

**ASSESSMENT REVIEW BOARD  
MUNICIPAL DISTRICT OF FOOTHILLS NO. 31**

**NOTICE OF DECISION**

IN THE MATTER OF A COMPLAINT against the assessment of property pursuant to the *Municipal Government Act RSA 2000, Chapter M-26, January 1, 2010 and Amendments Thereto* and *Matters Relating to Assessment Complaints Regulation AR 310/2009*.

between:

**Cargill Limited, represented by Wilson Laycraft - Complainant**

and

**Municipal District of Foothills No. 31, represented by Brownlee LLP - Respondent**

before:

**W. Kipp, Presiding Officer**

**D. Anderson and B.J. Ersson, Board Members**

This is the decision of the Composite Assessment Review Board (CARB) regarding a complaint filed respecting:

**ROLL # 1928195000**

**LEGAL DESCRIPTION: PTN. NW 19-19-28-W4M**

This complaint was heard on the 29<sup>th</sup> and 30<sup>th</sup> days of November and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> days of December, 2010 at the M.D. of Foothills Administration Building, 309 MacLeod Trail in High River, AB.

**BACKGROUND/SUMMARY:**

The Complainant owns and operates the Cargill Foods High River beef processing plant. The Complaint is against the property tax assessment for Taxation Year 2010 which is comprised of three parts:

<b>Classification:</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
Non-Residential Land	<b>\$2,949,730</b>		<b>\$2,949,730</b>
Non-Residential Buildings and Structures		<b>\$34,155,510</b>	<b>\$34,155,510</b>
Machinery and Equipment		<b>\$83,772,220</b>	<b>\$83,772,220</b>
Total 2010 Assessment	<b>\$2,949,730</b>	<b>\$117,927,730</b>	<b>\$120,877,460</b>

The fully integrated beef processing plant has capacity to process 4,500 head of live cattle per day. Approximately 2,000 workers, operating in two shifts, operate the plant. The facility reduces live cattle to dress carcass form as well as processing and packaging certain by-products such as edible and inedible components and hides. There is significant refrigerated freezer and cooler space within the plant for storage and preparation of finished product for shipping to customers. Much of the handling processes are fully or partially automated.

Originally constructed in 1989, the plant has been expanded over the years to its current size and capacity. The plant has a floor area of over 430,000 square feet. Ancillary buildings on site add almost 29,000 square feet of building area. The entire plant utilizes about 60 acres of the 83.02 acre parcel. The property is situated on the east side of Alberta Highway 2A, about three kilometres north of the Town of High River.

**PRELIMINARY ISSUES:**

**1. Application for Recusal of Panel Member**

The Respondent objected to the Composite Assessment Review Board (CARB) panel as constituted, making application for CARB Presiding Officer W. Kipp to recuse himself from this hearing. Grounds for the application were that the Respondent has a reasonable apprehension of bias as follows:

- Mr. Kipp is involved in subsisting litigation (Genesis Investors v. Genesis Land Development Corp.). Brian Gettel, witness for the Respondent, is involved in the same litigation supporting an adverse interest.
- Mr. Kipp has been retained by the solicitor for Cargill in the past, and has appeared in at least one MGB (Municipal Government Board) assessment hearing (Corridor Pipeline) as an expert witness for the solicitor for Cargill.

Mr. Gettel, witness for the Respondent, had pointed out to counsel for the Respondent, that he and Mr. Kipp were both involved in the "Genesis" litigation matter, each acting for different parties to the litigation. Other than some speculation regarding the litigation and the roles of Mr. Gettel and Mr. Kipp, counsel for the Respondent had no further information. Counsel conceded that the matter had not been fully explored.

With respect to the involvement of Mr. Kipp with the solicitor for the Complainant, counsel for the Respondent indicated that Mr. Kipp had acted as an expert witness for the solicitor at a Municipal Government Board hearing regarding an assessment of the "Corridor Pipeline." There was no indication whether or not the Corridor Pipeline appeal has any similarities to this Cargill complaint. Any present or past link with either party could lead a reasonable person to think that there could be a reasonable apprehension of bias.

Counsel for the Respondent cited cases where apprehension of bias had been an issue. Two Municipal Government Board (MGB) cases were mentioned. In one case, a former MGB member was appearing before that board as a witness. That was not found to be a situation where there was a reasonable apprehension of bias. In the second situation, where Board members were sitting on a case where there were similar issues to cases where those members had previously sat and decided, there was no finding of an apprehension of bias.

