(e) respecting transportation infrastructure to connect, or to improve the connection of, municipal roads to provincial highways resulting from a subdivision or development;

(f) respecting intermunicipal off-site levies.

(5) The Lieutenant Governor in Council may make regulations directing a municipality, with or without conditions, to amend its statutory plans and land use bylaw.

(5.1) If the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator or Alberta Utilities Commission grants a licence, permit, approval or other authorization that refers to environmental or physical limitations with respect to the development of land, and regulations are made under section 618(4) with respect to the development of that land, the Lieutenant Governor in Council may make regulations

(a) requiring the developer to apply to the Registrar to register a caveat against the land subject to the limitation referred to in the licence, permit, approval or other authorization, and

(b) respecting the contents of the caveat.

(5.2) When a caveat is presented for registration under subsection (5.1), the Registrar must endorse a memorandum referring to the licence, permit, approval or other authorization on any certificate of title for land to which the limitations described in subsection (5.1) apply.

(5.3) A caveat that is registered pursuant to a regulation under subsection (5.1)(a) runs with the land.

(5.4) Sections 137 and 138 of the *Land Titles Act* do not apply to a caveat referred to in subsections (5.1), (5.2), (5.3) and (5.5).

(5.5) Repealed 2020 c39 s10(56).

(5.6) The Lieutenant Governor in Council may make regulations respecting the exemption of The Town of Canmore, its councillors, officers and employees and volunteers performing duties under the direction of The Town of Canmore or performing duties for organizations established by The Town of Canmore from liability with respect to the development of designated land, as defined in the *Canmore Undermining Review Regulation* (AR 114/97), by persons other than The Town of Canmore, its councillors, officers and employees and volunteers performing duties under the direction of The Town of Canmore or performing duties for organizations established by The Town of Canmore.

(5.7) The *Canmore Undermining Exemption from Liability Regulation* (AR 113/97) is validated, is not repealed in accordance with section 603(2) and is deemed to have been made under this section.

(6), (7) Repealed 2020 c39 s10(56).

RSA 2000 cM-26 s694;2003 c43 s4;2007 cA-37.2 s82(17);
2012 cR-17.3 s95;2016 c24 s131;2017 c13 ss1(66),2(21);
2019 c22 s10(24);2020 cL-2.3 s24(41);2020 c39 s10(56)

Division 13
Transitional

695 and **696** Repealed by Revision.

Zoning caveat

697(1) On September 1, 1995 a zoning caveat prepared and signed by the Director of Town and Rural Planning or the Provincial Planning Director and registered in a land titles office under a former Act ceases to have effect.

(2) On and after September 1, 1995, the owner of a parcel of land that is affected by a caveat referred to in subsection (1) may apply to the Registrar to endorse the certificate of title with a memorandum cancelling the registration of the zoning caveat.

(3) On receipt of an application under subsection (2) and on being satisfied that the caveat is a zoning caveat, the Registrar must cancel the registration of the caveat.

AR 49/2002 s6;2002 c30 s23

698 to **708** Repealed by Revision.

Part 17.1
Growth Management Boards

Interpretation

708.01(1) In this Part and Part 17.2,

(a) "growth management board" means a growth management board established by regulation under section 708.02;

(b) "growth plan" means a plan, if any, required by a regulation under section 708.02;

(c) "growth region" means all or part of the land lying within the boundaries of the participating municipalities of a growth management board that is designated by regulation under section 708.02 as the growth region for that growth management board;

(d) "municipal agreement" means an agreement entered into by a participating municipality;

(e) "participating municipality" means a municipality that is designated by regulation under section 708.02 as a member of the growth management board;

(f) "representative" means a person appointed by a participating municipality under section 708.04 to represent the participating municipality on a growth management board;

(g) "statutory plan" means

(i) a statutory plan as defined in section 616(dd), or

(ii) an amendment to a statutory plan referred to in subclause (i).

(2) A reference in any other Part of this Act to a resolution or bylaw does not include a resolution passed or bylaw made by a growth management board.

2013 c17 s6;2019 c22 s10(25);2020 c39 s10(57)

Purpose

708.011 The purpose of this Part is to provide for integrated and strategic planning for future growth in municipalities.

2013 c17 s6;2016 c24 s132;2020 c39 s10(58)

Division 1
Establishment and Operation of Growth Management Boards

Establishing a growth management board

708.02(1) The Lieutenant Governor in Council may, by regulation

(a) on the recommendation of the Minister on the request of 2 or more municipalities, establish a growth management board in respect of those municipalities, or

(b) on the Lieutenant Governor in Council's own initiative, establish a growth management board and determine the membership of that board.

(1.1) Repealed 2020 c39 s10(59).

(1.2) For the purposes of subsection (1.1), the growth management board established under the *Capital Region Board Regulation* (AR 38/2012) is deemed to be a growth management board for the Edmonton region.

(2) The Lieutenant Governor in Council may make regulations

(a) respecting the mandate of a growth management board;

(b) respecting the membership of a growth management board and the voting rights of the participating municipalities;

(c) respecting the land lying within the boundaries of the participating municipalities that is included in the growth region for the growth management board;

(d) respecting the operations, management and administration of the growth management board;

(e) respecting the appointment of

(i) persons to represent the participating municipalities on the growth management board, and

(ii) a chair of the growth management board and, if necessary, the appointment of an interim chair;

(f) respecting the powers, duties and functions of

(i) the growth management board, and

(ii) the representatives on the growth management board;

(g) respecting the consistency of statutory plans and bylaws with a growth plan including, without limitation, respecting any requirements for the council of a participating municipality to amend statutory plans or bylaws to conform with a growth plan;

(h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Part.

2013 c17 s6;2016 c24 s133;2020 c39 s10(59)

Corporation

708.03(1) A growth management board is a corporation consisting of

(a) the participating municipalities, as represented by the representatives, and

(b) the persons appointed by the Lieutenant Governor in Council under subsection (2).

(2) The Lieutenant Governor in Council may appoint one or more persons to a growth management board to represent the Government of Alberta, but those persons do not have voting rights.

2013 c17 s6

Appointment of representative

708.04 Each participating municipality must, in accordance with the regulation establishing the growth management board of which the participating municipality is a member, appoint a person to represent the participating municipality on the growth management board.

2013 c17 s6

Meetings of growth management board

708.041(1) Subject to subsection (2), sections 197 and 199 apply to the meetings of a growth management board.

(2) Notwithstanding sections 197 and 199, for the purposes of this Part, a reference in sections 197 and 199 to a council, councils and council committees shall be read as a reference to a growth management board, growth management boards and growth management board committees, respectively.

(3) The Minister may make regulations authorizing and respecting the use of electronic, telephonic or other communication methods to conduct meetings of a growth management board.

(4) Regulations under subsection (3) may apply generally or specifically and may modify the requirements in this Part to any extent the Minister considers necessary or appropriate to give effect to the regulations.

2015 c8 s76;2019 c22 s10(26);2020 c39 s10(60);
2022 c16 s9(82)

Powers and duties of growth management board

708.05(1) Except as provided for in the regulations under subsection (3), Divisions 3 and 4 of Part 15.1 and any regulations made under those Divisions apply with any necessary modifications in respect of a growth management board as if it were a regional services commission.

(2) Except as provided for in the regulations under subsection (3), Divisions 3 and 4 of Part 15.1 and any regulations made under those Divisions apply with any necessary modifications in respect of the representatives on a growth management board as if those representatives were directors of a regional services commission.

(3) The Lieutenant Governor in Council may make regulations modifying any provision of Division 3 or 4 of Part 15.1 for the purpose of applying the provision to a growth management board or to the representatives on a growth management board.

2013 c17 s6;2015 c8 s77

Consistency with ALSA regional plans

708.06(1) In carrying out its functions and in exercising its jurisdiction under this Part and other enactments, a growth management board must act in accordance with any applicable ALSA regional plans.

(2) In the event of a conflict or inconsistency between a growth plan prepared by a growth management board and an ALSA

regional plan, the ALSA regional plan prevails to the extent of the conflict or inconsistency.

2013 c17 s6;2020 c39 s10(61)

Conformity with growth plan

708.061(1) Despite any other enactment, but subject to this section, a growth plan prevails in the event of a conflict or inconsistency between the growth plan and a statutory plan, bylaw, resolution or municipal agreement of a participating municipality.

(2) The council of a participating municipality must amend every statutory plan and bylaw as necessary to conform with a growth plan no later than the date specified by the growth management board.

(3) If the council of a participating municipality fails to amend a statutory plan or bylaw in accordance with subsection (2), the statutory plan or bylaw is deemed to be invalid to the extent that it conflicts or is inconsistent with a growth plan.

(4) The Minister may, in respect of a municipal agreement entered into by a participating municipality that conflicts or is inconsistent with a growth plan, require the council of the participating municipality, to the extent possible under the terms of the municipal agreement,

(a) to amend the municipal agreement so that it conforms to the growth plan, or

(b) to terminate the municipal agreement.

(5) If the council of a participating municipality fails to amend or terminate a municipal agreement when required to do so by the Minister under subsection (4), the municipal agreement is deemed to be invalid to the extent that it conflicts or is inconsistent with the growth plan.

(6) Except as otherwise provided in the regulation establishing the growth management board of which the participating municipality is a member, this section applies to statutory plans adopted, bylaws made, resolutions passed and municipal agreements entered into before or after the coming into force of that regulation.

2013 c17 s6;2020 c39 s10(61)

Delegation

708.07(1) Subject to subsection (2), a growth management board may delegate any of its powers, duties or functions under this Part or any other enactment to a committee, official or employee of the growth management board.

(2) A growth management board may not delegate

(a) the power to make bylaws;

(b) the power to borrow money;

(c) the power to adopt budgets;

(d) the power to approve financial statements;

(e) the power to appoint an auditor;

(f) the power to recommend the approval of a growth plan.

2013 c17 s6

Bylaws

708.08(1) A growth management board must, at its inception, establish by bylaw an appeal mechanism or dispute resolution mechanism, or both, for the purposes of resolving disputes arising from actions taken or decisions made by the growth management board.

(1.1) A growth management board may make bylaws respecting its conduct and affairs, including, without limitation, rules and procedures for dealing with matters before the growth management board.

(2) Unless the Minister directs otherwise, a bylaw made under this section does not come into force until it has been approved by the Minister.

(3) The *Regulations Act* does not apply to a bylaw made under this section.

2013 c17 s6;2020 c39 s10(62)

708.09 Repealed 2020 c39 s10(63).

Division 2
Approval and Effective Date of Growth Plan

708.1 to **708.16** Repealed 2020 c39 s10(64).

Information must be provided

708.17(1) A participating municipality must, when required in writing by the growth management board to do so, provide the growth management board with information about the participating municipality that the growth management board requires.

(2) A participating municipality that contravenes subsection (1) is guilty of an offence and liable to a fine of not more than $10 000.

(3) This section does not apply to information acquired by a participating municipality that is subject to any type of legal privilege, including solicitor-client privilege.

2013 c17 s6

Matters before the Land and Property Rights Tribunal

708.18(1) If

(a) a matter relating to land within a growth region is appealed to the Land and Property Rights Tribunal, or

(b) the Land and Property Rights Tribunal is considering an application for an annexation of land involving 2 or more participating municipalities,

the Minister may by order direct the Land and Property Rights Tribunal to defer its consideration of the matter or application.

(2) When the Minister makes an order under subsection (1), all steps in the appeal or application, as the case may be, are stayed as of the date of the order until the Minister gives notice to the Land and Property Rights Tribunal that the appeal or application may be continued.

(3) This section applies to an appeal or application commenced after the coming into force of the regulation establishing the growth management board

(a) in respect of which the land referred to in subsection (1)(a) is part of the growth region, or

(b) of which the participating municipalities referred to in subsection (1)(b) are members.

2013 c17 s6;2020 cL-2.3 s24(38)

Limitation of actions

708.19 No cause of action arises as a result of

(a) the enactment of this Part,

(b) the making of a regulation, bylaw or order under this Part, or

(c) anything done or omitted to be done in accordance with this Part or a regulation, bylaw or order made under this Part.

2013 c17 s6

No remedy

708.2 No costs, compensation or damages are owing or payable to any person, and no remedy, including in contract, restitution or trust, is available to any person in connection with anything referred to in section 708.19.

2013 c17 s6

Proceedings barred

708.21 No proceedings, including any proceedings in contract, restitution or trust, that are based on anything referred to in section 708.19, may be brought or maintained against any person.

2013 c17 s6

No expropriation or injurious affection

708.22 Nothing done or omitted to be done in accordance with this Part or a regulation, bylaw or order made under this Part constitutes an expropriation or injurious affection for the purposes of the *Expropriation Act* or otherwise.

2013 c17 s6

708.23 Repealed 2020 c39 s10(65).

Ministerial orders

708.24(1) In addition to any other orders that the Minister may make under this Part, the Minister may make any one or more of the following orders:

(a) an order providing for transitional matters related to the coming into force of this Part;

(b) an order respecting the requisition of operating and capital costs of a growth management board;

(c) subject to the regulations, an order respecting the management, duties and functions of a growth management board;

(d) an order respecting the records to be kept by a growth management board and the manner in which they are to be kept and respecting which reports are to be submitted to the Minister;

(e) an order providing for any other matter that the Minister considers necessary for carrying out the purposes of this Part.

(2) In addition to the orders the Minister may make under subsection (1), the Minister may by order take any action that a

growth management board may or must take under this Part or a regulation under this Part.

(3) If there is a conflict or inconsistency between an order made by the Minister under subsection (2) and an action taken by a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.

(4) The *Regulations Act* does not apply to an order made under subsection (1)(c) or (d) or (2).

2013 c17 s6

708.25 Repealed 2020 c39 s10(66).

Part 17.2
Intermunicipal Collaboration

Definitions

708.26(1) In this Part,

(a) "arbitrator" means a person who is chosen as an arbitrator under section 708.35;

(b) "framework" means an intermunicipal collaboration framework entered into between 2 or more municipalities in accordance with this Part, and includes any amendments to a framework.

(c) repealed 2020 c39 s10(67).

(2) A reference in this Part to a municipality includes an improvement district.

2016 c24 s134;2019 c22 s10(27);2020 c39 s10(67)

Purpose

708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities

(a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,

(b) to steward scarce resources efficiently in providing local services, and

(c) to ensure municipalities contribute funding to services that benefit their residents.

2016 c24 s134;2019 c22 s10(28)

Division 1
Intermunicipal Collaboration Framework

Requirements for framework

708.28(1) Municipalities that have common boundaries must create a framework with each other by April 1, 2020 unless they are members of the same growth management board.

(2) Municipalities that are members of the same growth management board may create a framework with other members of the same growth management board in respect of matters that are not addressed in a growth plan.

(3) Municipalities that do not have common boundaries may be parties to a framework.

(4) A municipality may be a party to more than one framework.

(5) Despite subsection (1), the Minister may by order exempt, on any terms and conditions the Minister considers necessary, one or more municipalities from the requirement to create a framework.

(6) For greater certainty, a municipality that is a member of a growth management board must create a framework with a municipality that is not a member of the same growth management board if they have common boundaries.

2016 c24 s134;2018 c11 s13;2019 c22 s10(29);
2020 c39 s10(68)

Contents of framework

708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

(3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to

(a) the interpretation, implementation or application of the framework, and

(b) any contravention or alleged contravention of the framework.

(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

2016 c24 s134;2019 c22 s10(30)

Court order to comply

708.291 If a municipality that is a party to an intermunicipal collaboration framework fails to participate in the dispute resolution process set out in the framework or fails to comply with an agreement reached by the parties as a result of that process, any other party to the framework may apply to the Court of King's Bench for an order directing the municipality to comply with the process or agreement.

2019 c22 s10(31);AR 217/2022

708.3 Repealed 2019 c22 s10(32).

Conflict or inconsistency

708.31 If there is a conflict or inconsistency between a framework and an existing agreement between 2 or more municipalities that are parties to that framework, the framework must address the conflict or inconsistency and, if necessary, alter or rescind the agreement.

2016 c24 s134

Term and review

708.32(1) The municipalities that are parties to a framework must review the framework at least every 5 years after the framework is created, or within a shorter period of time as provided for in the framework.

(1.1) Unless a framework provides otherwise, it may be reviewed at any time by agreement of all the municipalities that are parties to it.

(2) Where, during a review, the municipalities do not agree that the framework continues to serve the interests of the municipalities, the municipalities must create a replacement framework in accordance with this Part.

(3) Subsection (2) applies only to municipalities that are required under section 708.28(1) to create a framework.

2016 c24 s134;2019 c22 s10(33)

Participation by Indian bands and Metis settlements

708.321 Municipalities that are parties to a framework may invite an Indian band or Metis settlement to participate in the delivery and funding of services to be provided under the framework.

2016 c24 s134;2017 c13 s2(22)

Method of creating framework

708.33(1) In order to create a framework, the municipalities that are to be parties to the framework must each adopt a bylaw or resolution that contains the framework.

(2) Repealed 2019 c22 s10(35).

(3) In creating or reviewing a framework, the municipalities must negotiate in good faith.

(4) Once the municipalities have created a framework, the municipalities must notify the Minister of the framework within 90 days of its creation.

2016 c24 s134;2019 c22 s10(35)

Division 2
Arbitration

Application

708.34 This Division applies to municipalities that are required under section 708.28(1) to create a framework where

(a) the municipalities are not able to create the framework within the time required under section 708.28,

(b) when reviewing a framework under section 708.32, the municipalities do not agree that the framework continues to serve the interests of the municipalities and one of the municipalities provides written notice to the other municipalities and the Minister stating that the municipalities are not able to agree on the creation of a replacement framework, or

(c) the municipalities

(i) have an intermunicipal framework,

(ii) have attempted to resolve a dispute referred to in section 708.29(3.1) using the dispute resolution process under the framework, and

(iii) have been unsuccessful in resolving the dispute within one year after starting the dispute resolution process.

2016 c24 s134;2019 c22 s10(37)

Arbitration

708.35(1) Where section 708.34(a), (b) or (c) applies, the municipalities must refer the matter to an arbitrator.

(2) The arbitrator must be chosen by the municipalities or, if they cannot agree, by the Minister.

(3) Any mediator who has assisted the municipalities in attempting to create a framework is eligible to be an arbitrator under this Division.

(4) In a case referred to in section 708.34(a) or (b), the arbitration process ends where the municipalities create a framework by agreement or the Minister terminates the arbitration and makes an order under section 708.412.

(5) In a case referred to in section 708.34(c), the arbitration process ends where the municipalities resolve their dispute by agreement, the arbitrator makes an award under section 708.36 or the Minister terminates the arbitration and makes an order under section 708.412.

(6) The *Arbitration Act* applies to an arbitration under this Division except to the extent of any conflict or inconsistency with this Division, in which case this Division prevails.

(7) No municipality may, by means of an intermunicipal collaboration framework or any other means, vary or exclude any provision of the *Arbitration Act* and, for greater certainty, section 3 of the *Arbitration Act* does not apply in respect of an arbitration under this Division.

(8) An arbitrator chosen by the Minister is not subject to challenge or removal under the *Arbitration Act* by the parties or any court, but any party may request the Minister to remove and replace the arbitrator and the Minister may do so if the Minister considers it appropriate after considering the reasons for the request and any response by the other parties and the arbitrator.

(9) Section 42(2)(b) of the *Arbitration Act* does not apply in respect of an arbitration under this Division but the Minister may, at the Minister's discretion or at the request of any party or the arbitrator, terminate the arbitration and make an order under section 708.412.

(10) For greater certainty, nothing in this Division applies to an arbitration that occurs under the dispute resolution terms of a framework before the expiry of the year referred to in section 708.34(c)(iii).

2016 c24 s134;2019 c22 s10(38)

Role of arbitrator

708.36(1) Where a dispute is referred to an arbitrator under section 708.35, the arbitrator must make an award that resolves the issues in dispute among the municipalities

(a) in the case of a framework that is required under section 708.28(1) to be created by April 1, 2020, within one year after that date, or

(b) in the case of a replacement framework, within one year from the date the arbitrator is chosen.

(2) Despite subsection (1), an arbitrator may, as part of the arbitration process,

(a) attempt mediation with the municipalities in an effort to resolve the issues in dispute, and

(b) if the mediation is successful, require the municipalities to complete the framework to reflect their resolution of the dispute within a specified time.

(3) An arbitrator's award may include provisions respecting the responsibility for parties to pay or to share in paying costs, fees and disbursements incurred in the arbitration process.

(4) An arbitrator may require a municipality to provide or to make available for the arbitrator's examination and inspection any books, records or other materials of the municipality, but nothing in this subsection requires the arbitrator to examine or inspect any books, records or other materials before making an award.

(5) Unless the arbitrator rules otherwise, hearings in the arbitration are open to the public.

(6) An arbitrator may solicit written submissions from the public and, if the arbitrator does so, the arbitrator must take into account any written submissions received.

(7) An arbitrator must not make an award

(a) that has the effect of granting, varying or otherwise affecting any licence, permit or approval that is subject to this Act or any other enactment,

(b) on any matter that is subject to the exclusive jurisdiction of the Land and Property Rights Tribunal,

(c) that is contrary to the *Alberta Land Stewardship Act* or an ALSA regional plan,

(d) that is contrary to an intermunicipal development plan under Part 17 or a growth plan,

(e) that directs a municipality to raise revenue by imposing a specific tax rate, off-site levy or other rate, fee or charge, or

(f) that directs a municipality to transfer revenue to another municipality, unless

(i) the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, and

(ii) the arbitrator considers it equitable to do so.

