

LOCAL AUTHORITIES BOARD

Board Order No. 6474

File: C-20-A(7)

Before:

The Local Authorities Board for the Province of Alberta.

In the matter of The Municipal Government Act:

And in the matter of an application by the majority of the registered owners of a certain territory in the County of Strathcona No. 20 lying immediately adjacent to the City of Edmonton, Alberta, petitioning for annexation of the said area to the city.

Pursuant to an application by the majority of the registered owners of a certain territory in the County of Strathcona No. 20 lying immediately adjacent to the City of Edmonton in the Province of Alberta, as more particularly described immediately hereunder, requesting annexation of the territory to the City of Edmonton, the Board conducted a public hearing of the matter in the City of Edmonton on April 11, 1973.

Description of lands proposed to be annexed to the City of Edmonton and separated from the County of Strathcona No. 20.

1. All of section 32, township 51, range 24, west of the fourth meridian in the Province of Alberta, lying west of the west limit of the Canadian Pacific Railway Right-of-way as shown on Railway Plan C & E #1.

2. Province of Alberta Highway No. 2 as shown on registered Plans 1390 E.U., 4795 E.U. and 814 P.X. in the east half of section 32, township 51, range 24, west of the fourth meridian.

3. The original road allowance adjoining the east boundary of the east half of section 31, township 51, range 24, west of the fourth meridian.

4. The fractional north-west quarter of section 31, township 51, range 24, west of the fourth meridian in the Province of Alberta, being in the Papachase Indian Reserve No. 136, as shown on a plan of subdivision of said reserve in October, 1890, of record in the Department of Indian Affairs, containing one hundred and thirty-three (133) acres more or less. Excepting thereout — All that portion of the north-west quarter of section 31, said township and range, shown as Parcel (B) on a plan of survey filed as Plan 3027 C.L. containing seventy-six and forty-eight hundredths (76.48) acres more or less. The land hereby described containing fifty-six and fifty-two hundredths (56.52) acres more or less.

5. All that portion of the north-east quarter of section 31, township 51, range 24, west of the fourth meridian in the Province of Alberta. Excepting thereout — Lot R-One (R-1) (Reserve) containing fifteen and eleven hundredths (15.11) acres more or less, in the said Province, as shown on subdivision Plan 513 R.S. (N.E. 31-51-24-4).

Appearing as counsel for the Applicant representing the majority of the registered owners of the "annexation territory" was James A. Cox, who called as witnesses Mr. J. Monaghan, development officer; Alldritt Development Company Limited; and Robert Mayne, P.Eng., Underwood, McLellan & Associates Ltd.

The County of Strathcona No. 20 was represented by E. J. Walter LL. B., who appeared for A. M. Brownlee, Q.C., solicitor for the county. Mr. Walter had in attendance Reeve Roger Parker and Secretary-treasurer Alfred Hawkins of the county.

Counsel for the City of Edmonton was H. F. Wilson who called as witnesses Commissioner George Hughes; Mr. Clive Rogers, superintendent of planning and Mr. Philip Walker, director of realty development for the city.

Norman Giffen, M.T.P.I.C., Director, Edmonton Regional Planning Commission attended to represent the commission.

Mr. P. J. Mousseau appeared as counsel for Messrs. Tomas and Alex Opalinski, owners of lands in the annexation area.

The Edmonton Taxpayers Association was represented by members Eric Riley and Mr. Querengesser.

Mr. R. I. Broughton, a landowner in the annexation area spoke on his own behalf and on behalf of his neighbor landowner, Don Wheaton.

Mr. Angus Murray appeared on his own behalf as the owner of a parcel of land in the annexation territory.

Mrs. Janet Yaskowich made inquiry respecting proposed school building sites in the area.