Counsel for the Complainant pointed out that the passage of time is a very relevant factor to consider. Further, just because a board member has sat on a prior case involving similar subject matter does not lead a reasonable person to an apprehension of bias. From a practical perspective, the community of appraisers is quite small. Reference was made to the "Boardwalk" case heard by the Alberta Court of Appeal a number of years ago. In Boardwalk, a judge was asked to step down because that judge had prior dealings with the same tax consulting company that was representing a party at the appeal hearing. Different individuals were involved and the judge had resided in a different city. He added that Mr. Kipp had not performed any work for his law firm since being appointed to the MGB and that there is no present relationship that would give rise to an apprehension of bias. By his recollection, any work Mr. Kipp had done on the Corridor Pipeline case had been four or five years old so time had well passed for any reasonable apprehension of bias. With regard to the Genesis case, it appeared from the Respondent's comments that Mr. Kipp was playing a role as an expert in that case. There would therefore not be a relationship between him and Mr. Gettel. In this current situation, there was no suggestion that Mr. Kipp had any past or present link with the Complainant, Cargill. Simply because Mr. Kipp had performed work for a law firm in the past does not give necessarily to reasonable apprehension of bias.

The duty of the Board, not only Mr. Kipp but also for the locally appointed members is to make a decision independent of all municipal influences. Board members must approach the case objectively and bring their own independent analysis.

In closing, Counsel for the Respondent stated that cases involving judges and allegations of reasonable apprehension of bias should be viewed somewhat differently than at this level (the Composite Assessment Review Board level).

#### Decision on Preliminary Matter 1:

The Presiding Officer informed the parties that the first he had heard of the Genesis litigation matter being ongoing was when he read the application of the Respondent. Several years earlier, he had met with a solicitor for Genesis and was informed that there was a statement of claim filed by Genesis investors. He had not heard anything about that case until just before the opening of this hearing. He had never been aware, prior to reading the Respondent's application, that Mr. Gettel was in any way involved in the Genesis case.

The Presiding Officer confirmed that he had done no consulting for Wilson Laycraft since being appointed to the MGB in 2006. Further, for his first year or two as a member of the MGB, he had routinely recused himself from any MGB hearings where Wilson Laycraft was involved. He pointed out that he had been retained as an expert witness by a number of law firms, including Brownlee. There are a limited number of appraisers who do property assessment consulting work and it is normal for an individual to be retained by several clients for similar work over the years.

W. Kipp has had no past links to Cargill or to any MGB or CARB hearings involving similar Complainants/Appellants with issues similar to those in the case at hand.

Given the time lapse between W. Kipp's dealings with Wilson Laycraft and other assessment clients and the absence of any links to Cargill or to the Municipal District of Foothills, it was his decision not to recuse himself from the current hearing. Mr. Anderson and Mr. Ersson were in agreement that no reasonable person, being fully informed of the facts, would find any apprehension of bias on behalf of W. Kipp.

The hearing will continue with the CARB panel as constituted.

### **2. Will Land Assessment be an Issue in this Complaint?**

The Respondent noted that land had not been identified on the Complaint Form (Exhibit 1) as an issue. For that reason, land would not be something this Board could deal with under Section 9(1) of the Matters Relating to Assessment Complaints Regulation (Alberta Regulation 310/2009) (MRAC).

The Complainant informed the Board that Mr. Beatty, the appraisal witness for the Complainant, had undertaken a market valuation of the real property which included both land and buildings. It would therefore be up to the Board to decide whether land is an issue in the complaint.

#### Decision on Preliminary Matter 2:

The Complaint Form, while not specifically addressing land as an issue, did note that "assessment amount" was the key issue. That could be construed as all encompassing. One of the Complainant's witnesses included a land value in his appraisal but that was a component of the market value estimate contained therein. The CARB will consider land value as part of the evidence before it but will not consider land to be an issue of and by itself.