2016 c24 s134;2019 c22 s10(39);2020 cL-2.3 s24(41); 2020 c39 s10(69);

708.37 Repealed 2019 c22 s10(40).

Matters to be considered by arbitrator

708.38(1) In resolving a dispute, an arbitrator may have regard to

(a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,

(b) consistency of services provided to residents in the municipalities,

(c) equitable sharing of costs among municipalities,

(d) environmental concerns within the municipalities,

(e) the public interest, and

(f) any other matters that the arbitrator considers relevant.

(2) Repealed 2019 c22 s10(41).

2016 c24 s134;2019 c22 s10(41)

708.39 Repealed 2019 c22 s10(42).

Municipalities must adopt framework and amend bylaws

708.4(1) Where an arbitrator makes an award respecting a framework, the municipalities are bound by the award and must,

within 60 days after the date of the award, adopt a framework in accordance with the award.

(1.1) A municipality must amend its bylaws, other than its land use bylaw, as necessary to reflect the framework within 2 years after adopting the framework.

(1.2) If there is a conflict or inconsistency between a bylaw and the framework, the framework prevails to the extent of the conflict or inconsistency.

(2) A municipality must not amend, repeal or revise its land use bylaw in a manner that is inconsistent with an intermunicipal development plan under section 631 to which the municipality is a party.

(3) A municipality must not amend, repeal or revise its bylaws to be inconsistent with a framework to which it is a party or an award of an arbitrator applicable to it.

2016 c24 s134;2019 c22 s10(43)

Costs of arbitrator

708.41(1) Subject to an award of the arbitrator or an agreement by the parties, the costs of an arbitrator under this Part must be paid on a proportional basis by the municipalities that are to be parties to the framework as set out in subsection (2).

(2) Each municipality's proportion of the costs must be determined by dividing the amount of that municipality's equalized assessment by the sum of the equalized assessments of all of the municipalities as set out in the most recent equalized assessment.

2016 c24 s134;2017 c13 s2(22);2019 c22 s10(44)

Remuneration of experts

708.411 Where an arbitrator appoints an expert, the expert must be paid on a proportional basis by the municipalities that are or will be parties to the framework, with each municipality's proportion of the costs to be determined in the same manner as is required under section 708.41(2) for an arbitrator.

2019 c22 s10(45)

Minister may make orders

708.412(1) Despite this Division or any arbitration occurring under this Division, the Minister may at any time make any order the Minister considers appropriate to further the development of a framework among 2 or more municipalities to carry out the purpose of this Part, including, without limitation, an order establishing a framework that is binding on the municipalities.

(2) If there is a conflict or inconsistency between an order made by the Minister under this section and an action taken by a municipality or a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.

2019 c22 s10(45)

708.42 Repealed 2019 c22 s10(46).

Measures to ensure compliance with award

708.43(1) If a municipality fails to comply with section 708.4(1), any other municipality that is or will be a party to the framework may apply to the Court of King's Bench for an order requiring that municipality to comply with section 708.4(1).

(2) If the Minister considers that a municipality has not complied with a framework, the Minister may take any necessary measures to ensure that the municipality complies with the framework.

(3) In subsection (2), all necessary measures includes, without limitation, an order by the Minister

(a) suspending the authority of a council to make bylaws in respect of any matter specified in the order;

(b) exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);

(c) removing a suspension of bylaw-making authority, with or without conditions;

(d) withholding money otherwise payable by the Government to the municipality pending compliance with an order of the Minister;

(e) repealing, amending and making policies and procedures with respect to the municipality;

(f) suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order;

(g) requiring or prohibiting any other action as necessary to ensure that the municipality complies with the framework.

2016 c24 s134;2019 c22 s10(47);AR 217/2022

708.44 to **708.46** Repealed 2019 c22 s10(48).

Division 3
General

Regulations Act does not apply

708.47 The *Regulations Act* does not apply to a framework or order made under this Part.

2016 c24 s134

Obligations continue during dispute

708.471 During a dispute in respect of a framework, the parties must continue to perform their obligations under the framework.

2019 c22 s10(50)

Jurisdiction of arbitrator

708.48(1) Repealed 2019 c22 s10(51).

(2) An arbitrator acting under this Part may make a determination

(a) on a matter of process,

(b) on the arbitrator's jurisdiction,

(c) on a matter of law, and

(d) on any other matter ancillary to a matter referred to the arbitrator.

(3) The arbitrator must make the findings and determinations the arbitrator determines to be necessary to decide the matters referred to the arbitrator.

(4) Except as provided in this Part, every award of an arbitrator is final and binding on all parties to the award and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

(5) An award of an arbitrator may be reviewed by the Court of King's Bench on a question of jurisdiction only and the application for judicial review must be made within 60 days after the award is made.

(6) For the purposes of a judicial review, the arbitrator is considered to be an expert in relation to all matters over which the arbitrator has jurisdiction.

(7) A person making an application to the Court of King's Bench under this section must give the arbitrator notice of the application.

2016 c24 s134;2019 c22 s10(51);AR 217/2022

Limitation period

708.49 A person who wishes to have an order of the Minister under this Part declared invalid on any basis must make an application for judicial review within 60 days after the order is made.

2016 c24 s134;2019 c22 s10(52)

708.5 Repealed 2019 c22 s10(53).

Paramountcy of Part 17.2

708.51 In the event of a conflict or inconsistency between this Part and Parts 1, 2, 3, 5, 6, 7, 8 or 17, this Part prevails.

2016 c24 s134

Regulations

708.52 The Lieutenant Governor in Council may make regulations

(a) respecting a subsequent action before a court following a decision of an arbitrator;

(b) defining any term or expression that is used in this Part but not defined in this Act;

(c) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Part.

2016 c24 s134;2019 c22 s10(54)

Part 18
Transitional Provisions

709 Repealed by Revision.

Transitional regulations

710(1) The Minister may make regulations

(a) respecting the conversion to this Act of anything from the former Acts or from any other Act repealed by this Act;

(b) to deal with any difficulty or impossibility resulting from this Act or the transition to this Act from the former Acts or from any other Act repealed by this Act.

(2) In this section, "former Acts" means

(a) the *Assessment Appeal Board Act*, RSA 1980 cA-46;

(b) the *County Act*, RSA 1980 cC-27;

(c) the *Improvement Districts Act*, RSA 1980 cI-1;

(d) the *Municipal Government Act*, RSA 1980 cM-26;

(e) the *Municipal Taxation Act*, RSA 1980 cM-31;

(f) the *Municipalities Assessment and Equalization Act*, RSA 1980 cM-32.

1994 cM-26.1 s617;1995 c24 ss94,96

711 to **740** OBNR – RSA.

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TAB 2

Province of Alberta

MUNICIPAL GOVERNMENT ACT

COMMUNITY ORGANIZATION PROPERTY TAX EXEMPTION REGULATION

Alberta Regulation 281/1998

With amendments up to and including Alberta Regulation 152/2023

Current as of January 1, 2024

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 152/2023)

ALBERTA REGULATION 281/98

Municipal Government Act

COMMUNITY ORGANIZATION PROPERTY TAX EXEMPTION REGULATION

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Interpretation

1(1) In this Regulation,

(a) "Act" means the *Municipal Government Act*;

(b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;

(c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;

(d) "professional sports franchise" means a professional sports franchise operating in the National Hockey League, the Canadian Football League, the National Professional Soccer League or the Pacific Coast League;

(d.1) "subsidized accommodation" means

(i) rental accommodation where the Government of Alberta sets the rent at a maximum amount, sets the rent at a percentage of household income or provides the facility with ongoing operating funds, and

(ii) rent to own units where the Government of Alberta sets the rent at a percentage of income or sets the rent at a maximum amount,

(iii) repealed AR 152/2023 s2;

(e) "taxation" means taxation under Division 2 of Part 10 of the Act.

(2) For the purposes of the Act and this Regulation, "community association" means an organization where membership is voluntary, but restricted to residents of a specific area, and that is formed for the purpose of

(a) enhancing the quality of life for residents of the area or enhancing the programs, public facilities or services provided to the residents of the area, or

(b) providing non-profit sporting, educational, social, recreational or other activities to the residents of the area.

(3) The definitions in sections 1 and 284 of the Act apply to this Regulation.

AR 281/98 s1;182/2008;152/2023

Part 1
General Rules

Application

2 This Regulation applies to taxation in 1999 and later years.

Part of a property

3 An exemption under section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation applies only to the part of a property that qualifies for the exemption.

Primary use of property

4(1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the Act or Part 3 of this Regulation unless the property is primarily used for the purpose or use described in those provisions.

(2) For the purposes of this Regulation, a property is primarily used for a purpose or use if the property is used for the specified purpose or use at least 60% of the time that the property is in use.

Holding property

5 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization, a society as defined in the *Agricultural Societies Act* or a community association for the property to be exempt from taxation, the property is not exempt unless

(a) the organization, society or association is the owner of the property and the property is not subject to a lease, licence or permit, or

(b) the organization, society or association holds the property under a lease, licence or permit.

Non-profit organization

6 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization, community association or residents association as

defined in section 13 for the property to be exempt from taxation, the property is not exempt unless

(a) the organization or association is a society incorporated under the *Societies Act*, or

(b) the organization or association is

(i) a corporation incorporated in any jurisdiction, or

(ii) any other entity established under a federal law or law of Alberta

that is prohibited, by the laws of the jurisdiction governing its formation or establishment, from distributing income or property to its shareholders or members during its existence.

AR 281/98 s6;204/2011

Meaning of restricted

7(1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on

(a) race, culture, ethnic origin or religious belief,

(b) the ownership of property,

(c) the requirement to pay fees of any kind, other than minor entrance or service fees, or

(d) the requirement to become a member of an organization.

(2) The requirement to become a member of an organization does not make the use of the property restricted so long as

(a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and

(b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.

(3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.

Gaming and liquor licences

8(1) For the purposes of section 365(2) of the Act, property described in section 362(1)(n) of the Act and Part 3 of this Regulation in respect of which a bingo licence, casino licence, pull ticket licence, Class C liquor licence or a special event licence is issued under the *Gaming, Liquor and Cannabis Regulation* (AR 143/96) is exempt from taxation if the requirements of section 362(1)(n) and this Regulation in respect of the property are met.

(2) Despite subsection (1), property in respect of which a casino facility licence is issued is not exempt from taxation.

AR 281/1998 s8;56/2019;295/2020

Part 2
Qualifications for Exemptions Under Section 362(1)(n)(ii) to (v)

Exemption under section 362(1)(n)(ii) of the Act

9(1) The following property is not exempt from taxation under section 362(1)(n)(ii) of the Act:

(a) property to the extent that it is used in the operation of a professional sports franchise;

(b) property that is used solely for community games, sports, athletics or recreation if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older.

(2) Property is not exempt from taxation under section 362(1)(n)(ii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

(3) For the purposes of subsection (2), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

Exemption under section 362(1)(n)(iii) of the Act

10(1) Property referred to in section 362(1)(n)(iii) of the Act is not exempt from taxation unless

(a) the charitable or benevolent purpose for which the property is primarily used is a purpose that benefits the general public in the municipality in which the property is located, and

(b) the resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent purpose for which the property is used.

(2) Property is not exempt from taxation under section 362(1)(n)(iii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

AR 281/98 s10;182/2008

Exemption under section 362(1)(n)(iv) of the Act

11 Property referred to in section 362(1)(n)(iv) of the Act is not exempt from taxation unless the accommodation provided to senior citizens is subsidized accommodation.

AR 281/98 s11;182/2008

Exemption under section 362(1)(n)(v) of the Act

12(1) The following property is not exempt from taxation under section 362(1)(n)(v) of the Act:

(a) property to the extent that it is used in the operation of a professional sports franchise;

(b) property if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older;

(c) property in Calgary or Edmonton that is held by and used in connection with a community association if the association is not a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues.

(1.1) Notwithstanding subsection (1)(c), property held by a community association referred to in that provision is exempt from taxation under section 362(1)(n)(v) of the Act where that community association was a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues on January 1, 1999 but cancelled its membership after that date.

(1.2) Subsection (1.1) applies with respect to 2004 and subsequent years.

(2) Property is not exempt from taxation under section 362(1)(n)(v) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

(3) For the purposes of subsection (2), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

AR 281/98 s12;283/2003

Part 3
Other Property Exempt Under Section 362(1)(n)

Definitions

13 In this Part,

(a) "arts" means theatre, literature, music, painting, sculpture or graphic arts and includes any other similar creative or interpretive activity;

(b) "chamber of commerce" means a chamber of commerce that is a non-profit organization and is a member of the Alberta Chamber of Commerce;

(c) "ethno-cultural association" means an organization formed for the purpose of serving the interests of a community defined in terms of the racial, cultural, ethnic, national or linguistic origins or interests of its members;

(d) "linguistic organization" means an organization formed for the purpose of promoting the use of English or French in Alberta;

(e) "museum" means a facility that is established for the purpose of conserving, studying, interpreting, assembling and exhibiting, for the instruction and enjoyment of the general public, art, objects or specimens of educational and cultural value or historical, technological, anthropological, scientific or philosophical inventions, instruments, models or designs;

(e.1) "residents association" means a non-profit organization that requires membership for residential property owners in a specific development area, that secures its membership fees by a caveat or encumbrance on each residential property title and that is established for the purpose of

(i) managing and maintaining the common property, facilities and amenities of the development area for the benefit of the residents of the development area,

(ii) enhancing the quality of life for residents of the development area or enhancing the programs, public

facilities or services provided to the residents of the development area, or

(iii) providing non-profit sporting, educational, social, recreational or other activities to the residents of the development area;

(f) "retail commercial area" means property used to sell food, beverages, merchandise or services;

(g) "sheltered workshop" means a facility designed to provide an occupation for and to promote the adjustment and rehabilitation of persons who would otherwise have difficulty obtaining employment because of physical, mental or developmental disabilities;

(h) "thrift shop" means a retail outlet operated for a charitable or benevolent purpose that sells donated clothing, appliances, furniture, household items and other items of value at a nominal cost to people in need.

AR 281/98 s13;283/2003;204/2011

Exemption for other property

14 This Part describes property that is exempt from taxation under section 362(1)(n) of the Act that is not exempt under section 362(1)(n)(i) to (v) of the Act.

Property of residents association

14.1(1) Property that is owned and held by and used in connection with a residents association is exempt from taxation.

(2) Despite subsection (1), the following property owned and held by and used in connection with a residents association is not exempt from taxation under section 362(1)(n) of the Act:

(a) property to the extent that it is used in the operation of a professional sports franchise;

(b) property if, for more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older;

(c) property if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

(3) For the purposes of subsection (2)(c), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

AR 204/2011 s4

Day cares, museums and other facilities

15 A non-profit organization that holds property on which any of the following facilities are operated may apply to the municipality within whose area the property is located for an exemption from taxation:

(a) a facility used for sports or recreation to the extent that the facility is not used in the operation of a professional sports franchise;

(b) a facility used for fairs or exhibitions, including agricultural exhibitions;

(c) a facility used for the arts or a museum;

(d) a program premises as defined in the *Child Care Licensing Regulation* (AR 143/2008);

(e) a facility used by a linguistic organization if

(i) the use of the property by the general public is actively encouraged, and

(ii) a sign is prominently posted in the facility, or information is available online, indicating the hours that the whole or part of the facility is accessible to the public;

(f) a facility used by an ethno-cultural association for sports, recreation or education or for charitable or other benevolent purposes if

(i) the use of the property by the general public is actively encouraged, and

(ii) a sign is prominently posted in the facility, or information is available online, indicating the hours that the whole or part of the facility is accessible to the public;

(g) a facility in a municipality operated and used by an organization for a charitable or benevolent purpose where the majority of the organization's beneficiaries do not reside in the municipality;

(h) a facility used as a thrift shop;

(i) a facility used as a sheltered workshop;

(j) a facility operated and used by a chamber of commerce;

(k) a facility used for a charitable or benevolent purpose that is for the benefit of the general public if

(i) the charitable or benevolent purpose for which the facility is primarily used is a purpose that benefits the general public in the municipality in which the facility is located, and

(ii) the resources of the non-profit organization that holds the facility are devoted chiefly to the charitable or benevolent purpose for which the facility is used.

AR 281/98 s15;283/2003;182/2008;77/2010;152/2023

Conditions for exemption

16(1) A municipality must grant a non-profit organization an exemption from taxation in a taxation year in respect of a property referred to in section 15 that is held by the organization if

(a) the non-profit organization, subject to subsection (1.1),

(i) makes an application for an exemption to the municipality by September 30 of the year preceding the taxation year, and

(ii) supplies the municipality with the following by November 30 of the year preceding the taxation year:

(A) any information the municipality requires to determine if the organization meets the conditions for the exemption;

(B) a description of any retail commercial areas in the facility on the property,

(b) the facility on the property is one of the facilities described in section 15 and the non-profit organization operates the facility on a non-profit basis,

(c) the funds of the non-profit organization are chiefly used for the purposes of the organization and not for the benefit of the organization's directors and employees,

(d) the property is not disqualified by virtue of subsection (2) or (3), and

(e) the requirements of subsections (4) and (5), if applicable, are met.

(1.1) For the purpose of subsection (1)(a), the municipality

(a) may specify other dates for a non-profit organization to make an application and supply the information and description referred to in subsection (1)(a), and

(b) must advertise the dates referred to in clause (a) in accordance with section 606 of the Act.

(2) Property referred to in section 15(a), (b), (c), (e), (f), (j) or (k) is not exempt from taxation if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

(3) Property referred to in section 15(d) or (g) to (i) is not exempt from taxation if an individual is not permitted to use the property because of the individual's race, culture, ethnic origin or religious belief.

(4) Before granting an exemption under this section in respect of a property that is held by a non-profit organization, the municipality may require that an agreement between the organization and the municipality be in force that sets out that

(a) the organization will provide the municipality with a report by a time and in a manner specified in the agreement that sets out the information the municipality requires to determine if the organization met the conditions for the exemption during the taxation year, and

(b) if the organization does not comply with the provisions referred to in clause (a), the organization will pay the municipality an amount equivalent to the property taxes that would be payable in respect of the property for the taxation year if the property was not exempt.

(5) Before granting an exemption under this section in respect of a property that is owned by a non-profit organization, the municipality may require that an agreement between the organization and the municipality be in force that sets out that

(a) no disposition of the property may be made without the approval of the municipality, and

(b) if the organization is being wound-up and dissolved, the organization must, if required by the municipality, transfer the property to the municipality.

(6) If a municipality grants an exemption to a non-profit organization and later determines that the organization did not meet the conditions that applied to the organization for the exemption for

all or part of the taxation year, the municipality may in the taxation year cancel the exemption for all or part of the taxation year, as the case may be, and require the organization to pay property tax in respect of the property for the period that the exemption is cancelled.

AR 281/98 s16;4/2010;77/2010;152/2023

Waiver of application requirement

17(1) If a municipality has granted a non-profit organization an exemption from taxation under section 16 in respect of a property, the municipality may grant the non-profit organization an exemption from taxation in the following taxation year under section 16 in respect of the property without requiring the organization to apply for the exemption.

(2) A municipality that has waived an application requirement under subsection (1) in respect of a property for a taxation year may

(a) require the non-profit organization that holds the property to provide any information that the organization may be required to provide if it was applying for an exemption, and

(b) if the non-profit organization does not provide the information, cancel in that taxation year the exemption for all or part of that taxation year and require the organization to pay property tax in respect of the property for the period that the exemption is cancelled.

(3) A municipality may not waive the application requirement under subsection (1) in respect of a property for more than 3 consecutive taxation years.

Retail commercial areas

18(1) In this section, "exempt facility" means a facility or part of a facility

(a) that is held by a non-profit organization, a society as defined in the *Agricultural Societies Act* or a community association and that is exempt from taxation under section 362(1)(n)(i) to (v) of the Act or section 16 of this Regulation, or

(b) that is owned and held by a residents association and that is exempt from taxation under section 362(1)(n) of the Act.

(2) A retail commercial area that is located within an exempt facility is exempt from taxation if

(a) the non-profit organization, society as defined in the *Agricultural Societies Act,* community association or residents association that holds the exempt facility also holds and operates the retail commercial area, and

(b) the net income from the retail commercial area is used

(i) to pay all or part of the operational or capital costs of the exempt facility, or

(ii) to pay all or part of the operational or capital costs of any other facility that is held by the non-profit organization, society, community association or residents association and that is exempt from taxation under section 362(1)(n) of the Act or section 16 of this Regulation.

AR 281/98 s18;204/2011

Part 4 Repealed AR 283/2003 s5.

Part 5
Repeal and Review

Repeal

22(1) The *Community Organization 1998 Property Tax Exemption Regulation* (AR 289/97) is repealed.

(2) Repealed AR 182/2008 s6.

AR 281/98 s22;182/2008

Expiry

23 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on December 31, 2025.

AR 281/98 s23;283/2003;182/2008;4/2010;9/2015;257/2017;220/2018;152/2023

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TAB 3

Alberta Court of Queen's Bench
Ukrainian Youth Unity of General Roman Schuchewych-Chuprynka v. Edmonton (City)
Date: 1997-09-25

Ihor Broda, for the Applicant.

Marilyn McAvoy, for the Respondent.