The applicant represented generally that the annexation area should be annexed to the City of Edmonton for the following reasons:

- (a) the lands form a part of the Kaskitayo Outline Plan, a part of which is already within the city limits.
Development of this area is complementary to the development of the residential area of Mill Woods and the adjoining industrial area.
- (b) the services have been designed to serve the annexation area and efficiency and economy dictates that the lands should be developed and annexed.
- (c) the proposed roadways including the ring road and major 23rd Avenue roadway are designed in accordance with the outline plan.
- (d) the annexation area should be developed along with the lands immediately north as one unit all within the city limits to include provision for neighborhood roads, schools, services and other facilities.
- (e) early annexation is favoured to allow "planning time" before actual development; i.e., 5 years advanced planning for major school sites etc.; heavy financing requirements of developers respecting services; large areas to be assembled to allow continuity of development under one planning authority — The City of Edmonton.
- (f) the annexation area is in a section of the city where there is a demonstrated demand and desire for housing on the part of the public.
- (g) the lands form a natural geographical area for development, lying west of the Calgary Trail, inside the outer ring road and to the east of Blackmud Creek.
- (h) it is completely undesirable to allow the development of urban communities with large populations on the immediate boundary on an existing large municipality.

Where such has occurred the problems of integrating utility, transportation and other services have been so immense and cumbersome that in many cases efforts at eliminating multi-governmental metropolis has been undertaken.

It is therefore desirable that this area be annexed and developed to minimize these problems with respect to Edmonton.

The Applicant further represented that:

(1) The City of Edmonton generally supports the annexation application subject to certain conditions which are basically conditions of a development agreement.

(2) While the city requests that no tax concessions be given to any of the lands annexed to the city under this application, the petitioners request that a taxation condition be awarded as was awarded under Board Order No. 5626 covering lands on the west side of Edmonton, on the 24th day of January, 1972.

In particular the applicants request that the lands bear the same amount of tax as if the same has remained in the County of Strathcona.

The lands ought not to be fully assessed (and taxed) until the land is used or could be used for development because without a Board tax concession order, the recent escalation in the city tax rate on land held for development will defeat any attempt that the city makes to reduce land costs to the home buyer.

Further, this recent tax increase combined with the change in city policy as to servicing will make it impossible for anyone but very large developers to develop lands which will in turn result in a monopoly which will tend to reduce competition in the supply of lots.

The Edmonton Regional Planning Commission's director advised the Board of general support for the annexation application but suggested that the centre of the Blackmud Creek bed could and should be used as the annexation boundary in S.W. 32-51-24-4 rather than the quarter section line subject to Land Titles Office acceptance of a parcel description.

Mr. Giffen was of opinion that the Blackmud Ravine physically separated the areas lying south and west of Blackmud Creek from the areas proposed for development under the Kaskitayo Outline Plan and that the annexation area should be amended in this respect in S.W. 32. He advised the Board that it was his understanding that the Land Titles Office was prepared to accept a metes and bounds description for that portion of the Opalinski Parcel (Certificate of Title No. 70-B-236) in S.W. 32-51-24-4 that lies north and east of the centre line of the stream of Blackmud Creek.

The County of Strathcona No. 20 neither consented nor objected to the granting of the application but strongly objected to the inclusion of the triangle of lands in S.W. 32-51-24-4 lying generally south and west of Blackmud Creek being included in the annexation area.

The City of Edmonton's support of the application resulted from a recommendation of council passed on March 13, 1973:

"That City Council support the above noted annexation request on the understanding:

(1) That the applicants will be subject to the development policies of The City of Edmonton as set out in the standard terms of reference for a developers' agreement as adopted by Council July 17, 1972.

(2) That there be no tax concessions given to any of the lands annexed to the city under this application."

Commissioner Hughes submitted that property in the city and in the County of Strathcona would be assessed under the same legislation and subject to the same rules and regulations of assessment and assuming the assessors from the city and county had applied these rules adequately, there should be no assessment differential. Assessment of bona fide farm land, exclusive of improvements, brought into the city under the annexation, should be equitable therefore with their assessments in the county. He agreed that a bona fide farmer's improvements (buildings) brought into the city by annexation would be subject to assessment and taxation whereas such improvements would remain exempt in the rural municipality.

The city noted that the territory falls within one of its residential outline plan areas and that economic utility services could be provided thereto by extensions to trunk lines from the existing developed area to the north and from the Mill Woods area to the east.

The city agreed with the applicant that the best utilization and development of the portion of the Kaskitayo Outline Plan within the city limits was dependent upon complementary development and use of the portion of the outline plan in the annexation territory.

In concluding, the city observed that the area offered a rich potential for residential development, ranging from one family dwellings to higher density apartment uses.

