Decision: **CARB 0263-582/2013**
Complaint ID 582
Multiple Roll No.'s (see Appendix "A")

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATES: DECEMBER 16 – 20, 2013

PRESIDING OFFICER: J. Dawson
BOARD MEMBER: A. Gamble
BOARD MEMBER: R. Kerber

BETWEEN:

NAL RESOURCES LIMITED
(AS REPRESENTED BY AEC PROPERTY TAX SOLUTIONS)
Complainant

-and-

RED DEER COUNTY
Respondent

[1] These are complaints to the Central Alberta Regional Assessment Review Board (hereinafter, "the Board" or "CARARB") in respect of property assessments entered in the 2013 Assessment Roll as follows in Appendix "A" attached.

[2] These complaints were heard by the Board on the 16th, 17th, 18th, 19th, and 20th days of December, 2013, in the City of Red Deer, Alberta at the Public Works Yard building #3, room C-201.

[3] 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 AEC Property Tax Solutions (Agent of Complainant)
J. Bergeson	Vice President Exploitation West, Canadian Natural Resources Limited (December 16th AM)
J. d'Easum	Senior Director of Assessment Services – Western Canada, DuCharme McMillen and Associates Canada, Ltd. (December 16th, 17th, 18th, and 19th)
R. Berrien	Berrien Associates Ltd. (December 16th, 17th, 18th, and 19th)

C. Langpap	Observer (December 16th, 17th, and 18th AM)
M. Pierson	Observer (December 17th, and 18th)

[4] 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
G. Vande Bunte	Assessor, Red Deer County
K. Burnand	Observer (December 16th, 17th, 18th, 19th, and 20th AM)
H. Gray	Observer (December 16th AM)

JURISDICTION

[5] This Board is a Composite Assessment Review Board (hereinafter, "CARB") established in accordance with section 456 of the Municipal Government Act R.S.A. 2000, c. M–26 (hereinafter, "the MGA" or "the Act") and the Red Deer County Bylaw.

[6] 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, 2013. The Board was granted an extension until February 28, 2014 by the Minister of Municipal Affairs on October 2, 2013 with Ministerial Order #L:191/13.

[7] Neither party raised an objection to any Board member hearing these complaints.

[8] No jurisdictional matters were raised by any party.

PRELIMINARY AND PROCEDURAL

Identification of the subject properties and their assessment value before the Board:

[9] The Respondent raised two concerns on the following subject properties:

Complaint ID	Roll Number	Concern Raised	Board Decision
582-20	301020142	Withdrawn.	Excluded from hearing.
582-21	528333026	Withdrawn.	Excluded from hearing.

Identification of properly disclosed evidence:

[10] The Respondent raised a concern regarding disclosure from a previous hearing that the Complainant wished to utilise during this hearing. In its letter, dated November 1, 2013, the Complainant explained it wished to rely upon document C1 from hearing number PREC 0263-578/2013. The referenced hearing was a preliminary hearing between the Complainant, the Respondent, and one other municipality. At this hearing the Complainant explained that it was in fact document C2 it wished to rely upon and it had identified C1 in error.

[11] The Complainant referenced a decision from the Court of Queen's Bench; ***Calgary (City) v. Alberta (Municipal Government Board)***, 2010 ABQB 719 (hereinafter, "Romaine decision"). The Complainant indicated that within that decision the court found that evidence can be used for different hearings between the parties and new disclosure was not necessary as there is no prejudice to the parties involved. The Complainant further explained that this decision was appealed to the Court of Appeal; ***Calgary (City) v. Alberta (Municipal Government Board)***, 2012 ABCA 13 wherein the court upheld the Romaine decision.

[12] The Board finds the facts in the Romaine decision are different than the facts before the Board. In the Romaine decision it appears that there were three hearings for three calendar years on the same properties and between the same parties. All three hearings were being heard at the same time by an identical panel. All three hearings had identical issues and evidence; however, the panel in those cases found the evidence was properly disclosed for two of the hearings and not properly disclosed for the third hearing. The Municipal Government Board (hereinafter, "MGB") granted a change in assessment for the two years that the evidence was deemed disclosed and confirmed the assessment for the one year where the evidence was deemed not disclosed.

[13] In this decision the Complainant requested the use of evidence disclosed from a previous hearing. While prejudice is not at issue because both parties are aware of and have knowledge of the previously disclosed evidence, the real issue becomes one of reasonableness and fairness of accepting this evidence into the hearing.

[14] The Board finds it unreasonable to allow a party to disclose evidence by merely referring to it from a previous hearing. The hearing from which the disputed evidence arose and the current hearing were held 108 days apart and were between non-identical parties (two of three parties are the same). Even if the parties were identical the Board finds the suggestion of allowing evidence by referral to be a dangerous slope that the Board does not wish to traverse. The Board is concerned about the possible unfairness to the Respondent which could result from the acceptance of evidence from a different hearing.

[15] In making the decision the Binds finds support within the Act section 464(1) wherein; "*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*". Based upon this power to determine admissibility of evidence, the Board has chosen not to admit the evidence in question due to concerns about the fairness of such a process. The Board is of the view that it is not appropriate, or even correct to accept evidence by 'referral' from a previous hearing.

[16] The concerns of the Board are heightened by the fact that the Complainant referenced C1, but at the hearing indicated it wished to rely upon C2. Even if the Complainant had referenced the correct document, the Board would continue to have the same concerns as identified above. Both documents C1 and C2 from hearing PREC 0263-578/2013 are not properly before the Board as this is a new hearing. The fact that the wrong document was referenced compounds the issue because the Respondent had not reviewed, commented on, or had present the document that the Complainant stated that it now wished to rely on. To permit the Complainant to rely upon a document which the Respondent was not advised of would be unfair to the Respondent.

[17] The hearing notice clearly required the Complainant to disclose all evidence it wished to rely upon on or before November 3, 2013. A review of Matters Relating to Assessment Complaints Regulation (hereinafter, "MRAC") found in section 8(2)(a)(i) the requirement for the

Complainant to disclose. It does not indicate that evidence disclosed for a previous hearing may be relied upon by referral. It is incumbent upon the Complainant to properly disclose all evidence it wishes to rely upon for each hearing. MRAC section (9)(2) requires the Board to not hear any evidence not properly disclosed in section 8.

[18] Although the Board noted the Complainant's disappointment with the Board's decision on this matter, the Board must provide procedural fairness to both parties. It is the Board's opinion that permitting the Complainant to rely upon C2 would be both unfair to the Respondent, and would be contrary to the mandatory disclosure rules as provided in MRAC.

Questioning of a party:

[19] During the hearing, the Complainant requested a single party of the Respondent team to answer questions without consultation from another Respondent member. The Presiding Officer, with the support of the Board, permitted the Respondent collectively to respond. Within MRAC section 8(2)(b)(i) each member of the Respondent team who wishes to speak to the evidence before the Board may do so and answer questions collectively provided each is a signatory to the disclosure document. In support of this finding, the Board relies on the Act section 464(1) which exempts the Board from rules of evidence typically seen in court proceedings.

[20] The Complainant voiced displeasure with the Board's decision on this matter.

Notice to Produce:

[21] Following the completion of the hearing, the Board determined that additional information was required in order to reach a decision and issued a 'Notice to Produce' to the Respondent. The request was to provide an electronic version of the roll with assessment details including previously undisclosed information pertaining to the leased areas for each subject property. The Board also requested information regarding the base assessment rate for each market zone within the municipality.

[22] The Respondent provided greater detail than requested by the 'Notice to Produce'. Because that information was beyond the scope of what had been requested by the Board, the Board did not enter that information into evidence.

[23] In response to the information provided by the Respondent, the Complainant provided further new information. The Board determined that this new information provided by the Complainant would be accepted into evidence as it arrived within the prescribed timelines. The Board received correspondence from the Respondent in response to the Complainant's response, which the Board did not accept into evidence as it fell outside of the prescribed timelines.

No additional preliminary or procedural matters were raised by any party.

PROPERTY DESCRIPTION AND BACKGROUND

[24] The subject properties are industrial parcels of land within Red Deer County containing between zero and two wellheads. A total of 272 industrial parcels of land were presented at the

hearing from six different Complainants. The decision herein pertains to 19 complaints filed by NAL Resources Limited with each specific industrial parcel of land identified in Appendix "A".

[25] In 2008 the Act section 304 was amended to clarify that municipalities must assess the lease holder of a parcel of land leased for oil and gas exploration, rather than the landowner. The Respondent and four other municipalities began to assess industrial parcels of land to the lease holders in 2012 leading to a decision in Kneehill County for 2012 (hereinafter, "Kneehill decision"), and this decision in Red Deer County for 2013. While CARB decisions do not create a precedent, the industry and assessors are looking to these decisions for guidance on future assessments.