(Edmonton 9703-08030)

September 25, 1997.

Decision

[1] BIELBY J.: — The right to an exemption from the payment of municipal property taxes under the *Municipal Government Act,* S.A. 1994, c. M-26.1 ("the Act") includes the right to a partial exemption where a property is used for exempt purposes part of the time. Also, the exemption is not lost because the activities for which the property is used primarily benefit persons of a certain ethnic heritage.

Facts

[2] This is an application for judicial review of a decision of the Municipal Government Board ("the Board") from a decision in which it refused to exempt the Applicant non-profit corporation from the payment of property tax to the Respondent, the City of Edmonton ("the City").

[3] There is little factual dispute between the parties; the issues arise over the proper legal interpretations to be based on property tax exemptions granted by the Act, a two-year old piece of legislation.

[4] The Applicant is registered under the *Societies Act,* is a non-profit organization and is a charity registered with Revenue Canada. It owns and operates a recreation and social centre in Edmonton. Most of the people using the Centre, with the exception of rentals, have some ethnic link to the Ukrainian community. Membership is open to all applicants subject to approval by the Board of Directors.

[5] The Assessment Appeal Board, established under the provisions of Part 11 of the Act, granted a 93% exemption from property tax on the Centre. A portion of the building is, from time to time, rented out for revenue-generation; the Applicant admitted that 7% of the building use is for catering and banquets, and that at best it is entitled to a 93% exemption from the payment of property tax. That was calculated by determining that

50% of the building was used for commercial purposes for one day a week, or 14% of each week. Multiplication of 14% by 50% yielded the 7% figure.

[6] The City successfully appealed the decision of the Assessment Appeal Board to this Board which denied the property tax exemption in its entirety. From that decision the Applicant has brought this application for judicial review.

Jurisdiction

[7] This is not an appeal. There is no appeal from any decision of the Board, see the Act, s. 506.

[8] It is not the Court's function on judicial review to substitute its opinion for the opinion of the Board. Any order the Court may issue is limited to correcting an excess of jurisdiction or an error of law apparent on the face of the record which has led to an unreasonable or patently unreasonable result. See *British Pacific Building Ltd. v. Alberta (Assessment Appeal Board),* [1973] 5 W.W.R. 344 (Alta. C.A.); *T. Eaton Co. v. Alberta (Assessment Appeal Board)* (1995), 33 Alta. L.R. (3d) 349 (Alta. C.A.).

[9] The Applicant urged me to conclude that the standard against which I am to assess the Board's decision is one of correctness. It submits that the errors made were errors of statutory interpretation. The Board has no particular expertise in the area of statutory interpretation such as to justify deference to its decisions; in fact, the Court has more expertise than the Board in that area.

[10] The City argued that the Board has to meet a lower standard of performance than that of being correct. It argued that even if the Board made an error of law, judicial review should not issue as the result was not unreasonable.

[11] At the end of the day it does not matter which standard is applied, as the errors of law I have found the Board to have made violate the lesser standard as well as the higher.

Issues

[12] Does the Act allow an exemption for a part of an assessment, where a property is partially used for a non-exempt purpose? Does this change where the partial exemption is based on temporal, rather than physical use, i.e. where all parts of the building may be used for non-exempt purposes, but for only part of the time?

[13] Is an exemption based on uses “for the benefit of the general public” not made out where the users are most likely to be members of an identifiable ethnic group?

Analysis

[14] The Applicant argues that the Board exceeded its jurisdiction or made an error of law in failing to uphold the 93% exemption originally allowed by the Assessment Appeal Board. It maintains that pursuant to s. 362(n)(ii), (iii) or s. 363(1)(c) of the Act it qualified for an exemption. Alternatively, it argues that the Board acted in a discriminatory manner, contrary to the *Charter of Rights and Freedoms* and thus lost jurisdiction to make this decision.

[15] The decision of the Board is in writing which is broken down into different headings. The portion under the heading “Reasons” is sparse indeed, giving little inkling into the conclusions which the Board must have made for the decision. However, I have examined the balance of the decision for assistance, as I did in *Alberta Special Waste Management System v. Improvement District No. 125* (February 11, 1997), Doc. Edmonton 9603-15898 (Alta. Q.B.); counsel conceded that this was the proper approach.

[16] In particular I turned to the “Summary of the Appellant’s Position” contained in its written decision. The Board, in the result, must have agreed with this position and I therefore treat it as comprising part of the Board’s reasons for its decision.

The Section 362(n)(ii) Exemption

[17] Section 362 of the Act reads:

> The following are exempt from taxation…
>
> (n) property that is…
>
> (ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,
>
> (iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned…
>
> (B) by a non-profit organization…
>
> and that meets the qualifications in the regulations and any other property that is described in the regulations.

[18] The Board gave two reasons for refusing to apply s. 362(n)(ii); first, that part of the property was periodically used for income-earning purposes and was thus not “solely” used for “community games, sports, athletics or recreation” and secondly, that it was

primarily used by people who are ethnically linked to the Ukrainian community and thus it was not used "for the benefit of the general public".

[19] I find that the Board made an error of law in denying the entire exemption because some of the building was used for income-earning purposes some of the time. Both the Act and regulations contemplate apportionment.

[20] Section 367 of the Act states "a property may contain *one or more parts* that are exempt from taxation under this division". Section 368 refers to "an *exempt property or part of an exempt property*" and "a taxable property or *part of a taxable property*".

[21] Regulation 125/95 was promulgated under the Act; it pertains to nonprofit organization tax exemptions. Section 2 of this Regulation states that "an exemption … may apply to a) whole of a property or, b) *part of a property* that is chiefly used for the purposes that qualify for the exemption". Section 3 of the Regulation refers to "property or *part of a property".* Section 6(2) contains the same reference (emphasis added throughout).

[22] Counsel for the City urged the Court to interpret the phrase "part of a property" as meaning only a physical part. Therefore, an exemption for part of a property would apply only if that physical part was never used for nonexempt purposes, no matter how briefly.

[23] Nothing in the Act, Regulation or logic mandates a mere physical interpretation of the phrase "part of a property". Time of usage may also fall within the phrase, so that the exemption may apply to a property which is entirely used for non-exempt purposes part of the time; see *Royal Canadian Legion Norwood (Alberta) Branch 178 v. Edmonton (City),* [1992] 6 W.W.R. 265 (Alta. Q.B.). While Justice Gallant considered predecessor and therefore different legislation in that case than we do in this, his approach to the word "chiefly" is equally applicable to the current phrase "part of a property". He stated at 271:

> The word "chiefly" means "for the most part". It is slightly ambiguous because it could define the time element or the space element. In the end result, I do not think it matters which of the two elements it defines.

[24] The Applicant noted that the Board had allowed such an interpretation in at least one other case decided contemporaneously with this; see *The Victoria Soccer Club v. The City of Edmonton,* MGB 170/96, where the exemption was allowed although part of the soccer clubs premises were, at certain times, rented out to generate revenue. This inconsistent interpretation by the Board, while not strictly relevant to this decision, evidences the uncertainty which the Board itself had over its interpretation.

[25] The use of the word “solely” in the subsection must be interpreted to mean that if part of the building, part of the time is solely used for community games, sports, athletics and recreation, the exemption is made out. There is no other interpretation which gives meaning to the above statutory exemptions of “part of a property”.

[26] However, this error of law by the Board does not yield an exemption if it was correct in the second part of its decision, to the effect that the property was not used for the benefit of the general public. Counsel conceded that the Board was correct in concluding that the Centre was used primarily by people who are ethnically linked to the Ukrainian community.

[27] Was the Board correct in its finding that the ethnic usage of the Centre meant it was not used for the benefit of the general public? Aside from the ethnicity issue, the uncontroverted evidence before the Board supports the conclusion that activities conducted in the Centre were charitable in nature (excluding the 7% commercial component).

[28] The City did not offer a definition of the phrase “for the benefit of the general public” other than urging that it did not include “for the benefit of groups primarily composed of persons of the same ethnic background”. It offered no authority for its definition other than to argue that the interpretation had to be accepted out of deference to the decision of an administrative tribunal.

[29] Is that interpretation unreasonable? The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any other for the exemption to apply; indeed the City did not try to defend such a definition.

[30] Nor does the plain wording of the section exclude activities designed to benefit only one segment of the public. In fact, the City has extended the exemption to groups which, by definition or location, are designed and likely to benefit only certain segments of the public, i.e. the Youth Emergency Shelter, Girl Guides of Canada, Boyle-McCauley Health Centre, Kiwanis Club of Edmonton. Why then is it reasonable to separate out and deny the exemption because the portion of the public likely to be benefited shares a common ethnic heritage? No answer was offered to this question.

[31] Turning to other aids to interpretation, the Applicant argued that the entire community benefits when Canadians of Ukrainian descent have access to games, sports,

athletics and recreation. It referred generally to governmental policies and legislation designed to enhance and preserve the multicultural heritage of Canadians. It referred to authority which equates charities with activities designed to benefit certain segments of the public only, and urged a similar interpretation of the phrase “for the benefit of the general public”.

[32] In particular, Revenue Canada grants charitable status to groups with an ethnic focus, see *Interpretation Bulletin* IT-496, as indeed it has to the Applicant. Activities focused at benefiting women medical students (*Towle Estate v. Minister of National Revenue* (1966), [1967] S.C.R. 133 (S.C.C.)), Anglican girls of low income (*St. Catherine’s House, Re* (1977), 2 A.R. 337 (Alta. C.A.)), charitable purposes in Israel (*Levy Estate, Re* (1989), 33 O.A.C. 99 (Ont. C.A.) Ont. C.A.), and native communications (*Native Communications Society of British Columbia v. Minister of National Revenue* (1986), 67 N.R. 146 (Fed. C.A.)) have all been found to be charitable notwithstanding their limited focus.

[33] On the other hand, not every activity which may benefit the public has been found to be charitable. Political objectives have been found to negate an organization’s claim to benefit the community in a way the law regards as charitable, see *Notre Dame de Grâce Neighbourhood Assn. v. Minister of National Revenue* (1988), 88 D.T.C. 6279 (Fed. C.A.). Where the essence or substance of the group’s work primarily benefited its subscribers, any incidental public benefit was insufficient to characterize it as a charity, see *Aerie Inc. v. Ontario Regional Assessment Commissioner, Region No. 3* (1988), 39 M.P.L.R. 135 (Ont. Div. Ct.).

[34] The facts must therefore be examined carefully in each case to determine whether the gist of the group’s activities operate for the public benefit. The Courts have not interpreted that to mean, however, that the general public does not benefit solely because a group’s activities are aimed primarily at a certain racial or ethnic component, see *Native Communications Society of British Columbia v. Minister of National Revenue, supra.*

[35] One can imagine scenarios where ethnic groups operate for purposes other than to benefit the public. Merely because a group is ethnically-based does not automatically create a right to a property tax exemption. Indeed, Regulation 125/95 appears to be designed to impose limitations which ensure that only true charities qualify.

[36] Absent authority to support the City’s interpretation, which is not supported by either the clear wording of the Act nor general authority on charities, and which would

inconsistently grant some groups a property tax exemption while denying it to others equally worthy, I conclude that the Board, in accepting that interpretation, made an error of law on the face of the record which has lead to an unreasonable result.

[37] This error alone is not determinative of the issue because Regulation 125/95 imposes a third set of qualifications for entitlement to the exemption offered by s. 362(n)(ii). That regulation is incorporated by reference into s. 362(n).

[38] Section 5(1) of Regulation 125/95 provides:

> Property referred to in section 362(n)(ii) of the Act is exempt from taxation only if
>
> (a) the general public is evidently and actively encouraged by the non-profit organization that holds the property to use the property for the purposes set out in that section…

[39] The Board accepted that there was little evidence of the Society soliciting the general public patronage of the Centre. While counsel urged me to find that the informational signing placed on the building and some community newsletter advertising of unknown content amount to active solicitation of the general public, he was able to point to nothing which made it clear that the general public was welcome or encouraged to use the facility. I reject his suggestion that the absence of active prohibition amounts to active solicitation. The Board's findings of fact was supported by the evidence on this point.

[40] The Board therefore properly concluded that the public was not "evidently and actively encouraged" to use the property; the failure to meet this requirement of the Regulation therefore operates to defeat the Applicant's claim for exemption under s. 362(n)(ii).

[41] The City also attempted to rely on s. 5(2)(a) of the Regulation which denies the exemption if "the property is used to satisfy the interests of an individual or group of individuals that has a specific interest or objective". However, I find it does not apply because the interests of the Applicant are general and do not fall within the ambit of this qualification which appears to be aimed at ferreting out business-type activities, as indicated by s. 5(2)(b).

[42] Similarly, s. 3 of the Regulation denies the exemption for that part of the property that is used for business usages which compete with any business subject to taxation. The same analysis applies to this exclusion as to the above argument that the use of any portion of the building for non-exempt purposes defeats the entire claim; i.e. it fails here for the same reasons.

The Section 362(n)(iii) Exemption

[43] Section 362(n)(iii) of the Act creates a separate right to an exemption for activities of a charitable or benevolent nature which are for the benefit of the general public. Section 5 of Regulation 125/95 does not apply to this exemption.

[44] The Board did give express reasons for its refusal to grant the exemption under this section, as follows:

> With regard to Section 362(n)(iii), the Board finds the property is not used for charitable or benevolent purposes. Evidence was that the property was used for activities for the Ukrainian community.
>
> In addition, the activities carried on the premises cannot be regarded for the general public as they relate to a specific cultural group.

[45] For the reasons stated above I have concluded that the Board made an error of law on the face of the record in concluding that activities carried on which relate to a specific cultural group cannot be regarded as being for the general benefit of the public. Further, based on the authorities cited above the definition of charity clearly includes groups which are aimed at benefiting certain groups, including those defined by common ethnic heritage.

[46] Nothing in Regulation 125/95 adds additional qualifications for this exemption which the Applicant has failed to meet.

[47] The City argued that this exemption must relate to different activities than those exempted by s. 362(n) (ii), for which the Applicant has failed to qualify. I agree. The activities therein defined, being community games, sports, athletics or recreation do not fall under the umbrella of the charitable or benevolent purpose exemption. The Legislature must be taken to have meant different things by creating each of the separate categories in s. 362(n).

[48] However, the evidence before the Board was that there were many charitable types of activities occurring at the Centre which were different than games, sports, athletics and recreation. Those other activities, and the space and time used by them, would be exempt from taxation.

[49] Therefore, the Board made an error of law on the face of the record, yielding an unreasonable result in denying the exemption from taxation for the entire facility, rather than exempting the 7% used for commercial purposes and exempting a further portion

based on the time and space used for non-commercial activities that did not constitute games, sports, athletics or recreation.

[50] There is no evidence from which the Court could determine the amount of such further exemption that should have been granted and so the matter is remitted back to the Board for determination.

The Section 363 Exemption

[51] In its oral argument the Applicant abandoned its claim for a further exemption based on s. 363 of the Act which creates a tax exemption for property held by and used in connection with an organization of former members of any allied forces. The evidence was admittedly deficient to found such a claim.

The Constitutional Argument

[52] Finally, the Applicant urged me to "read-down" s. 362(n) of the Act to delete any limitations on exemptions based on ethnic heritage. It laid a poor foundation in fact and law for such an argument. However, I need not consider it at all because, in the end result, no such limitations exist. The problem arose from the Board's erroneous interpretation of the Act, rather than from the wording of the Act itself.

[53] The failure of the Applicant to satisfy the s. 362(n)(ii) exemption so that the full range of its non-commercial activities were exempt arises not from its ethnic focus but from its failure to engage in evident and active encouragement to the general public to use the facility. That failure has nothing to do with ethnicity and could be addressed by changes in the conduct of the Applicant in future years should it choose to do so.

Remedy

[54] The City's appeal from the decision of the Assessment Appeal Board is ordered to be reheard *de novo* by the Municipal Government Board which, in coming to its decision, shall apply the property tax exemptions created under the *Municipal Government Act* in accordance with the above directions. In particular, an exemption shall not be entirely denied simply because the property is used for a non-exempt purpose part of the time. Further, the exemption shall not be denied because the primary users of the property are persons of Ukrainian heritage.

Costs

[55] The Applicant shall have its costs to be taxed, as it was primarily successful in this application.

Application granted.

TAB 4

Alberta Court of Queen's Bench
Carmelite Nuns of Western Canada v. Alberta (Assessment Appeal Board)
Date: 1994–07–29

R.B. Bruyer, for applicant.

W.J. Nugent, for respondent.

S.C. McNaughtan, for intervenor.

(Doc. Edmonton 9403–03194)

July 29, 1994.

[1] BERGER J.:– The issue here is whether a monastery and a 13.05–acre parcel of land on which it sits in the County of Parkland are assessable or exempt from assessment under the terms of the *Municipal Taxation Act.*

[2] The relevant provisions of the *Municipal Taxation Act* are as follows:

> 24(1) The following property is exempt from assessment by a municipality:
>
> (*c*) one or more parcels of land to the extent in each case of
>
> (i) 1 acre in the aggregate when situated in a city, town, new town, village or summer village,
>
> (ii) 4 acres in the aggregate when situated in any other municipality, or
>
> (iii) any area greater than the area referred to in subclause (i) or (ii) that may be exempted by by–law
>
> if the parcels are held by or for the use of any religious body and are
>
> (iv) the site of a building chiefly used for divine service, public worship or religious education, or
>
> (v) used exclusively as a parking area and solely in connection with the specified uses of the building described in subclause (iv);
>
> (*c*. 1) a building or any part of it
>
> (i) situated on land held by or for the use of any religious body, and
>
> (ii) which is chiefly used for divine service, public worship or religious education, but exclusive of any part of the building which is chiefly used for other purposes.

[3] The Alberta Assessment Appeal Board on December 20, 1993, having heard an appeal from a decision of the Court of Revision of the County of Parkland No. 31, held that the monastery is partly used, but not chiefly used, for the purposes set out in the exempting provisions of the Act. The Board agreed with the Court of Revision that 14% of the monastery is exempt from assessment but varied the earlier disposition to "provide [an exemption] for common areas necessary for the support of the exempted areas". The Board also held that "for any portion of the land to be exempt it must contain a building which is chiefly used for divine service, public worship or religious education". The Board

interpreted the term "chiefly" to mean at least 50%. Accordingly, the Board ruled that no portion of the land is exempt.

[4] The Applicant seeks an Order in the nature of certiorari and asks that the decision of the Alberta Assessment Appeal Board be set aside pursuant to R. 753.04 of the *Alberta Rules of Court.*

[5] The Applicant sets forth the following grounds:

1. The Respondent Board erred in law on the face of the record in holding that the land and improvements of the Applicant are not exempt from assessment pursuant to s. 24(1)(*c*) and (*c*.1) of the *Municipal Taxation Act*, R.S.A. 1980, c. M–31;

2. The Respondent Board erred in law or in jurisdiction or misdirected itself in failing to take into account the monastic lifestyle and use which the Applicant makes of the property;

3. The Respondent Board's decision is patently unreasonable in that the Board failed to look at the monastic lifestyle and use which the Applicant makes of the property in determining that the land and improvements of the Applicants were not exempt from assessment pursuant to s. 24(1)(*c*) and (*c*.1) of the *Municipal Taxation Act.*

[6] The facts are not in dispute. The property is a cloister or monastery for the Order of Carmelite Nuns. The development consists of two main buildings. The monastery is a two–storey structure totalling 22,112 square feet and the secondary building is a caretaker's residence of 1,300 square feet. The monastery was designed as a permanent home for nine to sixteen nuns and contains sleeping rooms (cells), kitchen and dining facilities, an "infirmary", a "recreation room", work space, a "crafts room", sacristy, chapel, library, offices, refectory, prayer rooms, choir and ante–choir areas and two 1 –bedroom self–contained suites.

[7] It is common ground that the Carmelite Nuns lead a monastic life of silence and prayer. This religious Order follows a continuous agenda of prayer and religious teaching as set out in the daily timetable which I have marked as Sched. "A" to this judgment [post, p. 387].

[8] The County of Parkland No. 31, while not disputing the foregoing, persuaded the Board that the areas designed and used for purposes such as eating and sleeping or to accommodate visitors to the monastery are assessable. The Board held that the caretaker's residence "would seem to be clearly outside the requirements [of the statute], as would the guest suites in the monastery. As well, the kitchen, dining and sleeping accommodation for the resident nuns do not fit within the exempting provisions of the Act".

The Board held that only the chapel, sacristy area, choir area, ante–choir area, and choir balcony qualified for exemption. With the exception of common areas necessary for the support of the exempted areas, the Board held that the evidence was not sufficient to persuade the Board that the remaining areas of the building qualify for exemption.

[9] In the result, the Board declined to grant an exemption in respect of the remaining areas of the monastery.

[10] An application for judicial review is not an appeal. This Court is limited to reviewing errors of law or jurisdiction. It is not my function to substitute my opinion for that of the Board. Even an erroneous appraisal of the evidence by the Board cannot ground a successful challenge in certiorari.

[11] In my opinion, however, the decision of the Board is patently unreasonable and reveals palpable misapprehension and misdirection amounting to error in law and jurisdiction on the face of the record.

[12] Exemptions are not lost simply because part of a building that would otherwise be exempt has an ancillary or incidental purpose in addition to the chief purpose of divine service, public worship or religious education.

