

TUESDAY, THE FIFTEENTH DAY OF APRIL, 1958.

Before:

The Board of Public Utility  
Commissioners for the Province  
of Alberta

In the matter of The Public  
Utilities Act:

And in the matter of The City  
Act:

And in the matter of an appli-  
cation by the City of Edmonton  
for the annexation to the city of  
properties hereinafter described.

Upon the application of the Council of the City of Edmonton for an  
Order to include within the city certain territory adjacent thereto:

And upon hearing representation thereon at a public hearing held  
at the office of the Board of Public Utility Commissioners in the City  
of Edmonton on the 18th day of February, 1958:

And it appearing that there is need for the annexation of the area  
and that it is particularly suitable for the purpose to which it is to  
be put:

And it appearing that the City of Edmonton and the Municipal  
District of Strathcona No. 83 having reached agreement on all questions  
incidental to the proposed annexation:

And it appearing that while there is a need for the annexation of  
the area that it is particularly suitable for the purpose to which it is  
to be put, it will be some time before the entire area is fully developed,  
and in the meantime the taxpayers of the undeveloped portion will  
not be receiving much more in the way of services from the City than  
they have been receiving from the municipal district.

It is ordered that:

1. Subject to the aftermentioned conditions the following described  
land to be annexed to the City of Edmonton as of December 30, 1957,  
namely:

*Firstly:* The north half and the fractional south half of section 15,  
township 52, range 24, west of the fourth meridian, in the Province of  
Alberta, as shown on a plan of survey signed at Ottawa on the 7th day  
of November, 1908, containing four hundred and twenty-three and two-  
tenths (423.2) acres more or less;

*Secondly:* The portion of original road allowance adjoining the  
west boundaries of the said north half and fractional south half of said  
section 15, township 52, range 24, west of the fourth meridian, in the  
said Province, containing five and twenty-seven hundredths (5.27) acres,  
more or less;

*Thirdly:* The portion of the original road allowance adjoining the  
north boundary of fractional section fifteen-R (15-R), township 52,

range 24, west of the fourth meridian, in the said Province, being in the Papachase Indian Reserve No. 136 as shown on a plan of the said Indian reserve as resurveyed in October 1890 by John C. Melson, D.L.S., containing eight acres (8.0) more or less;

*Fourthly:* All of the road allowance intersection of the said road allowance at the south-west corner of the said fractional south half of section 15, township 52, range 24, west of the fourth meridian, in the said Province, containing ten hundredths (0.10) of an acre, more or less.

#### Conditions

1. It is a condition of this order that all small holdings occupied by veterans under the provisions of The Veterans' Land Act are to be assessed on the same basis of assessment as would be applicable to them had such parcels remained in the Municipal District of Strathcona No. 83, and the maximum rate which the City may tax such lands shall be the mill rate of the City of Edmonton or of the Municipal District of Strathcona No. 83, whichever is the lesser. At the expiration of ten years from the date of the Veterans' Agreement, or at such time as a veteran is entitled to take title and dispose of his holdings or part thereof shall be assessed and taxed in the same manner as other properties within the city.

2. It is further ordered that any parcel of land of 8 acres or more from which the owner or tenant derives an income sufficient to provide his principal livelihood from the production of crops or livestock or from fur production, beekeeping or hog ranching, shall be assessed as farm lands and shall be taxed at the current mill rate prevailing within the city, and the buildings and improvements necessary for the said operations shall be exempt from taxation.

3. All of the foregoing is subject to the general condition that, exclusive of any rate necessary to raise the cost of local improvements abutting any parcels of land in the said area, the taxes charged in respect of parcels of land in the said area to which the city has not made water and sewer available will not represent an increase over the taxes that the parcel would be liable for had the area remained in the municipal district. As soon as the city has made water and sewer available to any parcel of land within the said area then normal city taxes, subject to the foregoing conditions, will apply to that parcel.

4. In the event that the Municipal District of Strathcona No. 83 and the City of Edmonton fail to come to any agreement as above indicated either party may apply to the Board.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS  
R. D. HENDERSON, Chairman."

