Decision: **CARB 0263-636/2014**
Complaint ID 636
Multiple Roll No.'s (see Appendix "A")

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATES: DECEMBER 1 – 4, 2014

PRESIDING OFFICER: J. Dawson
BOARD MEMBER: A. Knight
BOARD MEMBER: R. Schnell

BETWEEN:

NAL RESOURCES LTD.

Complainant

-and-

RED DEER COUNTY

Respondent

[1] These are complaints to the Central Alberta Regional Assessment Review Board (*the Board* or *CARARB*) in respect of property assessments entered in the 2014 Assessment Roll as follows in Appendix "A" attached.

[2] These complaints were heard by the Board on the 1st, 2nd, 3rd, and 4th days of December, 2014, in Red Deer County, Alberta at the Red Deer County Centre, Council Chambers.

[3] Board clerks:

J. Hindbo	*Appeals Coordinator, The City of Red Deer*
C. Mulder	*Board Officer, The City of Red Deer*

[4] Appeared; on behalf of, provided testimony as a witness of, attended in support of, and referred to throughout collectively as the Complainant:

B. Dell	*Solicitor, Wilson Laycraft Barristers & Solicitors representing Canadian Natural Resources Limited*
J. Bergeson	*Vice President Exploitation West, Canadian Natural Resources Limited*
J. d'Easum	*Senior Director of Assessment Services – Western Canada, DuCharme McMillen and Associates Canada, Ltd.*

K. Minter	*Manager Fixed Assets and Property Tax, Canadian Natural Resources Limited – Observer*
T. Klaus	*Associate Tax Consultant, DuCharme McMillen and Associates Canada, Ltd. – Observer*

[5] Appeared; on behalf of, provided testimony as a witness of, attended in support of, and referred to throughout collectively as the Respondent:

B. Boomer	*Assessment Services Manager, Red Deer County*
K. Burnand	*Assessor, Red Deer County*
T. Ploc	*Assistant Assessor, Red Deer County – Observer*

[6] In attendance as an observer with no affiliation to any party before the Board:

J. Kurylo	*Legislative Services consultant to The City of Red Deer – Observer*
A. Keibel	*Deputy City Clerk, The City of Red Deer – Observer*
L. Ripe	*Chief Assessor, Lacombe County – Observer*

JURISDICTION

[7] This Board is a Composite Assessment Review Board [*CARB*] established in accordance with section 456 of the *Municipal Government Act*, RSA 2000, c M–26 [*the MGA the Act*] and the Red Deer County Bylaw number 2011/29.

[8] Pursuant to section 468(1) of the Act, the Board is required to render its decision within 30 days from the last day of the hearing, or by the end of the tax year – December 31, 2014. The Board was granted an extension until March 31, 2015 by the Minister of Municipal Affairs [*Minister*] on November 4, 2014 with Ministerial Order #L:160/14.

[9] The Board acknowledges that there are previous Board decisions in *Encana Corporation and Penn West Petroleum Ltd. v Kneehill County* (4-8 March 2013), online: CARB http://www.municipalaffairs.alberta.ca/cfml/boardorders/pdf/0191%2002-2013.pdf [*Kneehill*] and *Canadian Natural Resources Limited v Red Deer County* (16-20 December 2013), CARB 0263-578/2013: CARB http://www.municipalaffairs.alberta.ca/cfml/boardorders/pdf/CARB%200263-578-2013.pdf [*Red Deer County*] on similar issues. Both of these decisions have been appealed before the Court of Queen's Bench with no resolution as of hearing date. The Board is required by legislation to complete hearings in a timely fashion and it is not bound by previous Board decisions.

[10] No additional jurisdictional matters were before the Board.

BOARD AS CONSTITUTED

[11] The Complainant raised an objection to J. Dawson, Presiding Officer, hearing these complaints. The Complainant spoke on the legal principle known as *audi alteram partem*, which is an adjunct to the duty of fairness and the right to be heard. The Complainant argued it is to be heard by a tribunal that is not only fair but also impartial.

[12] The Complainant argued that a special circumstance exists, because the 2013 decision from the Board, on the same 18 complaints, is before the Court of Queen's Bench. The Complainant indicated that there is no allegation of actual bias; however, it was concerned that there will be a prejudgment.

[13] The Complainant argued that the Supreme Court of Canada dealt with a similar situation in *Newfoundland Telephone Co. v Newfoundland (Board of Commissioners of Public Utilities)*, 1992 1 SCR 623 [*Newfoundland Telephone*]. Based upon the principle that a party is entitled to sustained confidence of the independence of the decision maker, including what parties may think, in terms of whether there has been a prejudgment of the issue.

[14] The Complainant continued that the legal principle in this area indicates that if any one member of the panel 'is tainted', in the legal sense, then the panel as a whole is disqualified. The effect of there being a reasonable apprehension of bias is that any decision of the Board may be found to be void and not enforceable.

[15] The Board reviewed the *Newfoundland Telephone* decision. The Board held that the facts in that case are distinguished from the case at hand in that the panel member, when appointed, publicly championed a position that clearly showed a biased position towards a party to the hearing. In addition, this particular action was regarding costs and the member in question was quoted in a local newspaper with its position on the issue before the panel.

[16] The Board including the Presiding Officer is confident that there is no bias against either party and it has no interest in the outcome other than to uphold the values of the Central Alberta Regional Assessment Review Board and the Municipal Government Board [*MGB*] as identified within Appendix "C."

[17] Additionally, the *MGA* speaks to pecuniary interest as opposed to bias, in section 480:

> 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 purpose 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.

[18] The Board confirms that all members of this panel have reviewed section 170 of the *MGA* and have no pecuniary interest. Furthermore, all members of the panel reside outside of the municipality referred to as the Respondent and have no interest in the Complainant's activities. The Presiding Officer indicated that there is no bias on his part. The Board found that there was no bias and the hearing went ahead.

[19] No additional concerns of the Board were raised. Both parties indicated that they were prepared to proceed with the Board as constituted.

PRELIMINARY AND PROCEDURAL

[20] All witnesses were sworn in at the request of the Complainant.

[21] Upon review of the complaint forms submitted for the various companies represented by the Complainant, it was found that one document may not have been properly signed by the Complainant. The Respondent indicated that it was confident that all the complaints are properly before the Board. The Board accepted the documents as presented.

[22] The Complainant and Respondent confirmed the complaint information before the board is that which is printed on page 2 of exhibit B1.

[23] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaints.

PROPERTY DESCRIPTION AND BACKGROUND

[24] The subject properties are leased parcels of land within Red Deer County used for industrial purposes and containing a wellhead. A total of 18 parcels of land were presented at the hearing from six different Complainants. **The decision herein pertains to two complaints filed by NAL Resources Ltd. with each specific parcel of land identified in Appendix "A".**

[25] In addition to the land value, each subject property is assessed for buildings and structures, as well as for machinery and equipment by the municipality, which is not in dispute; therefore, this decision only reflects the land assessment, and does not address any other assessment of the subject property.

[26] The Province of Alberta provides an assessment, as set out in the 2013 Alberta Linear Property Assessment Minister's Guidelines [*Linear Assessment*], for the actual wellhead on each subject property. The Linear Assessment purportedly includes a land component, which each party has agreed amounts to approximately $5,000. The assessment values have been adjusted by $5,000 to recognize the interest in land for the actual wellhead already captured within the Linear Assessment.

ISSUES

[27] Section 460(5) of the *MGA* identifies the ten matters that can be brought under complaint before the Board. The Complainant confirmed that the three matters it indicated on its initial complaint form are still before the Board:

Matter 2: 460(5)(b) *the name and mailing address of an assessed person or taxpayer*,

Matter 3: 460(5)(c) *the assessment amount*, and

Matter 9: 460(5)(i) *whether the property is assessable.*

[28] The Board considered the parties' positions and determined the following questions are to be addressed within this decision:

a) Should the subject properties be assessed? [matter 9, MGA s. 460(5)(i)]

b) If assessable, who is the assessed person? [matter 2, MGA s. 460(5)(b)]

c) If assessable, what is the correct assessment? [matter 3, MGA s. 460(5)(c)]

d) What does the legal interest in land entail? [issue, MGA s. 284(1)(k)(iii)(E.1)]

COMPLAINANT'S POSITION

[29] During his opening statement, counsel for the Complainant indicated it is advancing three positions:

a) **What does the legal interest in land entail?** The Complainant indicated that there is no complaint available on the Linear Assessment rate assigned by the Minister. The Linear Assessment rate of a well site includes a value of approximately $5,000 for the legal interest in land. What is that $5,000 intended to cover? The Complainant's position is the Linear Assessment rate is all encompassing.
b) **What sales do you use to determine the market value?** The Complainant stated that if there is anything at all for the municipal assessor to assess, it is limited to the area in use but at a land rate of $2,450 per acre not the $38,000 per acre that the assessor has applied. In establishing the $38,000 per acre the assessor has used country residential sales – properties that have sold for acreage purposes. The rate of $2,450 per acre is the market value of farmland.
c) **What area is to be assessed by the municipal assessor?** The Complainant argued; that if assessed at all, it is its position that it is strictly confined to the area in use as described in *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004 [*MRAT*], whereas the assessor breakdown includes the area in use as well as the additional area which when added together equals the size of the entire lease.

COMPLAINANT'S REQUESTED VALUE

[30] The Complainant's requested land assessment for each specific subject property is identified within Appendix "A". The Board did not receive a request from the Complainant to change the value of assessed machinery and equipment, and or buildings and structures. Therefore, the Board only provides a decision on the land assessment value. Any and all other assessments on the subject properties by the municipality remain unchanged as a result of this decision. The Minister assesses a Linear Assessment for the subject properties. A change to the Linear Assessment is not within the jurisdiction of this Board.

WITNESS'S TESTIMONY FOR THE COMPLAINANT:

J. Bergeson (Exhibit B2)

[31] Witness for the Complainant; J. Bergeson, Vice President Exploitation West, Canadian Natural Resources Limited provided testimony.

[32] Three specific topics were presented by the Complainant:

a) acquisition of well sites between oil and gas operators,
b) regulatory requirements for transfer of licenses and accompanying surface leases, and

c) reclamation requirements for well sites.

[33] **Acquisition of well sites between oil and gas operators.** During the negotiation of a purchase and sale agreement of oil and gas properties that includes the acquisition of an operating well (or active lease site) by a third party oil and gas operator, there are commonly three components under consideration: the Petroleum and Natural Gas rights [*PNG*], the tangibles, and the miscellaneous interests.

[34] The PNG rights represent the working interests, royalty interest, or share of entitlement in production of petroleum substances underlying the lands governed by leases subject to purchase and sale.