### **3. What is the Assessment Being Requested by the Complainant?**

The Respondent wanted clarification of the revised assessment being requested by the Complainant. On the Complaint Form (Exhibit 1), the requested assessment was \$75,000,000. In evidence submitted to the CARB, the request was for an assessment of \$50,353,667. As in the prior issue, the CARB's jurisdiction is prescribed by 9(1) of MRAC and that the value set out on the Complaint Form should be the one to consider at the hearing. The

intent of the new rules and form for property assessment complaints was to get early disclosure regarding the issues so that the parties knew what the complaint was about and thus, be able to proceed accordingly. Given the significant difference between the number on the Complaint Form and the number in evidence, that is more than was intended by the legislators when they passed amendments to the Municipal Government Act and its related regulations such as MRAC.

On behalf of the Complainant, Counsel pointed out the area on the filed Complaint Form where it was stated that the Complainant was seeking opinions from outside experts. The \$75,000,000 number on the form was a preliminary number only. Prior 2010 CARB decisions from a number of jurisdictions across the province had dealt with this matter and the requests on Complaint Forms were accepted as preliminary numbers based on an initial analysis. The CARB should not be locked in to a specific request such as \$75,000,000. There could be findings by the CARB that the proper assessment lies between the current assessment and the requested assessment and the CARB would have its hands tied if it was bound by one number or the other.

The Respondent informed the CARB that it was their understanding that other CARB decisions regarding the weight to be given the form and its contents had gone both ways – some in favour of the Complainant and others in favour of the Respondent.

#### Decision on Preliminary Matter 3:

The CARB is aware of the range of CARB decisions from other jurisdictions that have been rendered on the matter of the Complaint Form. It is noted that MRAC Section 9(1) makes reference to an incomplete form. It does not mention changes made between the filing of the Complaint Form and the disclosure of evidence prior to a hearing. It is the intent of the legislation to restrict the complaint to what can be put on a form. The issues in this case are sufficiently detailed and it is reasonable that the value requested may change once the Complainant has had the time to thoroughly review the case and to obtain reports from experts. The form contained notification that various experts were to be retained by the Complainant. The quantum of the variance between the initial indicated assessment request and the amount put forward in evidence is substantial however that does not invalidate the claim.

The CARB will deal with the requested assessment amount contained in the evidence and supported by the Complainant's witnesses.

#### **4. Application to Strike Rebuttal Evidence of J. D'Easum**

It was the Respondent's position that the rebuttal report filed by Mr. D'Easum (Exhibit 5A) was not rebuttal evidence. It was merely new evidence that could have and should have been properly disclosed during the required evidence disclosure time period. Section 8(2)(a) of MRAC sets out clear rules on disclosure and that section must be rigorously followed. It is improper for a party to put in its case through rebuttal when it should have been done in the initial filing. In the case of the D'Easum rebuttal report, it does not respond to any evidence that was put in by the Respondent. It simply attaches a number of documents without explanation or reference to Respondent evidence. MRAC requires that rebuttal evidence be in sufficient detail to allow the Respondent to respond or rebut the evidence at the hearing and this document does not do that.

The Complainant maintained that the D'Easum rebuttal report was responsive to what is in the Driscoll report (Exhibit 4D). Links between the content of the Driscoll report and the D'Easum rebuttal report were pointed out to the CARB by reference to specific pages in the documents.

#### Decision on Preliminary Matter 4:

The CARB reviewed the legislation, in particular MRAC 8(2)(c). That subsection states that rebuttal evidence must be in sufficient detail to allow the Respondent to respond to or rebut the evidence at the hearing. There is no provision for the Respondent to file rebuttal evidence so that of the Complainant must be clear and sufficiently detailed. The CARB made a comparison of the Driscoll report and the D'Easum rebuttal report and concluded that, for the most part, the D'Easum rebuttal report explains sufficiently what the tabs that follow reference in the Driscoll report. From the perspective of a reader, however, the CARB could not find where Tabs 6 and 7 fit in with Driscoll evidence. The inclusions in Tab 6 were responses to emailed questions but the questions were not there. The CARB is of the opinion that the questions would be necessary in order to put the responses into the proper perspective. The contents of Tab 7 were not explained in the body of the D'Easum report and the single page in that tab showed some assessment amounts with a note that the assessments reflected a "10% Allowance Previously Applied to M&E." There was no way for a reader to understand that page. If the County of Newell XL plant assessment was relevant, then it should have been provided in detail in the Complainant's evidence so that full consideration could be given to it. It is not appropriate to introduce this document for the first time in rebuttal disclosure.

The text of the D'Easum report is admitted, as are Tabs 1 through 5, however, Tabs 6 and 7 are excluded.