[13] In its reasons, the Board considered, inter alia, *The Shorter Oxford English Dictionary*, 3rd ed., definition of "education". "Education" contemplates "systematic instruction, schooling or training … in preparation for the work of life". The evidence before the Board was clear and unequivocal. It showed that the Carmelite Nuns have adopted a life of silence and prayer marked by immersion in religious pursuit, including divine service and religious instruction, schooling and training, in preparation for that which they see as their life work. The lifestyle adopted to achieve those goals is that of a cloistered existence in a monastery.

[14] The cells, which the Board held were not exempt, serve as "private chapels" or places of prayer and spiritual reading as laid down by the Carmelite Rule. Four of the cells belong to the novitiate Sisters who are in formation for the religious life. Two are prayer rooms and lecture rooms for the religious formation of new applicants.

[15] The fact that these cells also serve as places of respite does not, in my judgment, operate so as to deprive the cells of the exempt status that the statute would confer upon them. The cells exist only to permit the Nuns to pursue religious objectives in a cloistered context. The same may be said of the kitchen and dining facilities. To hold otherwise, in my respectful opinion, is patently unreasonable.

[16] The same holds true for that part of the monastery set aside for the older Sisters of the Order. The "infirmary" allows those in greater need of care and comfort to continue their religious pursuits and observances without abandoning the monastery. The chapel and choir area are connected by microphone to the "infirmary" so as to enable the older Sisters to join in the religious services. It is, in my view, patently unreasonable to conclude that the infirmary area is chiefly used for a non–religious purpose.

[17] One of the suites is available for the periodic use of a priest who gives spiritual direction and conducts conferences as part of the religious education of the nuns. The other suite is used by the Sisters to meet visitors who come for spiritual help and direction. The work rooms are for Sisters who make text cards and other religious items as part of the spiritual apostolate of the community. The "crafts room" is, in fact, the Novitiate Room used by those beginning their studies and religious formation. The "recreation room" is a meeting place for informal daily meetings of the nuns to discuss practical points of daily religious life. It is not used in a recreational sense. The Sister who receives visitors to the convent uses the external Sister's room (workroom) to receive them. The big and small parlours are for spiritual direction for those who come for this purpose to learn about the life of prayer. The library holds the books for religious education of the Sisters and those who come to the monastery for religious instruction. The two rooms labelled "offices" are for the Religious Superior who has to organize the daily religious activities of the Sisters, and who are there received for individual spiritual direction. The basement rooms are places where religious objects are made. These are provided as a form of spiritual help for those coming to share the life of the Order. It is, in my view, patently unreasonable to conclude, as the Board did, that any of these areas is chiefly used for a non–religious purpose.

[18] No one suggests that any part of the daily activities of the members of the Order is occupied with commercial or secular enterprise. The lives of the Carmelite Nuns, the record shows, are devoted exclusively to religious pursuits. They have no life outside the walls of the monastery. Within the monastery, every waking hour is devoted to religious endeavour including divine service and religious education. No part of the main two–storey structure is used chiefly for any other purpose whatsoever.

[19] For these reasons, and in order to avoid having the matter referred back to the Alberta Assessment Appeal Board, I conclude that the Applicant is entitled to a declaration that the monastery totalling 22,112 square feet is exempt from taxation. I find, however, that no reviewable error was made by the Board in respect of the caretaker's residence of

1,300 square feet. It is not exempt. Mindful of the provisions of the statute, I declare the land consisting of 13.05 acres to be exempt from taxation.

[20] Counsel may speak to costs.

Application allowed in part.

SCHEDULE"A"

CARMELITE NUNS OF WESTERN CANADA

DAILY TIME–TABLE

HORARIUM (Latin = hour)

Time–table

5:20 a.m.	Rise –	breakfast
5:50 a.m.	Go to Choir	(i.e. our part of the Church)
6:00 a.m.	Angelus	(ancient prayer of the Church for the beginning, middle and end of the day –said at 6:00 a.m., midday and 6:00 p.m.).
		This is followed by what is called the Prayer of the Church or the Divine Office which is said by all priests, monks and nuns at 7 different times of the day. It is said aloud, together and consists of hymns, prayers and readings from Scripture with the intention of offering the whole day to God for all the needs of the whole world.
6:05 a.m.	MORNING PRAYER	of the Prayer of the Church
6:40 a.m.	Mental Prayer	one hour of private prayer together
8:00 a.m.	Mass followed by TERCE –	1/4 hour of prayer in thanksgiving
		Second part of the Prayer of the Church. The name comes from it being said formerly at the third hour of the day (terce = third)
9:00 a.m.	WORK –	This includes all the domestic chores as we do not have outside help; cleaning, sweeping, washing, cooking, making clothes, mending, household needs, gardening, correspondence, care of the Church, care of the sick, etc. Each Sister will also have personal work which she can do according to the time available for her. Some have more household work than others.
11:30 a.m.	SEXT–	the third part of the Prayer of the Church (Latin sext = six, i.e. sixth hour of daylight)
12:00 a.m.	ANGELUS–	midday prayer Dinner
		Washing the dishes, preparing the vegetables for the next meal, etc.
1:00 p.m.		Short meeting together to discuss relevant aspects of our religious life.

1:30 p.m.	NONE –	the fourth part of the Prayer to the Church (Latin nonum = nine, i.e. the ninth hour of daylight)
		Prayers for special needs
2:00 p.m.	Spiritual Reading –	the writings of the saints of our Carmelite Order
3:00 p.m.	WORK –	as in the morning. Sometimes the whole community will work together on some community job, or some service we are doing for others, those in needs, some charity, poor families, etc.
4:30 p.m.	EVENING PRAYER –	the fifth part of the Prayer of the Church (this used to be called Vespers from the Latin word vespera = evening) followed by
5:00 p.m.	Mental Prayer for one hour	
6:00 p.m.	ANGELUS	Supper
		Washing the dishes, preparing vegetables for next day, etc.
7:00 p.m.	Recreation together.	Discussions on our Carmelite life.
7:45 p.m.	Rosary –	traditional prayer of the Church
8:00 p.m.	NIGHT PRAYER –	the sixth part of the Prayer of the Church (this used to be called compline from the Latin word Completum = the end, because it is the end of the day)
8:30 p.m.	Free Time –	the Sisters usually take this time for personal letters or reading, prayer, etc.
9:30 p.m.	READINGS –	the seventh part of the Prayer of the Church
		It has this name because it consists of 2 long readings from Scripture and several Psalms and a Prayer. This is equivalent to a night Office or prayer, instead of getting up at night.
	Short Prayers	
10:30 p.m.	Retire	

TAB 5

In the Court of Appeal of Alberta

Citation: T. Eaton Company Ltd. v. Alberta (Assessment Appeal Board), 1995 ABCA 361

Date: 19950925
Docket: CA-14648
Registry: Calgary

Between:

T. Eaton Company Ltd.

(Applicant)
Appellant

- and -

The Alberta Assessment Appeal Board
and The City of Calgary

Respondents
(Respondents)

The Court:

The Honourable Madam Justice Hetherington
The Honourable Mr. Justice O'Leary
The Honourable Madam Justice Picard

Reasons for Judgment The Honourable Mr. Justice O'Leary
Concurred in by The Honourable Madam Justice Hetherington
Concurred in by The Honourable Madam Justice Picard

APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE VIRTUE OF THE COURT OF QUEEN'S OF ALBERTA DATED SEPTEMBER 8, 1993

COUNSEL:

P.A. Smith, Q.C. for the Appellant

W.J. Nugent for the Respondent, The Alberta Assessment Appeal Board

P. Tolley for the Respondent, The City of Calgary

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE O'LEARY

INTRODUCTION

[1] This is an appeal by The T. Eaton Company Limited ("Eatons") from the dismissal in Queen's Bench of an application for judicial review of a decision of the Alberta Assessment Appeal Board ("the Board"). The Board confirmed the City of Calgary's 1988 municipal tax assessment of the land occupied by Eatons downtown department store.

[2] The City Assessor based his assessment on the price paid for the land in 1985 when it was acquired in contemplation of the development of a large retail shopping project which included the store. As part of the development, Eatons accepted the imposition of height and density restrictions not present when the land was bought. The Assessor and the Board found that the development restrictions did not lower the value of the land for assessment purposes.

[3] The reviewing Judge held that there was "no error of law on the face of the record which significantly affects the Board's decision or renders it unreasonable". He noted that the issues involved were complex and within the Board's area of expertise and therefore the decision "should not lightly be interfered with by a Court".

[4] I have concluded that the appeal must be allowed. The question before the Board was whether the market value of the land was adversely affected by the development limitations attached following its acquisition. Although the Board professed to answer that question, it in fact looked only at the impact of the restrictions on the special value of the property to Eatons. That was an error of law which is, in my view, sufficient to justify interfering with the decision.

LEGISLATION

[5] Section 9 of the ***Municipal Taxation Act,*** R.S.A. 1980, c. M-31 (repealed and superseded by the ***Municipal Government Act,*** S.A. 1994, c. M- 26.1, eff. Jan. 1/95) ("the Act") requires land to be assessed on the basis of its "fair actual value exclusive of any improvements on it". Section 3(1) of ***Alberta Regulation 397/85*** defines "fair actual value" as a percentage of market value:

> …. the fair actual value of land, other than farm land, in an urban municipality is an amount equal to 65% of the market value of the land in the base year of the general assessment.

[6] The relevant "base year" of the Calgary general assessment was 1985. The City Assessor was therefore required to commence his assessment by determining the market value of the land in the base year of 1985, which was, coincidentally, the year in which it was acquired and prior to the imposition of the development restrictions.

[7] Section 9(3) of the Act lists criteria which the assessor must consider in arriving at market value. Those relevant here are as follows:

> (3) In determining the value of land an assessor shall have regard to
>
> (a) any advantages or disadvantages of location,
>
> …
>
> (c) any profitable use that may reasonably be made of the land,
>
> …
>
> (e) any other considerations that the Assessment Commissioner from time to time specifies.

[8] Section 34(1) of the Act compels the assessor to reassess property where its market value has been decreased subsequent to the base year by a cause other than fair wear and tear:

> 34(1) …. the assessor shall reassess not later than December 31 in each year,
>
> …
>
> (b) all other assessable property the value of which is decreased by the destruction of some improvement on it or by some cause other than fair wear and tear.

[9] The second step in making the assessment was therefore to establish the decrease in market value, if any, between the base year of 1985 and December 31, 1987, the date for fixing the value for the 1988 assessment.

[10] Eatons does not question the conclusions of the Assessor and the Board that the acquisition price reflected market value in 1985. Its position is that both erred in their approach to the determination of the effect of the development limitations on market value.

STANDARD OF REVIEW

[11] In ***Pezim v. British Columbia (Sup't of Brokers),*** [1994] 7 W.W.R. 1, 114 D.L.R. (4th) 385 (S.C.C.), the Supreme Court of Canada reviewed the principles governing judicial review of the decisions of administrative agencies and tribunals. Iacobucci, J., speaking for a unanimous seven-member Court, gave the following outline commencing at p. (WWR) 22:

> There exist various standards of review with respect to the myriad of administrative agencies that exist in our country. The central question in ascertaining the standard of review is to determine the legislative intent in conferring jurisdiction on the administrative tribunal. In answering this question, the courts have looked at various factors. Included in the analysis is an examination of the tribunal's role or function. Also crucial is whether or not the agency's decisions are protected by a privative

clause. Finally, of fundamental importance, is whether or not the question goes to the jurisdiction of the tribunal involved.

Having regard to the large number of factors relevant in determining the applicable standard of review, the courts have developed a spectrum that ranges from the standard of reasonableness to that of correctness. Courts have also enunciated a principle of deference that applies not just to the facts as found by the tribunal, but also to the legal questions before the tribunal in the light of its role and expertise. At the reasonableness end of the spectrum, where deference is at its highest, are those cases where a tribunal protected by a true privative clause, is deciding a matter within its jurisdiction and where there is no statutory right of appeal … .

At the correctness end of the spectrum, where deference in terms of legal questions is at its lowest, are those cases where the issues concern the interpretation of a provision limiting the tribunal's jurisdiction (jurisdictional error) or where there is a statutory right of appeal which allows the reviewing court to substitute its opinion for that of the tribunal and where the tribunal has no greater expertise than the court on the issue in question … .

[12] The ***Municipal Taxation Act*** and the ***Assessment Appeal Board Act,*** R.S.A. 1980, c. A-46 (repealed and superseded by the ***Municipal Government Act,*** S.A. 1994, c. M-26.1, eff. Jan. 1/95), give the Board wide powers to supervise the assessment of real property for municipal taxation purposes with the objective of ensuring that all property in the Province subject to municipal taxation is fairly and equitably assessed. It is a specialized tribunal by any definition. Its members are appointed because they have expertise in land valuation acquired through training and experience. Neither statute confers a right of appeal or contains a privative clause limiting the scope of review.

[13] Here, the Board decided an issue within its jurisdiction. Its decision may be set aside only if there is error of law apparent on the face of the record. Even in the presence of such error the ruling is entitled to deference. The level of deference is, in my view, closer to the "reasonableness" end of the spectrum than it is to the "correctness" end. It will be set aside only if an unreasonable result flows from the error of law.

[14] This is an appeal from a refusal to quash the decision. The task of this Court is to determine if the reviewing Judge properly applied the appropriate standard of review. If we conclude that he erred, we may grant the remedy which he should have given.

FACTS

[15] The store is located on two adjacent parcels legally described as Lot 38, Block 49, Plan 8410964, and Portions of Lot 19 and Lots 20-26, Block 49, Plan A-1, respectively. The land was purchased in 1985 by a developer on behalf of Eatons for $32,000,000.00 in contemplation of a major retail-commercial development which included the new Eatons store. The land was subsequently transferred to Eatons and the new store was built as

part of a comprehensive re-development project negotiated between Eatons, the City of Calgary and the developer. In addition to the new store, the development involved the construction of a high-rise office tower and a shopping mall complex on separately-owned properties immediately to the east ("Parcel B") connected to the store by a multi-level pedestrian bridge over a City street. The development is the western end of the retail-commercial centre of downtown Calgary, with the Hudson's Bay store three blocks away forming the eastern terminus.

[16] When the land was purchased in 1985 it was not subject to any unusual height, density or other development restrictions. Lot 38 was under Direct Control subject to a By-law which permitted high density office tower development. Lot 19 and Lots 20-26 were zoned for high-density commercial development. As part of the negotiated re-development scheme the land became subject to certain height, density and use restrictions which were incorporated in a development agreement between Eatons, the City and the developer and in a Direct Control By-law. The use of the land is now limited to a department store not exceeding six stories in height, and the permitted density has been substantially reduced. To accommodate the project, the City agreed to the transfer of a portion of the density allowance to Parcel B. Eatons was aware when the land was acquired that it would be subjected to these restrictions.

[17] The Assessor determined the base year market value by referring to three sales in 1985. These comprised the two parcels making up the land and a third parcel also located in downtown Calgary. None was subject in 1985 to development restrictions similar to those now attached to the land as a result of the redevelopment. The Assessor made no reduction in the 1988 market value for the use and density restrictions applied to the land subsequent to its purchase.

[18] Eatons appealed and in a decision made in December, 1990 the Board confirmed the assessment. An application to Queen's Bench for judicial review was successful. Prowse, J. quashed the decision, saying:

> The Board erred in law on the face of the record in refusing to take into account in determining the value of the subject lands development restrictions imposed by the City of Calgary upon the subject lands.

[19] After a re-hearing the Board again declined to make an adjustment to the 1988 market value because of the use and density restrictions. This appeal follows an unsuccessful application to Queen's Bench for judicial review of that decision.

[20] An expert in property appraisal called by Eatons testified that the 1985 market value was substantially reduced by the presence of the use and density restrictions attached later.

[21] The City argued that the price paid for the land was a reflection of market value in 1985 and the use and density restrictions had not had a negative effect. When Eatons acquired the land it intended to transfer a portion of the permitted density to Parcel B and to have the other restrictions attached. The land was notionally subject to the restrictions when Eatons acquired it through the developer. The price it paid was presumably calculated on that basis and therefore continued to be a fair measure of market value after the restrictions were placed.

SUMMARY OF BOARD'S DECISION

[22] The Board agreed with the City's position. It found that the price paid represented the market value of the land at the time of acquisition in 1985. That price contemplated the development restrictions and controls later attached. In the result, the Board considered the impact of the restrictions on market value but concluded that their presence did not decrease the market value measured by the acquisition cost. The price paid for the land was held to be a true reflection of market value in both 1985 and 1988. Subject to a small reduction to recognize the fact that the land is situated at the extreme western end of the retail-commercial core of downtown Calgary, the assessment was upheld.

ANALYSIS

[23] The presence of development and use limitations contained in a By-law or in an agreement with the municipal authority may affect the market value of land relative to comparable land not so restricted. In ***Canadian National Railway Co. et al. v. Vancouver (City),*** [1950] 2 W.W.R. 337 (B.C.C.A.), land held by Canadian National was, by agreement with the City, restricted to use as a railway terminal. Canadian National led evidence before the Vancouver Board of Assessment Appeals that the restrictions had the effect of decreasing the value of the land in relation to comparably situated property. The Board rejected this evidence and valued the land on the same basis as comparable property in the district the use of which was not restricted. The British Columbia Court of Appeal allowed an appeal. O'Halloran, J.A. (Bird, J.A. concurring) said at p. 343:

> Economically speaking, land solely as land has little value; it derives its value from its attributes. For example, farming land, speaking generally, derives its value from fertility, suitability for certain crops and proximity to marketing facilities; urban land, speaking generally, derives its value from its location in a city (varying of course with

> the commercial importance of the city), its suitability and size for varying commercial uses, and if not vacant, the type of building upon it. But the lands here, compulsorily restricted to railway terminal purposes, cannot owe their value to competitive exchange or sale conditions. Their restrictive opportunities for use deny it. The evidence later examined establishes that, because of their restricted opportunity for use, their assessment value is necessarily less than that of adjacent industrial sites.

And later, at p. 344:

> If land by statute, agreement with the city (as here), or otherwise, is restricted to the special use to which it is put, then the assessment rationally must be related to its value in that use, even though the land would be properly assessable at a much higher figure if it could be put to some other use. Hence it is reasoned that the lands here must be regarded as assessable in the light of their use for railway terminal purposes, and are not assessable as industrial sites, a use that is prohibited to them.

[24] The same principle was accepted by the Saskatchewan Court of Appeal in ***Managerial Services Ltd. v. Regina,*** [1981] 2 W.W.R. 501 where Bayda, J.A. (as he then was) said at p. 510:

> The key words in this respect are “fair value”. Among the many factors that ought to be considered in determining the value of bare land is the use to which the land is *capable* of being put, capable not only from the physical standpoint (location, size, topographical features and the like) but from the legal standpoint as well (zoning, building restrictions and the like). Plain sense and ordinary experience tell us that zoning controls are a factor in determining fair value. For example, land which by reason of municipal zoning provisions is capable of commercial development is likely to be worth more than would be the case if the zoning provisions restricted the land to residential development.

[25] An apparent exception to this principle was recognized by the Manitoba Court of Appeal in ***Consolidated Shelter Corp. Ltd. v. Rural Municipality of Fort Garry*** (1965), 49 D.L.R. (2d) 565. There, the owner had entered into an agreement with the Province to construct “low-income” housing on the subject land. The agreement prohibited resale of the land, restricted the amount of rent that could be charged for the housing units, and restricted the dividends payable to the shareholders of the owner-corporation. The Court conceded that the agreement had the effect of lowering the market value of the lands, but held that the ***Canadian National Railway*** principle did not apply since the municipality was not a party to the agreement imposing the restrictions. The Court held that it would be unfair to allow a landowner to unilaterally devalue his property and thereby shift his share of the tax burden to other properties.

[26] A review of the Board’s decision shows that it was aware of the possible negative effect on value of development and use limitations. It is evident from the Board’s reasons that it did consider the impact of the specific restrictions in place here on the market value of the land.

[27] Nevertheless, I find that the Board made a fundamental and significant error of law in its approach to the determination of value. It purported to apply a market value standard, as required by the Act, however it directed its inquiry to the question of whether the restrictions affected the subjective or special value of the land to Eatons, rather than to their effect on market value.

[28] Generally, the special value of land to a particular person is irrelevant in the determination of market value. In ***Great Central Ry. v. Banbury Union,*** [1909] A.C. 78 (H.L.), Lord Dunedin considered the assessment of a short strip of railway that connected two major railway systems. He said at p. 94-5:

> The assessing authority cannot, I think, be heard to say, "All your Great Western through traffic is dependant on this piece of line; therefore it has an enhanced value because you could not do without it." The same might be said as regards each and every isolated mile of line over which through traffic goes. It is really what Lord Halsbury in one of these cases calls the blackmailing argument. You may spoil the ship for want of a penny-worth of tar. A prudent ship owner would pay a great deal not to spoil a ship. Yet to the hypothetical buyer the price of tar still remains a penny.

[29] Subjective elements of value associated with the concept of special value to a particular person and speculative factors such as possible changes in permitted use are to be excluded in arriving at the value of land for assessment purposes: ***Re Bramalea Ltd. and Assessor for Area 9 (Vancouver); T. Eaton Co., Intervenor*** (1990), 76 D.L.R. (4th) 53 (B.C.C.A.).