[35] Tangibles are any and all tangible depreciable property, equipment and assets used to produce petroleum substances and transport the substances to market (i.e. wellheads, flow lines, tanks, pipelines, meters, pumps, generators, compressors, plants, *et cetera*).

[36] Miscellaneous interests is a catch-all term that includes anything to be included in the purchase and sale agreement that is not included in the PNG rights and tangibles. Amongst a variety of other items, miscellaneous interests will routinely include the surface rights, which allow for the entry, occupation, and access to the surface on any lands which are, or may be, used to gain access to, or otherwise use, the PNG rights or tangibles.

[37] Each of the three components are typically given a value in the purchase and sale agreement. While the asset value of the PNG rights and tangibles will vary, in almost all cases the miscellaneous interests are given a nominal value of $10 or less. This accurately estimates the perceived value of the miscellaneous interest in the context of purchase and sale agreements between operators. Typically, an acquiring company is more concerned with the liabilities that may be associated with the surface lease in an acquisition. The land in and of itself is assigned no value, and would not be considered an asset. In an acquisition of oil and gas well sites, there is no consideration for what the market value of the lease site may be.

[38] **Regulatory requirements of license transfers.** the transfer of well licenses and the accompanying surface lease for a well is regulated by the Alberta Energy Regulator [*AER*] through the Oil and Gas Conservation *MGA* [*OGCA*] and its regulations. As well AER directives (specifically 006 and 067) set out further requirements.

[39] A license cannot be transferred to a person, unless the person has an AER Business Associate Identification code that permits the holding of the license that is proposed to be transferred.

[40] The AER may, depending on the complexity of the transfer or a licensee's Liability Management Rating, impose conditions, require security deposits, or refuse to allow a transfer. Both the transferor's and transferee's experience records with the AER are relevant.

[41] The OGCA sections 16 and 17 require a licensee to hold a working interest participation in each well or facility for which it is a licensee.

[42] The only person who could possibly gain control of a surface lease through a transfer is another approved licensee. In addition, the landowner may carry on farming operations on portions of the lease(d) area.

[43] **Legal requirement to reclaim.** The *Environmental Protection and Enhancement Act*, RSA 2000, c E-12[*EPEA*], and associated regulations, require an operator to conserve and reclaim specified land, and obtain a reclamation certificate. Specified land is land on which activities such as construction, operation, and reclamation of a well, battery, or pipeline are conducted and associated with facilities, such as access roads, borrow pits, campsites, and off-site sumps. When a well site and associated facilities are reclaimed, the operator must obtain a reclamation certificate to show that reclamation has been successful. Under the *EPEA*, a surface lease with a landowner is not legally terminated until a reclamation certificate has been issued. Alberta Energy Regulator (AER) manages reclamation certificates through the Alberta Upstream Oil and Gas Reclamation and Remediation Program.

[44] The aim of reclamation under the *EPEA* is to obtain *'equivalent land capacity'*. Equivalent land capacity is defined in regulation as *'the ability of the land to support various land uses after conservation and reclamation similar to the ability that existed prior to an activity being constructed on the land, but that the individual land uses will not necessarily be identical'*.

[45] The overall intent of reclamation for well sites that are located on farmland is to return the land to farming use after the well site is no longer required.

[46] The Complainant testified that in developing the surface well site there are items for it to consider regarding the size of the lease area;

> *"...take a surface lease required big enough to accommodate the drilling operation, and when you're drilling there are certain rules to have your equipment spaced out, so you need a certain amount of footprint in order to make that happen. But our consideration is basically that we take the minimum possible to get the job done and then the other consideration is after the well site is equipped for production – ready to go, we try to turn as much land back to the farmer as possible – to keep the minimum amount we can get away with for our use and the rest can go to the farmer. There is a number of reasons for that... the main thing is vegetation control, it's a cost for us to look after the lease and keep vegetation under control, and the other [second] thing is the less land, the more time the farmer is using it the easier the reclamation will be, if we have a smaller area to deal with, the easier and cheaper. The third reason would be good relationship with farmer, were paying lease rentals on the entire thing but the area in use is small so it is win-win for him. He's getting the same money but he's still got the use of the land..."*

[47] During questioning, the Complainant indicated that if it owned a well site property it would not consider the market value of the parcel of land in a purchase and sale agreement. Likewise, the buildings and structures, and machinery and equipment carry little value even though they are assessable property. As stated by the Complainant witness, J. Bergeson, *"We wouldn't buy a parcel of land; usually the farmer won't sell it."*

[48] The Complainant testified that in order to access the mineral rights it would need to have a surface lease near the mineral rights. If there were no way to access the mineral rights there would be no value in it; however, there are laws in place, which enable it to force legal access.

[49] The Complainant confirmed that legally it has access to the entire leased area at any time; however, practically it would work with the farmer and compensate them for damaging areas that contain crops.

[50] The Complainant indicated that it has no need or desire to determine the market value of the land used for a well site. It acquires a lease for the sole purpose of accessing the mineral rights and the market value of the land is not a consideration. That is why it assigns a nominal value.

[51] The Complainant testified that it does not have any of the actual lease documents for the subject properties in evidence.

J. d'Easum (Exhibits B1 and B5)

[52] Witness for the Complainant; J. d'Easum, Senior Director of Assessment Services – Western Canada, DuCharme McMillen and Associates Canada, Ltd. provided extensive testimony and evidence regarding the valuation of the subject properties.

[53] The Complainant indicated that the Respondent seemed to follow the decisions rendered by the Board in 2013. These decisions have been appealed to the Alberta Court of Queen's Bench with no resolution as of the hearing date.

[54] The Complainant testified that the Respondent provided sales data from August 17, 2010 through to July 18, 2013. These sales represented 16 properties with a total of 17 transactions. The Complainant accepted the time adjustments and validity of the sales without extensive independent verification.

[55] The Complainant observed that one 4.50 acre site sold *post facto* from the July 1, 2013 valuation date. The Complainant suggested that the 16 small acre parcels carry attributes associated with country residential properties – fourteen are currently being assessed as residential versus farm land.*

[56] The Complainant indicated that all of the subject properties are located on agricultural land and that agricultural land value is the appropriate starting point to begin calculating land value for well sites. While the valuation of land for well sites is based on the legal interest (which is provided for in the Linear Assessment rates), it would be reasonable to surmise that if the hypothetical fee simple was to be acquired, a purchaser would pay no more than the value of farmland, at an 'across the fence' value.

[57] The Complainant provided a list of 57 agriculture land sales – thirteen from July 1, 2012 through June 30, 2013, with the remainder from 2011 and 2012. A 5.36% time adjustment was applied to the 2011 sales and a 0.98% time adjustment was applied to the 2012 sales. The median value for the 57 sales is $2,450 per acre.

[58] The Complainant argued that the *MGA* section 304(1)(f) stipulates that the holder of the lease is the assessed person for a parcel of land, or a part of a parcel of land, where the land and the improvements are used for... drilling, treating, refining or processing of natural gas, oil,... pipeline pumping or compressing.

[59] The Complainant asserted that farming operations would fall into the requirements under the *MGA* section 304(1)(a) whereby the assessed person must be the owner of the parcel of

* The Complainant used the word 'farmland'; however, the Board believed the words 'farm land' was its intent. (B1 p. 4 chart)

land. The Complainant's experience is that farm land* has never been assessed to the holder of a lease in the manner it has been assessed in Red Deer County for the 2014 tax year.

[60] The Complainant argued that it should only be assessed based upon the actual area in use, which is consistent with the opinion of Alberta Municipal Affairs. The part of the parcel to be assessed is defined in the *MRAT* as an area located within a parcel that is used for industrial purposes. An assessment bulletin released in July 2013 indicates that Alberta Municipal Affairs – Assessment Branch is of the opinion that land at well sites is to be assessed based on actual area in use.

[61] The Complainant presented the position that the requirement for a negative $5,000 adjustment per wellhead is not in dispute. The $5,000 amount is consistent with the opinion of Alberta Municipal Affairs as communicated to Penn West Exploration in a letter dated July 26, 2012, and as communicated by the Assistant Deputy Minister in a letter of July 6, 2012.

[62] The Complainant argued the Linear Assessment rate of $5,000 is all encompassing and perhaps the only value not captured in the regulated Linear Assessment is the residual farmland market value.

[63] The Complainant indicated that the Respondent and Complainant agree that market value is the valuation standard for the subject properties; however, the determination of the proper comparable set to arrive at market value is the issue before the Board.

[64] The Complainant explained the Boykin's best fit curve, which indicated that very small parcels have little utility, making them difficult to utilize. As a result, small parcels display very little value.

[65] The Complainant presented the *Kneehill* decision for the 2012 tax year which found the farmland value to be $2,250 per acre.

[66] The Complainant provided its requested assessment values which when the $2,450 per acre is applied to the area in use and the $5,000 Linear Assessment value is subtracted resulted in a $0 assessment for all five properties under complaint.

[67] In Rebuttal, the Complainant argued that the Respondent failed to recognize the limited utility and legal restrictions placed on the subject properties.

[68] The Complainant indicated the 15 sales in the Respondent's presentation is different than the 16 sales (with 17 transactions) disclosed under its section 299 (the Act) request.

[69] The Complainant challenged the special purpose sales presented by the Respondent indicating that they are not comparable properties. The five sales are much larger than the subject well sites, are not encumbered by a well site, and have road frontage and access that generally the subject properties do not have.

[70] The Complainant argued that the lease payments for the subject properties are compensatory and already accounted for in the Linear Assessment. The fact that the Complainant pays a lease does not indicate a market value.

[71] The Complainant created overlays on aerial photographs to show that when set back restrictions are imposed that there is no ability to develop on the subject parcels area in use.

[72] The Complainant illustrated from Respondent evidence that the majority of oil and gas property sales trade at a nominal value and confirm that the market value is nominal.

[73] The Complainant argued that the inclusion of abandoned well sites in future development is not representative of the hypothetical parcel that once existed. The fact that a developer must have regard for abandoned well sites does not show value.

[74] The Complainant concluded that the hypothetical parcel exists solely because of the presence of machinery and equipment; therefore, AER setback restrictions must be considered. When the machinery and equipment is removed, the well site ceases to exist, and the hypothetical parcel also ceases to exist. When considering the underlying use as farmland, then looking at the land as vacant can only lead to the conclusion that it is farmland.

[75] During questioning, the Complainant testified that to purchase a fee simple titled piece of land for the purposes of oil and gas extraction, The Complainant stated that it *"would pay no more than the surrounding farmland if we are a parcel within a parcel that's created by that manufacturing process, so if you got that so its encumbered by the setbacks associated with the wellhead or the land use bylaw then you would pay no more than the surrounding farmland."*

[76] The Board questioned the Complainant regarding the nominal value for land placed on transactions between oil and gas companies, asking whether it has something to do with market value. The Complainant responded that in a sense it does, because the sales are market transactions. They have traded – there is a willing buyer and a willing seller. And they have traded at a value. How they determine that value and how they allocate that value is very subjective. The value is determined between the parties involved, and they have created the sale documents that are listed within the chart included in Exhibit B5, tab 3, p. 3.1.