The city submitted that under the provisions of section 148, subsection (2), clauses (b) and (c) of The Public Utilities Act, being Chapter 267, Revised Statutes of Alberta, 1955, the Board, when issuing Order No. 21762, exceeded its jurisdiction in respect to the granting of Conditions "2." and "3." by not fixing a term of years to each of the said conditions.

The city submitted therefore that Conditions "2." and "3." of the Board Order were void and of no force and provided this successor Board with a legitimate reason to rescind Conditions "2." and "3." which were improper in the first instance.

Respecting Condition "1." of the Order, the city further submitted that there are no longer any parcels of land in the annexation territory covered by Board of Public Utility Commissioner's Order No. 21762 which are affected by this condition.

For this reason it was submitted that Condition "1." should be rescinded.

In support of its further contention that both Conditions "2." and "3." should be rescinded on the basis of changing economic and social conditions over the interval since 1958, which have led to a drastic increase in land values, the city introduced evidence to show that one 47 acre parcel of land in the subject territory was — under terms of the 1958 Order and Conditions — being taxed for \$132.68 in 1972, compared to the tax of \$7,387.20 which the city imposed on the same parcel in 1973 when it ignored the Conditions of Order No. 21762. The latter taxation yield, the city submitted, was equitable with surrounding properties and taxes throughout the City of Edmonton.

The only two other large privately-owned parcels of land in the annexation territory were one of 51 acres and one of 45 acres, taxed at \$144.00 and \$134.00 respectively in 1972 by the city — under the terms of the 1958 Order and Conditions — compared to the taxes of \$8,120.00 and \$7,186.00 which the city imposed in 1973 on the two parcels when it ignored the conditions of Order No. 21762. Similarly, the city submitted, the 1973 tax yields were equitable and fair for these latter two parcels when compared with other properties in the city.

The city stated that the Board should rescind the conditions to Board of Public Utility Commissioner's Order No. 21762 effective at December 31, 1972 because of the inequity that was being created by the "tax concessions" which were being provided to certain landowners in the annexation territory under Conditions "2." and "3." of the Order.

Finally, the city stated that the low taxation that was directed upon the large parcels of land under the conditions of the Order could have the tendency to make the subject landowners more difficult for the city to approach respecting subdivision and development than would be the case if normal taxes on the properties prevailed.

Mr. Teskey submitted on behalf of his client that if the Local Authorities Board finds that the conditions of Order No. 21762 should be imposed for a fixed term of years as was represented by the city, that the Local Authorities Board, under section 55 and section 132 of The Local Authorities Board Act, has power to remedy that defect at this time.

He observed that any argument that the conditions of the Order are invalid are not properly before this Board and should be made before a court of law.

He further submitted that albeit there is not a fixed number of years within the conditions to the Order, that it is arguable that there is a specific time period: that is, the time (in Condition "3.") until which water and sewer services are made available to the lands.

Mr. Teskey submitted that the order and conditions clearly set forth that the extension of sewer and water facilities is the triggering event for the changing of the "taxation rules" respecting the lands in the annexation territory and that the city should not be permitted to change the rules because it — as one affected party — may suffer a short-term tax disadvantage.

Mr. Teskey said that his client's lands were in process of being replotted and that normal progress was being made in this regard. The annexation terms and conditions, he submitted, were normal and should be continued.

Mr. Wallace P. Prosser, an interested citizen, who owns property which is situated in the City of Edmonton and was annexed thereto under provisions of Board of Public Utility Commissioner's Order No. 24581 dated April 22, 1960 (Refer *The Alberta Gazette* April 30, 1960) as amended by Public Utilities Board Order No. 24926, dated September 6, 1960 (Refer *The Alberta Gazette* October 31, 1960) effective with the tax year 1960, stated that the Order as amended containing a Clause or Condition "7." (see amendment Order No. 24926) similar to Condition "3." of Board of Public Utility Commissioner's Order No. 21762, was also being ignored by the city even though his property was not, in 1973, served by city water and sewer services as was agreed at the time of the 1960 annexation at Clause "7".