[30] The special value to the owner is not always irrelevant. In ***Montreal v. Sun Life Assur. Co. of Canada,*** [1952] 2 D.L.R. 81, the Privy Council held that in determining the market value of a building for municipal tax purposes the assessor may take into account the present owner as a possible purchaser of the property and consider what it would be willing to pay for the property if it were entering the market for property to meet its specific requirements, or the amount it would be willing to spend to replace the subject land. In his judgment, Lord Porter made it clear that this did not entitle the assessor to equate market value to the subjective value of the property to the present owner. He said at p. 90:

> But the owner must be regarded like any other purchaser and the price he would give calculated not upon any subjective value to him but upon ordinary principles, i.e., what he would be prepared to pay, if he was entering the market, for a building to meet his requirements, or would be willing to expend in erecting a building in place of that which is being assessed.

In that case there was no market for the building being assessed. In order to find a "market value" it was necessary to consider factors which have little or no significance where, as here, a market does exist.

[31] The erroneous approach of the Board is manifest in its reasons. For example, it observed that no owner in Eatons' position would voluntarily have assumed restrictions on development and use if to do so would decrease the value of the property. It said (A.B. p. 644):

> The Board cannot think of any circumstance where a property owner would intentionally devalue his property or deliberately attempt to limit its potential unless by so doing he could add to his overall value.
>
> …
>
> It seems very unreasonable that Eaton's would pay what they did pay and then intentionally ask the City to downzone the land to create a less intensive development and a corresponding decreased value.

[32] This passage illustrates the Board's preoccupation with the value of the property to Eatons rather than its value in the market. The land may have had the same market value and special value to Eatons when it was acquired, both properly measured by the purchase price. The subsequent development agreement and confirming By-law attaching restrictions to the use of the land may not have had an adverse effect on the subjective special value to Eatons. They may, indeed, have enhanced that special value. It is irrelevant whether Eatons or any other owner would deliberately seek restrictions on development and a possible decrease in value. The question facing the Board was whether the restrictions reduced the market value, not whether a prudent owner would voluntarily accept limitations which may have that effect.

[33] The Board demonstrated the same error by emphasizing Eatons' motivation for acquiring the land and assuming the development restrictions. It said (A.B. p. 645):

> Value is not directly proportional to density. … Many other factors contribute to value. The owners' entire motivation for acquisition of the subject lands was to construct a new retail department store to expand the western anchor of the downtown retail-commercial spine, and also to free up the adjacent parcel to the east to allow office tower development together with a retail mall. The motivation for the acquisition no doubt included the prospects of transferring density so as to preclude the possibility of any requirements by the City of additional bonusing.

[34] At the same time the Board appears to confuse actual or possible development of the land within the limits permitted by development controls with legal restrictions on use (A.B. p. 645):

> Even though some of the $32,000,000.00 purchase can be shown to represent some other things other than land, the Board is not persuaded that for any proposed use that the value would be different. If a purchaser wishes to construct an office tower on the site or a department store or even a livery stable, the market value would be the same. Value in land is inherent. If there is a loss in value due to Eatons request

> and permission to construct a department store and not an office tower, the loss would be attributable to the building and not the land.

[35] The statement that the "Value of land is inherent" is clearly wrong: ***Canadian National Railway Co. et al. v. Vancouver (City),*** supra. The Board was quite correct, however, in saying that the election of an owner to under-use his land does not detract from its market value as land. Had the development restrictions not been attached, Eatons' election to under-develop the site would not be a basis for finding a decrease in market value: ***Grampian Realties Co. v. Montreal East,*** [1932] 1 D.L.R. 705 (S.C.C.). This is consistent with s. 9 (1) of the Act which requires that land be valued "exclusive of any improvements on it".

[36] The following passage is a further illustration of the Board's mistaken emphasis on the value of the land to Eatons rather than its value in the market. The Board said (A.B. p. 644):

> The City holds that to do what Eaton's did enhanced their presence downtown by expanding the mall one block further west, which allowed for plus 15, 30 and 45 connections which would likely not be possible at another location as well as allowing the old store to operate until the new store was completed thereby preventing any business interruption.
>
> … The subject lots were perhaps most ideally suited to Eatons as opposed to anyone else in the market place. This of course is the nature of real estate as no other land had this location.

[37] The foregoing extracts from the Board's reasons demonstrate clearly that the Board, while purporting to assess the market value of the land, in fact based its assessment on its special and subjective value to Eatons. This was, in my view, a significant error of law. The Board considered the effect of the restrictions on the value of the land to Eatons; it did not assess their impact on market value as it was required to do. This error is sufficient to justify allowing the appeal and quashing the Board's decision.

[38] The Board made a further error when it assumed that the restrictions were not an important factor in determining market value since they could be removed or varied without difficulty. It said (A.B. p. 645) :

> It was not difficult for Eatons to get zoning through decreased F.A.R. [density allowance] for a department store it would also be possible to get 20 or more F.A.R. if that is what the developer wanted.

[39] Counsel for the City referred us to ***T. Eaton Co. v. British Columbia (Assessor of Area No. 09 - Vancouver)*** [1991] B.C.J. #2593 (B.C.S.C.), as authority for the proposition that because the land could always be re-zoned, the restrictions are not

"permanent" and hence do not affect the amount that a prudent purchaser would pay for the land. In dismissing the appeal (at (1993) 83 B.C.L.R. (2d) 236), Taylor, J.A., for the Court, recognized that where restrictions are made by way of agreement and that agreement may be altered in the future by further agreement, the restrictions are not "permanent" and do not affect the value of land for assessment purposes under the British Columbia legislation. However, he was careful to distinguish between restrictions which are contained in a By-law and those which are not. In the former case, because a change in a By-law requires a formal resolution, the restrictions are regarded as permanent. In the latter situation, since the restrictions can be changed by negotiation, they are not. This case is, therefore, of no assistance to the City. If it is relevant at all, it is only to the extent that it affirms the principle set out in the ***Canadian National*** and ***Managerial Services*** cases that development limitations are a factor to be taken into account in determining the market value of land. Speculation that such restrictions may be relaxed in the future is irrelevant: ***Re Intervenor,*** *supra,* unless there is evidence of a reasonable expectation amounting to a probability, that is, something higher than a 50% possibility that a change in the development status of the land will take place: ***Farlinger Developments Ltd. v. Borough of East York*** (1915), 8 L.C.R. 112 (Ont. C.A.), ***T. Eaton Co. v. British Columbia (Assessor of Area No. 09 - Vancouver),*** [1991] B.C.J. No. 2593 (B.C.S.C.).

CONCLUSION

[40] In my view, the error of the Board led to an unreasonable result. The Board did not direct its mind to the effect of the development and use restrictions on market value. It considered only their effect on the value of the land to Eatons. It is impossible to know what decision the Board would have reached had it not erred in its approach to the valuation of the land. It cannot be concluded that the decision under review was reasonable despite the error: ***Von Meer et al. v. Assessment Appeal Board (Alta.) and Edmonton (City)*** (1991), 117 A.R. 186 (C.A.).

[41] The appeal is allowed, the decision of the Board is quashed and the matter is remitted to the Board.

JUDGMENT DATED at Calgary,
Alberta, this 25th day of
September, 1995.

TAB 6

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***Pacific Newspaper Group Inc. v. Assessor of Area #14 - Surrey/White Rock,*** 2008 BCCA 284

Date: 20080627
Docket: CA034277

Between:

Pacific Newspaper Group Inc.

Respondent
(Appellant)

And

Assessor of Area #14 – Surrey/White Rock

Appellant
(Respondent)

Before: The Honourable Mr. Justice Smith
The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Frankel

J.H. Shevchuk	Counsel for the Appellant
B.T. Gibson, Q.C.	Counsel for the Respondent
Place and Date of Hearing:	Vancouver, British Columbia 11 September 2007
Place and Date of Judgment:	Vancouver, British Columbia 27 June 2008

Written Reasons by:
The Honourable Mr. Justice Chiasson

Concurred in by:
The Honourable Mr. Justice Frankel

Dissenting Reasons by:
The Honourable Mr. Justice Smith (p. 23, para. 59)

Reasons for Judgment of the Honourable Mr. Justice Chiasson:

Background

[1] The respondent, Pacific Newspaper, owns the Vancouver Sun and Province newspapers. They are printed in a facility in Surrey, British Columbia. The appellant Assessor's valuation of the facility for municipal taxation for the years 2000 and 2001 caused litigation: Pacific Newspaper and its predecessor, Southam Inc., appealed the decision of the Property Assessment Appeal Board of British Columbia by way of stated case pursuant to s. 65 of the ***Assessment Act***, R.S.B.C. 1996, c. 20; on the stated case, Madam Justice Gray held the Property Assessment Appeal Board erred in law by assessing the property by reference to the value to its owner rather than by reference to its fair market value; the effect of Madam Justice Gray's decision was to reduce the respondent's assessments for 2000 and 2001; this Court affirmed her decision. (***Southam Inc. (Pacific Newspaper Group Inc.) v. British Columbia (Assessor of Area No. 14 – Surrey/White Rock)***, 2004 BCCA 245, 28 B.C.L.R. (4th) 317, 238 D.L.R. (4th) 640 aff'g 2003 BCSC 676, 39 M.P.L.R. (3d) 85, leave to appeal to S.C.C. refused, [2004] 3 S.C.R. v).

[2] In ***Southam***, Levine J.A. had this to say:

> [12] The Board's analysis proceeded from a finding that the highest and best use of the building was its current use as a printing plant for the respondent's two newspapers. The chambers judge rejected that finding on the ground that there is no market for the current use.
>
> […]
>
> [15] The Board's finding that the highest and best use was the current use where there was no evidence of a market for that use is

> contradictory and wrong in law. Highest and best use is the use that produces the highest estimate of market value and cannot be determined without reference to a competitive market.
>
> [...]
>
> [22] It seems to me that if the owner is to be considered a potential purchaser, there must be at least one other potential purchaser for the current use. Otherwise, there can be no competitive bidding and no market. That is this case: there is no market, other than the current owner, for the current use. Therefore, determining the market value of the property based on its current use inevitably leads to determining the value of the current use to the owner, and not market value.

[3] In assessing the property for the years 2002, 2003, 2004 and 2005, the Assessor did not follow this Court's decision in ***Southam***. Pacific Newspaper appealed the assessments to the Board. The Assessor took the position it was not bound by ***Southam*** because there were new facts that distinguished the later assessments: there was no agreement on what the value of the property would be for an alternative use as there had been in the previous case; there was evidence of a market – the sale of the printing facility as part of the sale of the business as a going concern. The Assessor also took the position that the decision in ***Southam*** was contrary to certain decisions of higher courts (***Montreal v. Sun Life Assurance Co. of Canada***, [1952] 2 D.L.R. 81 (J.C.P.C.), and ***Assessment Commnr. of York v. Office Specialty Ltd.***, [1975] 1 S.C.R. 677).

[4] In para. 26 of its reasons (2005 PAABBC 20050284), the Board stated it was "not satisfied that, just because there is no agreement on the value of the Property for an alternate use, that this is sufficient to distinguish the previous courts' decisions", but concluded in paras. 34 and 35:

> […] [T]here is a market for the Property as part of the going concern of the newspapers, though the market may be limited […] there are other potential purchasers, though a limited number, both nationally and internationally, for the Property in its current use as part of the purchase of that going concern.
>
> As such, the previous courts' decisions in *Southam* […] can be distinguished on this finding and the Board does not consider them binding.

The Board confirmed the assessments.

[5] Pacific Newspaper again appealed by way of stated case. The specific question on the stated case was:

> Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?

[6] In para. 3 of his reasons (indexed as 2006 BCSC 953) Mr. Justice N. Smith noted, "the matter was argued primarily as a question of *stare decisis* - whether the board erred in concluding that it was not bound by the previous decisions of this court and the Court of Appeal". In para. 16, the judge concluded that the Board had no basis on which it could distinguish ***Southam*** and that he and the Board were bound by that decision. He answered the question on the stated case, "yes".

[7] Granting leave to appeal to this Court, Mr. Justice Lowry stated at para. 6 of his reasons (indexed as 2006 BCCA 386):

> […] The Assessor further contends that *Southam* was wrongly decided. On this application, counsel has curtailed his criticism of the decision somewhat, given that he maintains undermining it is not

> necessary to the success of the proposed appeal, but he says that, if permitted, he will seek to establish, on the filing of the Assessor's factum, that the Court should convene a five-member panel to reconsider *Southam*. [...]

[8] The Court refused the request for a five-judge division and stated that the appeal would proceed before three judges in the usual way.

The Chambers judgment

[9] The judge stated in para. 4, "[t]here is […] no market for the property as it is currently used, except as part of a larger sale of the entire newspaper business". In para. 12 he observed that a court or tribunal can probably take notice of the fact that businesses of all kinds are bought and sold as going concerns. He continued in para. 12:

> [A] review of the board's previous decision makes it clear that there was nothing new about this evidence or the argument based on it. The board decision of April 11, 2002 [the ***Southam*** decision], specifically referred to the same evidence at ¶18:
>
> > A number of corporate share transactions took place in the 1990's. In 2000, a share transaction, described by Mr. Ross as the largest (of its nature) in Canada in 50 years, involved a number of assets in a number of provinces, including this property.

[10] The judge then referred in paras. 13 – 15 to the treatment by the Board and the courts in ***Southam*** of the evidence of the sale of the newspaper business, including references to the application of s-s.19(4) of the ***Assessment Act***:

> [13] At ¶ 56 of the same decision [***Southam***], the board rejected the concept of valuing the property as part of a going concern:

> The Board was also asked to consider section 19(4) of the *Assessment Act* which provides that if an industrial or commercial undertaking or a business is carried on on the property, the property must be valued as the property of a going concern. If the Assessor was saying this section means the property must be valued as a going concern of a newspaper business of the magnitude of the Appellant, the Board disagrees…. The Board finds that this subsection simply requires that in determining the actual value of property, the undertaking or enterprise carried on from the property is to be assumed to be financially viable such that it is a going concern, and not insolvent or otherwise in financial straits. This only means that the financial or business viability of the occupant, separate and apart from the property, is to be assumed, so that if a business is struggling financially for reasons unrelated to the property's characteristics, the determination of value is not to be affected.

[14] Although she referred to it in a somewhat different context in *Southam*, Gray J. was clearly aware of evidence previously before the board that the newspapers, and with them the subject property, could be and had been sold:

> The Board gave only "the slightest, most marginal, limited weight to the declared value of the property in the transfer documents filed as part of the share transaction." The Board accepted that the transfer documents were part of a much larger transaction and, as such, the determination of the value of this particular property would not have attracted a considered valuation, despite the amount of property taxes payable (¶ 23).

[15] The argument that there is a market for the property as part of a going concern and the evidence in support of that argument was also put before the Court of Appeal, although not dealt with in the court's judgment. The assessor's factum [in ***Southam***] included the following:

> There is a market for the property in its highest and best use. But the subject property does not sell by itself. It sells as part of the going concern or, as in *Crown Forest, supra*, as part of a share purchase transaction. The evidence in this case is that the subject property was part of Canwest's purchase of Hollinger. The market value of the subject property in that transfer was stated by the vendor and the purchaser to be $43,093.116. The

> subject property was used as a printing press before and after the sale.

[11] Smith J. alternatively considered s. 19 of the ***Assessment Act*** in paras. 17 and 18:

> Even if I were not bound by the decisions in *Southam*, I would hold that the board's approach was wrong in law. As said above, s.19 of the *Assessment Act* requires valuation of "land and improvements", based on "the market value of the fee simple interest in land and improvements." Nothing in the *Assessment Act* permits valuation to be based on the valuation of a business. The value of land and buildings in and of themselves is not the same thing as their value as an asset of a larger business. Depending on the circumstances, there may or may not be a relationship between those two values.
>
> In this case, a purchaser buying the two daily newspapers would need to acquire the printing plant as part of the transaction. The business would probably be worthless without it. But the market value of the land and improvements would play little, if any role, in determining the purchase price for the business. That price would presumably be based on the revenue stream of the entire business and/or the value of a dominant position in the Vancouver newspaper market.

[12] The judge's comments are *obiter dicta*. I agree with his observations in para. 17, but I find his comments in para. 18 confusing and not entirely consistent. A purchaser buying the newspapers would not necessarily need to acquire the printing plant. It could buy the business and print the newspapers elsewhere. Without the plant the business would not be worthless. The observation that the market value of the facility would play little role in determining the purchase price for the business does not appear to be consistent with the statement that the business would be worthless without the printing plant. It is clear that the price likely would reflect the

income stream of the business, but again this does not appear to be consistent with the notion that the business would be worthless without the facility.

Positions of the parties

[13] In its factum, the Assessor identified a number of issues, including whether ***Southam*** was wrongly decided, but at the hearing of the appeal, the Assessor agreed that we must proceed on the basis that ***Southam*** was decided correctly. In this context the question is whether this case is distinguishable from ***Southam***.

[14] The Assessor summarized its position with two propositions: first, even if the evidence were identical, *res judicata* does not apply to decisions of the Board, which is entitled to make a different decision; second, there was ample evidence to support the Board's finding of fact that there was a market for the subject property. The Assessor contends that this finding is the basis on which the Board properly distinguished ***Southam***.

[15] The Assessor relies on s-s. 19(4) of the ***Assessment Act*** to support the valuation of the property in the context of a sale of the newspaper business as a going concern. In operative part, the subsection requires the printing facility to "be valued as the property of a going concern".

[16] The respondent Pacific Newspaper contends *res judicata* is not in issue and the applicable principle is *stare decisis*.

[17] Pacific Newspaper asserts it always has been common ground that there is a market for the newspaper business, but this does not convert into a market for the

printing facility. It says the Board valued the property in use and not in exchange, contrary to the principle of law stated in ***Southam***.

[18] Pacific Newspaper says the application of s-s. 19(4) was before the Board and the courts in ***Southam*** and that the section has never been used in assessment matters to establish a value greater than exchange value.

Discussion

[19] As noted, the Assessor takes the position that the issue is not one of *stare decisis*, but respect for the findings of fact of the Board, anchored by the proposition that the principle of *res judicata* does not apply to the Board.

[20] The Assessor says in this case the Board made a finding of fact that there was a market for the property as part of the sale of a going concern, whereas in ***Southam*** the Board held that there was no market for the current use, a newspaper printing facility. The Assessor asserts the Board was entitled to reach this conclusion even if there were no differences in the evidence in the two cases and the court must defer to the Board's finding of fact.

[21] In my view, the doctrine of *res judicata* is not engaged. The judge's decision is not based on a review of the Board's findings of fact. His focus was on the legal conclusion reached by the Board. In para. 16, he stated:

> The board has made a decision with the same result, and based on the same evidence, as the decision that was previously found by both this court and the Court of Appeal to be wrong in law. The board had no basis on which it could properly distinguish the decisions of this

> court and the Court of Appeal in *Southam*. The board was bound by those decisions, as I am.

[22] It is clear that the Board in this case recognized that there was no stand-alone market for the property and as a printing facility it could be sold only as part of the sale of a going concern. The "evidence" to which the judge was referring was discussed by him in paras. 12 – 15. It involved the previous sales of the respondent's business. In para. 12 he said, "[t]he fact that businesses of all kinds are bought and sold as going concerns is probably something any court or tribunal can take notice of without evidence". I agree with this observation and note, as did the judge, that throughout these proceeding it has been well known that this newspaper business has been sold as a going concern.

[23] The Assessor relies on additional evidence that newspaper businesses are sold as going concerns and s-s. 19(4) of the ***Assessment Act*** to support the conclusion of the Board that a market for the business as a going concern is a market for the printing facility as the property of a going concern. While I recognize that s-s. 19(4) was not raised as directly in ***Southam*** as it is in this case, that evidence did not lead the Board or the courts to conclude that there was a market for the facility in ***Southam***. In my view, it is not a basis on which ***Southam*** can be distinguished.

[24] In my view, the Board erred in law in concluding the ability to sell the printing facility as part of the sale of the business as a going concern means there is a

market for the printing facility and the present use of the property is its highest and best use.

[25] Subsections 19(1)-(4) of the ***Assessment Act*** state:

> **Valuation for purposes of assessment**
>
> **19** (1) In this section:
>
> **"actual value"** means the market value of the fee simple interest in land and improvements;
>
> […]
>
> (2) The assessor must determine the actual value of land and improvements and must enter the actual value of the land and improvements in the assessment roll.
>
> (3) In determining actual value, the assessor may, except where this Act has a different requirement, give consideration to the following:
>
> (a) present use;
>
> (b) location;
>
> (c) original cost;
>
> (d) replacement cost;
>
> (e) revenue or rental value;
>
> (f) selling price of the land and improvements and comparable land and improvements;
>
> (g) economic and functional obsolescence;
>
> (h) any other circumstances affecting the value of the land and improvements.
>
> (4) Without limiting the application of subsections (1) to (3), if an industrial or commercial undertaking, a business or a public utility enterprise is carried on, the land and improvements used by it must be valued as the property of a going concern.

[26] Actual value means market value. It is the overriding requirement for valuation in the section. Subsection (3) permits the Assessor to consider present use, but that does not mean that market value can be value in use rather than value in exchange. In my view, consideration of present use can be relevant to determining market value for at least two reasons: first, to answer the question, "is there a market for that use?" (that is the question in this case); if so, to assess whether the present use is the highest and best use. (As stated in para. 15 of this Court's decision in ***Southam***, "[h]ighest and best use is the use that produces the highest estimate of market value […]".)