Counsel Mousseau for the registered owner of the lands described in Certificate of Title Numbered 70-B-236 (Tomas Opalinski) comprising some one hundred and forty-one and seventy-three hundredths (141.73) acres, more or less in the S.E. 32-51-24-4 and some one hundred and forty-six and seventy-nine hundredths (146.79) acres, more or less in the S.W. 32-51-24-4, submitted that his client had not sought annexation but would not oppose it on the following three conditions:

(1) that his lands in S.W. 32 should all be annexed to the city.

He opposed the proposal to annex only that portion of his client's lands in S.W. 32 which lie north and east of the Blackmud Creek, thereby creating a subdivision of his farm lands in this quarter section and making the parcels subject to dual planning and development jurisdictions and controls and the liability to dual land dedications under section 25 of The Planning Act. He stated that the use of Blackmud Creek as the annexation boundary would have the effect of placing the south westerly "triangle" portion of the S.W. 32 lands "in limbo" — under subdivision regulations.

(2) that the presently used farm lands (and farm improvements) continue to be taxed on the same basis as they are presently taxed (in the County of Strathcona) so long as they continue to be farmed.

(3) the owner does not agree to enter into a development agreement (with the city) or be subjected to a development policy as is reflected in the 1972-1973 standard residential servicing agreement in as much as they are not out to develop this particular piece of property.

Mr. R. I. Broughton, owner of Lot "C", a four and seventy-two hundredths (4.72) acre parcel of land in Plan 2657 M.C. (Pt. S.W. 32-57-24-4), the major portion of which lies south westerly of Blackmud Creek opposed annexation of his land to the city because of:

- (a) fear of increased taxation in the city.
- (b) reluctance to change from county school system to city school system at this time.
- (c) reluctance to change municipal administration.

Mr. Broughton relayed his neighbor's (Don Wheaton — owner under agreement for sale of Lot "B", Plan 2657 M.C. — 3.69 acres) objection to annexation to the city for similar reasons.

Mr. Angus Murray joint owner with his wife, of a one (1.00) acre parcel of land, Parcel "A", Plan 6217 H.W. (Pt. N.E. 31-51-24-4) opposed annexation of his land to the city because of the uncertainty respecting taxation and development under city administration and because of his fixed income.

The Edmonton Taxpayers Association represented that its executive was instructed by unanimous vote to oppose the granting of the within annexation application for the following reasons:

- (a) there are close to 40,000 acres within the present city limits which are available for development.
- (b) if these 700 acres are annexed the city will be responsible for policing, fire protection, road maintenance, public transportation and other services with no assurance of an increase in the present tax structure now in effect. His association believes that the property will always be available when deemed necessary and that annexation was not indicated at this time.

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

(1) The area proposed for annexation to the city in township 51, range 24, west of the fourth meridian, with the exception of:

- (a) a portion or "sliver" of unsubdivided land (Certificate of Title No. 70-B-236 T. Opalinski) in the south-east quarter of section 32, lying east of the C.P.R. in Plan No. C & E No. 1 and west of cancelled government road allowance described in Certificate of Title No. 134-B-165, containing an estimated thirty-eight hundredths (0.38) acre, more or less; and
- (b) a fraction of the unsubdivided lands (Certificate of Title No. 70-B-236 T. Opalinski) in the south-west quarter of section 32, lying south and west of Blackmud Creek, estimated by the Board to contain about forty-eight (48) acres more or less; and
- (c) a certain portion of the south-west 32 comprising all of lots "B" and "C" and Park Reserve lot "R" in Plan 2657 M.C. containing three and sixty-nine hundredths (3.69) acres, more or less, four and seventy-two hundredths (4.72) acres, more or less and one (1.00) acre, more or less, respectively, together with the adjoining portions of road shown on Road Plan 621 R containing two and eight tenths (2.8) acres, more or less and on Road Plan 2223 T.R. containing fifty-five hundredths (0.55) acre, more or less,

should be annexed to the city to allow for its development in accordance with the Kaskitayo Outline Plan, as major trunk services become available and as residential demand dictates.

(2) The Board is of opinion that the city has need of this desirable area for residential expansion and that the economics of trunk expansions within the adjacent city area must consider customer potential from this portion of the Kaskitayo Outline Plan area.