[77] The Board asked the Complainant whether any of the 57 land sales submitted by the Complainant contain a well site. The Respondent replied, *"no, they did not."* The Complainant was redirected by counsel and indicated that it did not know the answer to that question. These are vacant farmland sales and that was the extent of its analysis.

COMPLAINANT ARGUMENT

B. Dell (Exhibits B4 and B6)

[78] The Complainant outlined the three issues that it thought the Board needed to grapple with:

a) What is encompassed in the Linear Assessment rates?
b) What is the area to be assessed to the Complainant? and
c) What is the appropriate data set, which leads to a discussion – what is market value?

[79] The Complainant argued that the land that forms the well site falls under the definition of linear property pursuant to section 284(1)(k)(iii)(E.1) of the *MGA*. The Complaint asserts that as a result, the land assessment is entirely captured in the Linear Assessment rates.

[80] The Complainant continued that if a land assessment is to be prepared by the Respondent, then only the area in use as set out in section 4(3)(e) of *MRAT* should be assessed to the Complainants.

[81] The Complainant argued that if a land assessment is to be prepared by the Respondent, then the land rate to be applied is per acre value of the farmland surrounding the well site, less the $5,000 amount included in the Linear Assessment.

[82] The Complainant reviewed historical practice indicating that in the years prior to the 2012 tax year it was generally accepted that the land component of well sites was included within the legal interest in land assessed through the Linear Assessment rates. No municipal assessments were prepared for well site lands. In the 2012 taxation year, five municipalities assessed land at well sites.

[83] The Complainant explained; that the same complaint that is brought before the Board this year was before the Board in the *Kneehill* decision. The Complainant argued that the issue presented is identical to that adjudicated with a decision rendered on May 24, 2013. The Board finds that, for the vast majority of the 360 well site complaints, the assessments were to be reduced to zero.

[84] The Complainant pointed out that the Board in the *Kneehill* decision found:

a) That typical industrial or country residential properties are not comparable to well sites and are not a valid indication of market value (B4 tab 1, p. 25, para. 133);
b) The market value of surrounding farmland was the best indication of market value (B4 tab 1, p. 26, para. 136);
c) The market farmland value is to be applied to the actual area in use (B4, tab 1, p. 24, para. 124); and
d) The value is to be adjusted downward to account for the $5,000 rate included in the linear assessment (B4 tab 1, p. 27, para 142).

[85] The Complainant explained that the vast majority of municipalities still do not prepare land assessments at well sites. And the municipalities that do so, predominantly follow the *Kneehill* decision.

[86] The Complainant indicated that the complaints were heard in *Red Deer County* in 2013 on the same 18 well sites that are before the Board. The Board in that case rendered a different decision than *Kneehill*. The 2013 *Red Deer County* decision is before the Court of Queen's Bench. The Complainant requested an adjournment of the 2014 complaints pending the Leave to Appeal Application. This adjournment was refused by the Board.

[87] The Complainant argued that if a land assessment is to be prepared by the Respondent, then the methodology established in the *Kneehill* decision is appropriate. The land assessments for each complaint, in most cases, would be reduced to zero.

[88] The Complainant discussed the 1999 report; *'Shaske & Zeiner Appraisal Consultants Ltd.'* 1999 [*Zeiner*], that is purported to create the $5,000 value for the legal interest in land, which is encompassed within the Linear Assessment rate.

[89] The Complainant explained that the legal interest in land that forms the site of the well sites under complaint was determined in the *Zeiner* report conducted by the Assessment Service Branch of Alberta Municipal Affairs. The purpose of the report was to determine the market value of well sites to arrive at the value of the legal interest to be assessed in *MGA*, s 284(1)(k)(iii)(E.1) (B2, tab 24, p. 24-5).

[90] The Complainant continued, advising that the *Zeiner* report concluded rates for four zones within the province. The Assessment Services Branch made a policy decision to have one uniform rate of $5,000 per well applied within the Linear Assessment to cover the legal interest in land. The *Zeiner* report indicated that it was utilizing mass appraisal principles and employed an income approach using the average annual lease rates paid by oil and gas operators to arrive at the market value of well sites. This market value has been incorporated in the Linear Assessment.

[91] The Complainant argued that the Board has no jurisdiction to alter a regulated assessment rate, or the contents of a regulated rate. The 'market value' of the well site is included within the Linear Assessment rates applied to each well site under complaint. It is for the Minister, not the Board, to change the market value incorporated within the Linear Assessment rates.

[92] The Complainant continued; that there is no basis for the Respondent to apply any additional land assessment as the market value, to be assessed under MRAT section 4(3), is included in the regulated Linear Assessment rate.

[93] The Complainant explained; that the Linear Assessment rates (B4 tab 4) set out a formulaic method to determine well assessments, which are inclusive of the market value of not only the area in use, but the entire leased area.

[94] The Complainant referred to *MRAT* section 4 and indicated that the regulation is silent as to which assessor (linear or municipal assessor) is to assess the land that is used for industrial purposes at a well site. The Complainant argued; that clearly, the legislation must be interpreted to avoid double taxation. The market value can only be assessed once, and the Complainant argued that the market value is incorporated into the Linear Assessment rate.

[95] The Complainant argued; that there is no ambiguity that the Linear Assessment rate includes the market value of the well site. The *Zeiner* report, as adopted by the Assessment Services Branch in arriving at Linear Assessment rates, in conclusive of such. An interpretation of the legislative scheme that avoids the prospect of double taxation is preferable. The Complainant cited; *'Talisman Energy Inc. v Lakeland (County)'*, 2002 AMGO No. 17 [*Lakeland*], and *'Casa Blanca Homes ltd. v Canada'*, 2013 TCJ No. 306 [*Casa Blanca*] as precedents.

[96] The Complainant argued that if there is any doubt as to the interpretation of the legislation, then the residual presumption in favour of the taxpayer is to be applied. The Complainant cited *Quebec (Communaute urbaine) v Corp. Notre-Dame de Bon-Secours*, 1994 3 SCR 3 [*Quebec*].

[97] The Complainant referred to the *Zeiner* report to indicate that the legal interest includes the right to possess, occupy, and use the 'property'. The Complainant indicated that in the event that the legal interest assessed under *MGA* section 284(1)(k)(iii)(E.1) is not all encompassing, then further discussion on 'area in use' and 'market value' is required.

[98] The Complainant argued that *MRAT* 4(3)(e) defines the 'hypothetical parcel' to be assessed as only the 'area in use'. The clear, precise language of the section excludes consideration of the 'leased area'. The Complainant explained that when the language of the taxing statute is clear, it should simply be applied. Citing *Shell Canada Ltd. v Canada,* 1999 SCJ No. 30 [*Shell*].

[99] The Complainant explained that in the municipalities that have assessed land at well sites, all have only considered the area in use, and not the whole of the leased area.

[100] The Complainant argued that the additional farm land assessment must be vacated. The 2013 *Red Deer County* decision incorporates a foreign element into the valuation process. There are simply no principles of statutory interpretation that would support the Board's findings that the entire leased area is to be assessed.

[101] The Complainant reviewed sections 285 and 289 of the *MGA* and argued that the Respondent's duty is to assess property annually. If there is a change to the area in use, then the assessor's responsibility is to reflect that change in subsequent year's assessments. Taxation is not a matter of convenience. The area assessed as regulated farm land must be removed from the assessments.

[102] The Complainant argued that if a land rate is to be applied at a well site, then it is the market value of the underlying farmland that is to be used in preparing the assessment against the area in use.

[103] The Complainant argued that the assessments are in error as the base land rate used in the assessments is derived from an incomparable data set; that primarily country residential sales that do not have the same restrictions on use as imposed upon the subject well sites. The *MGA* calls for the assessment of the hypothetical parcel on a market value standard; however, as determined in the *Kneehill* decision, that does not divorce the valuation process from the realities of the status of the property on the condition date provided in section 289(2)[1] of the *MGA*, development restrictions, or lack of utility due to size.

[104] The Complainant argued that the assessment cannot ignore the presence of a wellhead. Valuing a property 'as if vacant' does not allow for looking past regulatory restrictions imposed either by other legislative schemes or by municipal bylaw. Development restrictions must be taken into account in the valuation process. The Complainant provided the following citations in reference to this long recognized principle before the courts: *T. Eaton Co. v Alberta (Assessment Appeal Board)*, 1995 AJ 859 [*T. Eaton*], *908118 Alberta Ltd. v Calgary (City)*, 2013 ABQB 100 [*908118 Alberta Ltd.*], and *Musqueam Indian Band v Glass*, 2000 2 SCR 633 [*Musqueam*].

[105] The Complainant referred to the AER setbacks, arguing that the Respondent has not accounted for the extent of restrictions imposed on the well sites in any way. In particular, provincial AER setback requirements render the hypothetical parcels incapable of development of any kind, other than farming and the existing well site use. Setback requirements apply to the existing sites encumbered with an active wellhead, and further after the well has been abandoned. There is no market value that can be attributed to the sites in issue above the market farmland value. This is supported by the fact that the legal interest in the well site land is included in the Linear Assessment, and if there is anything left for the Respondent, it could only be the residual value of the underlying farmland.

[106] The Complainant argued that if a land value is to be applied to the well sites, then the restrictions against developing within 100 metres of the wellhead, provided in section 2.110 of

[1] Though the Complainant referred to 285(2), the Board assumed it to be referring to 289(2).

the OGCA regulation, must be taken into account. So long as the well sites are encumbered with a well, no other development is possible. Developments after abandonment must also account for a 5 metre setback from the abandoned wellhead.

[107] The Complainant presented on the requirement to reclaim the well site, indicating that after a well is abandoned, there is a legal requirement to reclaim land to its equivalent prior state. This is a legal requirement set out in the *EPEA*, and associated regulations.

[108] The Complainant argued that the isolated nature of the subject properties, the absence of servicing, and the restricted use would all require negative adjustments. The best methodology, if the land is to be assessed by the Respondent, is set out in the *Kneehill* decision. As the land associated with a well site is eventually reclaimed to its farmland state, the most appropriate value would be that of the surrounding farmland.

[109] The Complainant referred to the market value definition within section 1(1)(n) of the *MGA* which states,*"'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."* The Complainant argued that if there is no market, there is no market value. The Complainant stated that there is no market for well site land, citing *Fording Coal Ltd. v British Columbia,* 1996 BCJ No. 1546 [*Fording*], as an example to support its position.

[110] The Complainant argued that the only person who could purchase a well site is another entity approved by the AER. Entities approved by the AER place no value other than a nominal $1 or $10 for the right to access and control of the leased area.