#### **ISSUES:**

- A. Is the assessment of Buildings, Structures and Land for the 2010 Taxation Year in excess of market value and in particular, has external obsolescence been adequately considered in the assessment amount?
- B. Should the assessment of Machinery and Equipment for the 2010 Taxation Year be adjusted to reflect additional depreciation in accordance with Schedule D of the 2009 Alberta Machinery & Equipment Assessment Minister's Guidelines?

The underlying argument of the Complainant was that there was external obsolescence or abnormal depreciation in all of the assessed improvements, including buildings and structures and machinery and equipment. Each of the Complainant's witnesses addressed the general state of the meat processing industry in one way or another. Since the grounds of the complaint were tied to the Complainant's analyses of difficulties in the industry, the evidence and argument on that matter will be considered prior to considering each of the specific issues.

**LEGISLATION:**

**Municipal Government Act**

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;

**Part 9**

**Assessment of Property**

**Interpretation provisions for Parts 9 to 12**

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

(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;

(l) “machinery and equipment” has the meaning given to it in the regulations;

(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;

**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.

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.

**Regulation 220/2004 Matters Relating to Assessment and Taxation**

**Definitions**

1 In this Regulation,

(j) “machinery and equipment” means materials, devices, fittings, installations, appliances, apparatus and tanks other than tanks used exclusively for storage, including supporting foundations and footings and any other thing prescribed by the Minister that forms an integral part of an operational unit intended for or used in

- (i) manufacturing,
- (ii) processing,

whether or not the materials, devices, fittings, installations, appliances, apparatus, tanks, foundations, footings or other things are affixed to land in such a manner that they would be transferred without special mention by a transfer or sale of the land;

**Valuation standard for machinery and equipment**

9(1) The valuation standard for machinery and equipment is that calculated in accordance with the procedures referred to in subsection (2).

(2) In preparing an assessment for machinery and equipment, the assessor must follow the procedures set out in the Alberta Machinery and Equipment Assessment Minister’s Guidelines.

(3) For the purposes of section 298(1)(z) of the Act, an assessment must be prepared for machinery and equipment that is not part of linear property as described in section 284(1)(k) of the Act, and the assessment must reflect 77% of its value.

**2009 Alberta Machinery and Equipment Assessment Minister’s Guidelines**

**1.000 APPLICATION**

Pursuant to section 9 of the Regulation, the assessor appointed by the municipality must follow the procedures set out in the 2009 Alberta Machinery and Equipment Assessment Minister’s Guidelines.

## 1.001 DEFINITIONS

(h) *machinery and equipment* has the meaning given to it in the Regulation (AR220/2004), as amended.

## 1.002 CALCULATION OF ASSESSMENT

The assessment of machinery and equipment in a municipality shall be calculated by:

- (a) establishing the base cost as prescribed in Schedule A of the *2009 Alberta Machinery and Equipment Assessment Minister's Guidelines*;
- (b) multiplying the base cost by the appropriate assessment year modifier prescribed in Schedule B of the *2009 Alberta Machinery and Equipment Assessment Minister's Guidelines* to adjust the base cost to the assessment year;
- (c) multiplying the amount determined in clause (b) by the appropriate depreciation factor prescribed in Schedule C of the *2009 Alberta Machinery and Equipment Assessment Minister's Guidelines*;
- (d) if applicable, adjusting the amount determined in clause (c) for additional depreciation as prescribed in Schedule D of the *2009 Alberta Machinery and Equipment Assessment Minister's Guidelines*.

## 4.000 SCHEDULE C—DEPRECIATION

The depreciation factors for machinery and equipment described in the *2009 Alberta Machinery and Equipment Assessment Minister's Guidelines* are listed in Table 2—Depreciation Factors. Depreciation for machinery and equipment that is *not* described in Schedule C of the *2009 Alberta Machinery and Equipment Assessment Minister's Guidelines* shall be determined in a manner that is fair and equitable with the depreciation factors listed in Table 2.

The anticipated age life for machinery and equipment described in Schedule A is 20 years. The anticipated age life for machinery and equipment located in specific types of property is listed in Table 1.

**Age** refers to the chronological age or the effective age, in years.

**Chronological age** is the actual number of years elapsed from the year the machinery and equipment was built, to the assessment year.

**Effective age** refers to the estimated age of machinery and equipment based on its present condition, design features and engineering amenities. Effective age may be less than, equal to, or greater than actual age.