(3) We believe that the lands referred to at (1) above should be annexed to the city effective at the beginning of 1974 and in this regard do not agree with the Edmonton Taxpayers' Association representation that the application should be refused because:

- (a) the city has within its present limits some 40,000 acres of available undeveloped lands and does not require additional lands. The Board estimates the city's total acreage at 77,000 and its available undeveloped lands suitable for residential development at between 14,000 and 16,000 acres. (Board note: a city planning official places the figure at about 17,000 acres at this time.)
- (b) the city will be burdened with the costs of servicing the annexed lands pending their development (without adequate compensation in revenue) which is an unfair load to place on city ratepayers.

While the city will be assuming the responsibility for maintaining certain services to persons and properties in the annexed area, the Board observes that it will also be receiving taxable assessment amounting to some \$350,000 and one-half mile of highly improved road.

- (c) the lands will be available when the city requires them.

The Board's concern is that without annexation, the lands may not necessarily remain in their present undeveloped form.

We believe that the city should now have direct planning and development control over the lands to be annexed and for which an outline plan has been prepared.

A prior or other use or development of the "annexation lands" while left outside the city would and likely would seriously jeopardize the best use of "the Kaskitayo Outline Plan lands" now within the city limits.

The Board has considered the representations of the City of Edmonton that there should be no tax concessions given to any lands annexed to the city under this application, it being noted by the city that previous Board Order No. 4804 annexing parts of sections 5, 6R and fractional section 6, township 52, range 25, west of the fourth meridian and part of east half of section 1, township 52, range 25, west of the fourth meridian — the lands lying adjacent to the subject area — provided no conditions respecting taxation of lands subsequent to their annexation to the city.

In this regard, the Board found on July 13, 1973, upon casual inspection of the lands which were annexed to the city effective on January 1st, 1971, under Board Order No. 4804, that the original farm lands continued to be used for farm purposes; however, the city assessment roll carried the majority of these parcels for the year 1973 at a rate of \$3,900.00 per acre, as compared with farm land assessment across the road to the south in the County of Strathcona being carried at from \$42.00 to \$65.00 per acre.

Upon reporting these findings to J. B. Laidlaw, assessment commissioner, Province of Alberta, Edmonton, his inspector of assessments, Sam Grimson, advised him that the \$3,900.00 per acre assessments were under appeal to the city's court of revision being held in 1973. The commissioner was thus unable to review the matter at this time.

Mr. Grimson confirmed that the lands were actually being used for farm purposes.

The Board is of opinion that farm lands that are annexed to the city — or any other urban municipality — should be assessed equitably

with other farm lands in adjoining rural municipalities, pursuant to the provisions of The Municipal Taxation Act and that it appears necessary to include this condition in our Order, so that the onus is not put upon the owner of bona fide farm lands to appeal a "non-farm land" urban assessment to gain this equity, pending subdivision of his lands. Short, "renewable — upon — application" terms to such a condition are included in this Order.

Had the Board in July 1970 predicted that the farm lands that it annexed to the city under its Order No. 4804 effective on January 1, 1971 were to be assessed in 1973 at \$3,900.00 per acre while still being used for farm purposes, while the adjoining county farm land assessments bore assessments of up to only \$65.00 per acre, it is inconceivable that we would have ignored the 1970 applicant's (B.O. 4804) plea for assessment and taxation provisions such as we granted under Board Order No. 3981, as was sought.

We also believe that farm improvements situate on bona fide farm lands annexed to urban municipalities should, in general, be exempted from assessment and taxation pending subdivision of the lands and we will include a condition in this regard for a short, "renewable — upon — application" term.

Respecting Mr. Opalinski's representations concerning S.W. 32-51-24-4 particularly, (though his "new-found" sliver of land lying east of the tracks in S.E. 32 is troublesome), the Board, on the following main considerations has decided that only that portion of his parcel lying generally north easterly of the centre line of Blackmud Creek and to the east of the east limit of Road Plan 223 T.R. should be annexed to the city at this time because:

(1) the portion of S.W. 32 lying south westerly of the Blackmud Creek is not planned for residential development as a portion of the Kaskitayo Outline Plan which is under active consideration by the Edmonton Regional Planning Commission and the city.

(2) the planning commission indicates that the area of S.W. 32 lying generally south westerly of Blackmud Creek is physically separated from the outline plan area to the north and east, and should be left in the county with other lands between Whitemud and Blackmud Creeks—until studies of the "between creeks" areas are undertaken.