[27] As noted by the chambers judge in para. 13, the Board in ***Southam*** addressed s-s. 19(4) in para. 56 of its decision. The Board referred to ***Re Alkali Lake Ranch Ltd.*** (1964), 45 D.L.R. (2d) 83, 48 W.W.R. 120 (B.C.C.A.) (cited to D.L.R.), but concluded it was not helpful.

[28] This Court in ***Alkali Lake Ranch*** was considering s. 37 of the ***Assessment Equalization Act***, R.S.B.C. 1960, c. 18, which stated:

> 37 (1) The Assessor shall determine the actual value of land and improvements. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

[29] After noting the "significant words" in s-s. 37(1) - "*and without limiting the application of the foregoing considerations*" (emphasis in original) - the Court addressed the words "property of a going concern" at p. 86:

> I interpret the words "as the property of a going concern" to mean that the main undertaking of which the land under assessment is a part is to be treated as still being operated and the land is not to be valued separately as bare land. See Black's Law Dictionary, 4th ed., p. 821 which defines "going concern" as follows:
>
> > An enterprise which is being carried on as a whole, and with some particular object in view. The term refers to an existing solvent business, which is being conducted in the usual and ordinary way for which it was organized. When applied to a corporation, it means that it continues to transact its ordinary business. . . . A firm or corporation which, though embarrassed or even insolvent, continues to transact its ordinary business.

[30] Pursuant to s-s. 19(2), the Assessor's obligation was to determine actual value – "the market value of the fee simple interest in land and improvements". Subsection 19(4) does not modify or supplant that obligation. It expressly does not limit the application of s-ss. (1) – (3). The Assessor is required to value the printing facility "as the property of a going concern", that is, for example, not as the property of a non-operating or bankrupt concern, which in some circumstances may not reflect the highest and best use and could distort the market value. The proper inquiry mandated by s. 19 of the ***Assessment Act*** is to determine the fee simple market value of the property being assessed. Subsection 19(4) merely states that if the property is used by an enterprise that is a going concern, it is to be valued recognizing that fact.

[31] The section speaks to use, not to market - for example, consider grazing land as opposed to bare land for a consideration of highest and best use (***Alkali Lake Ranch***) - but the inquiry remains, as it was in ***Southam***, whether there is a stand-alone market for the use. Subsection 19(4) does not shift the determination of assessed value from the actual value - "the market value of the fee simple interest" - to the value of property as if it were being sold as part of the sale of a going concern. The latter is a value in use, which ***Southam*** held is not the value required to be determined by the Assessor.

[32] It is clear from both the decisions of this Court (at para. 21) and Gray J. (at para. 37) in ***Southam*** that "the ultimate aim is to find the market (or 'exchange') value" (both decisions referred to ***Montreal v. Sun Life Assurance Co. of Canada***, *supra*).

[33] The distinction between value in use and value in exchange is illustrated in the evidence of the appraiser called by the Assessor before the Board. In explaining his conclusion that "there is a market for this facility", he stated at one point that the "market is for the sale of the facility as the property of a going concern". Shortly thereafter he said, "[i]t would only sell as part of the overall going concern". It is clear on the evidence that Pacific Newspaper could not sell the printing facility *qua* printing facility. The printing facility would only sell as part of the sale of Pacific Newspaper itself. In my view, that is a value in use. It is not the exchange value of the lands and improvements in question. ***Southam*** mandates it is the latter that must be determined by the Assessor.

[34] The Assessor relies on ***Re Canadian Pacific Railway Company and City of Vancouver*** (1964), 47 D.L.R. (2d) 157, 50 W.W.R. 302 (B.C.S.C.) (cited to D.L.R.); ***Re Alkali Lake Ranch***, *supra*; and ***118603 Canada Ltd. v. Vancouver Assessor Area No. 9*** (1988), 43 M.P.L.R. 169 (B.C.S.C.) (in Chambers), aff'd [1990] B.C.J. No. 390 (C.A.). It is contended these cases support assessing the value of the printing facility by considering its value in the context of the newspaper business as a going concern.

[35] These cases concern legislation which did not equate actual value with market value. Market value was merely one factor to be taken into account. For example, in ***118603 Canada***, s-s. 26(3) of the ***Assessment Act***, R.S.B.C. 1979, c. 21, provided, "[i]n determining actual value [of land and improvements…] the assessor may […] give consideration to […] market value of the land and improvements". Referring to ***Sun Life***, Cowan J. in ***118603 Canada Ltd.*** stated at p. 172, "[i]t is clear from the authorities that 'actual value' *can be equated* to market value" (emphasis added). It is equally clear from s. 19 of the present ***Assessment Act*** that for the purposes of this case, actual value is market value.

[36] Mr. Justice Cowan, who was upheld by this Court on appeal, relied on McFarlane J. in ***Canadian Pacific Railway***, which involved legislation to similar effect. Both cases considered the implications of the requirement to value land and improvements "as the property of a going concern". Mr. Justice McFarlane referred to this Court's decision in ***Alkali Lake Ranch,*** in which Norris J.A. stated at p. 87:

> […] [T]he assessor obeyed the mandatory language of s. 37(1) and did value the land and improvements as the property of a going concern, and arrived at their actual value *as farm lands* by applying such further permissible considerations as he deemed necessary in the circumstances.
>
> [Emphasis added.]

Explaining the decision in ***Alkali Lake Ranch,*** McFarlane J. said at pp. 161-162, "[i]t was held that although the assessor must value such lands as the property of a going concern, he need not necessarily determine that such value is actual value".

[37] The use of the lands and improvements, their characterization as farm lands, was determined by the fact they were part of a going concern. The objective was to decide their actual value. A number of factors were considered. There was no issue whether there was a market for farm lands. In the present case, the objective was to decide the market value. ***Southam*** says that crucial to that is the existence of a market for the land and improvements. Without it there is no market value. This was not a requirement in the legislation under review in the cases relied on by the Assessor. They are of no assistance to the assessing authority in this case.

[38] The Assessor relies on ***Bishop of Victoria v. City of Victoria***, [1933] 4 D.L.R. 524 (B.C.C.A.), and the statement of M.A. Macdonald J.A. therein at pp. 539-540:

> The building must be treated as an academy as long as it remains as such in making assessments. It is improper, for assessment purposes to mentally convert it, so to speak, into a revenue-producing commercial structure (*e.g.*, an apartment house) and value it accordingly. That would be placing a value not on this special "improvement" but on something else not in existence. To

> follow this method one would be taking into account potential values whereas the meaning of "actual" is "as opposed to potential." It must be valued *qua* school and although the task is difficult it cannot be shirked by adopting an easier or unsound method.

[39] Pacific Newspaper says while Macdonald J.A. concurred in the result, no other member of the Court made a similar comment and the statement has not been relied on subsequently. It may be the proposition has not been referred to subsequently, but the judgment of Macdonald J.A. was adopted expressly by Martin and McPhillips JJ.A. More important is a consideration of the legislation there under review.

[40] The applicable legislation was the ***Municipal Act***, R.S.B.C. 1924, c. 179. It provided that land and improvements should be assessed separately. Land was to be assessed at its actual value and improvements for the amount of the difference between the actual value of the whole property and the actual value of the land. "Actual value" was not defined specifically. The trial judge valued the improvement, a residential school, at the selling price on a forced sale. Macdonald C.J.B.C reviewed the history of the legislation and said at pp. 527-529:

> […] Some cases in the Supreme Court of Canada were cited to us by counsel for the respondent, in which opinions were expressed to the effect that the actual value of land was what it would bring in the market. In those cases the Court was dealing with wild land which had no other ascertainable value. In this case, however, there are other criterions which ought to have been considered, namely, what the property cost those who own it, and who intended to use it and continue to use it for the very purpose for which it was built. […]
>
> One cannot doubt that the assessor, considering the actual value of the property might very well say: -- "Respondent has built this property for a special purpose; it is a permanent purpose. He has considered the

> cost before building it and has agreed to pay $58,425 for it. There are no circumstances local or otherwise which would make that property less valuable to the owner than the price paid for it and while no outsider would be willing to pay that cost having no use for the building, except as an apartment house, the actual value, to the owner who has use for it and who has built it and paid for it the price above mentioned and will continue to use it for an indefinite time, may be exactly what it has cost, less any depreciation since its construction."
>
> This, I think, would be something that ought to appeal to the valuator taken in connection with any other circumstances which might affect the value including its market value. He ought not to accept the selling value at a forced sale or the selling value at an open sale as the basis of assessment to the exclusion of all other relevant facts any more than he should accept the cost of construction as the actual value to the exclusion of all other circumstances. [...]
>
> […]
>
> In my opinion the result would be the same in the appeal if the Judge had confined his opinion to a sale in the ordinary way, not a forced sale and if it became necessary to discard the words "upon a forced sale" my opinion of the case would not be altered.
>
> […] What the Court ought to do is to decide whether actual value means the market value or the market value at a forced sale. […]

The Chief Justice Macdonald's thinking appears to accord with the approach of Macdonald J.A., and both reflect the legislation there under review.

[41] That approach to valuation is consonant with neither s. 19 of the ***Assessment Act*** nor this Court's decision in ***Southam***.

[42] What is consonant is the observation of Macdonald J.A. at p. 538:

> There are two kinds of value known to economists, *viz.*, value in *use* and value in *exchange*. An article may have great value *in use* because of special properties or characteristics not susceptible to

> measurement by commercial standards and have comparatively little value in exchange. It is the latter measure of valuation, properly understood however, that should be applied.
>
> [Emphasis in original.]

[43] In my view, ***Bishop of Victoria*** cannot be applied to the circumstances of this case because the legislation there under consideration differs markedly from the legislation that controls the valuation in this case. Actual value did not equate with market value. In this case, by definition, "actual value" is "market value". Contrary to the approach taken by Macdonald J.A. in ***Bishop of Victoria***, on the basis of the legislation applicable in this case, this Court in ***Southam*** in para. 25 held that Gray J. correctly found that "[t]he question under the *Assessment Act* is the actual value of the property, not the value of the use".

[44] Relying on ***Bishop of Victoria***, the Assessor says in its factum, "even though it is difficult to determine the market value of a special purpose, limited market property which is being used for the purposes for which it was constructed, it is not acceptable to hypothesize an alternate use and value on that basis".

[45] The Assessor asserts appraisers commonly value property in the context of a going concern, points to hotels as an example and relies on the Board's decision in ***British Columbia (Assessor of Area # 01 – Capital) v. Fairmont Hotels & Resorts***, 2003 PAABC 20039104, upheld 2005 BCSC 468, 7 M.P.L.R. (4th) 70. A simple answer to this contention is that, in the case of a hotel, the building is the business. In the present case, the printing facility is an adjunct of the business.

[46] In ***Fairmont Hotels***, the Board noted the unique challenge of valuing the land and property of a hotel: "[t]he valuation of hotels for assessment purposes poses a particularly difficult appraisal problem" (para. 1). The issue before the Board and the court was the methodology of the appraisal. There was no issue concerning market.

[47] The Assessor also contends that certain special use properties are assessed based on value to the owner. It points to ***Crown Forest Indust. Ltd. v. Courtenay Assessor Area 06*** (1987), 10 B.C.L.R. (2d) 145 (C.A.). Again, the legislation involved in that case did not specify that actual value is market value.

[48] In my view, the chambers judge did not hypothesize an alternative use. Madam Justice Gray and this Court in ***Southam*** concluded the Board erred finding the highest and best use was the current use of the property and, based on evidence, including a past sale of premises that had housed printing facilities, concluded there was a correct highest and best use.

[49] The Assessor says that the chambers judge exceeded his jurisdiction because assessments are annual and discrete and the Board is required to make findings of fact in each case. It is contended that the judge erred by holding that the Board was bound by findings of fact made in previous assessment proceedings. It is asserted the Board's factual conclusion that there was a market for the property in its current use cannot be disturbed by the court.

[50] Pacific Newspaper does not quarrel with the proposition that each year's assessment is discrete, but asserts this is not an issue in this case.

[51] It is correct that the chambers judge referred to the evidence previously available to the Board concerning the sale of the business as a going concern. As noted, he concluded in para. 16:

> The board has made a decision with the same result, and based on the same evidence, as the decision that was previously found by both this court and the Court of Appeal *to be wrong in law*. The board had no basis on which it could properly distinguish the decisions of this court and the Court of Appeal in *Southam*. The board was bound by those decisions, as I am.
>
> [Emphasis added.]

[52] I agree with the judge. As noted previously, this case concerns *stare decisis*, not *res judicata*.

[53] In this case, the Board was given additional evidence concerning the previous sales of the appellant's business and of the market generally for such businesses, but it does not change the basic conclusion of Gray J. and this Court in ***Southam***.

[54] In para. 11 of its reasons the Board found as undisputed or uncontradicted the facts "there is no other buyer in the market for the Property with the presses that are in place as there is no one else with the specific requirements of the facility" and "the Property, without the presses, is worthless to anyone else in the market except for an alternate use, such as [a] warehouse". That is, there is no market for the printing facility on a stand-alone basis. As a printing facility, it could only be sold as part of the newspaper business.

[55] Selling the facility as part of a going concern is selling its use for the business. Valuing the facility in that context is valuing its use for the business, its value to the owner. ***Southam*** clearly rejects that approach to valuation as a matter of law.

[56] In my view, the Board was bound by ***Southam*** and it erred as a matter of law in concluding that a sale of the business as a going concern constituted a market for the printing facility. In the absence of buying the business, no one would buy the printing facility, which is not to say that everyone who might buy the business necessarily would buy the printing facility. The Board committed the same error in this case as it did in ***Southam***: it used the current use as the highest and best use where there was no evidence of a market for that use.

[57] In my view, the judge correctly concluded that the Board was obliged to follow and apply this Court's decision in ***Southam*** and erred in law by assessing the Appellant's property by reference to the value of the property to its owner, present or future, that is, by reference to its value in use, rather than by reference to its value in exchange, its fair market value.

[58] I would dismiss this appeal.

"The Honourable Mr. Justice Chiasson"

I agree:

"The Honourable Mr. Justice Frankel"

Reasons for Judgment of the Honourable Mr. Justice Smith:

[59] I have had the advantage of reading in draft form the reasons for judgment of my colleague Mr. Justice Chiasson with which, with respect, I am unable to agree. For the following reasons, I would allow the appeal.

[60] The appeal is brought with leave pursuant to s. 65(9) of the ***Assessment Act***, R.S.B.C. 1996, c. 20, on a question of law from a decision of the Supreme Court on a case stated by the Property Assessment Appeal Board pursuant to s. 65(1) of the ***Act***:

> **65** (1) […] a person affected by a decision of the board on appeal, including a local government, the government or the assessment authority, may require the board to refer the decision to the Supreme Court for appeal on a question of law alone in the form of a stated case.

[61] The question stated was:

> Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?

The chambers judge answered the question "yes" and remitted the matter to the Board to determine the "assessed" values, by which I understand he meant the "actual" values, of the subject property in the years in question. His reasons for judgment are indexed as 2006 BCSC 953.

[62] Although the chambers judge answered the question on the stated case in the affirmative, he did not directly address either the question or the stated case in

his reasons for judgment. Rather, he considered whether the Board was bound as a matter of law to apply this Court's decision in ***Southam Inc. v. Surrey-White Rock Assessor, Area No. 14***, 2004 BCCA 245, 28 B.C.L.R. (4th) 317, 238 D.L.R. (4th) 640, which affirmed the decision of Madam Justice Gray of the Supreme Court of British Columbia (2003 BCSC 676, 39 M.P.L.R. (3d) 85), who answered "yes" to the following question in respect of the 2000 and 2001 assessments of the subject property:

> Did the Property Assessment Appeal Board err in law by assessing [the Appellant's] property by reference to the value of the property to its owner rather than by reference to its fair market value?

[63] It is generally accepted, and it is not an issue in this appeal, that the *res judicata* doctrine does not apply to successive assessments of the same property; rather, each assessment is limited to the year in which it is made and each subsequent assessment is a new assessment. However, decisions on questions of law arising out of an assessment rest on a different footing. Since the question on which the parties joined issue before the chambers judge in this case was whether the Board was bound as a matter of law to apply this Court's decision in ***Southam***, I will begin by identifying the *ratio decidendi* of that decision, bearing in mind that a case is only authority for what it actually decides[1]: see ***Quinn v. Leatham***, [1901] A.C. 495 (H.L.) *per* Lord Halsbury at 506:

> […] there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that

[1] It should be noted that this principle no longer applies in its full vigour to decisions of the Supreme Court of Canada: ***R. v. Henry***, 2005 SCC 76, [2005] 3 S.C.R. 609, ¶ 53-57.

> every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.

See also ***Lupton v. F.A. & A.B. Ltd.***, [1972] A.C. 634 (H.L.), *per* Lord Simon of Glaisdale at 658:

> […] what constitutes binding precedent is the *ratio decidendi* of a case, and this is almost always to be ascertained by an analysis of the material facts of the case – that is, generally those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material.

[64] In her reasons for judgment in ***Southam***, Madam Justice Gray began her analysis by observing that s. 19(1) of the ***Act*** defines "actual value" as "the market value of the fee simple interest" in the subject property. She took the following as the generally accepted definition of "market value":

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Next, she acknowledged the undisputed principle that an assessment should begin with a determination of the highest and best use of the property. Continuing, she referred to the Board's finding that "the property's current use is so specialized there is no demonstrable market for it except for the owners of the two major daily newspapers" (at para. 21). Then, she noted the Board had found "that the current use is the highest and best use […] even though it concluded there is no other

potential purchaser for this building for its current use" (at para. 23). She concluded the Board's finding of highest and best use was an error, stating,

> [51] The task for the Board was to determine the market value of the plant property. The Board fell into error by following the process of accepting a highest and best use for which there was no market, and then valuing that use of the property using the cost approach. […]
>
> [52] The cost approach may be appropriate for most special use limited market properties. In most such cases, either another purchaser may be interested in the special use, or there is no evidence about the selling price in the open market. The property at issue might be better termed a "special use" property which, rather than having a "limited market", does not have any market for its present use, but has a market for an alternate use.
>
> [53] The question under the *Assessment Act* is the actual value of the property, not the value of the use. The effect of the Board's decision was to value the property on the basis of its value to the owner, rather than on the basis of the market for the property.
>
> [My emphasis.]

[65] On appeal, this Court elaborated on the concept of "highest and best use":

> [14] Highest and best use is a market-driven concept, as explained in *Ford Motor Co. v. Edison*, 127 N.J. 290; 1992 N.J. LEXIS 32 (New Jersey Sup.Ct). Quoting the Oregon Tax Court in *Meyer v. Department of Revenue*, Or. Tax, No. 3049, 1991 WL 244494 (Nov. 20, 1991), the New Jersey Supreme Court said (at p. 6 (LEXIS)):
>
> > The Tax Court emphasized that the concept of highest and best use is based on market forces. "When the purpose of an appraisal is to estimate market value, highest and best use analysis identifies the most profitable, competitive use to which property can be put. Therefore, highest and best use is a market-driven concept."
> >
> > [Emphasis in original.]

The Court determined that the Board's finding of fact that there was no market for the property in its current use precluded a finding that the current use was the highest and best use, stating,

> [15] The Board's finding that the highest and best use was the current use where there was no evidence of a market for that use is contradictory and wrong in law. Highest and best use is the use that produces the highest estimate of market value and cannot be determined without reference to a competitive market.
>
> [16] The determination of highest and best use as the current use also drove the Board's approach to the assessment on the basis of replacement cost, as there was no evidence of a market in which the current use could be valued.
>
> [My emphasis.]

The Court concluded,

> [25] Gray J. correctly found (at para. 50) that: "The plant should not be assessed for more than anyone other than the owner would pay for the property." I agree entirely with her conclusions (at paras. 51 and 53) […]

[66] Thus, the pivotal material fact in ***Southam*** was the finding that there was no market for the property in its current use and the *ratio decidendi* is that, in an assessment of property under the ***Act***, it is an error of law to treat the current use of the property as the highest and best use when there is no market for the property in that use.

[67] Turning to this appeal, the proper approach to a stated case is set out in ***Saanich/Capital Assessor, Area No. 1 v. Hardt*** (1992), 88 D.L.R. (4th) 183 at 188, 10 B.C.A.C. 31:

> The general principles for the court to follow on hearing a stated case have been set out in *District of Tumbler Ridge v. Assessor of Area #27 - Peace River* (2 December, 1985), Vancouver Registry A851790 (B.C.S.C.), at p. 3, [[1985] B.C.J. No. 810 (QL)(S.C.) at para. 4] where Finch J. said:
>
> > The law seems clear enough, although its application has caused problems in particular cases. I summarize what I apprehend to be the applicable principles. The questions should be questions of law only. The questions should be framed by, and are the sole responsibility of, the appellant. Statements of fact are within the exclusive province of the board. On appeal, the Court must accept the findings of fact made by the Board, and not substitute its own. The Board should not express opinions, or put forward arguments. The Court may not look beyond the stated case to make inferences of fact, nor find new facts, nor weigh and consider the sufficiency of the evidence. The Court may refer to the Board's reasons. The Court may also refer to the transcript of evidence, but only for the purposes of interpreting or explaining the stated case.
>
> and in *Re Caldwell and Stuart* (1984), 15 D.L.R. (4th) 1 at pp. 9-10, [1984] 2 S.C.R. 603 [at 613-614], 85 C.L.L.C. ¶17,002, where McIntyre J. said:
>
> > From the many cases decided upon this issue, it seems clear that the appellate court may not look beyond the stated case in order to make inferences of fact, or to find new facts not in the case, nor to weigh and consider the sufficiency of evidence:
> >
> > . . . . .
> >
> > As for the reasons for decision, it seems clear that the law of Canada as well as that of England has always permitted reference to the reasons for decision.