[111] The Complainant referred to the *T. Eaton* decision at paragraphs 27 through 29, calling it an objective exercise without regard of the owner or user. Additionally, references are made regarding objective value and to the concept that without a market, there is no market value; *Pacific Newspaper Group Inc. v British Columbia (Assessor of Area no. 14 – Surrey/White Rock)* 2008 BCJ No. 1211 [*Pacific*], and *Southam Inc. (Pacific Newspaper Group Inc.) v British Columbia (Assessor of Area no. 14 – Surrey/White Rock)'* 2004 BCJ, No 872 [*Southam*].

[112] The Complainant referred to the *Kneehill* decision, stating that the Board determined that when a wellhead is present the setbacks make it incomparable to residential property and that the market value of farmland on the 'across the fence' methodology was the correct value because it was the same value used to create the lease.

[113] The Complainant argued that the Alberta Court of Appeal has endorsed the principle that land in and of itself has no inherent value, citing *Calgary (City) v Alberta (MGB)*, 2004 AJ No. 5 [*Calgary (City)*]. In addition, in *Tirion Group of Properties v Calgary (City)*, DL 016/10 [*Tirion*], found an assessment of zero for property with no market.

[114] The Complainant explained that in the 2013 Board decision for the subject properties, the Board did not give consideration as to whether the characteristics of the well sites (including the presence of a well head), which is assessed as linear property, had an effect on valuation. The Complainant argued that as of the condition date, the restrictions imposed by the AER and the Respondent's Municipal Development Plan cannot be ignored.

[115] The Complainant argued that there is no market value for well sites beyond the value of the surrounding farmland. The Complainant indicated that, similar to the *Tirion* case, the subject well sites are of no utility in the market place.

[116] The Complainant expressed that market value is subject to supply and demand. The Complainant argued that it is an error to ignore prevailing forces of supply and demand in arriving at an assessment, citing; *Von Meer v Alberta (Assessment Appeal Board)*, 1991 AJ No. 421 [*Von Meer*].

[117] The Complainant argued that only persons who have a legal ability to transfer the surface lease would pay more than farmland value for a fictitious well site parcel. The Complainant asserted that a well site operator, when faced with purchasing a 'parcel', would avail itself of the market value in accordance with a right of entry order under the SRA before paying the value range assessed by the Respondent.

[118] The Complainant referred to the lease samples in evidence indicating that the lease agreements that define the well site gave rise to a number of rights: a) it gave rise to the right to use; b) it gave rise to the right to access; c) it gave rise to the right to occupy – either a portion thereof, or all of it; and d) it also gave rise to the right to use the site indefinitely. A twenty-five year initial term, and perpetual automatic renewals for twenty-five years so long as the Complainant needs the property for its purposes. All of these rights are encompassed in the lease. Many of the sticks in the bundle of rights pass to the lessee under the lease.

[119] The Complainant argued that the subject properties' land value is fully accounted for in the Linear Assessment rate; however, if the Board finds otherwise, the only value is the underlying value as farmland.

[120] In rebuttal, the Complainant agreed with the Respondent that the *ad valorem* principle; however, the courts have consistently found that a property should not be subject to taxation for non-productive features, even if a limitation on use arises because of physical feature or a legal restriction. The Complainant cited: *908118 Alberta Ltd*, *Tirion*, *Calgary (City),* and *Sun Life Assurance Co. of Canada v Montreal (City)*, 1950 SCR 220 [*Sun Life*].

[121] The Complainant argued that in *Sun Life*, the five Supreme Court Justices were consistent that the principles of expropriation law and assessment law are not comparable.

[122] The Complainant refuted the Respondent's argument regarding the meaning attributed to *Sawiak v Petroleum Ltd.*, 1989 ABCA 324 [*Sawiak*], in which Justice Stevenson stated that a smaller parcel will ordinarily fetch a higher unit value. The Complainant argued that in cases such as the subject properties, this proposition does not apply. The Complainant further argued that Justice Stevenson in *Cochin Pipelines Ltd. v Rattray*, 1988 AJ No. 607 [*Rattray*], sitting as an arbitrator from a Surface Rights Board decision, indicated that there must be evidence of market value for the smaller taking.

[123] The Complainant reviewed a Court of Appeal decision of *Rattray* where it indicated that where there is no market for the smaller parcel, the per acre value of the larger quarter section should be applied. ...if there is a market for the small parcel, then you assume the parcels sold on that market. You assume the sale, not the market.

[124] The Complainant argued that if there is no market, there can be no market value, citing: *908118 Alberta Ltd., Calgary (City), Tirion, Pacific, Southam*, and *Assessor of Area No. 1 v NavCanada*, 2014 BCSC 2088.

[125] The Complainant asserted that in the valuation of property by the Respondent, there is no room for hypothesis as to the regards for the future of the property. As stated in *Sun Life*:

> *"...The assessor should not look at past, or subsequent or potential values. His valuation must be based on conditions as he finds them at the date of the assessment. ..."*

[126] The Complainant argued that the previous court decisions establish two things: a) the wellhead cannot be ignored in the valuation, and b) that the Respondent's sales with abandoned wells are irrelevant.

[127] The Complainant argued that none of the Respondent's sales are encumbered with a wellhead. To ignore the wellhead is to ignore the condition of the parcels as of the condition date as required by section 289 of the Act. The Complainant cited *908118 Alberta Ltd.,* and *Calgary Golf & Country Club v Calgary (City)*, 2006 AJ No. 841 [*Calgary Golf*], for the principle that in the valuation process, developable lands cannot validly be used for the purpose of comparison to restricted lands.

[128] The Complainant argued that the Respondent presupposes a market where none exists by asking the question, 'what would the farmer sell the parcel for?' This is precisely the error highlighted in, *Gallivan v Alberta Power Ltd. (Alta. QB)*, 1988 AJ No. 607 [*Gallivan*], a market cannot be assumed.

[129] In conclusion, the Complainant stated that the authorities are conclusive:

a) With no market there can be no market value;
b) The parcels in issue are not like any others;
c) The Linear Assessment accounts for the legal interest in land;
d) The subject properties are to be treated differently than other non-residential parcels; and
e) The Linear Assessment includes the right to occupy, use and exclude others.

[130] Only a nominal value remains to be assessed by the Respondent.

RESPONDENT'S POSITION

[131] **The Respondent's position is that the properties are properly assessed and should be confirmed.**

ARGUMENT AND TESTIMONY FOR THE RESPONDENT:

B. Boomer (Exhibits C1 and C2)

[132] The Respondent characterized the issue under complaint is the market value of the land utilized for oilfield industrial lease sites.

[133] The Respondent referred to Alberta Municipal Affair Bulletin 13-02 that indicates land area used for machinery and equipment at the well sites is to be assessed at market value.

[134] The Respondent provided a letter from the Assistant Deputy Minister of Alberta Municipal Affairs, dated July 6, 2012, as follows:

a) *"...the current interpretation of municipal assessors is the correct approach to assessing land at lease sites"*;
b) there are two parts to the land assessment for lease sites;
    i) the leasehold value of the land which is included in the well assessment, and
    ii) the market value of the industrial site; and
c) *"When machinery and equipment is not present at a well site, the only land that is assessed is that which is included in the Minister's Guidelines."*

[135] The Respondent referenced the *Kneehill* decision, where the Board found that they (well sites) were not included in the Linear Assessment, and that they were indeed assessable by the municipal assessor.

[136] The Respondent argued that the assessment, according to the regulations, must be at market value, as though a separate parcel. Property assessment is the process of assigning a dollar value to a property for taxation purposes. In Alberta, property is taxed based on the *ad valorem* principle, meaning 'according to value.' The amount of tax paid is based on the value of the property. The market value based standard is considered the most fair and equitable means of assessing property. It is fair because similar properties are assessed in the same manner. It is equitable because owners of similar properties in a municipality will pay a similar amount of property tax.

[137] The Respondent included information regarding its interpretation of legislation and regulation, indicating that these laws are in place to ensure equitable assessments among all property types, including titled and untitled properties, such as the subject leased lands. It is specific in stating an area within a larger parcel that is not utilized solely for agricultural purposes is to be assessed at market value. The intention of this is for equity and fairness: a 3 acre residential market land site within a quarter section is to be valued similarly to other residential acreages in the area; and a quarter section of agricultural land with a non-residential use is to have the area in use assessed at values similar to non-residential small parcels.

[138] The Respondent argued that;
a) the subjects should not be treated and assessed in a different manner, utilizing different data, than any other non-residential property within the municipality; and
b) that the subjects should not be treated or assessed in a different manner, utilizing different data, that the titled properties owned by the Complainant or other oil and gas companies.

[139] The Respondent argued that; the subjects are an integral part of the operations of the Complainant, same as other non-residential properties are to its operations, and the sites must be considered as though titled parcels that would have to be purchased in order to operate; and that the subjects are leased with the Complainant paying an annual rate for the exclusive rights to the land – an indication of its value;

[140] The Respondent argued that; not all types of properties within the municipality are offered for sale on a regular basis, however, that does not deem the properties to have little or

no value; and that properties are desired for various reasons and the Complainant requires the area held under lease for its desired purpose.

[141] The Respondent pointed out that in section 284(1)(k)(iii)(G) of the *MGA*, land and buildings are specifically excluded from the definition of linear property. The Respondent argued that it is abundantly clear that land is not included in linear property.

[142] The Respondent referred to section 304(1)(f) of the *MGA* and asserted that the subject properties meet the definition because the Complainant holds a lease for a parcel of land, from the owner of the land, and the properties are used for the purposes outlined in the legislation.

[143] The Respondent explained that the subject properties' assessments are an estimate of value, derived utilizing mass appraisal principles. They are based on available data, and ensure an equitable distribution among other well site assessments, as well as all non-residential properties within the municipality. Non-residential property throughout the municipality is assessed using these principles, including parcels within a larger parcel. Non-residential property throughout the municipality use comparable data, and other leased properties exist within the municipality, and are assessed based on the actual use.

[144] The Respondent pointed out that the market value based standard is considered the most fair and equitable means of assessing property. It is fair because similar properties are assessed in the same manner; it is equitable because owners of similar properties in a municipality will pay a similar amount of property tax.

[145] The Respondent reviewed its assessment process for the subject properties: the lease information was obtained and reviewed; it determined the well site area to be assessed at market value as the area not exclusively used for agricultural use, and is used by the Complainant; the balance of the leased area, if it appeared to be farmed, was assessed at the regulated farm land rate; and the entire leased area was removed from the assessment of the owner of the land.