He stated that the city had honoured Order No. 24581 as amended and the conditions therein, insofar as his property was concerned, for the years 1960 to 1972 inclusive but had ignored Condition "7." in the year 1973 which resulted in the taxes on his property increasing from about \$670.00 in 1972 to \$1,268.00 in 1973.

Mr. Prosser stated that at the time of the annexation of his lands in 1960 the affected landowners were assured of the tax protection outlined in Order No. 24581 as amended and the conditions thereto and that the city should not be allowed to "... unilaterally ... scrap that agreement ..." after honouring it for thirteen years, on similar grounds to today's application that Condition "3." also does not have therein "a fixed term of years".

Mr. Burgess, counsel for the city advised the Board that the city had taken the same position in respect to Board of Public Utility Commissioner's Order No. 24581 as amended by Public Utilities Board Order No. 24926 (Prosser) insofar as the conditions therein being deficient by reason of the omission of the "fixed term of years", as it was taking in the present instance.

After considering all the evidence that was presented at the hearing; after reviewing the governing legislation and Board Order No. 21762, and the conditions thereto; the Board has reached the following substantial conclusions:

- (a) the city's request to rescind Condition "1." should be granted because the condition no longer has application in the annexation territory.
- (b) the Board does not favour rescission of Condition "2." but will amend it to set forth a fixed term of years for the applicability of the assessment and the taxation provisions therein.

There are only three (3) private parcels of lands in the annexation territory (forty-seven (47) acres, Sabo Bros. Construction Ltd.; fifty-one and four-tenths (51.4) acres, Bruce McLean; forty-five and five tenths (45.5) acres, Bruce McLean) which might still fall under "protection" of this clause, though in 1973, the Sabo parcel was summer fallowed and the McLean parcels were left idle, making all three parcels apparently ineligible for the "farmland" benefits of Condition 2.

The reason that the Board is fixing a time limit is primarily because of the very rapid increase in land values throughout the city and in the immediate annexation area coupled with the city's evidence of the strong demand for industrial lands in the general Davies area.

It appears to the Board that continuation of the assessment and taxation provisions afforded by Condition 2. to the end of the year 1974 — to farm lands that qualify under the Order's directive — will be fair to the landowners and the City of Edmonton in the circumstances.

"Farmlands" at the County of Strathcona No. 20 rate of assessment are about \$58.00 per acre in the annexation area compared to the urban assessment of \$2,924.00 per acre in 1973.

- (c) the Board does not favour rescission of Condition 3. but will amend it to set forth a fixed term of years for the applicability of taxes to be charged to parcels in respect of which the city has not made water and sewer available.

The reason that the Board has chosen to fix the time limit is again because of the rapid increase in land values of properties in the annexation territory and the evidence of a strong demand for industrial subdivision in the immediate Davies area.

The city gave evidence to the Board showing that it had made further extensions of its water and sewer services in the annexation territory in the year 1973 — an action which may result in even the amended Conditions 2. and 3. becoming in practice, inoperative in 1974, by reason of all properties in the area having available to them the city's sewer and water services.

It is ordered therefore that the Board of Public Utility Commissioner's Order No. 21762 dated April 15, 1958 be amended as follows:

*Firstly:* As to Condition "2." thereof, by inserting immediately after the word "shall" wherein it first appears after the words "hog ranching", the words "for the years 1958 to 1974 inclusive".

*Secondly:* As to Condition "3." by inserting immediately after the word "taxes" wherein it first appears before the word "charged", the words "for the years 1958 to 1974 inclusive".

Dated and signed at the City of Edmonton, in the Province of Alberta, this 18th day of June, 1974.

LOCAL AUTHORITIES BOARD,  
C. G. MACGREGOR, Chairman,  
I. MORRIS, Member.

Certified a true copy,  
B. CLARK, Secretary.