[68] The Board will be found to have erred in law if its findings of fact are not supported by any evidence or if they are based on a view of the facts that could not reasonably be entertained: ***Gemex Developments Corp. v. British Columbia***

(Assessor of Area #12 – Coquitlam) (1998), 62 B.C.L.R. (3d) 354 at para. 9, 112 B.C.A.C. 176. There is no suggestion that the Board made any such error here. Accordingly, the remarks of Davey J.A. (later C.J.B.C.) in ***Provincial Assessors of Comox, Cowichan and Nanimo v. Crown Zellerbach Canada Ltd.*** (1963), 42 W.W.R. 449 at 458, 39 D.L.R. (2d) 381 (B.C.C.A.), aff'd 42 D.L.R. (2d) 319 (S.C.C.), are apt for present purposes:

> […] neither this court nor the court below has any right to make findings of fact on the evidence before the board; that was the function of the board, and its findings of facts are set out in the stated case as the foundation for the questions of law that are asked, and we must accept those findings as the case does not raise any question of absence of evidence to support them.

[69] The facts and the question of law to be answered on the basis of those facts are set out in the stated case, which I have annexed to these reasons as an appendix.

[70] The Assessor submits that the chambers judge "erred in law when he determined that the Board had no basis upon which it could properly distinguish" ***Southam*** and that he "erred in law by substituting his view that there was no difference in the evidence before the Board which would allow the Board to distinguish this Appeal from [***Southam***] for the Board's opinion that there was evidence upon which to distinguish those decisions".

[71] These contentions arise because the chambers judge began his analysis by identifying the issue as it had been framed for him by counsel:

> [3] […] the matter was argued primarily as a question of *stare decisis* – whether the board erred in concluding that it was not bound by the previous decisions of this court and the Court of Appeal.

[72] The Board's conclusion that it was not bound to apply ***Southam*** is not found in the stated case but in the Board's reasons for decision. It was reflected in these facts stated by the Board:

> 10. The Property, if sold for its current use, would sell as part of the operation or going concern of the publishing of The Vancouver Sun and The Province.
>
> […]
>
> 20. The Board found that there is a market for the Property as part of the going concern of the newspapers, though the market may be limited, and that there are other potential purchasers, though a limited number, both nationally and internationally, for the Property in its current use as part of the purchase of that going concern.
>
> 21. The Board found the highest and best use of the Property is a continuation of the existing use.

[73] In its reasons, the Board addressed and rejected Pacific Newspaper's argument that ***Southam*** was dispositive of the Assessor's appeal. The Board noted that it had found in that case that "there [was] no demonstrable market for [the property] except for the owners of the two major daily newspapers". It observed correctly that the courts in ***Southam*** had concluded that it was an error of law to find that the current use of the property was its highest and best use when there was no evidence of a market for the property in that use. By way of contrast, it found in this case that there was a market for the property in its current use as part of the going concern of the newspapers and that the current use is the highest and best use of

the property. Accordingly, it concluded ***Southam*** was distinguishable on this material fact and the principle of law for which ***Southam*** stands was therefore inapplicable.

[74] The chambers judge was entitled to look at the Board's reasons to determine why it had not followed ***Southam*** and he did so. However, rather than accepting the stated facts, as explained by the Board's reasons for decision, as the foundation for the question in the stated case, he looked beyond the stated case and the Board's reasons and embarked on an investigation of the factual basis for the decisions in ***Southam*** in order to determine whether the Board had correctly distinguished that case.

[75] First, he examined the reasons given by the Board and noted references to evidence of past purchases of the newspaper businesses of which the subject property was a part (these transactions are set out in the stated case) and noted, as well, the Board's comment that there was similar evidence before it in ***Southam***.

[76] Then, looking further beyond the stated case, he examined the Board's reasons for decision in ***Southam*** in order to determine what similar evidence was before the Board at that time. He said,

> [12] The fact that businesses of all kinds are bought and sold as going concerns is probably something any court or tribunal can take notice of without evidence. However, a review of the board's previous decision makes it clear that there was nothing new about this evidence or the argument based on it. The board decision of April 11, 2002, specifically referred to the same evidence at ¶18:
>
> > A number of corporate share transactions took place in the 1990's. In 2000, a share transaction, described by

> Mr. Ross as the largest (of its nature) in Canada in 50 years, involved a number of assets in a number of provinces, including this property.

[77] Next, he examined Madam Justice Gray's reasons for judgment in ***Southam*** and inferred that she "was clearly aware of evidence previously before the board that the newspapers, and with them the subject property, could be and had been sold" (at para. 14).

[78] Straying even further afield, the chambers judge examined the factums that were filed with this Court in the ***Southam*** case. He said,

> [15] The argument that there is a market for the property as part of a going concern and the evidence in support of that argument was also put before the Court of Appeal, although not dealt with in the court's judgment. The assessor's factum included the following:
>
> > There is a market for the property in its highest and best use. But the subject property does not sell by itself. It sells as part of the going concern or, as in [*Crown Forest Industries Limited v. Courtenay Assessor Area 06* (1987), 10 B.C.L.R. (2d) 145 (C.A.)], as part of a share purchase transaction. The evidence in this case is that the subject property was part of Canwest's purchase of Hollinger. The market value of the subject property in that transfer was stated by the vendor and purchaser to be $43,093.116. The subject property was used as a printing press before and after the sale.

[79] To summarize, the chambers judge examined the Board's reasons for decision in this case, the Board's reasons for decision in the previous case, the chambers judge's reasons for judgment in the previous case, and the factums filed with this Court in the previous case, all without referring to the stated case, and, by inference drawn from those sources, decided that there was evidence before the

Board in the previous case that there was a market for the property in its current use. Relying on that finding, he concluded,

> [16] The board has made a decision with the same result, and based on the same evidence, as the decision that was previously found by both this court and the Court of Appeal to be wrong in law. The board had no basis on which it could properly distinguish the decisions of this court and the Court of Appeal in *Southam*. The board was bound by those decisions, as I am.

[80] The chambers judge erred in two respects in reaching this conclusion.

[81] First, he looked far beyond the stated case and transgressed the principle reflected in the remarks of Davey J.A. in ***Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Ltd.***, *supra*, that the court is bound to accept the Board's findings of facts as set out in the stated case as the foundation for the question of law. The facts he was required to accept were the Board's finding in the stated case, as explained in its reasons, that there was a market for the property in its current use and that in ***Southam*** it had found there was no market for the property in its current use. His failure to accept these facts reflected an erroneous approach to the stated case and led him into error.

[82] Second, in holding that there was no basis upon which the Board could properly distinguish ***Southam*** since the evidence on which the Board relied was also before the Board in ***Southam***, the chambers judge concluded, in effect, that the question whether there was a market for the property in its existing use as part of a going concern had been decided in ***Southam*** and that the Board was precluded in

the case at bar from treating ***Southam*** as if the question had not been decided. In other words, he found there was an issue estoppel on this question of fact.

[83] Issue estoppel is a doctrine developed by the law to prevent relitigation of issues of fact once decided. In ***Danyluk v. Ainsworth Technologies Inc.***, 2001 SCC 44, [2001] 2 S.C.R. 460, Binnie J., writing for the court, explained:

> [20] The law has developed a number of techniques to prevent abuse of the decision-making process. One of the oldest is the doctrine *estoppel per rem judicatem* with its roots in Roman law, the idea that a dispute once judged with finality is not subject to relitigation: *Farwell v. The Queen* (1894), 22 S.C.R. 553, at p. 558; *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248, at pp. 267-68. The bar extends both to the cause of action thus adjudicated (variously referred to as claim or cause of action or action estoppel), as well as precluding relitigation of the constituent issues or material facts necessarily embraced therein (usually called issue estoppel): G. S. Holmested and G. D. Watson, *Ontario Civil Procedure* (loose-leaf), vol. 3 Supp., at 21 s. 17 et seq. […]

As Binnie J. noted (at paras. 21-22), the operation of the doctrine has been extended from prior court proceedings to include prior judicial and quasi-judicial decisions of administrative officers and tribunals. (The Assessor and the Board are such administrative agencies, in my view.) The preconditions to the operation of issue estoppel are (1) that the same question has been decided, (2) that the judicial decision which is said to create the estoppel was final, and (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies (at para. 25). Further, the question out of which the estoppel is said to arise must have been "fundamental to

the decision arrived at"; an estoppel does not apply if the question is "one that must be inferred by argument from the judgment" (at para. 24).

[84] Here, although there was some evidence before the Board in ***Southam*** that the subject property had been sold as part of a going concern, the Board did not find in that case that there was a market for the property in its existing use. Indeed, it found to the contrary. Thus, the first precondition to the operation of issue estoppel is not met.

[85] As well, although the findings made in ***Southam*** were final, they were final only in respect of the years that were the subject of the assessment. Each year's assessment raises a new question to be decided on fresh evidence and new factual findings. The condition of the property may change over time. Market conditions can also change. For example, although there may be no evidence of a market for a particular property in one assessment year there may be such evidence in another assessment year. Thus, the second precondition to the operation of issue estoppel is not met.

[86] In addition, the proceeding before the Board was not litigation *inter partes* and the third precondition for issue estoppel is not applicable. The findings of fact in ***Southam*** were final only as to the assessment, not as a judgment between parties. There was no *lis* between the Assessor and Pacific Newspaper. The Assessor has no interest in the assessment other than to perform his statutory duties and the decision of the Board does not enure to the Assessor's benefit.

TAB 7

[87] Further, the Assessor and the Board are statutory bodies charged with exercising statutory powers for a public purpose. The individual Assessor and Board members may change from year to year, and to hold that these office holders are bound by the findings of fact and opinions of their predecessors would be to fetter improperly their exercise of their statutory powers: see ***Turnbull Real Estate Co. v. Sewell***, [1937] 2 D.L.R. 218 at 220 (N.B.S.C., App. Div.).

[88] The words of Romer L.J., in ***Commissioner of Inland Revenue v. Sneath***, [1932] 2 K.B. 362 at 391 (C.A.), although spoken in a different context, provide an apt analogy:

> […] the only thing that the Commissioners have jurisdiction to decide directly and as a substantive matter is the amount of the taxpayer's income for the year in question. This being so, their decision upon any incidental question of fact or law, however necessary it may be for the purpose of ascertaining the income for the year of assessment, cannot, as it seems to me, be conclusive in reference to the taxpayer's income for any subsequent year of assessment with which the Commissioners have nothing to do, and in respect of which a fresh estimate will have to be made when the time comes, and possibly by other Special Commissioners.

[89] It is manifest from the reasons of the Board and of both courts in ***Southam*** that the critical material fact in that case was the finding of the Board that there was no market for the property in its current use. The Board did not err in distinguishing ***Southam*** on that basis and the chambers judge was wrong to conclude that the Board was bound in the case at bar by this Court's decision in ***Southam*** and that the Board had erred in holding otherwise.

[90] I turn now to consider the question asked on the stated case.

[91] The statutory basis and methods of assessment are set out in s. 19(1)-(4) of the ***Act***, which my colleague has reproduced at paragraph 25 of his reasons, above.

[92] The Assessor's statutory duty under s. 19(2) is to determine the "actual value" of the subject property, which is defined in s. 19(1), as the "market value". The ***Act*** does not define "market value". However, in s. 19(3) it sets out in the broadest of terms the methods and the indicia to which the Assessor may have regard in arriving at the actual or market value: present use, location, original cost, replacement cost, revenue or rental value, selling price of the land and improvements and comparable land and improvements, economic and functional obsolescence, and "any other circumstances affecting the value of the land and improvements". Further, it stipulates, in s. 19(4), that if the subject property is part of a business, it "must be valued as the property of a going concern", that is, at its real value to the business of which it is an integral part, not its stand-alone value separated from the business: see ***Great Central Railway Company v. Banbury Union*** (1908), [1909] A.C. 78 at 85, 88 (H.L.); ***Re Alkali Lake Ranch Ltd.*** (1964), 45 D.L.R. (2d) 83, 48 W.W.R. 120 (B.C.C.A.).

[93] Thus, the Assessor is authorized to choose from several different methods of valuation and to consider many different factors in determining the actual value. The use of any method of valuation mentioned in s. 19 or the exclusion or inclusion of any enumerated factor does not raise a question of law appealable on a stated case so long as there is evidence to support the reasoning. These are questions of fact dependent on the expert judgment of the Assessor and ultimately of the Board. As

Davey J.A. said, in ***Provincial Assessors of Comox, Cowichan and Nanaimo v. Crown Zellerbach Canada Limited***, *supra*, at 455-56,

> The statutory duty of the assessor is to find the "actual value" of the taxable property, but sec. 37 [now s.19 of the *Act*] permits him to use several different methods and to consider many different elements in finding actual value. I do not think that the use of any specifically mentioned method of finding actual value, or the inclusion or exclusion of any enumerated element, provided there is evidence to support the reasoning, can be said to raise a question of law appealable to the courts on a stated case, for those matters lie in the judgment of the assessor and the assessment equalization board: *Reg. v. Penticton Sawmills Ltd.* (1954) 11 WWR (NS) 351, at 353, 356 [B.C.C.A.].

See also, ***Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)***, *supra*, where this Court, citing that case and ***Re Caldwell and Stuart***, [1984] 2 S.C.R. 603, said, *per* Newbury J.A.,

> [9] […] questions as to the sufficiency of evidence or as to which expert opinion should be preferred by the Board in deciding the highest and best use of a given property [are] questions of fact within the Board's exclusive jurisdiction […]

[94] Here, the Board accepted the evidence of the Assessor's expert appraiser that replacement cost (the "cost approach") was the best measure of actual or market value of the subject property. It set this out in paragraphs 22 and 23 of the stated case:

> 22. The Board found that what appraisal methodology is used to determine market value largely depends on the highest and best use concluded, and the quantity and quality of evidence available. Whether a property is termed "special purpose" or "limited market" property is not determinative, but, rather, the circumstances of each case, including the property's highest and best use and availability of reliable market evidence. In the event there is little or no reliable

> market evidence to support a valuation by the income or direct sales comparison approach, then the cost approach, properly applied and adjusted for, may be the most appropriate. The Board found there was insufficient evidence of any lease or rental information on comparable properties that would make the income approach to value the Property reliable. The Board found newspaper printing and publishing plants do not trade or lease in the market for their revenue generating potential. As for the direct sales comparison approach, the Board found the scarcity of similar properties in the market made this approach unreliable. The Board found that the cost approach was the most suitable method to determine the actual value of the Property.
>
> 23. The Board accepted the appraisal evidence provided by the witness for the Assessor and his conclusion of value.

[95] As I have stated, there is no suggestion that the Board's findings of fact were not supported by evidence or that they were based on an unreasonable view of the facts. Rather, Pacific Newspapers contends that the Board's adoption of the cost approach was contrary to law.

[96] In ***Crown Forest Industries***, *supra*, this Court considered the use of the cost approach to the assessment of the actual value of a complex made up of a pulp and paper mill, a sawmill, and a planer mill. After quoting the phrase "[t]he cost approach is nothing more than a theory without any evidentiary foundation" from the reasons of the chambers judge, the Court, *per* Mr. Justice Esson, said, at 152,

> That is not merely a finding that the board erred in law in having regard to replacement cost to the exclusion of other methods of valuation. It goes far beyond that to hold that it was not open to the board to have regard to replacement cost in this case. That conclusion, in my respectful view, runs counter not only to valuation theory but to generations of decisions binding on us. The basis for accepting replacement cost as a measure of actual or market value is not one which rests upon a different evidentiary foundation in each case. It is, rather, a logical assumption based on general experience.

Mr. Johnstone, director of appraisal services to the British Columbia Assessment Authority put it this way:

> That approach is based on the premise that cost equals value and if it is found at the end of the exercise that that is not so a correction can be made within the cost approach.
>
> The reference to correction within the approach is to such matters as functional obsolescence, as to which I will have more to say later. What is significant at this point is that the basic premise that cost equals value has long been accepted as conferring validity upon the replacement cost approach as a means of arriving at actual value.
>
> [My emphasis.]

[97] Mr. Justice Esson referred to a number of cases in support of these remarks.

[98] First, he referred to ***Golden Eagles Canada Ltd. v. City of St. Romuald D'Etchemin***, [1977] 2 S.C.R. 1090, as an illustration of the basic premise that cost equals value, which underlies and validates the cost approach, stating at 152-153,

> […] That case involved five partially completed tanks at an oil refinery. The assessment of some $2 million was based upon the replacement cost of the tanks, reduced by 20 per cent to allow for their incomplete state. The owner contended that, because the tanks were incomplete, the assessor should have allowed "internal functional depreciation" of 100 per cent. The assessor's basis for refusing to give effect to that contention is quoted at p. 245:
>
> > "... I could not see how Golden Eagle could construct buildings which did not meet the needs for which it had built them."
> >
> > De Grandpré J. for the court outlined Golden Eagle's arguments that that response constituted error in law and, at p. 248, said this:
> >
> > > Appellant itself committed the error in law when it forgot that in all cases of construction for special purposes the assessor must necessarily calculate the replacement value in order to determine the real value, and in determining the theoretical market value must consider

> the owner as a possible purchaser. The Privy Council confirmed and reconfirmed this view in *Montreal v. Sun Life Assurance Co.* [[1952] 2 D.L.R. 81].

[99] Next, after noting at 153 that "it is generally the absence of reliable market evidence which compels resort to replacement cost as a means of arriving at market value", he mentioned ***MacMillan Bloedel Limited v. Assessor of Area No. 7 – Sunshine Coast***, [1985] B.C.W.L.D. 2897 (B.C.S.C.), B.C. Stated Case No. 206, p. 1151, a case concerning the assessment of a pulp and paper mill at Powell River, and quoted from the reasons of McKay J. at p. 1152 as follows:

> The determination of actual value is anything but an exact science and the methods used will vary according to the circumstances of any given appraisal. It is usual, in the case of mills of the type under consideration, to use a depreciated replacement cost analysis (the "cost approach") because of the scarcity of comparable sales.

[100] Mr. Justice Esson endorsed that statement at 154 as "an entirely correct statement of the position" and "fully in accord with the earlier authorities". He then referred to the leading case of ***Sun Life v. City of Montreal***, [1950] S.C.R. 220, aff'd [1952] 2 D.L.R. 81 (P.C.), which concerned an assessment of a unique office building constructed by Sun Life as its head office. He said, at 154,

> […] The Privy Council was the fourth court to consider the matter after the Board of Revision. In delivering the judgment of the Privy Council, Lord Porter expressed agreement with the view of the trial judge and the Supreme Court of Canada that actual value in this context is to be equated with market value. At pp. 89-90 he said:
>
> > The Judge of the Superior Court states five ways by which the true figure can be reached:

> (a) A recent free sale of the property itself where neither the conditions of the property nor the market have since changed;
>
> (b) recent free sales of identical properties in the same neighbourhood and market;
>
> (c) recent free sales of comparable properties;
>
> (d) the price which the revenue producing possibilities of the property will command;
>
> (e) the depreciated replacement cost.
>
> None of the Judges in Canada so far as their Lordships can ascertain seem to quarrel with this statement and all say that the first three methods are inapplicable to the present case and therefore the last two are the factors from which the true result is to be derived.

[101] Mr. Justice Esson continued, at 154-155,

> The absence of market evidence in that case was attributable to the exceptional nature of the building. In this case, there has been no free sale of this or any identical or comparable property. The result is to require reliance on the fourth and fifth methods. As Lord Porter put it at p. 94:
>
> > As they have said, the Board accepts the view that the true test is what a willing buyer would give and a willing seller take.
> >
> > In many, perhaps in most cases, this figure is not difficult to discover - the first three methods mentioned by the Judge of the Superior Court point out the way. But in a limited number of cases none of these sources of information is available and what such a buyer would give or a seller would take can only be ascertained by indirect means. As has been said those means are to be found by relying upon the replacement value however that term may be interpreted or upon the revenue value, or by a mixture of the two.

And at p. 102 he said:

> It is the objective not the subjective value which has to be determined though, as has been said, the owner is to be regarded as one of a possible number of buyers, and subject to careful criticism and a sufficient qualification of price, the cost which he chose to incur is a relevant factor.

[102] By way of contrast, in the case at bar the Board rejected the fourth approach, the income approach, on the basis that there was insufficient evidence before it to make that approach reliable. That was a finding of fact exclusively within the Board's jurisdiction.

[103] Mr. Justice Esson referred to other authorities that approve the replacement cost approach to the assessment of market value, including ***Assessment Commissioner of the York Assessment Office v. Office Specialty Ltd.***, [1975] 1 S.C.R. 677. It is not necessary to descend further into detailed discussion of these cases. It is enough to say that Mr. Justice Esson's statement, that the proposition that it is an error of law to use the replacement cost approach to determine market value is contrary to generations of binding decisions, is fully supported by his analysis. Further, his statement that the proposition is contrary to valuation theory is fully supported by the expert evidence that was before the Board in this case.

[104] The question on the stated case is in two parts. The first asks whether the Board erred in law in assessing the property by reference to "the value of the property to its owner".