Effective age is determined by examining the present condition, design features and engineering factors of comparable types of machinery and equipment.

## 5.000 SCHEDULE D—ADDITIONAL DEPRECIATION

For any depreciation that is not reflected in Schedule C, the assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists.

## RECORD OF PROCEEDINGS

### **Complainant's Position:**

Witness Beatty: Mr. D. Allan Beatty is an Accredited Appraiser experienced in valuing real property and he has extensive experience with unique properties such as meat processing facilities.

In his appraisal report of the land, building and structures, Mr. Beatty presented a brief overview of the beef processing industry. He stated that plants like the subject had, in recent years, been impacted by changes in both the domestic and international markets for their product. Firstly, the crisis created by Bovine Spongiform Encephalopathy (BSE) in May 2003 resulted in the closure of the border for shipments of beef cattle and products from Canada. As at 2009, Mr. Beatty reported that trade had not fully regained its former levels with some trading partners. One of the outcomes of the market changes was that there was first an increase in the processing of live cattle in Canadian plants because cattle could not be shipped out of the country which led to construction of additional capacity but once the borders opened for cattle shipments, there was excess capacity in Canadian production facilities. The demand for processed beef in the United States is also down, resulting in excess processing capacity in that country. Since the U.S. adopted Country of Origin Labelling regulations (COOL), there has been additional negative pressure on the industry.

The appraisal of buildings and structures conducted by Mr. Beatty was prepared utilizing a Cost Approach. Costs of improvements were derived from the Marshall & Swift cost manual, a widely accepted costing source used by appraisers and assessors. The approach included making allowances for depreciation of all types. Normal depreciation factors, based on age-life measurements, were made for "short-lived" components as well as for the "long-lived" main structure components. With consideration to the original building construction and subsequent additions and upgrades, a 20% depreciation allowance was given to the long-lived building parts. Short-lived items, other than roof cover were depreciation at 50%. Roof cover which is currently being replaced was depreciated at 75%. Functional and external obsolescence were measured by analysis of sales of other properties in the marketplace. From 28 sales, seven properties (six sales and one listing) were selected as being most comparable to the subject Cargill plant property. Analysing the variances between extracted building/structures price and replacement cost of those buildings and structures, Mr. Beatty found differentials from 53% to 82% which he attributed to obsolescence. He set the obsolescence rate for the subject buildings and structures at 65%. Prior to the hearing, Mr. Beatty discovered an error in his report which he corrected and submitted through counsel. Based on the cost approach, the appraiser's final opinion of fully depreciated buildings/structures value was \$13,236,247 (not including land). An analysis of land led to a value opinion of \$2,502,500.

The subject property is unique in that there are few similar properties anywhere in North America and even a smaller number have recently sold. For that reason, just three meat processing plant sales were included in the seven comparables. The others were or had been food processing facilities (such as chocolate or dough). One former meat processing plant was listed for sale but it had not sold as at the valuation date. The remaining property had been used for food processing (no other details) but was converted for use as a distribution warehouse.

Two of the meat processing plants were located in Alberta (all others were in the United States). One of the Alberta plants was a similar sized operation located in the County of Newell, near Brooks. The other was a smaller plant at Balzac, near Calgary, that was sold by a Trustee in Bankruptcy. Considerable weight was placed on the sale of the Brooks plant (referenced as the XL Foods sale by parties to this hearing). The appraiser analysed the XL Foods sale in his report. The 493,066 square feet of building area are situated on a 99.83 acre land parcel. The sale closed in March 2009. Assets included in the sale were the beef processing plant, a fertilizer operation and a cattle feedlot. The fertilizer operation was subsequently sold by XL Foods for \$28.9 million. There was no subsequent sale of the feedlot so it was valued, on the basis of sales data pertaining to other feedlot sales, at \$9.7 million, leaving \$66.9 for the beef processing asset. 65% to 70% of the price was allocated to machinery and equipment, leaving \$21,750,000 for land, buildings and structures which represents \$44.11 per square foot of building floor area. The 65% to 70% allocation to machinery and equipment was based on the appraiser's analysis of financial statements for another sale, the idle plant at Balzac, Alberta and on the appraiser's experience and then confirmed by the ratio of machinery and equipment assessment compared to the total assessment.