(3) the Registrar, Land Titles Office, appears willing to issue, without necessity of a survey, a separate certificate of title for the portion of Mr. Opalinski's land in south-west 32 which lies generally south westerly of the centre line of Blackmud Creek, and by his so doing, there is not, in the Board's opinion a "subdivision" of S.W. 32 created under terms of "The Planning Act". The Board sees no planning or other problems arising from its choice of municipal boundary in this quarter section.

Accordingly, the Board is directing as a condition of this Order that the owner of the lands in that part of the S.E. quarter of section 32 lying west of Highway No. 2—(T. Opalinski) and in that part of the south-west quarter of section 32 lying north easterly of the centre line of Blackmud Creek and easterly of the east limit of Road Plan 2223 T.R. (T. Opalinski) should obtain separate certificates of title for the areas of these two quarter sections which are being annexed to the city.

(Board note: Respecting the portion of S.E. 32-51-24-4 lying to the east of Highway No. 2, including the C.P.R. Right-of-way and the Opalinski "sliver" of land, the Board intends on its own motion to initiate

a proposal to annex the said right-of-way and the "sliver" of land which comprises a part of Mr. Opalinski's title. If total consents to the proposal are obtained from all interested parties, a further annexation Order will then issue to bring this isolated strip of county territory into the city.)

The use of "the creek boundary" throughout the S.W. 32, excepting for the use of a short distance along the east limit of Road Plan 223 T.R. as the boundary, will "automatically" exclude Plan 2657 M.C. from annexation to the city.

Incidentally in this connection, Messrs. Broughton and Wheaton, owners of the two private lots in this subdivision, having provided their own utilities, opposed annexation of their properties to the city.

IT IS ORDERED THEREFORE as follows:

I. That there be annexed to the City of Edmonton, in the Province of Alberta and thereupon be separated from the County of Strathcona No. 20 the territory described on Schedule "B" attached hereto, the general location of which lands is shown on Schedule "A" attached hereto.

II. That any taxes owing to the County of Strathcona No. 20 as at December 31, 1973, in respect of the annexed property shall transfer to and become payable to the City of Edmonton together with the amount of any lawful penalties and costs levied thereon in respect of such taxes; however, upon the City of Edmonton collecting any or all of the said taxes, penalties or costs such collections shall forthwith be paid by the city to the said county.

III. The assessor for the City of Edmonton shall for taxation purposes in the year 1974, re-assess or re-value the annexed lands and assessable improvements thereon other than the properties described in Clause IV hereunder, so that the assessment or valuation thereof shall be fair and equitable with other lands and assessable improvements in the city.

IV. The assessor for the City of Edmonton shall for taxation purposes in the years 1974, 1975 and 1976 re-assess any annexed parcel of land comprising a farm unit or part thereof, as referred to in The Municipal Taxation Act, and the farm improvements thereon used in connection with the raising or production of crops or livestock or both, or in connection with fur production or beekeeping, on the same basis of assessment as would be applicable to them had such land and farm improvements remained in the County of Strathcona No. 20, provided however, that if:

- (a) the said land or a part thereof is subdivided, or if
- (b) the city, by resolution of council, or the owner or other interested person in writing prior to December 31, 1976 establishes before the Board that for other good and sufficient reason the provisions of Clause IV should be varied or rescinded, application may be made to the Board to implement such a change.

V. The chief provincial assessor, appointed pursuant to the provisions of The Municipalities Assessment and Equalization Act, shall for taxation or grant purposes commencing in the year 1974, re-assess or re-value, as the case may be, all properties that are assessable or subject to valuation under the terms of The Electric Power and Pipe-Line Assessment Act and The Municipal and Provincial Properties

Valuation Act, and which lie within the areas that are by this Order annexed to the City of Edmonton, so that the assessment or valuation shall be fair and equitable with properties of a similar nature.

VI. The registered owner of the lands described at items numbered "Secondly" and "Fourthly" in Schedule "B" attached to this Order, shall forthwith obtain from the Registrar, Land Titles Office, Edmonton Alberta separate certificates of titles for each of the annexed areas so described.