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

[27] The Province of Alberta provides a linear assessment for the actual wellhead on each subject property. The linear assessment includes a land component of $7,463 in the base value (Table A). Table B includes an inflationary adjustment which is not in evidence. Table C includes a depreciation factor of 0.67. Table D includes additional depreciation to recognise the various performance of each wellhead. These four values are multiplied together to derive the linear assessment. The parties have accepted the net $5,000 value for the land component; $7,463 (Table A) x 0.67 (depreciation in Table C) = $5,000. The Board deducted $5,000 from the assessed land value for each wellhead present recognising the $5,000 value ignores the inflationary factor and additional depreciation if present (C2 Tab 1 pp. 9-10 and C5 Tab 10 p. 3).

ISSUES

[28] Section 460(5) of the Act identifies the ten matters that can be brought under complaint before the Board. The Complainant identified four of the ten matters on their initial complaint form:

(c) ***the assessment amount***,

(d) ***the assessment class***,

(f) ***the property type***, and

(i) ***whether the property is assessable***.

[29] The Board identified the following issues that need to be addressed within this decision:

1. Should the subject properties be assessed at all? If so, what is the correct classification and property type for the subject properties? And what area of the leased parcel of land is to be assessed? **[MGA s. 460(5)(c),(d),(f), and (i)]**
2. Which valuation approach provides the best indication of market value for the subject properties? **[MGA s. 460(5)(c)]**
3. What is the correct market value for the subject properties and what influence adjustments should be made to the subject properties? **[MGA s. 460(5)(c)]**

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 Province of Alberta assesses a linear assessment for the subject properties. A change to the linear assessment is not within the jurisdiction of this Board.

BOARD DECISION

1. SHOULD THE SUBJECT PROPERTIES BE ASSESSED AT ALL? IF SO, WHAT IS THE CORRECT CLASSIFICATION AND PROPERTY TYPE FOR THE SUBJECT PROPERTIES? AND WHAT AREA OF THE LEASED PARCEL OF LAND IS TO BE ASSESSED?

Summary of Complainant's Position:

[31] On the complaint form, the Complainant indicated; *"Assessing the surface lease is beyond the jurisdiction of the municipal assessor."* The Complainant provided no recommendation on which class or property type is appropriate except within the initial complaint, where the Complainant indicated that the well site should be assessed at the regulated farmland rate.[1]

[32] In its written brief (C1 p. 15), the Complainant asserted that the parent parcels form a farming operation that extends across the lease trails (access road) and lease sites (well site) and; therefore, the subject properties retain farmland status with market farmland values (C1 p. 15). The Complainant provided excerpts of decisions of the Court of Queen's Bench, the Edmonton CARB, the MGB, and the Manitoba Court of Appeal. These decisions found broad definitions of farming operations (C1 pp. 16-17).

[33] The Complainant argued that each subject property has a land use designation of agriculture. If one considered the land as vacant, the value of the land would be the same value as the adjacent farmland. The Complainant advocated for a valuation based on an 'across the fence' principle, indicating that these industrial parcels would not be purchased for any use other than farmland (C6 pp. 23). The Board noted the acronym 'ATF' is found within evidence which the Board understands to be synonymous with 'across the fence' (C6 pp. 25 and 34).

[34] In addition, the Complainant argued that the leased area of the subject properties is not being used in its entirety as a well site. The amount of land leased is stipulated by the Alberta Energy Regulator (hereinafter, "AER"), which was formerly the Energy Resources Conservation Board (hereinafter, "ERCB"). The stipulated land area is to provide for necessary spacing between machinery and equipment or buildings and structures or both. As well, the stipulated land area provides for development setback requirements. The actual area in use by the Complainant is much less. A sample of six subject properties (C6 p. 17) shows an average of 0.4 acres in use while the leased area of the same six subject properties averages 4.12 acres

[1] Board note: see Appendix "C" for a thorough discussion on the term farmland.

(C6 pp. 11-16). The Complainant argued that the remaining leased area, plus the access right of way in some cases, is used by the farmer surrounding the well site for farmland.

[35] The Complainant argued that the surface lease that forms the well site falls under the definition of linear property in section 284(1)(k)(iii)(E) and (E.1) of the Act with The value of the land component being captured in the standardised linear assessment rate.

[36] The Complainant argued that the area to be assessed is not an issue before the Board. The Complainant has accepted the area in use identified by the Respondent for assessment purposes (C1 pp. 2, 4, 5, and 15). The Complainant explained that this was an issue dealt with in the Kneehill decision and because the Respondent has accepted the Kneehill decision for the assessed area there is no need for the Board to deal with it (C1 p. 5). The Complainant did not want the Board to consider the re-measured[2] areas as well.

[37] The Complainant provided an extensive argument on the way the properties should be assessed, assuming the Board holds that the properties are to be assessed at all. The argument was that because of setbacks required by the bylaw for industrial parcels within the municipality (C3), and ERCB setbacks required for operating well sites (C6 Tab 1), along with the small size of the area in use means that no development can occur on these parcels. Therefore, the Complainant argued, there was no value to the subject properties (C1 pp. 2 and 6).

[38] The Complainant provided evidence in the form of a letter from Alberta Municipal Affairs – Assessment Services. The letter indicated that linear property well assessment includes the net value of land at $5,000. This rate was calculated in 1999 and can be adjusted with a depreciation factor of 0.67 to find the base rate (C5 Tab 10 p. 3).

[39] The Complainant reviewed the provisions of a letter from the Assistant Deputy Minister of Alberta Municipal Affairs. The letter indicated that wells include the legal interest in the land that forms the site of wells. Further, an assessment amount is included within the Linear Property Minister's Guidelines to value the legal interest of the land. The letter stated that 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. However, when machinery and equipment is present, an industrial site is created and the land must be assessed at market value. As a land assessment value is included for the well site, it must be subtracted from the industrial site's market value to ensure the land is not being assessed twice (C5 Tab 10 pp. 1-2).

[40] The Complainant included in its evidence an Information Bulletin (IB Bulletin No. 13-02), from Alberta Municipal Affairs – Assessment Services. The bulletin indicated that the assessed person is the lease holder and the actual area in use is to be assessed as though vacant (C5 Tab 11 pp. 1-2).

[41] During summation the Complainant argued that when the identical area of a property has more than one use; such as a road access through a field, then the farmland use (which is a regulated assessment) trumps the non-regulated use.

[42] Also during summation, the Complainant indicated that it would be inequitable for the Board to change the area in use with the re-measured area in use as found within R1.

[2] Board note: see Appendix "C" for an explanation on the re-measured area.

[43] The Complainant argued in rebuttal that the Respondent is suggesting that tax is based on the *ad valorem* principle – the current use. While at a high level this may be true, the Respondent ignored that there is a value standard, which is value in exchange and not value in use. The overriding objective is to determine market value under the Act, the objective of market value assessment is to determine if a market exists. While property must be assessed in its present use and condition, it is implicit in that proposition that there must be a market (other than for the owner) for the property in its present use (C10 pp. 3-4).

[44] The Complainant, in response to a 'Notice to Produce' issued by the Board to the Respondent, indicated that the Board's request for the leased area is not relevant to the determination of value for the subject property to be assessed. The regulation clearly contemplates that it is the area in use that is the 'parcel' to be assessed. It would be a mistake to use the leased area as the basis for calculating the assessments in issue, as this is not the 'parcel' contemplated within the regulation (C13 p.2).

Summary of Respondent's Position:

[45] The Respondent provided excerpts from appraisal and assessment guidelines to illustrate that assessment is based on the *ad valorem* principle, with a literal meaning of 'according to value' or the current use. In the case of the subject properties, the current use is industrial and is therefore assigned the non-residential class. In the Act section 291(1) there are four classes for an assessor to choose from for assessment purposes; a) class 1 - residential; b) class 2 - non-residential; c) class 3 - farm land; and d) class 4 - machinery and equipment. The most appropriate classification is non-residential because the Act section 297 (4)(b) specifically refers to industrial use, which is the case for the subject properties. Farm land is defined in the Act as land used for farming operations, which is further defined in regulation with specific types of farming activity (the Act s. 297(4)(a), MRAT s. 1(i), and R1 pp. 27-37).

[46] The subject properties were assessed at market value according to their current use, the evaluator did not need to decide what could be, but simply observed what is – non-residential industrial use (R1 p. 36). The Respondent argued that the leased areas containing a well site with machinery and equipment or buildings and structures or both must be assessed as though a parcel of land with their non-residential industrial use. Furthermore, the Respondent confirmed that all subject properties have machinery and equipment or buildings and structures or both.

[47] A parcel of land is defined within the Act. Property assessment is the process of assigning a dollar value to a property for taxation purposes. Fundamental principles of municipal taxation include that property be assessed on a common basis in a fair and equitable manner. *"An appraisal is an estimate of value, and properties in Alberta are assessed using mass appraisal methods. Mass appraisal is the process of valuing a group of properties as of a given date, using common data, mathematical methods, and statistical tests. Mass appraisal allows the assessor to accurately value a large number of properties in a short period of time."* Not assessing the subject properties based on their market value would make them inequitable with other non-residential use properties (R1 pp. 21-27).