[146] The Respondent provided a sample of compensation payments for the subject properties. Compensation includes: entry fee, land value, initial nuisance, inconvenience and noise, loss of use of the land, adverse effect, and other relevant factors. An annual compensation rate of $3,200 for a 4.67 acre lease site for a 25 year term equates to over $80,000 excluding the initial payment of $14,400. Further, the fact that there is value in leasing the land translates to value for the land as assessed at market value, regardless of whether the subject properties are purchased and sold on a regular basis.

[147] The Respondent argued that an important part of the assessment process is fair and equitable valuation for similar properties. The Respondent states that it has achieved equity and fairness by treating the subject properties in a similar manner. In order to assess the subject properties at market value, the Respondent must consider the following: whether the subjects are titled parcels of land; whether the parcels of land are for sale by a willing seller; whether the parcels of land are vacant and could potentially be used for various purposes; whether an oil and gas company is willing to buy the parcels of land for its desired purpose; and whether there are other potential purchasers.

[148] The Respondent questioned whether the owner of the land would sell to a specific purchaser for a different and much lower value than it could sell to another purchaser.

[149] The Respondent explained the value it arrived at for each subject property by:
a) reviewing the Well Plan for the leased area;
b) measuring the area to be assessed at market value by reviewing digital photographs;
c) estimating that 50% of the access road is used to access the well site;
d) evaluating vacant small parcel sales arriving at a value of $38,000 per acre; and
e) removing the value of $5,000 per well site as the amount it believed represents the legal interest captured and assessed within the Linear Assessment.

[150] The Respondent reviewed its analysis approach, commenting that it is generally accepted that an increase in value on a per acre basis will occur when going from a 160 acre parcel to a one acre parcel. The degree of 'per acre' increase can be influenced by what the land use bylaw will allow (residential vs. non-residential) or, as is the case with the subject properties, what development has been approved by AER to a certain area with the larger parcel (allowing the well site, battery site, and/or compressor site). The principle of the increase is worded in the *Sawiak* decision, where Justice Stevenson stated; *"This court has consistently recognized the fact that small parcels will ordinarily fetch larger per acre values that the parcels from which they are taken".* For the subject properties, the Respondent disagrees with the Complainant's position, which suggests that the area in use is worth the same on a per acre basis as the parcel from which it is taken – an entire quarter section.

[151] The Respondent argued that the subject properties should be assessed based on the actual use, and not a hypothetical potential future use. The Respondent must assess based on the condition of the property as of December 31 based on legislation and regulations.

[152] The Respondent indicated that when determining an estimate of value for assessment purposes, the use of any and all small parcel sales can be an indicator.

[153] The Respondent commented on the distinction between the highest and best use process that takes place in the market guided by a land use bylaw or the imposed use by a body such as the AER. Under the County of Red Deer *Land Use Bylaw* there is room for variations and adaptations, whereas under the AER the use is rigidly prescribed. Therefore, it is no longer for the evaluator to decide what could be, but simply observe what is and then find the market value for land of similar use. It goes without saying that any area leased for mineral extraction produces revenue that far exceeds farm income of that same area, thereby suggesting a highest and best use is as physically found on the site.

[154] The Respondent argued that considering the average lease site (well site) of 4.19 acres for the subject properties, the Respondent suggests the most comparable data are property sales that range in size from 1.38 acres to 8.60 acres. The Respondent does not consider a 160 acre parcel sale to be a comparable for parcels of this size.

[155] The Respondent reviewed sales of 15 vacant small parcel sales with the Agricultural District Land Use Designation [*AG*]. The average time adjusted price per acre is $40,678.83. The market value area of the subject properties have been assessed at $38,000 per acre.

[156] The Respondent stated that there are few sales that occur throughout the municipality for similar use properties; however, it has the responsibility to assess them at market value. The Respondent determined the most equitable way to do this is have a starting point similar to other non-residential use properties within the municipality. Non-residential use properties, located outside of the commercial and industrial parks, are assessed using the same sales data

of small parcel sales. Although the occasional non-residential property sale does occur in these areas at higher value, the Respondent has chosen to use the lesser value since sales are more common.

[157] The Respondent provided information about sales of special use properties to illustrate that: there are sales of parcels of land for similar uses; the sales occur infrequently; and, the sale price per acre is somewhat greater than the value per acre of the parent parcel.

[158] The Respondent reviewed a surface lease agreement indicating that a surface lease legally secures the Complainant's interest in a specific parcel of land for the purpose of extracting minerals. The agreement includes the compensation paid to the owner of the land for inconvenience and losses due to the well site. A specific clause provides; *"THE OWNER HEREBY COVENANTS AND AGREES TO AND WITH THE OPERATOR: 1. Quiet Enjoyment. The Owner has the right to lease the Leased Area to the Operator. The Operator, if not in default, has the right to occupy and use the Lease Area without interruption or disturbance from either the Owner or any other persons claiming by, through or under the Owner."*

[159] The Respondent argued that it has provided evidence to support the assessed value of the subject properties. There is no evidence to support that a small parcel would sell for the same price per acre as a 160 acre parcel, as is suggested by the Complainant; no such sales have occurred. The Respondent indicated that the Complainant has provided opinions of value to support its case; however, it has not provided sales data to support the requested value of the subjects. The Respondent has submitted evidence that proves oil and gas companies and utility companies do own parcels of land used for similar purposes as the subject properties.

QUESTIONING OF THE RESPONDENT:

[160] The Complainant asked the Respondent to confirm that there are approximately 5,000 well sites within Red Deer County. The Respondent indicated that it was unsure how many oil and gas wells are within the municipality; however, there are 1,668 leased parcels within a parcel containing either machinery and equipment or buildings and improvements making them assessable as per section 304(1)(f) of the *MGA*.

[161] During questioning, the Respondent agreed that section 304 of the *MGA* does not indicate who should prepare the assessment.

[162] The Respondent testified that to the best of its knowledge, the setbacks imposed by the AER when an oil and gas well is drilled remain in effect whether the well site is assessable or not.

[163] The Complainant reviewed the sample lease provided by the Respondent in Tab 12 of C2 determining that the lease encompassed approximately four acres and the initial payment of $14,400 was for market value of the farmland plus disturbance damages in that first year. The Complainant asked the Respondent if the $3,600 per acre was the value of the lease. The Respondent agreed that it worked out to approximately $3,600 per acre.

[164] The Complainant asked if the highest and best use can be determined without a competitive market – that is a willing seller and a willing buyer. The Respondent reviewed its information on page 22 of C1 and advised that the basic principles of value form the foundation for the concepts of highest and best use.

[165] The Complainant reviewed the four basic principles of highest and best use: physically possible, legally permissible, financially feasible, and most productive. The Complainant asked if you fail one principle (i.e.: legally permissible), do the other three principles become irrelevant to conduct a highest and best use study for that given use. The Respondent replied that just because a use is not legally permissible does not mean that there is no market value. There are properties that are legal but non-conforming, but it does not mean that there is no value because there are some remedies that can take place.

[166] The Complainant argued that if there is no willing seller (the farmer) at $2,450 per acre and there is no willing buyer (oil and gas company) at $38,000 per acre, then there is not a competitive market. The Respondent replied that there may not have a competitive market, but it does not mean that there is no market. There may be limited purchasers for all types of properties and limited sellers for different types of properties. The Respondent suggests there is no willing purchaser because the oil and gas companies are not obliged to purchase this parcel of land and can enter into a lease for it. However, it has to be assessed as if it is a parcel of land. The Respondent is trying to determine what the Complainant would have to pay if the Complainant were obliged to purchase the parcel of land that does exist. There is a willing buyer by the fact that the Complainant leases it for its intended purpose.

[167] The Complainant reviewed the subject properties indicating that the average area around the well site is 0.36 acres with the average assessed area with access road is 0.99 acres and asked if a parcel of land gains its utility from its access or its useable area. The Respondent replied that it depended on the use of that site. In its opinion, an oil and gas site cannot use the site without the access.

[168] The Complainant referred to the bundle of rights when it comes to property law. The Complainant questioned the Respondent as to what bundle of rights are inclusive of the legal interest: the right of access, the right to occupy, or the right to use. How about the right to exclude others? The Respondent replied that the Complainant can fence it off and lock the gate if it desired. The Complainant asked if there are any other rights in the bundle of rights with the legal interest as contemplated in the Linear Assessment. The Respondent indicated that the Linear Assessment definition does talk about the legal interest; however, the definition of legal interest has not been defined and it does not want to assume or presume what the legislators and Municipal Affairs intended in the legal interests.

[169] Complainant questioned the Respondent as to whether it is the task of the Respondent to interpret and apply the legislation as it is. The Respondent replied that it follows the legislation. The Complainant followed up, asking the Respondent to clarify whether there is a legislated gap here, of some form or another, and whether it is for the legislature to fill that gap and not the Respondent through some form of interpretation. The Respondent indicated that the *MGA* lends itself to interpretation of all sorts of sections. The Respondent does the best it can with guidance from Municipal Affairs in order to prepare an assessment for the municipality.

[170] The Complainant reviewed an assessment summary report on page 326 of C2 and made note of remarks entered by an inspector. The Complainant asked the Respondent whether development on property will influence the land value. The Respondent indicated that there appeared to be a change and there must be access to the property because it is currently assessed as farm land. It may be serviced with power, gas, well, *et cetera*. Changes can influence the end value.

[171] The Complainant asked the Respondent if it would be prudent to look at the land use bylaw to see the permitted uses. The Respondent answered that it was not sure what that had to do with the summary report on page 326. A prudent purchaser would check the *Land Use Bylaw* to see what is permitted.

[172] The Complainant questioned the Respondent as to whether a development can have a positive effect on the land value, and whether a development or improvement can, in theory, have a negative effect on the land value. The Respondent indicated that properties may be purchased with a building and then the owner may demolish it after purchasing for whatever reason. The Building is not what they required when they purchased the property; however, they paid a sum for the entire property including the building.

[173] The Complainant referred to lease agreements on page 464, 465 and 468 of C2 and asked if the leases are in effect a right in perpetuity. The Respondent indicated that it appeared to be the case. The Complainant also referred to clause number 14 which provided the oil and gas company with the opportunity to walk away from the lease, not the landowner. The Respondent replied *"providing they have met its obligation to reclamation."*

[174] The Complainant asked if the Respondent agreed that the surface lease grants the legal interest in land. The Respondent indicated that all it can find, in a legal dictionary, is an advantage or right, and stated, *"Yes, a surface lease grants a legal interest in land."*

[175] The Complainant referred to page 31 of C1 in the last paragraph and asked the Respondent whether a surface lease legally secures the oil and gas company's interest in the land, the legal interest in land, including the lease and the area encompassed within the lease?" The Respondent answered that the lease secures the company's interest and allows it access. The Respondent stated there is no definition of the legal interest in land within the legislation and regulation.

