

Before:

The Local Authorities Board
for the Province of Alberta.

In the matter of The Local
Authorities Board Act:

And in the matter of an appli-
cation by Wallace P. and Mavis
Prosser, R.R. 3, Edmonton, Al-
berta for separation of certain
lands from the City of Edmonton,
Alberta.

Pursuant to an application by Wallace P. and Mavis Prosser, joint owners of lot 4 plan 309 K.S. (north-west quarter of section 11, township 52, range 25, west of the fourth meridian, containing five (5) acres, more or less, and situate in the south western part of the City of Edmonton (inside the city limits about one and one-quarter (1¼) miles), petitioning for the separation of their property from the City of Edmonton, in the Province of Alberta, in accordance with the provisions of section 120 of The Local Authorities Board Act, the Board commenced the hearing of the matter on March 20th, 1974 in Edmonton and, after adjournment re-commenced the hearing on Tuesday, May 14th, 1974 in the said city.

The applicants were represented by Mr. Prosser.

The City of Edmonton was represented by Counsel Leo J. Burgess who had in attendance as witnesses assessors Ed Staniforth and Art Cooper of the city's assessors department.

The applicants represented that when their lands were annexed to the City of Edmonton effective on December 30, 1959 against their wishes and under the provisions of Board of Public Utility Commissioner's Order No. 24581 as amended by Order No. 24926 they were told at the public hearings held in regard thereto, that they were "...guaranteed... that until such time as sewer and water were made available and (their) land could be subdivided that (they) would not have to pay taxes in excess of what they would have been had (they) remained in the county".

Mr. Prosser said condition 7 of the Order honours and sets forth this agreement reached between the landowners and the City of Edmonton at the public hearing and as at May 1974 the City has not made sewer and water available to his property i.e. lot 4, plan 309 K.S.

In 1973, in spite of its failure to make sewer and water service available to said lot 4, Mr. Prosser stated, the City of Edmonton's assessor and tax collector, disregarded the terms of condition 7 of the aforementioned Orders and taxed the Prosser's lot for 1973 City of Edmonton taxes (based on a city assessment for land of \$16,470, a building (residence) assessment of \$6,640 — total 1973 city assessment for taxation purposes \$23,110) of \$1,247.94 calculated at 54 mills.

Mr. Prosser stated that the 1973 city taxes of \$1,248.00 represented an increase of about \$577.00 in taxes over the amount of taxes that the city should have levied on the parcel under the provisions of condition 7 (subject to mill rate changes) of the Order.

Mr. Prosser stated that he had approached the office of Alberta assessment commissioner with the view of determining the approximate tax that should be imposed on his property under the provisions of condition 7.

He stated to the Board that the assessment commissioner's offices calculation of 1973 taxes on lot 4 was approximately \$634.44 basis condition 7.

Mr. Prosser said he repeatedly visited City Hall in an endeavour to have the city honour condition 7 of Order No. 24581 as amended by Order No. 24926, without success, and now requested that the Board correct whatever technical or legal deficiencies there may be in the orders and conditions to ensure that the city is required retroactive to January 1st, 1973 to honour the sewer and water agreement which was made at a public hearing with he and his wife (and all other affected parties) in November 1959.

As a point of record, the City of Edmonton firstly submitted that the applicant has no authority under the Local Authorities Board Act to apply to separate his land from the city since the land is not adjacent to a rural municipality to which it could be annexed.

Board Note: The applicant is applying for separation under section 120(1) of The Local Authorities Board Act and has not petitioned to have his land attached to a rural municipality under section 122. He hopes to have the Board act under section 120(5) of the Act, if the hearing determines such action is required.

The city represented that the property had not been paying — prior to 1973 — an equitable tax when compared with properties of similar market value in the city.

The city further submitted that condition No. 7 was in effect granted in perpetuity since no fixed term of years was set therein (See section 148, chapter 267 R.S.A. 1955) and this inordinately long period of time

for the passing on of this "tax benefit" to the parcel was unfair in the circumstances, due to the tremendous increase in the value of the parcel which was bought in 1956 for \$3,000.00.

The Board introduced as evidence a letter it had received from County of Strathcona No. 20 Assessor L. Harder dated January 9, 1974 setting forth the assessment of the Prosser's Lot 4 "as if it were still located within the boundaries of the County of Strathcona" under clause 7 of the Order.

Mr. Harder assessed the land at \$920.00; the improvements at \$7,840.00; total assessment \$8,760.00.

At the 1973 county mill rate of 68 he calculated the 1973 taxes on the property would be \$595.68.

The aforementioned information had been sought by the Board in a letter addressed to the secretary-treasurer of the County dated December 3, 1973.

Mr. Hardie did not appear to give evidence but the Board offered to bring him forth at the city's request which was not forthcoming.

Board Note: The Board made two independent checks with officers (Laidlaw and Cross) of the provincial assessment commissioners office relating to the probable taxes on the lot under condition 7 for 1973 and obtained substantial confirmation of the Harder approach and figures.

After considering all the evidence that has been presented to it, the Board has reached the following substantial conclusions:

- (a) The application of Wallace P. Prosser and Mavis Prosser for separation of lot 4, plan 309 K.S. (N.W. 11-52-25-4) from the City of Edmonton, Alberta, should be refused.

The Board sees no requirement for the applicant to request annexation of his property to a rural municipality as the city contemplates.

- (b) The Board should amend the conditions to Board of Public Utility Commissioner's Order No. 24581 as amended by Order No. 24926 to provide therein for a fixed term of years relating to matters of taxation.

While we consider that the property has appreciated in value very considerably over the period from 1960 and that its market value today must be taken into account and weighed against other considerations or conditions earlier set in the original Order, there is no question in the Board's mind that the Board of Public Utility Commissioners, in the last paragraph of the preamble to Order No. 24581, realized that it would be some considerable time before the entire area was fully developed and receiving city services i.e. water and sewer availability and wished to protect unserviced lands from "normal City taxes", hence condition 7.

- (c) The Board interprets the present condition 7 (Order No. 24926) of Order No. 24581 to direct that:

Firstly: All parcels annexed to the city to which the city has not made sewer and water available shall pay —

- (1) local improvement taxes, if applicable; and
- (2) property, improvement and business taxes not in excess of those the parcel would be liable for had the parcel remained in the (municipal district) county.

Secondly: All parcels annexed to the city and to which the city has made sewer and water available shall pay —

- (1) local improvement taxes, if applicable; and
- (2) normal city taxes, subject to conditions 1 to 6 of Order No. 24581, if they are applicable to the parcel.

The Board sees no particular problem relating to the application of the present clause 7 in any year.

It is ordered ~~therefore~~ as follows:

I. That the application of Wallace P. Prosser and Mavis Prosser, joint owners of lot 4, plan 309 K.S. (N.W. 11-52-25-4) for separation of the said land from the City of Edmonton in the Province of Alberta is hereby refused.

II. That condition 7 of Board of Public Utility Commissioner's Order No. 24581 dated April 22, 1960 (*The Alberta Gazette* — April 30, 1960) as amended by Public Utility Board Order No. 24926 dated September 6, 1960 (*The Alberta Gazette* — October 31, 1960) is hereby amended by inserting after the word "will" wherein it appears in the first sentence of condition 7, the words "for the years 1960 to 1975 inclusive".

Dated and signed at the City of Edmonton, in the Province of Alberta, this 14th day of June, 1974.

Certified a true copy,
B. CLARK, Secretary.

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