[48] The Respondent determined the parcel of land to be assessed is the area not utilised exclusively for agricultural use – that is used by the owner or operator of the well or facility at the particular location. The Respondent stated that when an access road is cultivated that it is done to control weeds rather than to produce crops (R1 p. 28).

[49] The Respondent explained how it calculated the area in use of a well site using digital air photographs (no date provided) and measured the areas without vegetation to arrive at an approximate area in use. Later, the Respondent indicated that MRAT was clear on the subject of area in use versus the leased area stating they are 'seldom equal' (R1 pp. 32 and 36).

[50] The Respondent did not request an increase in the assessment of any of the properties under complaint, primarily because of concerns over equity. However, the Respondent, in preparation to defend the assessments, re-measured each area in use using aerial photographs. The resultant comparison showed the area in use was under-estimated by as much as 1.45 acres with an average discrepancy in favour of the Complainant of 0.68 acres (R1 p. 18).

[51] The Respondent provided, through a 'Notice to Produce', the leased areas of each subject property. Two subject properties had areas in use, which are subject to assessment, outside of the described legal description but form the total assessed area. Two subject properties did not have a leased area in evidence and was estimated by the Respondent.

Board Findings:

[52] The Board notes that the parties referred to 'farmland status', 'farmland market value', and 'farm land status' (as contemplated within the Act) synonymously; however, the terms are distinctly different. Within this decision the Board refers to both 'farmland' and 'farm land'. 'Farmland' as one word is defined as any land that is suitable to farm. 'Farm land' as two words is the specific manner in which the Act refers to the regulated assessment of land that makes up a farming operation as defined within the Act and attendant regulations. The meaning of each is significantly different and recognised by the Board (see Appendix "C" for additional explanation). However, the Board retained the single word farmland as presented in evidence even when the Board thought a party is referring to farm land as two words.

[53] The Complainant referenced several farm land decisions. Each decision provides a broad definition of what a farming operation is. However, none seem to suggest that oil and gas exploration is a form of a farming operation.

[54] The Board considered the characteristics and physical condition of the subject properties. The characteristics are defined by a specific shape and size as outlined within their lease. The physical condition on December 31, 2012 is non-residential industrial use by the presence of either machinery and equipment or buildings and structures or both. No evidence is provided to suggest that any of the subject properties did not contain an industrial use.

[55] The possible future use is not an issue for the Board, even if on January 1, 2013 a property were to resort to an acceptable farm land use. The actual use during the assessment period and confirmed on December 31, 2012 is the use assessed with the value calculated as of July 1, 2012 – the valuation date for the 2013 tax assessment.

[56] The Complainant did not offer sufficient evidence to prove the area outside of the re-measured gravel 'teardrop' shape is used exclusively for farming operations; however, this point was not disputed by the Respondent. Therefore, the Board has accepted that the area outside the re-measured area in use is used exclusively for farming operations.

[57] The Board reviewed the Act and the regulations finding, in Matters Relating to Assessment and Taxation Regulation (hereinafter, "MRAT") section 4 where it explicitly indicated that an area within a parcel used for commercial or industrial purposes is to be assessed at market value. It is to be assessed as if it were its own unique parcel of land. A parcel of land by definition does not include unattached buildings, structures, or machinery and equipment. Therefore the Board finds the legislation clearly defines the subject properties as vacant for assessment purposes.

[58] Additionally, the Board finds that the Act section 284(1)(k)(iii)(G) specifically excludes land or buildings from the definition of linear property including pipelines or well properties (well sites). However, it does include the legal interest in the land that forms the site of wells (s. 284(1)(k)(iii)(E) and (E.1)). As described by the Assistant Deputy Minister of Alberta Municipal Affairs, the presence of machinery and equipment creates an additional assessment as an industrial property and then the land component within the linear assessment must be deducted from the industrial property assessment in order to avoid assessing the land twice where the actual well sits.

[59] The Board finds the exemption from assessment found within the Act section 298(1)(q) does not apply to an industrial parcel of land. This exemption is reserved for linear property used exclusively for farming operations – none of which are before the Board.

[60] The evidence indicates that the entire leased area is used for the intended leased purpose of oil and gas exploration. The fact that an adjacent farmer may plough, seed and sometimes harvest some of the leased land does not change the fact that its primary use is for oil and gas exploration and the farming use is not continuous nor is it exclusive. The Board cannot find any legislation or regulation giving credence to the prospect that regulated farm land assessment trumps all other possible assessments – as suggested by the Complainant. The Board finds the opposite is true as found in the Decision; ***Royal Montreal Golf Club v. Dorval*** [1946] 1 D.L.R. 50 (hereinafter, "Dorval decision") – a temporary use of farming across a leased industrial site and access road does not make it part of a farming operation.

[61] Below are notes written by Canada Law Books Inc. referring to the Dorval decision (C2 Tab 4 p. 95):

> *Where the property has solely value for a particular purpose, e.g. a golf course, that factor must not be arbitrarily disregarded, for its adaptability or availability for a subdivision will not justify a conjectural or speculative estimate of the real value of such property. Valuation based on the speculative potentialities is to be avoided. A valuation of a golf course based on comparing land values of residential property adjacent thereto is without substance as they are not similar. The value of real estate is as it is found standing and as being used for the purpose for which it is fairly and reasonably suitable.*
>
> *A golf course cannot be classed as 'farm lands' since under Geo. V, c. 71, s. 12, to be so classified it must be used as such, and must have the character of cultivated land from which the owner and his family reap the benefit of the*

> *substance. Therefore a temporary use of a portion of a golf course for sheep grazing does not justify classing that portion as farm lands. [sic]*[3]

[62] The Board understands the temporary use of sheep grazing in the explanation above was for an approximate term of four years. The courts have spoken on temporary use of farming operations, finding that a short-term use – even four years – does not qualify to make it a farming operation.

[63] There is no evidence to show that the industrial parcels of land are used exclusively for farming operations; however, there is evidence to show that they are not used exclusively for farming operations. The evidence is that each site has machinery and equipment or buildings and structures or both. Both the Complainant and the Respondent testified that each subject property is under a lease and is used for the intended use as contemplated within the lease. The lease holder may use any or all of the leased area for its industrial purpose at any time.

[64] The Board considered the activity on-site, referred to the Act and regulation and determined the only class that can be appropriately assigned to the subject properties is non-residential except for the areas proven to be exclusively farmed.

[65] The Board finds that evidence must be provided by the lease holder to prove that a farming operation exists exclusively or permanently on a portion of the leased area during the entire assessment period otherwise the leased area in its entirety is to be assessed as an industrial parcel.

[66] The Board uses the term permanently in a purposeful manner – while permanently suggests forever, the Board is looking for evidence of uninterrupted farm land use. Any clause allowing the oil and gas company to occupy any portion of the farmed area does not provide for exclusive or permanent use.

[67] The Board finds that in no circumstance can the access road to a well site be considered to be used exclusively for a farming operation because access to the well site must be maintained.

[68] The Respondent assessed the subject properties based on the Kneehill decision – determining that the area outside of the 'teardrop' area is to be considered farm land. In light of the position of the Respondent to assess the area outside the 'teardrop' as farm land, the Complainant did not fully address this argument at the hearing. Because of the position of the Respondent, and based on the evidence in this hearing, the Board has accepted the exclusive use of farming operations outside the re-measured 'teardrop' and access road areas on the basis of fairness and equity.

[69] In response to the issue of who the assessed person is, the Board finds the answer is clear. The Act section 304(1)(f) defines the lease holder as the assessed person. The lease holder holds a lease for a defined area. The leased area is the area to be assessed to the lease holder. How it is assessed is to be determined by the assessor, but the entire leased area is to be assessed to the lease holder.

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[70] The evidence shows the difficulty of trying to assess an area in use that is under constant flux – a moving target. The assessor assessed areas ranging from 0.50 acres to 3.48 acres. An area in use of 0.50 acres is used as a minimum value, versus the actual area in use, for reasons not clear to the Board. In preparation for this hearing the Respondent re-measured all areas in use and arrived at areas ranging from 0.59 acres to 4.08 acres. The resultant comparison showed the area in use is under-estimated by as much as 1.45 acres with an average discrepancy in favour of the Complainant of 0.68 acres (R1 p. 18).

[71] One site, chosen by the Complainant (complaint ID #582-18, roll #202337124, 14-NW-8-37-3-5) was assessed at 0.50 acres. The Complainant provided a rough estimate of the area in use at 10,528 square feet or 0.24 acres. The Respondent's re-measurement via aerial photograph, after the complaint was filed, found 0.59 acres in use or 18% larger. The area under lease by the lease holder was 4.02 acres (R1 p. 18, C6 p. 16 and C6 Tab 7 p. 4). The Respondent' current practise of estimating the area in use has resulted in differing estimates of the area to be assessed. Further, there was no agreement between the Complainant and the Respondent about the size of the area in use. The lack of a definitive size for the area in use for the subject properties increases the difficulty in this matter.