[105] "Value to the owner" is a judge-made concept developed in expropriation law, where the object is to compensate the owner for land taken from him and for his disturbance costs. This is explained in ***The Law Reform Commission of British Columbia Report on Expropriation (Project No. 5), 1971*** (Victoria, Queen's Printer, 1972) at 123-24:

> The basic principle on which compensation is now paid in British Columbia is "value to the owner." It is a judge-made concept, developed in an attempt to do justice to expropriated owners. On being faced with construing legislation similar to our *Lands Clauses Act* [R.S.B.C. 1960, c. 209], the Courts were able to include to some extent in the compensation awarded disturbance costs to the owner. All the older statutes authorizing payment of compensation make no mention of disturbance damages, but refer only to compensation for value and injurious affection.
>
> There are many reported cases on the meaning of "value to the owner." On several occasions the Supreme Court of Canada has dealt with the principle. In *Diggon-Hibben Ltd. v. The King* [[1949] S.C.R. 712 at 715], Rand J. stated the principle as follows:
>
> > … the owner at the moment of expropriation is to be deemed as without title, but all else remaining the same, and the question is what would he, as a prudent man, at that moment, pay for the property rather than be ejected from it.
> >
> > [My emphasis.]

[106] The emphasized phrase highlights the distinction between "value to the owner" and "replacement cost", which was described by Mr. Justice Esson in ***Crown Forest Industries***, *supra*, at 156, as follows:

> […] The principle applied in *Office Specialty*, derived from *Sun Life*, is that the replacement cost, although higher than the amount the building would fetch if offered to others on the prevailing market, may represent the actual value where the circumstances establish that the

> present owner, if entering the market, would be prepared to pay that amount for this building.
>
> [My emphasis.]

The latter value does not contain any element of compensation for ejection from the property. It is an objective value; it is the value a hypothetical potential purchaser drawn from the market for the property, which would include the current owner, would pay to acquire the property for its highest and best use. Of course, such a purchaser would not pay more to acquire the property than it would cost him to construct an equivalent facility.

[107] In ***Southam***, the courts found that the effect of the Board's assessment was to arrive at value to the owner. In that regard, this Court said,

> [22] It seems to me that if the owner is to be considered a potential purchaser, there must be at least one other potential purchaser for the current use. Otherwise, there can be no competitive bidding and no market. That is this case: there is no market, other than the current owner, for the current use. Therefore, determining the market value of the property based on its current use inevitably leads to determining the value of the current use to the owner, and not market value.

Here, the stated case stipulates that there were other potential purchasers for the property in its current use. Accordingly, this reasoning does not apply and the Board did not fall into the error of assessing the value to the owner in this case.

[108] The second part of the question asks whether the Board erred in law in assessing the property by reference to "its value in use".

[109] This question derives from Madam Justice Gray's conclusion in ***Southam***, affirmed in this Court, that the Board in that case had valued the use of the property, rather than the property itself (at para. 51). However, it must be remembered that the critical fact in that case was that there was no market for the property in the use in which the Board valued it. Thus, on Madam Justice Gray's reasoning, the Board was required to value it in an alternate use for which there was a market.

[110] Here, the Board assessed the property at its "value in use", that is, at its value in its highest and best use, one for which there was a market. In so doing, it did not err. Rather, it did what it was required to do by the ***Act***.

[111] In ***Southam***, the courts distinguished the authorities that endorse the cost approach to the assessment of actual or market value on the basis that they do not apply when there is no market for the subject property in its current use and there is evidence of the price at which the property would sell in the open market for another use. This Court said,

> [18] The Board found support for the appraiser's "judgment" to use replacement cost as the measure of market value in authorities that approved the use of the replacement cost approach to valuation: *Montreal v. Sun Life Assurance Co. of Canada*, [1952] 2 D.L.R. 81 (J.C.P.C.); *Ontario (Assessment Commissioner York) v. Office Specialty Ltd.*, [1975] 1 S.C.R. 677; *Crown Forest Industries Limited v. Courtenay Assessor, Area 06* (1987), 10 B.C.L.R. (2d) 145 (C.A.).
>
> [19] The chambers judge distinguished these cases, stating (at para. 34) that they "did not address the situation of a special use for which there is no market, in circumstances where there is an agreed value for the property apart from that use."
>
> [….]

> [23] As Gray J. found, this case is distinguishable from the cases relied on by the Board by the fact that there was evidence of the price at which the property would sell in the open market for a less restricted use than the current use. There was also evidence of the market for similar properties for another use – the sale of the Flexo plant.

[112] These comments must be read in light of the facts of that case. The distinction noted there is not applicable here, where the stated case stipulates that there was a market for the property in its existing use and that the current use of the property was its highest and best use. In this case, the principles laid down in the long line of authorities to which Mr. Justice Esson referred in ***Crown Forest Industries*** are applicable.

[113] For those reasons, I have concluded that the chambers judge erred in answering the question on the stated case in the affirmative. I would allow the appeal, set aside the order of the chambers judge, and answer the question on the stated case as follows:

> Question
>
> Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?
>
> Answer
>
> No.

"The Honourable Mr. Justice Smith"

APPENDIX

STATED CASE

THIS CASE STATED by the Board, pursuant to Section 65 of the *Assessment Act*, at the requirement of the Appellant, Pacific Newspaper Group Inc., seeks the opinion of the Supreme Court on the questions of law set out below in respect of which the following are the material facts:

1. The appeals before the Board were from the decisions of the Property Assessment Review Panel with respect to the 2002 through 2005 assessment of property owned by the Appellant, Pacific Newspaper Group Inc. (Pacific Newspaper) and used as a printing and distribution facility for the Lower Mainland's two dominant daily newspapers, the Vancouver Sun and The Province.

2. The Vancouver Sun and The Province have a daily circulation of over 200,000 newspapers each. They are the only large daily newspapers in the Lower Mainland market.

3. The printing and distribution of such a large quantity of newspapers requires a unique arid state of the art printing facility. This facility is located on a 13.81 acre site at Kennedy Heights in Surrey, British Columbia (the "Property"). The Property was purchased by Southam Inc. in September, 1995 and the plant was designed and constructed by Southam to meet its very specific requirements involved in printing two large daily newspapers. Through a series of share and property transactions, the fee simple interest in the Property was transferred to Pacific Newspaper.

4. Large metropolitan centres, such as the Lower Mainland, typically have one daily newspaper. Pacific Newspaper owns two daily newspapers, and there is no room in the market for another large daily newspaper. Therefore, there is no one other than Pacific Newspaper that requires the capacity and specifications that the printing facility was designed for.

5. The issue before the Board was the determination of the Property's actual value for the 2002 through 2005 assessment rolls.

6. The Property was purchased by Pacific Press, a division of Southam Inc. in September, 1995 for $5,100,000. In 1996 and 1997, Pacific Press constructed a 208,051 square foot newspaper printing and distribution and printing facility. The cost for construction of the plant was approximately $40-50 million.

7. Pacific Newspaper would not sell the Property, even for the assessed value, as the Property is essential to the revenue stream for the company.

8. There is no other buyer in the market for the Property with the presses that are in place as there is no one else with the specific requirements of the facility.

9. The Property, without the presses is worthless to anyone else in the market except for an alternate use, such as a warehouse.

10. The Property, if sold for its current use, would sell as part of the operation or going concern of the publishing of The Vancouver Sun and The Province.

11. Prior to purchase of the Property, the two newspapers were printed at a facility near King George Highway in Surrey called the “Flexo” plant, starting in 1990. The Flexo plant was commissioned due to the change in format of The Province newspaper.

12. In the 1990’s, Hollinger Inc. began to acquire the shares of Southam Inc., so by the end of the 1990’s, Hollinger had acquired all of Southam Inc. the owner of the two newspapers and the Property.

13. From 1997 to 2000, Southam Inc. printed its newspapers at the Property.

14. In 2000, Canwest Global purchased some of the newspapers owned by Southam Inc., including Pacific Press, a division of Southam Inc., which owned the Property and The Vancouver Sun and The Province. The assets of Pacific Press was transferred to Pacific Newspaper (a company affiliated with Canwest Global), the current owner.

15. Southam Inc. had initially purchased The Province in 1923 and the Vancouver Sun was owned by FP Publications. In the 1960s, both companies decided to pool their resources to build a printing facility where both papers could be printed. This facility was at 2250 Granville Street, which printed both papers until 1990. A company owned by both Southam and FP Publications was incorporated, Pacific Press, and ownership of the newspapers and the printing facility and the property was transferred to that company.

16. In 1980 or 1981, FP Publications sold its 1/2 interest in Pacific Press so that Southam Inc. became the sole owner and operator of Pacific Press, and its assets, including the property at 2250 Granville Street.

17. The property at 2250 Granville Street was eventually sold by Pacific Press after the commencement of the printing facility at the Flexo plant. The facility at Granville Street was torn down and has been redeveloped for residential development. Mr. Ross advised that there was no attempt to sell the Granville Street property with the presses as there would have been no buyers with these requirements and as the technology was outdated. As well, the property was rezoned residential.

18. The Flexo plant was sold in 1998 for $5.5 million to Sandy's Furniture for a furniture retail and warehouse use. Mr. Ross stated that there would not have been anyone interested in buying the Flexo plant with the presses, because the presses were designed to print 200,000 papers or more, and there is no other newspaper that would require this capacity or size.

19. The Flexo plant was then resold by Sandy's Furniture to Navigation Canada in 2001 for $9 million for use as an air traffic control centre.

20. The Board found that there is a market for the Property as part of the going concern of the newspapers, though the market may be limited, and that there are other potential purchasers, though a limited number, both nationally and internationally, for the Property in its current use as part of the purchase of that going concern.

21. The Board found the highest and best use of the Property is a continuation of the existing use.

22. The Board found that what appraisal methodology is used to determine market value largely depends on the highest and best use concluded, and the quantity and quality of evidence available. Whether a property is termed "special purpose" or "limited market" property is not determinative, but, rather, the circumstances of each case, including the property's highest and best use and availability of reliable market evidence. In the event there is little or no reliable market evidence to support a valuation by the income or direct sales comparison approach, then the cost approach, properly applied and adjusted for, may be the most appropriate. The Board found there was insufficient evidence of any lease or rental information on comparable properties that would make the income approach to value the Property reliable. The Board found newspaper printing and publishing plants do not trade or lease in the market for their revenue generating potential. As for the direct sales comparison approach, the Board found the scarcity of similar properties in the market made this approach unreliable. The Board found that the cost approach was the most suitable method to determine the actual value of the Property.

23. The Board accepted the appraisal evidence provided by the witness for the Assessor and his conclusion of value.

24. The Board confirmed the decisions of the 2002, 2003, 2004, and 2005 Property Assessment Review Panels as follows:

2002:

Land:	Class 5 - Light Industry	$ 3,949,000
Improvements:	Class 5 - Light industry	$ 35,741,000

Total Assessed Value:		$ 39,690,000
2003:		
Land:	Class 5 - Light Industry	$ 4,212,000
Improvements:	Class 5 - Light Industry	$ 35,731,000
Total Assessed Value:		$ 39,943,000
2004:		
Land:	Class 5 - Light industry	$ 4,212,000
Improvements:	Class S - Light industry	$ 34,818,000
Total Assessed Value:		$ 39,030,000
2005:		
Land:	Class 5 - Light Industry	$ 5,002,000
Improvements:	Class 5-Light Industry	$ 34,818,000
Total Assessed Value:		$ 39,820,000

25. Attached to this Stated Case as Schedule “A” is a copy of the Board’s decision dated October 4, 2005. Attached as Schedule “B” is a copy of the Board’s Hearing Results Form/Exhibit Sheet. Filed with this Stated Case are Exhibits 1 through 11 filed with the Board, and the transcript of the Board's hearing.

THE QUESTION which the Board is required to ask for the opinion of the Supreme Court is:

1. Did the Property Assessment Appeal Board err in law by assessing the Appellant's property by reference to the value of the property to its owner, or by reference to its value in use, rather than by reference to its fair market value?

TAB 8

In the Court of Appeal of Alberta

Citation: Calgary (City of) v. Municipal Government Board , 2004 ABCA 10

Date: 20040109
Docket: 0201-0318-AC
Registry: Calgary

Between:

The City of Calgary

Applicant (Respondent)

- and -

The Municipal Government Board

Respondent

Carma Developers Limited

Respondent (Appellant)

Corrected judgment: A corrigendum was filed on March 25, 2004; the corrections have been made to the text and the corrigendum is appended to this judgment.

The Court:

The Honourable Madam Justice Conrad
The Honourable Madam Justice Russell
The Honourable Mr. Justice Wittmann

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Mr. Justice Brian E. Mahoney
Dated the 23rd day of September, 2002
(2002 ABQB 843, Docket: 0101-03835)

Memorandum of Judgment

The Court:

[1] At the conclusion of this hearing, the appeal was dismissed and the decision of the Municipal Government Board reinstated, with reasons to follow.

I. INTRODUCTION

[2] This appeal relates to a 1999 tax assessment of development property in the City of Calgary (the City).

II. BACKGROUND

[3] The appellant, Carma Developers Limited (Carma), is a land developer. In 1999, Carma owned a 43.2 acre parcel of undeveloped land in Calgary in what is fast becoming the suburb of Tuscany. The land, which had not been sub-divided at the time of the tax assessment, consisted of two parts: a 14.13 acre parcel which Carma was entitled to subdivide and develop (the Tuscany lands), and a 29.07 acre parcel of environmentally sensitive land that consisted of a ravine (the ravine lands). In 1996, Carma entered into an "Environmental Reserve Dedication Agreement" with the City, obliging Carma to transfer the ravine lands to the City at no cost when it sub-divided the 43.2 acres. The City's interest in the ravine lands was protected by a caveat.

[4] In 1999, the Legislature instituted a new market value system of civic property tax assessment. The principle for guiding assessments was set out in an amended *Municipal Government Act*, (now R.S.A. 2000 c. M-26) and *Regulations*. Section 1(l)(n) of the *Act* defines market value as "the amount that a property, as defined in section 284(1)(r), might be expected to realize if it sold on the open market by a willing seller to a willing buyer." Section 284(1)(r) of the *Act* defines property as " (i) a parcel of land, (ii) an improvement, or (iii) a parcel of land and the improvements to it." Finally, s. 11(c) of the *Standards of Assessment Regulation* (the applicable regulation in 1999) says market value assessment "must reflect typical market conditions **for properties similar to that property**." These definitions reflect the common law interpretation of "market value" which contemplates the existence of a market.

[5] In the case before us, the City compared the value of Carma's land to the recent sale price of five other parcels of land in the Tuscany area, which, though undeveloped were also similarly capable of sub-division. Using this technique, the City assessed the land at $50,000 per acre for a total assessment of $2,160,000. Carma appealed that assessment to the Assessment Review Board. Carma accepted that $50,000 per acre was appropriate for the Tuscany lands (the 14.13 acres of sub-dividable lands). It took the position, however, that the ravine lands had no market value as they would transfer to the City upon sub-division at no cost to the City.

[6] At this point, the City assessors acknowledged there was a distinction to be drawn between

the Tuscany lands, which could be developed, and the ravine lands that could not. Before the Assessment Review Board, the City then took the position that while the Tuscany lands should be assessed at $50,000 per acre, consistent with their capacity for development, the ravine lands should be assessed at 50 per cent less than the value of surrounding lands. The City submitted this differential was consistent with its policy towards the assessment of city owned lands such as parks. On this basis, the City argued that the market value of the ravine should be $25,000 per acre which, when combined with the Tuscany lands, resulted in an assessment of $1,430,000. The Assessment Review Board, without giving reasons, agreed with the City.

[7] Carma appealed that decision to the Municipal Government Board (the Board) arguing, once again, that the ravine lands had no market value because there was no market for them. Carma submitted that the market value of the entire parcel was really the value of the 14.13 acres that could be sub-divided because no one would be willing to pay for an acreage that would automatically pass to the City upon sub-division. For its part, the City maintained the position taken before the Assessment Review Board. It compared the ravine lands to the undevelopable land found in Fish Creek Park and Nose Hill Park which, although exempt from taxation, had nonetheless been assessed at $20,000 per acre.

[8] Thus, the Board was faced with an agreement that the 14.13 acres of Tuscany land had a market value of $50,000 per acre. The issue then became the market value of the ravine lands to enable the Board to arrive at a total assessment of the entire acreage based on market value. The Board concluded that there would be no purchaser for the ravine lands and, as a result, the ravine lands had no independent market value. The market value of the parcel was the market value of the 14.13 acres - which was agreed upon. It assessed the property at $706,500 for the whole parcel.

[9] The City applied to the Court of Queen's Bench for judicial review of the Board's decision. The reviewing judge accepted that the standard of review was one of patent unreasonableness. He went on to conclude, however, that the Board had come to a patently unreasonable decision by assuming the land would be sub-divided when it made its assessment, and by effectively exempting the ravine lands from taxation when they did not yet fit into one of the exceptions set out in s. 361 of the *Municipal Government Act*. As a consequence, the reviewing judge quashed the Board's decision and remitted it for re-assessment. Carma appealed.

III. STANDARD OF REVIEW

[10] The parties agree that the chambers judge was correct in finding that the tribunal's decision could be interfered with only if it was patently unreasonable. The parties agree, as well, that in applying this standard of review, the chambers judge was obliged to be correct.

IV. ISSUE

[11] The issue before the Board was the market value of a particular piece of property zoned for sub-division. The issue before us is whether the Board's decision was clearly irrational and could not be sustained by reason.

V. DECISION

[12] Under the statute, and its regulations, property assessments are made on the basis of market value. Market value is determined by referring to recent market conditions concerning similarly situated parcels of land. Here, for purposes of comparison, the City chose to rely on property which drew its value from its capacity for future sub-division. It concluded the 14.13 acres of developable property was worth $50,000 per acre.

[13] The properties used by the City for comparison were properties that could be sub-divided and developed. This accounts for the high market value of the Tuscany lands. Having assessed acres at an enhanced value because of the ability to sub-divide, however, the City had to be prepared for the logical aftermath. If the high market value of the 14.13 acres was derived from the assumption that the land would be sub-divided, the remaining land had to be assessed in accordance with the negative aspects of that assumption, namely, that the reserve lands would pass to the City once the property was sub-divided at no cost to the City. Thus, the ravine lands had no market. What willing buyer would pay anything for land designated to be transferred to the City of Calgary at $0.00?

[14] In this case, the parties agree that the market value of the Tuscany lands was $50,000 per acre. The Board was entitled to accept that assessment based, as it was, on market sales of comparable property. The Board was also alive to the fact that it was dealing with the assessment of one, single titled parcel of land. It was not irrational, therefore, for the Board to conclude that if $50,000 per acre was the appropriate market value of the Tuscany lands because they could be developed, the ravine lands had a market value of $0.00 per acre because they would no longer be owned by the parcel owner. The Board's decision was not patently unreasonable.

[15] At the hearing of the appeal, the City argued that the ravine had value because it enhanced the value of the surrounding lands. We accept that a ravine (whoever owns it) could enhance the value of the surrounding acreage. A purchaser might be willing to pay more for an acre of developed property beside, or backing onto, a ravine than for an acre of land backing onto another developed property. But this fact does not give market value to the ravine. It merely increases the market value of the surrounding land - in the present case, the Tuscany lands.

[16] This argument, therefore, does not help the City because it had already established a market value of $50,000 per acre for the Tuscany lands, based upon what it chose to argue were market sales of comparable property. Having agreed that the Tuscany acres were worth $50,000 per acre, the City could not attempt to argue they were actually worth more through the guise of assigning a market value to the ravine lands. It may be that the City could have argued that the Tuscany lands were worth a considerable amount due to their surroundings. But the City did not take this position

before the Board, and it did not produce evidence, which the Board could have relied upon, showing the market conditions for similarly enhanced property.

[17] Thus, in our view, the chambers judge erred in concluding that the decision of the Board was patently unreasonable. The chambers judge appeared to base his decision on the fact that the ravine property would only revert to the City if the property was sub-divided, and that an owner may choose not to sub-divide. That is not the issue. The comparables which the City relied upon here were properties which drew their value from their capacity for sub-division. There was no evidence before the Board to allow it to assess the market value of Carma's land on the alternative basis that it would not be sub-divided.

[18] The City also argued that the assessment here was patently unreasonable because it effectively exempted the ravine lands from taxation. We respectfully disagree. It is clear that all the parties recognized the Board would assign a single market value to the whole property once the market value of the two different kinds of land within the parcel had been ascertained. In the end, the Board considered the property as a whole and assessed its market value at $706,500. Assessing a value per acre was merely a convenient way of assessing the final market value of a single parcel of land where there were restrictions on its use. The chambers judge erred, therefore, in finding that the reserve lands had been effectively declared exempt from taxation.

[19] As indicated at the hearing, the appeal is allowed and the decision of the Municipal Appeal Board is restored.

[20] Costs are awarded to the appellant for both the chambers application and the present appeal.

Appeal heard on November 14, 2003

Memorandum filed at Calgary, Alberta
this 9th day of January, 2004

Conrad J.A.

Russell J.A.

Wittmann J.A.

Appearances:

B.R. Inlow, Q.C.
For the Applicant

M.D. Talaga
for the Respondent

T.W. Kathol
for the Respondent (Appellant)

Corrigendum of the Memorandum of Judgment

In paragraph [15], before the word “argued” the word “appellant” has been corrected to read “City”.