[176] The Complainant asked whether a lease that is perpetual for all intents and purpose is a transfer of the fee simple. The Respondent indicated that there are provisions for cancelation of the lease; however, it agreed that the terms are written within the lease.

[177] The Complainant questioned the comparability of the Linear Assessment, which is regulated, to the regulated farm land rate. The Complainant asked the Respondent whether a farmer purchases farmland at $2,450 per acre or whether the regulated assessment is still $350 or less per acre. The Respondent answered; *"that if it is being used for farming activities, then that is correct."*

[178] The Complainant asked the Respondent whether the value to the oil and gas company is a value in use, and whether this is that what is being assessed. The Respondent indicated that every property has a value in use to the owner and that the fee simple value in exchange is what is being assessed.

[179] The Complainant reviewed a transfer document between two oil and gas companies, which had a total consideration paid of $12,630,000 with the stated, declared value of the land being $1. The Complainant asked the Respondent if it had investigated to determine how much of the sale is attributed to the land, the buildings, and the machinery and equipment. The Respondent indicated that it did not investigate because it does not assess machinery and equipment at market value.

[180] The Complainant asked if the subject properties are special purpose properties. The Respondent replied that there are all sorts of ways you can define special purpose. There are numerous well sites in Red Deer County, so whether they are considered special or unique for this municipality, it is not sure, it depends. The Respondent noted, as discussed previously, that the subject properties are used for an oil and gas well and can only be transferred to AER regulated parties, so those kind of issues make it different circumstances. The Respondent stated that a special use for assessment purposes is something that doesn't exist somewhere else or is very, very limited.

BOARD DECISION

A. SHOULD THE SUBJECT PROPERTIES BE ASSESSED?

Summary of Complainant's Position:

[181] The Complainant's argument is that the subject properties assessment is captured in the Linear Assessment administered by the Minister. If the Board finds that there is room for the Respondent to assess in addition to the Linear Assessment, the Complainant's argument is that the correct value for the area in use is the per acre value of the parent parcel.

Summary of Respondent's Position:

[182] The Respondent's argument is that the subject properties are small industrial parcels that are to be considered vacant, as per legislation and regulation, and that the sales of small parcels of similar land use designation are comparable, regardless of its future use. Had the Respondent relied only on industrial small parcel sales, the assessments would be greater.

Board Findings:

[183] The Complainant at paragraph [94] suggests that the legislation is not clear as to which assessor is to assess the land described in section 304(1)(f) of the *MGA*. The Board finds that 304(1)(f) of the *MGA* speaks to a parcel of land. In section 284(1)(k)(iii)(G) of the *MGA*, the Board finds that it clearly states that linear does not include land. Therefore, land is not assessed by the Minister. The Respondent is the only assessor that can assess land at the subject properties described in section 304(1)(f).

[184] The Board carefully examined the Linear Assessment guidelines (B4 tab 4), and finds no evidence of any land assessment at market value or otherwise included within the Linear Assessment for the subject properties.

[185] The Board acknowledges that both parties accept that a value of $5,000 is included within the Linear Assessment, based on letters and information bulletins provided by the Alberta Municipal Affairs. While the Board is unable to see the calculation nor the resultant value, because it was not an issue before the Board, the $5,000 value is considered to be factual. The extent that it encompasses the entire value of the land for the leased well site is not established within the evidence submitted.

[186] The Board finds no clear indication that land is included within the Linear Assessment; however, in section 284(k)(iii)(E.1) of the *MGA*, the interest in land is mentioned. The Board

finds the interest in land references the leased fee interest. It is the leased fee interest in the land which is included within the Linear Assessment, not the land itself. The Board finds that the fee simple interest includes the leased fee interest; therefore, the $5,000 attributed to the leased fee interest should be removed from the market value to arrive at the correct land assessment.

[187] The Board finds that the Complainant is arguing both sides to some extent; on one side, the Complainant, at paragraphs; above and [93] above argues that the Linear Assessment captures the land value for the entire leased area. On the other side, the Complainant argues that, if the Board finds that the Respondent can assess over and above the Linear Assessment, then it is only the area in use that is to be assessed.

[188] The Board finds the legal document, the lease itself, describes the area in use by the leaseholder. It describes it in detail – the exact area that the leaseholder intends to use for its purpose. In section 304(1)(f) of the *MGA*, the intent for the words *'used for'* seem to identify and exclude leases that may have been drafted and executed, but have not been used for its intended purposes. Perhaps a lease is executed in November; however, due to the Complainant's equipment and human resource schedule, the leased parcel of land is not used until February; therefore, the leaseholder is not obliged to the assessment implications until used because it is the use as of December 31 that the assessor is concerned about and not the actual lease. Plans change. Maybe the lease is never used and this provision saves the oil and gas company harmless from a non-residential industrial assessment until and if it is used. The legislators also protected leaseholders from being assessed when the intended use ends, but remains under a lease – awaiting reclamation. The non-residential industrial assessment is only in place during actual production of the resources.

[189] The Board finds the intent of the legislation is to assess the entire *'parcel of land'* as legally described within the lease document when and only if it is used for the intended purposes described in section 304(1)(f). This is collaborated by testimony of J. Bergeson; the Complainant *"take(s) a surface lease required big enough to accommodate the drilling operation."* The Complainant takes a lease on the area required by the AER in order to accomplish its task of mining resources. The photographic evidence, located at page 42 of C2 and pages 3-9, 3-15, 3-18, and 5-32 of B1, supports the testimony of J. Bergeson. In the photographs, the entire leased area has been cleared, at some point, or fenced for the entire leased area. After initial well site construction – the drilling operation, the visibly disturbed land is something less than the leased area – this is the area described by the parties as *'area in use'* and assessed at market value. The Board finds that the entire leased area is to be assessed at market value as a non-residential industrial use.

[190] The Board finds the subject properties are assessable by the Respondent for the entire leased area based on comparable sales.

B. WHO IS THE ASSESSED PERSON?

Summary of Complainant's Position:

[191] The Complainant spent little time on this issue; however, it referenced section 304(1)(a) of the *MGA* in paragraph [59], stating that farm land is not referenced in section 304(1); therefore it is the landowner who is the correct assessed person.

Summary of Respondent's Position:

[192] The Respondent argued that the entire leased area is to be assessed to the leaseholder as per section 304(1)(f). However, where part of the land is used for farming operations, the Respondent assessed the farm land rate on that portion of the subject properties.

Board Findings:

[193] The Board finds in accordance with section 304(1)(f) of the *MGA* that the assessed person is the Complainant. The manner in which it is assessed is up to the Respondent with the evidence of market value available to it. The Board finds no guidance from legislation to assess the owner of the land in whole or in part.

[194] The Board finds the farm land regulated rate is intended for farmland used for agricultural purposes in a *bona fide* farming operation. While the owner of the property is farming the land, it does so to aid the Complainant rather than as part of its *bona fide* farming operations. The landowner has released control of the subject properties for an industrial purpose. Furthermore, a snapshot in time does not prove exclusive use as farming operation. The terms of the lease documents enables leaseholder access at any time without further notice or compensation.

[195] The Board considers instructive the Alberta Court of Queen's Bench decision *Conocophillips Canada Resources Corp. v Lemay*, 2009 ABQB 72 [*Lemay*]. In *Lemay* at page 8 in the fifth paragraph, the Surface Rights Board stated, *"The Board however, holds the opinion that by farming over a portion of the lease, the Lessors are in effect saving the Operator (the Complainant) money in terms of expenditures for weed control and diminishing the eventual cost to reclaim the site."*

[196] In the *Lemay* decision, Mr. Lemay describes in detail the effect that well sites have on its operation with the specific point on controlling weeds on the well site at paragraph 161 points 3 and 4. The Board's reading of the entire *Lemay* decision shows that the farmer does not benefit from farming over a portion of the well site except to protect its crop adjacent to the well site. Additionally, even if a benefit was found for the farming activity, as per *MRAT* 4(3)(e) it is not assessed at agricultural rates. It is assessed as non-residential industrial use – the actual use in place.

[197] The Board finds the Complainant is the correct assessable person for the subject properties.

C. WHAT IS THE CORRECT ASSESSMENT?

Summary of Complainant's Position:

[198] The Complainant argued that; if there is an assessment from the Respondent, it is the per acre value of the entire quarter section that is applicable.

[199] The Complainant, at paragraph [57], provided a list of 57 agriculture land sales – thirteen from July 1, 2012 through June 30, 2013 with the remainder from 2011 and 2012. A 5.36% time adjustment was applied to the 2011 sales and a 0.98% time adjustment was applied to the 2012 sales. The median value for the 57 sales is $2,450 per acre.

Summary of Respondent's Position:

[200] The Respondent, at paragraphs [154] through [157], presented 15 vacant small AG parcel sales. The average time adjusted price per acre is $40,678.83. The market value area of the subject properties have been assessed at $38,000 per acre. The Respondent argued that the sales are comparable to the subject properties.

Board Findings:

[201] The Board finds that the Complainant, at paragraph [47], indicated that the landowner would not sell the land nor would the operator buy it; and at paragraphs [47] and [50] it indicated that the market value is not a consideration. Additionally, the Board finds, at paragraph [48], that the Complainant has no interest in actual market value.

[202] The Board rejects the sales provided by the Complainant as they are not comparable with the subject properties, which are small parcels of land utilized for industrial purposes. All of the sales provided by the Complainant are large parcel sales of land utilized for farming operations.

[203] The Board notes that some of the large parcels of land have well sites located on it; however, no information is provided to determine if the well sites are included in the farmland sales or what value the existence of the well sites played on the overall land value.

[204] The Board accepts the sales provided by the Respondent as they are comparable in size with some located adjacent to or in close proximity of the subject properties.

[205] The Board confirms all subject property assessments as presented by the Respondent.

D. WHAT DOES THE LEGAL INTEREST IN LAND ENTAIL?

Summary of Complainant's Position:

[206] The Complainant argued that the leases for the subject properties provided a legal interest that included the right to use, access, occupy (either a portion there of, or all of it), and the right to use the site indefinitely. A twenty-five year initial term, and perpetual automatic renewals for twenty-five years so long as the Complainant needs the property for its purposes.

[207] The Complainant suggested that the perpetual nature of the leases combined with the rights secured within the leases, for all intents and purposes, transferred the fee simple to the Complainant.

[208] The Complainant argued that, while the valuation of land for well sites is based on the legal interest, which is provided for in the Linear Assessment rates, the Linear Assessment rate of $5,000 is all encompassing. Perhaps the only value not captured in the regulated Linear Assessment is the residual farmland market value.

Summary of Respondent's Position:

[209] The Respondent did not delve into the legal interest argument, and argued that the assessment, according to the regulations, must be at market value, as though a separate parcel. The market value based standard is considered the most fair and equitable means of assessing property. It is fair because similar properties are assessed in the same manner; it is equitable because owners of similar properties in a municipality will pay a similar amount of property tax.