[72] The Board finds the industrial parcels of land as defined by their leased area have been created by the presence of machinery and equipment or buildings and structures or both and are to be entirely assessed at market value as if vacant. A portion of the leased parcel of land maybe assessed as farm land if there is evidence of an exclusive or permanent farming operation. Farming operations are defined within the Act and regulations.

[73] The current practice of the Respondent in determining the exclusive farming operation area is to base its calculations on an aerial photograph of the subject property. The photographs were not dated. A snapshot of a mere second of time on an unknown date does not prove exclusive use as a farming operation. The intent of the legislation is not to provide reduced assessments to areas with vegetation (as the Complainant suggests). Nor is there any indication that the legislation intended to find a fixed area or minimum assessed area (such as the Respondent did). The Board does not believe that this methodology demonstrates whether the land is used for a farming operation.

[74] As previously set out, for this decision, the Board accepted the re-measured area as the industrial use with the remaining area assessed as farm land. However, in the future, the Board expects clear evidence of a permanent or exclusive farming operation on a portion of the leased area.

[75] The Board finds the most practical and fair way to calculate an assessment is for the entire leased area to be assessed as an industrial parcel of land. If the lease holder does use a portion of the leased area for a permanent or exclusive farming operation then evidence is required to establish the area, dates and specific farming operation in use. However, even if it is used for one day for oil and gas exploration, then it is not exclusively or permanently used for a farming operation and therefore it must be assessed as an industrial parcel of land.

[76] The Board finds no evidence or justification to accept an arbitrary minimum parcel size as assessed by the Respondent. Therefore, the Board accepted the re-measured area as provided by the Respondent as the actual industrial parcel with the remaining area within the leased area used exclusively for farming operations.

[77] While the Board finds no evidence or justification to accept an arbitrary minimum parcel size as assessed by the Respondent. The Board considered the argument of the Complainant regarding setbacks for bylaw and ERCB reasons and finds that if a minimum area in use is developed then it should be large enough to accept the restrictions placed on it by all the setback requirements. The Board finds that the land 'as if vacant' is the proper assessment; therefore, the setbacks do not become an issue for assessment purposes.

[78] In addition, any property type that helps the assessor differentiate or stratify the various non-residential properties is acceptable including industrial. Though many of the subject properties are surrounded by farming operations, and there appears to be some farming activity on some of the leased area, the actual use within the lease boundaries is non-residential unless there is evidence of exclusive or permanent farming operations.

[79] The Board finds the leased area is not in evidence for two subject parcels of land and therefore finds the re-measured and the leased areas to be equal leaving no area to be assessed at the regulated farm land rate.

[80] The Board recognises the Complainant's concern regarding the use of the Respondent' re-measured areas. The Board is choosing to calculate assessments based on the re-measured areas in use; in some cases this results in the Board finding an area in use that is larger than originally assessed. However, the Board finds a lower value per acre for the subject properties. As a result, in all cases the value calculated within this decision is much less than the value of the original assessment.

Board Summary of issue 1:

[81] The subject properties must be assessed at using a non-residential classification and industrial property type. The entire leased area is to be assessed to the lease holder for the actual use in place which is a non-residential industrial use.

2. WHICH VALUATION APPROACH PROVIDES THE BEST INDICATION OF MARKET VALUE FOR THE SUBJECT PROPERTIES?

Summary of Complainant's Position:

[82] The Complainant provided evidence in support of a Direct Sales Comparison Approach, calculating a per acre value on large parcels of farmland 'across the fence' from the subject properties.

[83] The Complainant argued that well sites in virtually all circumstances are held under a surface lease from the owner of the parent parcel of land, which is virtually always used for farming (C1 p. 3).

[84] The Complainant asserts the Income Approach requires an income stream of actual rent for the leased area and not compensation, which is the nature of the oil and gas leases (C10 p. 4).

[85] The Complainant commented that discussion is required over fee simple and leasehold interests and how that affects the land assessment. The Complainant provided an excerpt of a decision; ***Municipal Property Assessment Corp. v. BCE Place Ltd.*** 98 O.R. (3d) 581 (hereinafter, "MPAC decision") (C1 pp. 9-10):

> *[41] The relationship between a fee simple interest and leasehold interests is described in the text accepted as authoritative,* ***The Appraisal of Real Estate, 2nd ed.*** *(Ottawa: Appraisal Institute of Canada, 2002) at 5.12:*
>
> > *Since all partial and fractional interests are "cut out" of the fee simple interest, the appraiser must have an understanding of the fee simple interest in a property prior to appraising a fractional or partial interest.*
> >
> > *Economic Interests*
> >
> > *The most common type of economic interests is created when the fee simple interest is divided by a lease. In such a circumstance, the lessor and the lessee each obtain partial interests, which are stipulated in contract form and are subject to contract law. The divided interest resulting from a lease represent two distinct but related interests – the leased fee interest and the leasehold interest.*
> >
> > *. . . . .*
> >
> > *Leased Fee Interests*
> >
> > *A leased fee interest is the lessor's, or landlord's, interest. A landlord holds specified rights that include the right of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the lessee (leaseholder) are specified by contract terms contained within the lease. . . .*
> >
> > *When an assignment involves the valuation of a leased fee interest, the appraiser often must also appraise the fee simple interest. If the rent and/or terms of the lease are favourable to the landlord (lessor), the value of the leased fee interest will usually be greater than the value of the fee simple interest, resulting in a negative leasehold interest. If the rent and/or terms of the lease are favourable to the tenant (or lessee), the value of the leased fee interest will usually be less than the value of the fee simple interest, resulting in a positive leasehold interest. The negative or positive leasehold interests will cease if contract rent and/or terms equal market rent and/or terms any time during the lease or when the lease expires.*
>
> *[42] Accordingly, if the lease is at less than market rent, the value of the leased fee interest of the owner of the fee simple will be diminished, but the value of the lease will increase. Conversely, if the lease requires rent in excess of the market,*

> *the value of the interest of the owner will be increased, and the value of the tenant's lease will diminish, relative to the market rent otherwise available.*
>
> *[43] If the property is assumed to be rented at market rent, it then follows that the tenant has no advantage or disadvantage vis-à-vis the market, and valuing the fee simple on that assumption may eliminate the need to separately value the landlord and the tenant's interests, at least for assessment purposes.[sic]*

[86] The Complainant explained that if an analysis is done of subject rents, and market rates are achieved, then the fee simple interest and the leasehold interest will be of equal value. There is no advantage to a tenant *vis-à-vis* the market (C1 p. 5).

[87] In rebuttal, the Complainant argued that the Respondent does not understand the nature of a well site lease and the compensation paid to a landowner thereunder, as compared to the nature of the Income Approach as applied for assessment purposes. An Income Approach deals with the rental stream garnered from a property's desirability in the market, and the owner's expected return on investment. While a well site lease may refer to annual rents, the nature of the payment is 'compensatory', and not 'income', in the sense required for an Income Approach.

[88] The Complainant continued by stating the Respondent's Income Approach also ignores the requirement of what is to be assessed – that is only the area in use. The 'well site' is not what is being valued, it is the area in use. One does not go out and buy a well site. Well sites are simply the surface requirement to win the minerals. When a production field is sold from one operator to another, it is strictly the value of the minerals that is in play (C10 p. 4-5).

Summary of Respondent's Position:

[89] In response to this issue, the Respondent posed their own question to answer; what would be the purchase price of the area if the lessee were to purchase the land opposed to leasing? In order to have access to the mineral rights, the Complainant entered into lease agreements with the owners of the land, for the area required (R1 p. 30).

[90] The lease terms include payments for: entry; land value; initial nuisance, inconvenience and noise; loss of use of the land; adverse effect; and other relevant factors. The fact that there is value in the leasing of land translates to value for the land as assessed at market value, regardless of whether these properties are purchased on a regular basis (R1 p. 30).

[91] The Respondent referenced disclosure from the Complainant wherein the Complainant quoted materials – a book that then quoted a court case: ***Sawiak v. Paloma Petroleum*** 43 LCR, 62. The court decision spoke on the differences in legislative regimes, with the lease rates calculated for a well site based on a compensation regime; whereas, the valuation regime (market value) is required for expropriation (and assessment) (R2 Tab 9 p. 2).

[92] The Respondent provided evidence for the Direct Sales Comparison Approach as well as an illustration with the Income Approach on a hypothetical 4.22 acre parcel of land using average income values found in evidence from Government of Alberta sources dating back to 2007 and 2009 (R1 pp. 44-46).

[93] While questioning the Respondent's presentation a question arose as to when a leased industrial parcel of land becomes assessable; is it when the lease is signed or when it is used as a well site?