Mr. Beatty also did a sales comparison approach to value based on the same seven comparables, arriving at an opinion of market value of \$13,400,000 to \$15,600,000.

From the two indicators (Cost Approach at \$15,700,000 and Direct Comparison Approach at \$13,400,000 to \$15,600,000), Mr. Beatty's reconciled estimate of market value was \$15,500,000 for land, buildings and structures.

Witness Wilichowski: Mr. Richard J. Wilichowski is a personal property appraiser with experience in appraising machinery and equipment such as that in a meat processing facility. He was retained to prepare an appraisal of the machinery and equipment located within the subject Cargill plant.

In an Industry Overview section of his appraisal report, Mr. Wilichowski set out pertinent economic data on the meat processing industry. This included commentary and statistics on beef, pork and poultry sectors of the industry. The section opened with a statement that the Canadian and United States beef industries are intertwined from both a supply and demand standpoint. Much of the statistical data related directly to the United States and much of it pertained to years prior to 2009. High beef prices and consumer nutritional awareness were cited as reasons for the decline in red meat consumption per capita. Statistics up until 2006 were quoted and there was a comment that consumption was forecast to rise again in 2007 but this was attributed to pork consumption.

Mr. Wilichowski described the decline in U.S. beef cattle and product exports after a Washington State cow was found to have BSE in December 2003. He stated that over the period 2009-2014, the processing industry (meat, beef and poultry) is expected to grow at a marginal rate. 2010 and 2011 would be years of decline while 2012, 2013 and 2014 would be growth years. *"Beef production is forecast to fall in 2010 and 2011 before returning to growth, but is forecast to decrease at a marginal annual rate over the outlook period."*

For Canada, Mr. Wilichowski referred to the 2010 Alberta Beef Producers Handbook and to discussions with a principal of Alberta Beef Producers: *"The Canadian Cattle industry continues to be impacted by the prior BSE crisis, cheap export products from places like Brazil and Australia, and costs to produce cattle relative to products such as poultry. Through the summer and fall of 2007, the rising value of the Canadian dollar and high feed costs created significant additional hardship for cattle producers. There has been a trend of declining cattle counts in Canada, with Fred Hays of Alberta Beef Producers stating the cow base has been declining around 3% to 4% for the last three years. This was followed by the global economic crisis of 2008 and further eroded sale prices for producers."*

Fred Hays was also quoted as saying that over the past 10 to 15 years, many small plants closed.

The Canadian cattle industry faces a wide range of costs and barriers that are imposed by government regulations and policies through the entire production system. The regulatory burden reduces the competitiveness of the industry and restricts companies' abilities to enhance profitability through innovation and efficiency.

Mr. Wilichowski also addressed the Country of Origin Labelling (COOL) in the U.S. that has created an economic disadvantage to marketing Canadian livestock in the U.S.

*"The continued weakness in the Canadian Cattle industry driven by the weak economy, lingering impacts of the BSE crisis, cheap exports, and uncertainty regarding Country of Origin labelling hurts the value of the subject assets."*

*"The Canadian beef processing industry has been hard hit since the discovery of BSE in the early 2000s and competition increases from places such as Brazil, Argentina and Australia. Most of the significant merger and acquisition activity in the industry has been between the top players who control over 80% of the market."*

*"The primary activity in the beef industry has been the consolidation of the larger operators. The underutilization of the existing capacity in the industry combined with all of the factors discussed in the previous section, continues to have a negative impact on the smaller market players. The market activity discussed above illustrates these issues. While there has been and will continue to be capital investment in existing facilities, it is unlikely that new large slaughter facilities will be constructed any time soon."*

Mr. Wilichowski's appraisal estimated the Fair Market Value – Installed of the taxable personal property in the Cargill plant. The appraised assets included some personal property that is not defined as machinery and equipment in Alberta taxation legislation so adjustments had to be made.

The appraisal method used was to start with the asset list provided by the client and the historical actual cost of each asset. Factors were applied to adjust the historical costs to a 2009 level. Then, adjustments were made for physical and functional depreciation and for economic obsolescence. The result was the fair market value-installed for each asset. Statistics Canada indices were used to factor historical actual costs to current (2009) levels. Physical depreciation was deducted on the basis of age-life measurements. A functional depreciation deduction was made for just one component – the box storage system that was antiquated and was to be replaced within a few years. Economic (External) obsolescence was measured by use of market extraction methodology wherein sales of approximately 300 pieces of meat processing plant equipment were analyzed with comparisons

made to new cost. This method produced a 43% economic obsolescence factor for the subject assets. Sales of two processing plants (including the one at Balzac, Alberta described in the Beatty appraisal) were described as supporting the appraiser's obsolescence conclusion.