Board Findings:

[210] Exactly what is the legal interest in land is a difficult question to answer without context. It entirely depends on the legal interest being sought. There can, in fact, be several legal interests in land: there is the owners' interest, there may be a leaseholders' interest, there may be a mortgage holders' interest, there may be a spousal interest, there may be a partnerships' interest, and there may be other interests. The real question the Board must answer, understand, and interpret is what is the legal interest in land for assessment purposes?

[211] The *Zeiner* report attempted to answer the question of legal interest in land, but it contains contradictions that have created a sense of confusion. In its first paragraph of the cover letter it refers to its purpose as, *"to determine a regulated rate for assessment"* (page 24-2 of C2), which ultimately it did. However the Board finds the purported $5,000 rate, which is not anywhere to be seen within the regulated rate tables, is simply that – a regulated rate for linear property. It is not the market value for any of the subject properties.

[212] The *Zeiner* report discussed the different approaches of value finding the Income Approach to Value as being the best indication for the *"contributory value of the well site"* (page 24-3 C2). With this statement, the *Zeiner* report seems to recognize that there is another value elsewhere that is not being captured within the report. However, in the Terms of Reference of the *Zeiner* report, it states, *"The function of the appraisal is to serve as a basis of determining market value of well sites for assessment purposes"* (Page 24-5 C2). Perhaps the *Zeiner* report intended to say for Linear Assessment purposes, which was the ultimate use of its findings.

[213] In the Appraisal Methodology section, the *Zeiner* report indicates, *"The legal interest would be the interest in the well site that is created by the lease that is in place"* (page 24-9 C2). Further recognition of this point is found as follows, *"Typically, in the appraisal of properties with well sites, a land value is determined by way of a Direct Comparison Approach, and the contributory value of the well site is determined through the utilization of an Income Analysis"* (page 24-10 C2). The notion of use of land is discussed as follows, *"The fact that a lease is in place on a property for a specific use does create additional value"* (page 24-12 C2), which is captured within the Linear Assessment – the purported $5,000.

[214] The *Zeiner* report also linked the lease value to market value through the *Surface Rights Act*, RSA 2000, S-24 [*SRA*]. In the *SRA* section 25(1)(a), it was argued by the Complainant and within the *Zeiner* report that the actual market value of the land is captured; however, careful reading shows that the Surface Rights Board *"may consider... the amount the land granted to the operator might be expected to realize if sold in the open market by a willing seller to a willing buyer on the date the right of entry order was made"* (page 24-13 C2). The key words being "may consider." The Board finds that if the actual market value is captured, it captures the incremental farmland market value, not the defined lease area as a non-residential industrial use for assessment purposes.

[215] The Board's final comment on the *Zeiner* report is on its timelines for analysis. It established a *"5-year reversionary time frame"* (page 24-16 C2). It determined that 5 years is the typical life expectancy of a well site in Alberta in 1999. However, in contrast, the Complainant went to lengths to point out in its argument that its leases are perpetual in nature – suggesting that for all intents and purposes the fee simple is transferred to the Complainant from the landowner with lease signing. Regardless, it seems, both positions are the extreme with the actual typical lifespan of an assessable well site being somewhere in between.

[216] The Board finds that the *Zeiner* report provided an opinion of value for a portion of the compensation paid to the landowner of a well site. It did not find the fee simple market value for the subject properties. The Board accepts the $5,000 value attributed to the interest in land contained within the Linear Assessment, as agreed to by the parties, despite the fact that there is no indication within the Linear Assessment regulations that the value is actually $5,000.

[217] The *MGA,* in section 284(1)(k)(iii)(E.1), directs that linear property includes the legal interest in any land; however, right below it, in section 284(1)(k)(iii)(G), it expressly excludes the land and buildings. The question is, what did our legislators intend by this definition?

[218] The Board finds that the intention of the legislators is as written. It is not the land itself, but the legal interest created by the lease (with described uses in section 304(1)(f) of the Act) that is captured within the Linear Assessment. The legislators intended that the leaseholder is the assessed person of the parcel of land. To complicate things a little further, the concept of area in use is defined as *'a parcel of land, or a part of a parcel of land… used for'.*

[219] The Board finds that the legislators intended that an undefined area, in that there is no legal instrument describing it, may also be assessed differently than the entire defined area. The Board finds that, by definition in the *MGA,* section 1(1)(v), a *'parcel of land'* means a legally described area; however, in section 304(1)(f) the legislators used the term *'a part of'* recognising the fact that a person may lease a portion of a legally described area. However, a lease then becomes a legal instrument, so perhaps this *'a part of'* wording is intended for another situation. For example, a farmer that also has a commercial trucking business but does not actually lease the area used for the trucking business back to its self.

[220] The Board finds that further guidance from the legislators is found in *MRAT* section 4(3) where it reads; *'Despite subsection (1)(b), the valuation standard for the following property is market value'.* A careful reading of that clause clearly says despite that *'The valuation standard for a parcel of land is… if the parcel is used for farming operations, agricultural use value' (section* 4(1)(b)). If it is an; *'area that is located within a parcel of land, is used for commercial or industrial purposes, and cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel'* (section 4(3)(e)); than it *'must be assessed as if it is a parcel of land'* (section 4(4)), which is *'market value'* (section 4(1)(a)). The Board finds that the section 4(1)(b) does not kick in a second time – it is not an endless circle. The valuation standard is 4(1)(a) *'market value'* unless 4(1)(b), except for 4(3)(e), and is assessed as found in 4(4). The entire leased area is assessed for its non-residential industrial use.

[221] The Board finds, for the purposes of assessment, the legal interest in land entails the rights of: use, entry, and access for the parcel of land identified within the terms of a lease. It does not entail the fee simple interest of the land itself; the inherent value of the parcel of land, for its non-residential industrial use, must be assessed in its entirety at market value less the value attributed to the legal interest in land already assessed within the Linear Assessment.

LEGAL ARGUMENT

[222] The Complainant provided extensive legal argument. The Board invested time and resources reviewing the principles presented, and offers a brief comment on the following relevant decisions:

a) The *Lakeland* decision is in regards to a meter – is it linear or building. This is a similar circumstance to this case, except that the *MGA*, in section 284(1)(k)(iii)(G), clearly states the definition of linear does not include land, which is the issue before the Board.

b) The *Casa Blanca* decision applies to GST and the application of it. This case is not comparable; however, the point raised is acknowledged by the Board. The Board accepted the reduction of $5,000 for the interest in land contained within the Linear Assessment (even though it is not proven), therefore negating any possibility of double taxation.

c) The *Quebec* decision is on point. If legislation is unclear, the benefit goes to the taxpayer. However, in this case the Board does not find the legislation unclear. Land is not included in the Linear Assessment.

d) The *Shell* decision relates to clarity of legislation applied simply. The Board finds the language clear to refer to the area defined by the lease that is used for (as described in legislation).

e) The *T. Eaton* decision is of interest; however, the property at issue did not have a directive in legislation to value as if vacant, which applies to the subject properties in this case. In the subject properties, the assessor is required by legislation and regulation to consider the land vacant, and to consider market comparables of similar characteristics including size, which it has done.

f) The *908118 Alberta Ltd.* decision dealt with a parking lot required for a business to operate. The parking lot is already assessed through the Income Approach 'as if' it had parking. This was not applicable to the subject properties, which are assessed on the Direct Sales Comparison Approach. Furthermore, the possibility of double assessment is removed by deducting the $5,000 purported to be included within the Linear Assessment.

g) The *Musqueam* decision pertains to a legal contract which has nothing to do with assessment. 'Current Land Value' was the question. While similar to Market Value it was not the fee simple it was looking for.

h) The *Fording* decision is of interest and relevance because of the negligible actual sale; however, the value of the land and improvements was based on the fair market value of an independent appraiser of the fee simple. For the subject properties the Board has no independent appraisals to illustrate the fee simple of the land. The sales in evidence are business interest sales including other considerations, and by the Complainant's own testimony, it has no interest in the fee simple value of the land. It is only looking at the resource value and tangible fixed assets.

i) The *Pacific* decision deals with value in use rather than value in exchange. The key difference for the subject properties is the legislated requirement to assess the subject properties as if vacant; therefore, the concept of value in use does not apply. It is the value of the vacant land in exchange. The Respondent provided comparable sales of similar properties.

j) The *Southam* case refers to the special value of the improvements on site to the owner. The subject properties have no improvements before the Board. It is only the vacant land value of the fee simple that the Board is concerned about. The

Respondent has valued the vacant parcels at the same value as anyone would pay, not at what the user would pay.

k) The *Calgary (City)* case is comparable in that the land is undevelopable due to environmental obstacles – water passing over the land. The subject properties are to be assessed as if vacant, so if they also had water passing over them they too would reflect a near zero value. The subjects are developable properties and are developed for its industrial use.

l) The properties discussed in the *Tirion* decision either had no possible legal access, were escarpment at a 10:1 ratio, or were insignificant in size and designated with a 'deferred reserve caveat.' There was no evidence of them being comparable property.

m) The *Sun Life* decision deals with the difference between assessment laws versus expropriation laws. The Board deals with the subject properties as if vacant using legislation and regulation based on assessment not expropriation.

DECISION SUMMARY

[223] The Board finds that the Respondent values are CONFIRMED and there is no change to the assessed value for the 2014 taxation year.

[224] The land values found for each subject property is printed in Appendix "A" attached. These values do not include any value for machinery and equipment, buildings and structures, or both. The parties can calculate the total assessment by adding these values as appropriate.

[225] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 19th day of March, 2015 and signed by the Presiding Officer on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.

Jeffrey Dawson,
Presiding Officer

This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the Municipal Government *MGA* which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX "A"

Subject Property			Respondent's Assessed	Complainant's Request	Board's Decision
Complaint ID	Roll Number	Legal Description	Land Assessment	Land Assessment	Land Assessment
636-1	202337179	7-SE-21-36-3-5	$80,880	$537	$80,880
636-2	202337124	14-NW-8-37-3-5	$14,380	$0	$14,380

APPENDIX "B"

Documents Presented at the Hearing
and considered by the Board

Document	Type	Description
A1	Agenda	
B1	Complainant Disclosure	Will say and evidence of J. d'Easum
B2	Complainant Disclosure	Will say of J. Bergeson
B3	Complainant Disclosure	Respondent Municipal Development Plan and Bylaws
B4	Complainant Disclosure	Legal brief of B. Dell
B5	Complainant Rebuttal Disclosure	Will say and evidence of J. d'Easum
B6	Complainant Rebuttal Disclosure	Legal brief of B. Dell
C1	Respondent Disclosure	Various submissions
C2	Respondent Disclosure	Evidence document

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Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Sales Approach	Land Comparable
		Linear Assessment		Land Value included in Linear Assessment
		Farmland		Assessed Person

APPENDIX "C"

Legislative Authority, Requirements, and Considerations:

The Municipal Government Act

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Interpretation

1(1) *In this 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;

(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;

Pecuniary interest

170(1) *Subject to subsection (3), a councillor has a pecuniary interest in a matter if*

(a) the matter could monetarily affect the councillor or an employer of the councillor, or

(b) the councillor knows or should know that the matter could monetarily affect the councillor's family.