Board Findings:

[94] The Board notes that each party has referred to and accepted that all of the subject properties are under a lease agreement; however, there are no leases in evidence.

[95] The Board acknowledges the difficulty each party has in finding appropriate Direct Sales Comparison Approach evidence. Notwithstanding that the subject parcels of land do not seem to transact like a typical parcel of land, an assessment must be calculated. The Board finds the Direct Sales Comparison Approach is the desired approach when sufficient sales of comparable property can be found.

[96] The Board finds that the Income Approach can be an appropriate valuation methodology if reliable income information can be obtained. However, the leases must be obtained and analysed first to determine if there is a relationship between the face rent and market rent and to test if it achieves the fee simple value. As in any Income Approach calculation, the assessor will need to appropriately determine which payments are attributable to income and which payments are attributable to expense reimbursement in order to find an appropriate assessment.

Board Summary of issue 2:

[97] The Board finds that, based upon the evidence provided to the Board, the fee simple must be calculated using the Direct Sales Comparison Approach. The Board cannot make a decision using the Income Approach because there are no leases in evidence and neither party has provided income and expense information for the subject properties.

3. WHAT IS THE CORRECT MARKET VALUE FOR THE SUBJECT PROPERTIES AND WHAT INFLUENCE ADJUSTMENTS SHOULD BE MADE TO THE SUBJECT PROPERTIES?

Summary of Complainant's Position:

J. Bergeson (C4)

[98] Witness for the Complainant; J. Bergeson, Vice President Exploitation West, Canadian Natural Resources Limited provided testimony. When an oil and gas operator acquires an operating well site from another oil and gas company, there are three components under consideration; the petroleum and natural gas rights, the tangibles, and the miscellaneous interests.

[99] The petroleum and natural gas rights represent the working interest, royalty interest or share of entitlement in production of the underlying petroleum substances beneath the surface and governed by the leases. These rights are subject to purchase and sale.

[100] The tangibles are all the depreciable property; equipment, and assets used to produce the petroleum substances and transport the substances to market. It includes items such as; wellhead, flow line, tank(s), pipeline(s), meter(s), pump(s), generator(s), compressor(s), plant(s), etcetera.

[101] The 'miscellaneous interests' is a catch-all term that includes anything to be included in the acquisition agreement that is not included in the petroleum and natural gas rights or the tangibles. Miscellaneous items routinely include (lease) agreements that allow for entry, occupation and access to the surface of any lands to gain access to the petroleum and natural gas rights or the tangibles.

[102] Each of the three components are typically given a value in the acquisition agreement. While the petroleum and natural gas rights and tangibles vary in each agreement, the miscellaneous items typically are given a nominal value of $1 or $10. This nominal value accurately reflects the perceived value of the miscellaneous items to the oil and gas companies. Usually the oil and gas company is more concerned about liabilities associated with the surface lease. There is no value in the land and it is not considered an asset.

[103] The Complainant also spoke about the Environmental Protection and Enhancement Act (herein after, the "EPEA") and the liabilities faced in returning the surface lease to the previous condition and land use at the time the lease was signed – typically farmland.

J. d'Easum (C5 and C11)

[104] 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.

[105] The Complainant reverse calculated the assessed land value for each subject property by taking the land assessment value, adding $5,000 for the value of the land contained within the linear assessment then divided by 50% to remove the influence adjustment and finally divided by the assessed area to arrive at the value per acre for each assessed parcel. The results of each subject property are found in Tab one of C5. The range of values on a per acre basis for each property is $44,655 through $160,000.

[106] The Complainant corrected some area values found in the Respondent's disclosure R1 at page 40. Two values are changed resulting in a new median of $206,376 per acre (C5 p. 5).

[107] The Complainant analysed property sales data provided by the Respondent (not in evidence) for sales ranging between July 8, 2010 and June 25, 2012. No independent verification was done and all data was accepted at face value. By analysing the data, the Complainant was able to arrive at 46 sales of agricultural use land to establish a value of $2,431 per acre for the subject properties (C5 pp. 4-8).

[108] The Complainant used the $2,431 per acre value and calculated a new assessed value for each subject property then subtracted the $5,000 value attributed to the linear assessment. The results make up the request in Appendix "A" and are also displayed in Tab one of C5.

[109] Commenting on the Kneehill decision, the Complainant referred this Board to paragraph 147 where that CARB found a value for each subject by analysing the farmland market values within that municipality (C5 p. 8).

[110] Five municipalities assessed leased industrial parcels of land (well sites) to the lease holder in 2012 with Kneehill County being the test case. In 2013 a total of seven municipalities assessed leased industrial parcels of land to the lease holder including Newell County, Lacombe County, Wetaskiwin County, Municipal District of Taber, Clearwater County, Kneehill County and Red Deer County. Two municipalities had no complaints Newell County and Lacombe County. Four municipalities settled complaints in accordance with the Kneehill decision Wetaskiwin County, Municipal District of Taber, Clearwater County and Kneehill County. Red Deer County did not settle and is the test case for this year.

[111] The Complainant provided information regarding the effects of very small parcels (under one acre) on market value. Including information from an article entitled; *"Site Size Adjustments: A Technique to Estimate the Adjustment Magnitude"*, and an excerpt from; *"The Appraisal of Real Estate – Third Canadian Edition"* (C11 Tabs 1-3).

[112] The Complainant provided background information on some of the sales used by the Respondent in making their assessment showing their opinion on why they are not suitable sales for the Direct Sales Comparison Approach (C11 Tabs 4-7).

[113] The Complainant provided details of revised assessments of similar parcels in a different municipality. That municipality accepted the Kneehill decision and their new assessments now reflect that decision (C11 Tab 8).

R. Berrien (C6 and C12)

[114] Witness for the Complainant; R. Berrien, Berrien Associates Ltd. provided extensive testimony and evidence regarding the valuation of the subject properties.

[115] The Complainant analysed six specific subject properties – one for each Complainant. For the Complainant at hand, the analysed property is: complaint ID #582-18, roll #202337124 with a legal address of 14-NW-8-37-3-5 comprised of 0.50 acres of assessed area in use with a surface lease of 4.02 acres. The current assessment is $35,000 (C6 p. 16).

[116] The analysis was extensive, covering a variety of issues for the Board to consider including; assumptions, highest and best use, small parcel valuation concepts, parent parcel concept (i.e. "across the fence"), and review of the Respondent's methodology. The Complainant arrived at a market value estimate of $2,700 per acre for the specific property noted above and for all properties west of the fifth meridian and a value of $2,200 per acre for all properties east of the fifth meridian (C6 pp. 5-37).

[117] The Complainant referenced the Kneehill decision making particular notice of a number of salient points (C6 pp. 22-23):

a. The area in use is the potentially assessable area.
b. The comparable properties must be based on similar non-residential property.
c. The subject properties must be assessed with all the influences that are present.

d. The subject properties must observe the ERCB setbacks.
e. 'Across the fence' valuation is most appropriate if comparables cannot be found.

[118] The Complainant critiqued the Respondent's methodology making particular notice of (C6 pp. 23-24):

a. The minimum parcel size of 0.50 acres is too large.
b. A total lack of reality in the assessment.
c. Dismissal of full quarter section sales.

[119] Mr. Berrien offered his opinion *"as a licensed Alberta real estate appraiser, with over thirty years of experience appraising all manner of rural lands, that the Red Deer County assessment approach used to value well sites as small parcels is improper"* (C6 p. 35).

Complainant as a whole

[120] The Complainant argued that well sites in virtually all circumstances are held under a surface lease from the owner of the parent parcel of land, which is virtually always used for farming. A well site operator would pay no more per acre than the per acre unit value of the parent parcel to acquire the fee simple of the hypothetical parcel. Further, the only probable purchaser of the well site land would be the owner of the land surrounding the 'teardrop'. The farmer would pay no more than agricultural value (C1 p. 3).

[121] The Complainant argued that the Respondent *"ignores there is a value standard, which is value in exchange and not value in use… the objective of a market value assessment is to determine if a market exists"* (C10 p. 3).

[122] "*There is simply no purchaser for this parcel, and it would attract no value in a transaction between oil and gas companies."* The Respondent's *"valuations are purely speculative. The only probable use is a return to farmland status. The return to farmland status is not speculative, it is a legal requirement imposed on the operator…"* (C10 p. 3).

[123] The Complainant in its concluding remarks of its initial presentation indicated; *"the use of farmland values applied to the area in use removes all of the subjectivity of the Assessor's 50% adjustment"* (for influences) (C1 p. 17). No recommendation on influence adjustments is provided.

[124] The Complainant provided additional information in its response to the 'Notice to Produce'. The information is in regards to base land rates within Red Deer County and the adjacent municipality of Kneehill County (C13 pp. 5-15).