VII. The effective date of this Order shall be the 1st day of January, 1974.

Dated and signed at the City of Edmonton, in the Province of Alberta, this 8th day of August, 1973.

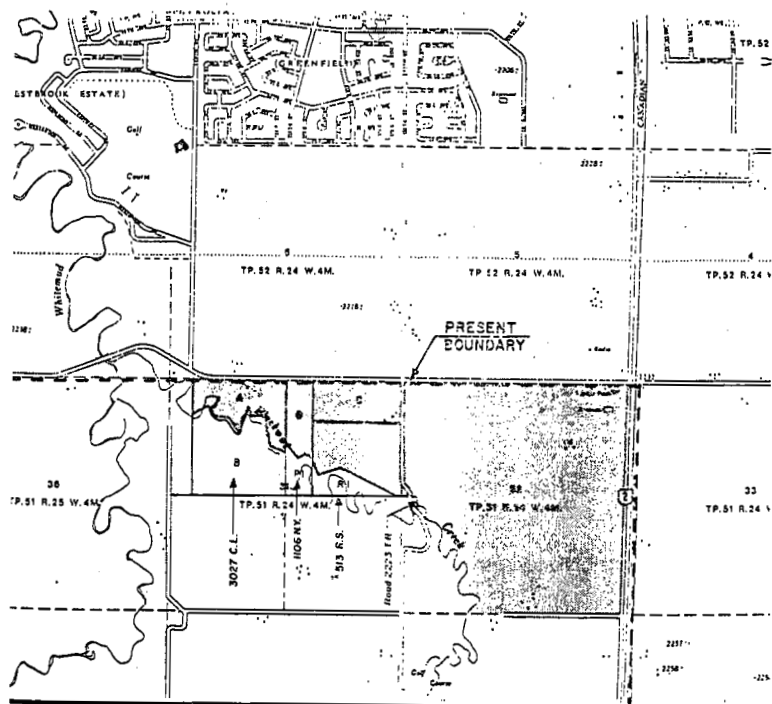
LOCAL AUTHORITIES BOARD
 C. G. MACGREGOR, Chairman
 I. MORRIS, Member

Certified a true copy,
 B. CLARK, Secretary.

SCHEDULE "A"

A SKETCH SHOWING THE GENERAL LOCATION
 OF THE AREAS AFFECTED BY ORDER No. 6474
 EFFECTIVE DATE - JANUARY 1, 1974

 AFFECTED AREA(S)



EDMONTON

SCHEDULE "B"

BOARD ORDER No. 6474

Description of territory annexed to the City of Edmonton, Alberta and separated from the County of Strathcona No. 20 effective on 1st day of January, 1974.

In the Province of Alberta in township 51, range 24, west of the fourth meridian:

Firstly: That part of the north half of section 32 lying west of the west limit of the Canadian Pacific Railway Right-of-way as shown on Railway Plan C & E #1;

Secondly: That part of the south-east quarter of section 32 lying west of the west limit of the Canadian Pacific Railway Right-of-way as shown on Railway Plan C & E #1;

Thirdly: That part of the east half of section 32, designated Province of Alberta Highway No. 2 as shown on registered Plans 1390 E.U., 4795 E.U. and 814 P.X.;

Fourthly: That part of the south-west quarter of section 32 lying north westerly of the centre line of Blackmud Creek and easterly of the east limit of Road Plan 2223 T.R.;

Fifthly: The original government road allowance adjoining the east boundary of the north-east quarter of section 31;

Sixthly: All of the north-east quarter of section 31 excepting thereout Lot R-One (R-1) containing fifteen and eleven hundredths (15.11) acres, more or less, as shown on registered Plan 513 R.S.; and also excepting thereout Park Reserve P-One (P-1), containing thirteen and six hundredths (13.06) acres as shown on Registered Plan 1106 N.Y.

Seventhly: The fractional north-west quarter of section 31 as shown on a plan of subdivision of Papachase Indian Reserve No. 136 dated October 1890 of record in the Department of Indian Affairs, containing one hundred and thirty-three (133) acres, more or less,

Excepting thereout — Parcel "B" as shown on plan of survey filed as Plan 3027 C.L., containing seventy-six and forty-eight hundredths (76.48) acres, more or less.

The lands herein described containing fifty-six and fifty-two hundredths (56.52) acres, more or less.