The opinion of Fair Market Value - Installed of the appraised assets as at July 1, 2009 was \$42,407,360.

Witness Lambie: Mr. Patrick L. Lambie is a property tax consultant employed by Ducharme, McMillen & Associates, Inc. He prepared a report of his analysis of the sale of the beef processing plant in the County of Newell, near the Town of Brooks, Alberta.

Included in his report was his analysis of the Canadian beef industry at the time of the sale of the Brooks assets from Tyson Foods to XL Foods.

The Canadian beef industry can be divided into two distinct areas: producers and processors.

The discovery of BSE in 2003 prompted both the United States and Canadian governments to undertake a number of regulatory measures in response to animal health and food safety concerns. These measures disrupted normal market relationships; notably the historical integration of the North American beef and cattle markets and, in particular, the regular flow of beef and live cattle from Canada to the United States. Other markets for Canadian beef closed as well.

Additional operating costs associated with adherence to government regulations have further undermined operating margins. In the year after the first discovery of BSE in Canada, exports of beef and veal declined 40% from their pre-BSE level (2002). Up until 2008, the industry had recovered to 75% of the pre-BSE level. Alberta beef exports in 2007 were about half of those in 2002.

Domestic levels of red meat consumption continue to fall. In reaction to the global recession, per capita consumption of red meat declined by 5.5% from 2008 to 2009.

In 2008, 31% of Alberta's beef production was sold to the U.S. with 6.6% sold to other countries. Changes in the Canadian dollar have made foreign producers more competitive and reduced the prices garnered by Canadian producers.

Increased regulations applicable to health and safety concerns have caused an increase in labour requirements in the animal (other than poultry) slaughter industry. The annual Canadian increase in employees from 1998 to 2007 was 1.9% while in the manufacturing sector, the change over the same period was a decline of 0.8% per year. The surge in the Alberta economy made labour costs increase to employers. Employee wages in the animal slaughter industry increased by 4.0% per year from 1998 to 2007 while manufacturing employee wages only increased by 1.5% per year.

In 2010, the size of the Canadian beef cow herd is forecast to decline to its lowest level in 9 years as farmers continue to cash out of an industry reeling from drought and recession. As a result, beef processors will have to compete aggressively for live cattle over the coming years.

The XL Foods Moose Jaw Saskatchewan beef processing plant was shut down indefinitely in April 2009. Reasons for the closure were cited as reduced cull cow and fed cattle supplies.

The combination of lower meat prices and increasing input costs along with the current economic conditions has led to an industry with diminishing profitability. The financial viability of beef processing facilities in Canada is challenged. This was a quote from the Alberta Government's "Alberta Livestock & Meat Strategy 2008-2013 Implementation Plan (Spring 2008).

The Brooks beef processing plant was sold by Tyson Foods to XL Foods. Included in the sale were a cattle feedlot and a fertilizer plant. Mr. Lambie prepared his analysis of the sale utilizing publicly available information. It was the opinion of the witness that the sale was indicative of market conditions.

Corporate press releases stated that the sale transaction was negotiated in early 2008 (June) with a closing set for March 2009. Initial indications were that the total purchase price was of the order of \$107 million however the closing price was \$105.5 million. The purchaser paid an additional amount for cattle inventory, fertilizer inventory and packaging assets. Subsequent to the purchase (September 2009), XL Foods sold the fertilizer operation for \$28.9 million. The feedlot component was not sold off so, in order to isolate a price for the beef processing unit, Mr. Lambie valued the feedlot at \$9.675 million based on comparison to five feedlot sales that occurred in the U.S. between June 2006 and May 2008. The price allocated to the beef processing property was \$66,900,000. Mr. Lambie concluded that the allocated price would have been inclusive of intangible values such as goodwill, in place workforce etc. but would exclude inventories and working capital requirements.

Analysis of Tyson's consolidated annual report led this witness to conclude that there was no undue pressure on Tyson to make the sale of this Canadian asset. The financial reports did not isolate assets such as the Brooks plant so there was no indication of the profitability or lack thereof of that facility. The Tyson Foods corporation was financially sound according to Mr. Lambie's interpretation of the annual reports.