Summary of Respondent's Position:

[125] Early in its presentation the Respondent indicated that, of the 1,685 leased industrial parcels of land assessed within the municipality, only 272 are before the Board or approximately 16%. The Respondent indicated that if the Board were to accept the request of the Complainant, then an inequity would be created contrary to the Act section 467(3) wherein the Board must not alter any assessment that is fair and equitable.

[126] The Respondent also cited the Court decision: ***British Columbia (Assessor of Area #09 - Vancouver) v. Bramalea Ltd.***, 1995 BC SC 1858 (hereinafter, "Bramalea decision", wherein the court commented on the equity principle (R1 pp. 22-23 and R2 Tab 19).

[127] The Respondent argued that assessment is the process of estimating the value of property. The land assessment of the properties under complaint is an estimate of value, derived ultilising mass appraisal principles, and based on available data. The market value based standard is considered to be 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 within a municipality will pay a similar amount of property tax (R1 p. 27).

[128] The Respondent stated that an appraisal is an estimate of value, and properties in Alberta are assessed using mass appraisal methods. Mass appraisal is the process of valuing a group of properties as of a given date, using common data, mathematical models, and statistical tests. Mass appraisal allows the Respondent to accurately value a large number of properties in a short period of time (R1 p. 27).

[129] The Respondent explained that the market land values have been applied to sites that are occupied by machinery and equipment or buildings and structures or both. They determined the site area to be the area not utilised exclusively for agricultural use (R1 p. 28).

[130] The Respondent argued that the assigned land rates have been developed from vacant land sales in the area, preferably in close proximity to the subject property. The market value of well sites would be influenced in a similar manner as other industrial parcels such as gravel pits (R1 pp. 31 and 32).

[131] The Respondent explained when considering the highest and best use of a property, appraisal literature is consistent in specifying that the highest and best use of a special-purpose property, that is currently being used for its designed use, is probably the continuation of its present use[4] (R1 p. 32).

[132] The Respondent indicated that the task before the Board is to determine a reasonable value based on the evidence provided. It is important that all factors be considered, and weighed appropriately. The comparable data involves many facets (explained on page 38 of R1).

[133] The Respondent presented sixteen vacant land sales with a land use designation of AG, which is agricultural use. The sixteen sales occurred between August 2010 and June 2012 for vacant land parcels between 2.99 acres and 19.99 acres. In addition three vacant land sales with a land use designation of R-1, which is residential use, are provided between 1.40 acres and 5.44 acres with sales occurring between October 2010 and January 2012. The nineteen sales combined arrived at a median of $36,645 per acre and an average of $49,275 per acre (R1 p. 39).

[134] The Respondent provided twenty-two vacant commercial and industrial sales occurring between August 2010 and May 2012 ranging in size between 0.68 acres (determined by

[4] Fuller, L. (2011, July). Valuing special purpose properties – what do the experts say? *Fair & Equitable Magazine of the International Association of Assessing Officers, 9(7),* 3-14.

Complainant to be 0.20 acres) and 46.85 acres finding a median of $298,423 per acre (determined by the Complainant to be $206,376 per acre) with an average of $297,584 per acre (R1 pp. 40-41).

[135] The Respondent explained that the vacant sales of commercial and industrial properties (non-residential) have a higher per acre value than the residential properties of similar size. Non-residential use properties, located outside of the commercial and industrial parks, are assessed using the same sales data as small parcels. Although the occasional non-residential property sale does occur in these areas at a higher value, the Respondent has chosen to use the lesser values since they are more common (R1 p. 42).

[136] The Respondent presented sales of special use properties; three sales between February 2011 and August 2012 with between 15.00 acres and 20.21 acres fetching between $7,507 per acre and $14,985 per acre. In addition there are two sales from 2009, each with 6.33 acres that sold for $50,553 per acre and $52,783 per acre. Of the five sales two have been utilised and assessed as non-residential properties while three are undeveloped and are assessed for their agricultural use (R1 p. 43).

[137] In determining the value of the properties under complaint, the Respondent used mass appraisal principles and valued them similarly. The Respondent indicated that an influence reduction of 50% is applied for all industrial leased parcels of land. This may include, but is not limited to access, topography, size, and shape. Although no specific adjustments were made for the characteristics and attributes of each unique parcel of land, the Respondent recognises that the subject properties are unique and have applied the influence reduction uniformly (R1 pp 31-32). In addition a reduction of $5,000 was provided to each well site regardless of the presence of a wellhead, thus giving the benefit of the doubt to the Complainant (R1 p. 42).

[138] The Respondent commented on the Kneehill decision indicating that the Board in that case made the decision it did because there was a lack of evidence – which is not the situation before this Board (R1 p. 64).

[139] In response to the 'Notice to Produce', the Respondent provided the base land rates for industrial properties, by market zone, for 2012 in Red Deer County (R3).

Board Findings:

[140] If the Board were trying to arrive at the market value for an entire quarter section (160 acres) of farmland within Red Deer County, then the evidence from J. d'Easum and R. Berrien would be invaluable. However, the Board is charged with finding the correct assessment for the subject properties, which are all leased industrial parcels of land ranging from 1.25 acres and 5.97 acres.

[141] The Board does not accept the 'across the fence' argument as it is not supported within the Act, regulations, or court decisions. The only instance where this methodology has been supported is within the Kneehill decision; however, this Board finds no evidence to arrive at similar values for the subject properties in this hearing. The Board notes that the Kneehill decision in under appeal to the Court of Queen's Bench. Further, the Board notes that decisions of other tribunals are not binding upon this Board.

[142] The Board is charged with finding the fee simple value for the subject properties – leased industrial parcels of land ranging from 1.25 acres and 5.97 acres. The fee simple value is the value likely arrived at if a willing buyer and a willing seller are to conclude a transaction. It is clear to the Board, based on the evidence presented, that there is no willing seller at the 'across the fence' value and there is no willing buyer at the value per acre arrived at by the Respondent.

[143] There seems to be confusion of who the willing buyer and willing seller are. The Complainant suggests the only possible willing buyer is the farmer of the parent parcel, and he or she would only pay an incremental value of what the entire quarter section is worth at some indefinite period of time in the future. The Respondent suggests that the farmer of a parent parcel is not a willing seller of farmland at the incremental value of an entire quarter section.

[144] The Board agrees that both scenarios stated above are likely true. However, the Board is not assessing farmland at farm land rates. The Board is assessing an industrial parcel of land held under a lease arrangement that the Board is prescribed to assume is an individually titled parcel of land. The willing seller is any person, which has the authority to access, possess and use the site indefinitely. The willing buyer is any person who wishes to have the authority to access, possess and use the site indefinitely.

[145] The Complainant also cautioned against confusing the value 'in use' versus value 'in exchange'. The Complainant provided several court decisions on this prospect. Generally speaking, these situations arise when a building or structure is created for a specific use and that specific use disappears. Many times, the assessor in these situations assess on the Cost Approach as a special purpose building and taxpayers have successfully argued that if the property were to sell, the special aspects incorporated within their building would have no value to a willing buyer.

[146] The Board agrees with the principle argued by the Complainant and is cautious to not assess the subject properties on their perceived value to the owner and instead finds the value based on what a similar site would be valued at if it were to sell on the open market between willing buyers and willing sellers. The evidence that the owner, an oil and gas company, finds no value in the land is the exact reason why the value to the owner is to be avoided, yet the Complainant essentially is asking for no value.

[147] The Board did not find any use for the evidence from either party on the base land values for Red Deer County and Kneehill County (R3 and C13).

[148] The Board finds five sales, presented within the Respondent's Disclosure Document R1 at page 39, provide a good indication of value for the subject properties. Each of the sales involved land use designation – AG agricultural, which is identical to the subject properties. Each sale is in the size range of the subject properties. Each sale sold between willing sellers and willing buyers. Each sale occurred during the twelve month period prior to the valuation date and were adjusted to the valuation date. Each sale was sold as vacant land with no change in use or land use designation prior to the sale date and no reasonable conclusion of what changes may occur. The Board cannot speculate on the motive of the buyer and seller. Furthermore, a change in use or land use designation occurring sometime after the sale date does not negate the sale. It is the use and land use designation at the time of sale that is important.

[149] The five sales ranged in value between $15,756 and $53,825 per acre. The mean value is $36,112 per acre and the median value is $36,645 per acre:

ROLL	LEGAL	SALE DATE	SALE PRICE	ADJUSTED PRICE	SIZE	VALUE PER ACRE
438114014	SW-11-38-23-4	16-Feb-2012	$172,500	$172,600	4.71	$36,645
476143019	SE-14-36-27-4	24-Apr-2012	$137,500	$137,500	4.99	$27,555
486134019	SW-13-36-28-4	30-Nov-2011	$270,000	$270,200	5.02	$53,825
487311012	NE-31-37-28-4	29-Jun-2012	$260,000	$260,100	5.56	$46,781
435281017	NE-28-32-23-4	16-May-2011	$128,000	$128,100	8.13	$15,756
					Mean	$36,112
					Median	$36,645

[150] The Board relies on the median value of $36,645 per acre for the subject properties. The Board did not make any adjustment for market zone because the information available could not be discerned to make an accurate adjustment. Therefore, the rate of $36,645 per acre is applied uniformly across the entire municipality in a similar fashion recommended by the Complainant.