(2) *For the purposes of subsection (1), a person is monetarily affected by a matter if the matter monetarily affects*

(a) the person directly,

(b) a corporation, other than a distributing corporation, in which the person is a shareholder, director or officer,

(c) a distributing corporation in which the person beneficially owns voting shares carrying at least 10% of the voting rights attached to the voting shares of the corporation or of which the person is a director or officer, or

(d) a partnership or firm of which the person is a member.

(3) *A councillor does not have a pecuniary interest by reason only of any interest*

(a) that the councillor, an employer of the councillor or a member of the councillor's family may have as an elector, taxpayer or utility customer of the municipality,

(b) that the councillor or a member of the councillor's family may have by reason of being appointed by the council as a director of a company incorporated for the purpose of carrying on business for and on behalf of the municipality or by reason of being appointed as the representative of the council on another body,

(c) that the councillor or member of the councillor's family may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor or member of the councillor's family may be entitled by being appointed by the council to a position described in clause (b),

(d) that the councillor may have with respect to any allowance, honorarium, remuneration or benefit to which the councillor may be entitled by being a councillor,

(e) that the councillor or a member of the councillor's family may have by being employed by the Government of Canada, the Government of Alberta or a federal or provincial Crown corporation or agency, except with respect to a matter directly affecting the department, corporation or agency of which the councillor or family member is an employee,

(f) that a member of the councillor's family may have by having an employer, other than the municipality, that is monetarily affected by a decision of the municipality,

(g) that the councillor or a member of the councillor's family may have by being a member or director of a non-profit organization as defined in section 241(f) or a service club,

(h) that the councillor or member of the councillor's family may have

(i) by being appointed as the volunteer chief or other volunteer officer of a fire or ambulance service or emergency measures organization or other volunteer organization or service, or

(ii) by reason of remuneration received as a volunteer member of any of those voluntary organizations or services,

(i) of the councillor, an employer of the councillor or a member of the councillor's family that is held in common with the majority of electors of the municipality or, if the matter affects only part of the municipality, with the majority of electors in that part,

(j) that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor, or

(k) that a councillor may have by discussing or voting on a bylaw that applies to businesses or business activities when the councillor, an employer of the councillor or a member of the councillor's family has an interest in a business, unless the only business affected by the bylaw is the business of the councillor, employer of the councillor or the councillor's family.

(4) *Subsection (3)(g) and (h) do not apply to a councillor who is an employee of an organization, club or service referred to in those clauses.*

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 or adopted;

(c) *"assessment" means a value of property determined in accordance with this Part and the regulations;*

(d) *"assessor" means a person who has the qualifications set out in the regulations and*

(i) is designated by the Minister to carry out the duties and responsibilities of an assessor under this Act, or

(ii) is appointed by a municipality to the position of designated officer to carry out the duties and responsibilities of an assessor under this Act,

and includes any person to whom those duties and responsibilities are delegated by the person referred to in subclause (i) or (ii);

(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,

(iv) machinery and equipment;

(k) *"linear property" means*

(iii) pipelines, including

(D) well head installations or other improvements located at a well site intended for or used for any of the purposes described in paragraph (C) or for the protection of the well head installations,

(E.1) the legal interest in any land other than that referred to in paragraph (E) that forms the site of wells used for any of the purposes described in paragraph (C), if the municipality in which the land is located has prepared assessments in accordance with this Part that are to be used for the purpose of taxation in 1996 or a subsequent year,

but not including

(G) land or buildings;

(r) *"property" means*

(i) a parcel of land,

(ii) an improvement, or

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

(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;*

Preparing annual assessments

285 *Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.*

Assessments for property other than linear property

289(1) *Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.*

(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.

292(1) *Assessments for linear property must be prepared by the assessor designated by the Minister.*

(2) *Each assessment must reflect*

(a) the valuation standard set out in the regulations for linear property, and

(b) the specifications and characteristics of the linear property

Duties of assessors

293(1) *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.

(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.*

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*

(a) divide class 1 into sub-classes on any basis it considers appropriate, and

(b) divide class 2 into the following sub-classes:

(i) vacant non-residential;

(ii) improved non-residential,

and if the council does so, the assessor may assign one or more sub-classes to a property.

(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.

Non-assessable property

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

(q) linear property used exclusively for farming operations;

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;*
(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 *(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*	*(f) the holder of the lease, licence or permit;*

under land in the vicinity of that land.

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 to do so in accordance with the regulations.*

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.*

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.*

(3) *An assessment review board must not alter any assessment that*

(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.

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.

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.*

Matters Relating to Assessment and Taxation Regulation

Alberta Regulation 220/2004

Definitions

1 *In this Regulation,*

(b) "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations;

(h) "farm building" means any improvement other than a residence, to the extent it is used for farming operations;

(i) "farming operations" means the raising, production and sale of agricultural products and includes

(i) horticulture, aviculture, apiculture and aquaculture,

(ii) the production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the Livestock Industry Diversification Act, and

and

(iii) the planting, growing and sale of sod;

Mass appraisal

2 *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.

Valuation standard for a parcel of land

4(1) *The valuation standard for a parcel of land is*

(a) market value, or

(b) if the parcel is used for farming operations, agricultural use value.

(2) *In preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines.*

(3) *Despite subsection (1)(b), the valuation standard for the following property is market value:*

(a) a parcel of land containing less than one acre;

(b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;

(d) an area of 3 acres that

(i) is located within a parcel of land, and

(ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(e) any area that

(i) is located within a parcel of land,

(ii) is used for commercial or industrial purposes, and

(iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(4) *An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.*

Matters Relating to Assessment Complaints Regulation

Alberta Regulation 310/2009

Disclosure of evidence

8(2) *If a complaint is to be heard by a composite assessment review board, the following rules apply with 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,

Failure to disclose

9(2) *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

Black's Law Dictionary

Bryan A. Garner (Editor-in-Chief). © 2004. Black's Law Dictionary (8th ed.). St. Paul: Thomson Reuters

agriculture*: the science or art of cultivating soil, harvesting crops, and raising livestock.*

beneficial use, *The right to use property and all that makes that property desirable or habitable, such as light, air, and access, even if someone else owns the legal title to the property..*

bona fide*: **1.** made in good faith; without fraud or deceit. **2.** sincere; genuine.*

farm*, n. land and connected buildings used for agricultural purposes. Vb. to cultivate land; to conduct the business of farming.*

fee simple, *An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs.*

lease, *A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent.*

leasehold, *A tenant's possessory estate in land or premises, the four types being the tenancy or years, the periodic tenancy, the tenancy at will, and the tenancy at sufferance.*

leasehold interest, 2. *A lessor's or lesee's interest under a lease contract.*

right, 5. *The interest, claim, or ownership that one has in tangible or intangible property.*

The Canadian Oxford Dictionary
Katherine Barber (Editor-in-Chief). © 2001. The Canadian Oxford dictionary. Toronto: Oxford University Press Canada

area, 3. *A space allocated for a specific purpose.*

agriculture*, n: the science or practice of cultivating the soil and rearing animals.*

bona fide *adj.: genuine; sincere; adv.: in good faith.*

farm*, n: an area of land, and the buildings on it, used for growing crops, rearing animals, etc.*

farmland*, n: land used or suitable for farming.*

use, 8. *Law , • historical the holding of land or property by one person for the sole benefit or profit of another.*

Oxford Dictionaries
© 2015 Oxford University Press, n.d. Web. 26 January 2015.

ad valorem, *Origin: Latin, 'according to the value'.*

area, 2 *The extent or measurement of a surface or piece of land.* ***3*** *A subject or range of activity or interest*

continuous, *adj.* ***1*** *forming an unbroken whole; without interruption.* ***1.1*** *forming a series with no exceptions or reversals.*

exclusive, *adj.* ***1*** *excluding or not admitting other things.* ***1.1*** *unable to exist or be true if something else exists or is true.* ***3.*** *(of terms) excluding all but what is specified.*

permanent, *adj.* ***1.*** *lasting or intended to last or remain unchanged indefinitely.* ***1.1*** *lasting or continuing without interruption.*

right, title, and interest, *this phrase, one of the classic triplets of the legal idiom, is the traditional language for conveying a quitclaim interest. Technically, only one of the three words is necessary, as the broad meaning of interest includes the others: though you can have an interest without having title and perhaps without a given right, you cannot have title or a right without having an interest.* Garner's Dictionary of Legal Usage, Bryan A. Garner

use, *n.* ***1.*** *The action of using something or the state of being used for a purpose.* ***2.1*** *Law, historical the benefit or profit of lands, especially lands that are in the possession of another who holds them solely for the beneficiary.*

vicinity, *n.* ***1.*** *the area near or surrounding a particular place*

Central Alberta Regional Assessment Review Board
Policy: 003/G

Board

The Regional Assessment Review Board (RARB) is a quasi-judicial Board, as set out in the Municipal Government Act, which hears formal complaints filed in member municipalities regarding Notices of Assessment.

We are not employees of any municipality. We are an impartial, independent Board appointed by a committee of member municipalities. We receive administrative support from the Legislative & Governance Services Department of The City of Red Deer.

We strive to maintain procedural equity throughout the region by interpreting legislation and applying the principles of natural justice in view of the evidence presented. We strive to provide

a fair hearing, using an unbiased, collaborative decision making process and provide reasoned, quality decisions.

Municipal Government Board

Mission

The Municipal Government Board shall provide timely, independent, quasi-judicial appeal adjudication to all parties in the areas of assessment matters, planning, subdivision appeals, inter-municipal disputes and annexation recommendations, that yields fairness and equity consistent with the authority of the Municipal Government Act.

Vision

The Alberta Municipal Government Board will be a leader among tribunals with a reputation for excellence in adjudication.

All Albertans shall have access to a fair and independent process with strict adherence to the principles of natural justice and in which all individuals are treated fairly and without bias in an open, orderly and impartial manner.

This Vision will be attained by:

1. *providing benchmark decisions.*
2. *advocating excellence and providing guidance in decision making to stakeholders.*
3. *demonstrating efficiency, effectiveness and timeliness in the appeal process.*
4. *respecting rights of individuals, businesses, corporations and municipalities.*
5. *ensuring that all property assessments are equitable, fair and correct in accordance with legislation.*
6. *striving for consistency and predictability based on evidence presented.*