[151] To calculate the farm land portion of each subject property the Board relies on the regulated assessment value as found in Ministerial Order #L:183/13, the; *"2013 Alberta Farm Land Assessment Minister's Guidelines"*. The Board used the non-irrigated farm land value of $350 per acre with no adjustment for the quality index of the land because there is no evidence before the Board to make the appropriate adjustment.

[152] The Board finds no evidence to support the influence adjustment of 50%; however, the Complainant has not offered an alternative other than assessing the parcels of land at an incremental value of a whole quarter section of land sold at market farmland rates – an argument not accepted by the Board. The Board maintained the 50% influence adjustment assessed by the Respondent.

[153] To calculate the correct assessment of each property, the Board relies upon the leased area as reported by the Respondent. No information is in evidence from the Complainant to dispute these values. The Board assessed all leased areas to the lease holder; however, adjusted for the different uses. The re-measured area for each subject property as reported by the Respondent is assessed as a non-residential property at the $36,645 per acre value less 50% for influences and less $5,000 per wellhead. The remaining area in each case is assessed to the lease holder at the regulated farm land rate of $350 per acre with no further adjustment.

[154] Though the Board cannot order it because the assessment of the parent parcel is not under complaint, the Board recommends the Respondent adjust the assessment of each parent parcel to account for the new area being assessed by the Board which will prevent land being assessed twice.

[155] The Board calculates an example of three subject assessments below:

Formula: A (leased area) – B (industrial parcel) = C (farm land parcel)

a. Complaint ID #582-2, roll #202022038, with legal description 12-NW-26-37-3-5; has a leased area of 5.29 acres, has a re-measured area in use of 1.96 acres and has one assessable wellhead. The area assessed is (A) 5.29 acres. The area assessed as an industrial parcel is (B) 1.95 acres and the area assessed at the regulated farm land value is (C) 3.34 acres.

1.95 acres (B) x $36,645 per acre	=	$71,457.75
Influence adjustment of 50%	=	($35,728.88)
1 wellheads x $5,000 for linear	=	($5,000.00)
Net industrial parcel assessment	=	$30,728.87
3.34 acres (C) x $350 per acre	=	$1,169.00
Net farm land parcel assessment	=	$1,169.00
Total 5.29 acre (A) assessment	=	$31,897.87
Truncated assessment value	=	$31,890.00

b. Complaint ID #582-18, roll #202337124, with legal description 14-NW-8-37-3-5; has a leased area of 2.98 acres, has a re-measured area in use of 0.59 acres and has one wellhead. The area assessed is (A) 2.98 acres. The area assessed as an industrial parcel is (B) 0.59 acres and the area assessed at the regulated farm land value is (C) 2.39 acres.

0.59 acres (B) x $36,645 per acre	=	$21,620.55
Influence adjustment of 50%	=	($10,810.28)
1 wellhead x $5,000 for linear	=	($5,000.00)
Net industrial parcel assessment	=	$5,810.27
2.39 acres (C) x $350 per acre	=	$836.50
Net farm land parcel assessment	=	$836.50
Total 2.98 acre (A) assessment	=	$6,646.77
Truncated assessment value	=	$6,640.00

c. Complaint ID #582-19, roll #202337179, with legal description 7-SE-21-36-3-5 plus 7-NE-21-36-3-5; has a leased area of 7.09 acres, has a re-measured area in use of 1.07 acres on two assessable land parcels with a single assessment roll and one wellhead. The area assessed is (A) 7.09 acres. The area assessed as an industrial parcel is (B) 1.07 acres and the area assessed at the regulated farm land value is (C) 6.02 acres.

1.07 acres (B) x $36,645 per acre	=	$39,210.15
Influence adjustment of 50%	=	($19,605.08)
1 wellhead x $5,000 for linear	=	($5,000.00)
Net industrial parcel assessment	=	$14,605.07
6.02 acres (C) x $350 per acre	=	$2,107.00
Net farm land parcel assessment	=	$2,107.00
Total 7.09 acre (A) assessment	=	$16,712.07
Truncated assessment value	=	$16,710.00

[156] The Board recognises the equity concerns raised in the Bramalea decision and shares the view that assessments must be both correct and equitable. An individual decision of the Board, by its very nature of correcting an error, might create an inequity for all properties that did not seek a correction, and therefore did not receive the benefit of the correction – assuming the correction results in a decrease. The Bramalea decision does not suggest that a decision of the Board cannot create an inequity, rather the Board can only deal with the complaint(s) before it. However, the decision of the Board should be correct and equitable from an overarching perspective.

[157] The Board's decision results in assessments lower than previously assessed for the majority of the subject properties; however, some of the subject properties have increased in value. The Board is conscious of recent court decisions on increasing assessments. One, for example, is a decision on a leave application that offers guidance The Board recognises the Complainant's concern regarding the use of the Respondent' re-measured areas. The Board is choosing to calculate assessments based on the re-measured areas in use finding an area in use that is larger than originally assessed in some cases. However, the Board finds a lower value per acre for the subject properties. As a result, in the majority of the subject properties, the value calculated by reason of this decision is much less than the value of the original assessment.

[158] The Board did find four subject properties that would have resulted in an increased assessment due to the change of area in use, but for the reasons set out above in relation to the size of the areas in use, the Board adjusted the area in use so the assessed value for the industrial parcel of land did not exceed the original assessment value. These changes pertained to: ***Edmonton East (Capilano) Shopping Centre Limited (AEC International) v. Edmonton (City)***, 2012 ABQB 44 (hereinafter, "Capilano decision"). In the Capilano decision Justice Michalyshyn distinguishes between creating a whole new assessment versus correcting an error made by the assessor, finding that an assessment review board can increase an assessment if correcting an error made by the assessor.

[159] The Board agrees with the findings in the Capilano decision and has corrected the area of each subject property with the leased area. The industrial portion is the actual area in use, as re-measured by the Respondent in preparation for this hearing. There is no evidence supplied casting doubt on validity of these re-measurements. Many subject properties re-measured a smaller area in use while others re-measured a greater area in use. It appears the Respondent took greater care to find the correct area in use for this hearing.

[160] Although the Capilano decision would permit this Board to increase the assessment, in the circumstances in this case where a correction lead to an overall increase in the assessment, the Board lowered the area in use to save the Complainant harmless. The Board made its decision because the change of area in use was not something the Complainant had properly prepared a presentation on as the Respondent had not requested the Board to make a change. The Board finds that it is equitable to make a correction for the area in use and the correct number of wellheads present provided the total non-residential land assessment is no greater than the original land assessment.

[161] The Board made a further correction where the farm land assessment was not calculated at all for the subject properties. The farm land was instead assessed against the landowner. The Board finds that this is a correction that needs to be fixed and saves the

Complainant harmless provided they choose to seek the expense from the purported user of the area – the farmer/landowner.

Board Summary of issue 3:

[162] The correct market value for each subject property found in Appendix "A" and is adjusted for the influences described by the Respondent and for linear assessment of land where the well is situated.

DECISION SUMMARY

[163] The Board exhaustively reviewed all the evidence provided by each party to this hearing. The stakes are high and each party has an interest in the value the Board places on the subject properties. The Act provides for the assessor to assess all property at market value, the assessor must do so in an objective manner being fair and equitable. Fairness not only for the assessed person but also fair to all taxpayers.

[164] The decision of the Board is fair to the taxpayers before the Board and to all taxpayers of the municipality; but, more importantly, the decision is based on the Act (and the regulations) that clearly indicate what a parcel of land is and what it is not. The Act clearly compels the assessor to consider these hypothetical properties as if they are parcels of land. The Assessor has demonstrated an effort to adjust for influences, though not clearly explained. The values found by the Board do reflect market value with the relevant evidence before the Board.

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

[166] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 28th day of February, 2014 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 Act 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	Area (Acres)	Land Assessment	Area (Acres)	Land Assessment	Total Area (Acres)	Industrial Area (Acres)	Farm Land Area (Acres)	Other Farm Land Area (Acres)	Number of Wellheads	Net Land Assessment
582-1	202016139	10-NE-12-37-3-5	0.50	$35,000	0.50	$0	5.33	1.06	4.27		1	$15,910
582-2	202022038	12-NW-26-37-3-5	0.50	$35,000	0.50	$0	5.29	1.95	3.34		1	$31,890
582-3	202022047	15-NE-2-38-3-5	0.50	$35,000	0.50	$0	4.10	1.10	3.00	4.34	1	$17,720
582-4	202022065	6-SW-14-38-3-5	0.50	$35,000	0.50	$0	1.66	1.66	0.00		1	$25,410
582-5	202033019	12-NW-24-37-3-5	0.50	$35,000	0.50	$0	4.25	1.07	3.18		1	$15,710
582-6	202035011	15-NE-16-38-3-5	0.50	$35,000	0.50	$0	3.52	1.03	2.49		1	$14,740
582-7	202077199	10-NE-21-36-3-5	0.50	$35,000	0.50	$0	5.97	1.11	4.86		1	$17,030
582-8	202152008	6-SW-7-37-3-5	0.50	$35,000	0.50	$0	1.25	1.25	0.00		1	$17,900
582-9	202182139	15-NE-26-37-3-5	0.50	$35,000	0.50	$0	5.83	1.35	4.48		1	$21,300
582-10	202182166	15-NE-33-37-3-5	0.50	$35,000	0.50	$0	4.52	1.13	3.39		1	$16,890
582-11	202182193	6-SW-33-37-3-5	3.48	$72,700	3.48	$3,460	4.97	4.08	0.89		1	$70,060
582-12	202182248	10-NE-5-38-3-5	0.50	$35,000	0.50	$0	5.64	1.45	4.19		1	$23,030
582-13	202333251	6-SW-17-38-3-5	0.50	$35,000	0.50	$0	2.00	1.19	0.81		1	$17,080
582-14	202333433	11-NW-23-37-3-5	0.50	$35,000	0.50	$0	3.30	1.05	2.25		1	$15,020
582-15	202334024	6-SW-16-36-2-5	0.50	$35,000	0.50	$0	4.64	1.25	3.39		1	$19,080
582-16	202335582	14-NW-2-37-3-5	0.50	$35,000	0.50	$0	4.45	1.18	3.27		1	$17,760
582-17	202337087	4-SW-26-37-3-5	0.50	$35,000	0.50	$0	3.26	0.76	2.50		1	$9,800
582-18	202337124	14-NW-8-37-3-5	0.50	$35,000	0.50	$0	2.98	0.59	2.39		1	$6,640
582-19	202337179	7-SE-21-36-3-5	0.50	$35,000	0.50	$0	4.67	1.07	3.60	2.42	1	$16,710

APPENDIX "B"

Documents Presented at the Hearing
and considered by the Board

Document	Type	Description
C1	Complainant Disclosure	Legal brief of Brian Dell – 20 pages bound
C2	Complainant Disclosure	Authorities – binder with 23 tabs and 248 pages
C3	Complainant Disclosure	Respondent Municipal Development Plan and Bylaws – binder with 6 tabs and 135 pages
C4	Complainant Disclosure	Willsay of Jeff Bergeson – document with 5 pages
C5	Complainant Disclosure	Willsay and evidence of Jon d'Easum – binder with 21 tabs and 233 pages
C6	Complainant Disclosure	Willsay and evidence of Robert Berrien – bound with 11 tabs and 141 pages
C7	Complainant Disclosure	Map Red Deer County – 1 page
C8	Complainant Disclosure	Subject details for Canadian Natural Resources Limited – 405 pages
C9a	Complainant Disclosure	Subject details for Bonavista Petroleum Ltd. and Bonavista Energy Corporation – ~200 pages
C9b	Complainant Disclosure	Subject details for NAL Energy Corp. and NAL Resources Limited. – ~80 pages
C9c	Complainant Disclosure	Subject details for Trident Exploration Corporation – ~110 pages
C9d	Complainant Disclosure	Subject details for Vermillion Energy Inc. and Vermilion Resources Limited – ~210 pages
C9e	Complainant Disclosure	Subject details for Whitecap Resources Inc. – ~160 pages
R1	Respondent Disclosure	Various submissions with 5 tabs and 173 pages
R2	Respondent Disclosure	Evidence document with 20 tabs and ~400 pages
C10	Complainant Rebuttal Disclosure	Legal brief and evidence of Brian Dell – bound with 5 tabs and 84 pages

Document	Type	Decription
C11	Complainant Rebuttal Disclosure	Willsay and evidence of Jon d'Easum – binder with 8 tabs and 107 pages
C12	Complainant Rebuttal Disclosure	Willsay and evidence of Robert Berrien – 2 pages
R3	Respondent Response	Received under a Notice to Produce – Market Location Base Rate spreadsheet printed on 1 page
R4	Respondent Response	Received under a Notice to Produce – roll info spreadsheet with 7 tabs printed on 15 pages
C13	Complainant Response	Received in response to Notice to Produce: R3 and R4 – 15 pages

FOR MGB ADMINISTRATIVE USE ONLY					
Appeal Type	**Property Type**	**Property Sub-Type**	**Issue**	**Sub-Issue**	
CARB	Other Property Types	Vacant Land	Sales Approach	Land Comparable	®

APPENDIX "C"

Legislative Authority, Requirements, and Considerations:

The Municipal Government Act [the MGA or the 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;

Interpretation provisions for Parts 9 to 12

284(1) *In this Part and Parts 10, 11 and 12,*

(i) "farming operations" has the meaning given to it in the regulations;

(j) "improvement" means

(i) a structure,

(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,

(iii) a designated manufactured home, and

(iv) machinery and equipment;

(k) "linear property" means

(iii) pipelines, including

(E) the legal interest in the land that forms the site of wells used for any of the purposes described in paragraph (C) if it is by way of a lease, licence or permit from the Crown, and

(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;

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.

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**
(f) a parcel of land, or a part of a parcel of land, and the improvements to it held under a lease, licence or permit from the owner of the land where the land and the improvements are used for	*(f) the holder of the lease, licence or permit;*

(i) drilling, treating, separating, refining or processing of natural gas, oil, coal, salt, brine or any combination, product or by-product of any of them,

(ii) pipeline pumping or compressing, or

(iii) working, excavating, transporting or storing any minerals in or under the land referred to in the lease, licence or permit or under land in the vicinity of that land.

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.*

Notice to attend or produce

465(1) *When, in the opinion of an assessment review board,*

(a) the attendance of a person is required, or

(b) the production of a document or thing is required, the assessment review board may cause to be served on a person a notice to attend or a notice to attend and produce a document or thing.

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.

Matters Relating to Assessment and Taxation Regulation [MRAT]

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;

(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 [MRAC]

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 [Cnd. Oxford]

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 [Oxford]
© 2014 Oxford University Press, n.d. Web. 24 January 2014.
<http://www.oxforddictionaries.com/words/contact-us>.

***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, 1**. forming an unbroken whole; without interruption. **2**. forming a series with no exceptions or reversals.*

***exclusive, 1**. excluding or not admitting other things. **2**. unable to exist or be true if something else exists or is true. **3**. (of terms) excluding all but what is specified.*

***permanent, 1**. lasting or intended to last or remain unchanged indefinitely. **2**. lasting or continuing without interruption.*

***use, 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**, the area near or surrounding a particular place*

Farmland versus farm land:

Within this decision, the Board refers to farmland as one word, which is any land that is suitable to farm. The Cdn. Oxford dictionary definition is; *"farmland, n: land used or suitable for farming."* The definition is very broad and can literally mean any 'green' area.

The MGA specifically uses farm land – two words. The Board explored the ordinary definition of these two words and found the Act purposefully implies something greater than just land suitable for farming. The Cdn. Oxford dictionary definition is; "*farm, n: an area of land, and the buildings on it, used for growing crops, rearing animals, etc."* The key word is used; no mention of suitability, nor is there any mention it may be used for. It is land that is used for a *bona fide* farming operation.

The Board does not doubt that farmers surrounding well sites might infringe upon land leased for well sites and these farmers are engaged in a *bona fide* farming operation. The primary issue before the Board is the continuous, permanent or exclusive use for a farming operation.

Are in use:

The term 'area in use' is used by all parties throughout the hearing, evidence and decision. The Board is unable to find that term in the Act, regulation or any dictionary. The Act and regulation

refers to area that is used for specific purposes. The Kneehill decision uses the term 'area in use' within their decision; however, no specific definition is found. The Board accepted 'area in use' as synonymous with an area used for a specific purpose.

Teardrop:

The term 'teardrop' is used by all parties throughout the hearing, evidence and decision. It is to describe the typical shape observed on a typical well site. Each well site has an access point, which forms the point of the teardrop and the rounded part surrounds the wellhead.

Measured and re-measured areas in use:

The Respondent in 2011 measured the area in use for some 1,600 industrial parcels of land created on leased well sites in preparation for the 2012 assessment. The Respondent did not verify or re-measure the area in use for the 2013 assessment. It appears the Respondent took greater care to find the correct area in use for the 272 properties before the Board in preparation for this hearing. The Respondent calculated a revised area in use that the Board refers to as the re-measured areas in use.

The Respondent did not request an increase in the assessment for the corrected measurement of the area in use. The Board is concerned with finding the correct assessment. Therefore, the Board used the re-measured area in use.