Witness D'Easum: Mr. Jon D'Easum is an Accredited Municipal Assessor Alberta (AMAA), employed by DuCharme, McMillan & Associates as a director of assessment services for Western Canada. This witness prepared a report that summarized and interpreted the other Complainant's witness reports as well as explain the Complainant's position on external obsolescence and abnormal depreciation.

Cargill is seeking an economic obsolescence allowance (on its 2010 assessment) to reflect the loss in value that has occurred to its High River beef packing facility due to external factors beyond its control. The loss in value that has occurred is a long term loss that has and will continue to have a permanent impact on the value of the facility.

For buildings and structures, the Beatty appraisal is relied upon. The conclusion in that appraisal was that the buildings and structures had a value of \$12,500,000 as at July 1, 2009 (this witness' report was prepared prior to Mr. Beatty submitting corrections to his appraisal report). Land would add \$2,500,000.

For machinery and equipment, Cargill is requesting Schedule D depreciation of 50%. This request related to differences between the valuation of personal property prepared by Mr. Wilichowski and the basis for the actual 2010 assessment.

Although the Alberta 2001 Metal Buildings Cost Manual was not used in the preparation of the Cargill assessment, it contains some relevant definitions and explanations, including descriptions of the concept of depreciation. Depreciation is a loss in value from any cause. The standard depreciation tables are guides for determining depreciation attributable to normal physical deterioration and functional obsolescence. Abnormal depreciation, including economic obsolescence, which is not reflected in the standard depreciation tables, is potential additional loss in value that may be applicable to an improvement. Total depreciation is the difference between replacement cost new and market value at the same date.

Section 1.002 Calculation of Assessment from the 2009 Machinery and Equipment Assessment Minister's Guidelines was quoted. This section describes how assessments of machinery and equipment are to be prepared.

The application of abnormal depreciation is one that Alberta assessors have done and continue to do. This is true in the case of meat packing industry facilities and other industries. A number of Alberta facilities are currently receiving allowances for economic obsolescence based on the state of the industry over the last several years. The expectation is that the depressed state in certain industries, including meat packing, will continue into the extended future.

In the subject complaint, there is substantial evidence from the Complainant showing that facilities such as Cargill transact at a fraction of their reproduction cost. Further, the machinery and equipment is shown to have suffered substantial additional depreciation. Schedule D requires that "acceptable evidence" must be produced to support an additional depreciation claim. That has been done in this situation as can be seen in each of the Complainant's witness reports.

Market value is the basis for assessments of buildings and structures. Regardless of the valuation procedure used (cost approach, income approach, direct comparison approach), depreciation from all causes must be taken into account.

For assessments of machinery and equipment, there are regulated procedures. Starting with the actual cost of an item of machinery or equipment, a factor is applied to take the cost to the assessment year, a factor is applied to account for normal depreciation and, finally adjustments are made pursuant to Schedule D of the Minister's Guidelines if appropriate.

Schedule C of the Minister's Guidelines reflects normal physical and normal functional depreciation but does not include abnormal physical, abnormal functional or economic obsolescence. Municipal Government Board (MGB) decision 109/09 was cited to support this contention. The application of additional depreciation is determined using Schedule D based on the provision of acceptable evidence. The application of additional depreciation is left to the local assessor to review and apply accordingly on a case by case basis. One only has to look to Schedule D to see that the intent of the calculation process is to allow for fairness and equity to be achieved.

The appraisal by Kent-Macpherson (Beatty) and the Accuval (Wilichowski) machinery and equipment appraisal produced evidence that additional depreciation was warranted for the Cargill property. These appraisals, along with other evidence, showed the poor state of the meat processing industry and provide further support to the conclusions of the appraisers.

Schedule D allows the assessor to allocate further depreciation for losses due to unforeseeable causes of obsolescence including losses relating to unexpected changes in market conditions.

From an equity perspective, a comparison was made to the assessment of the Brooks XL Foods plant in the County of Newell. Mr. D'Easum had been directly involved in negotiations regarding obsolescence in that plant for the 2009 assessment year. The assessment of that plant has a 10% allowance applied to the buildings and structures and a 20% allowance applied to the machinery and equipment under Schedule D. Mr. D'Easum had also been directly involved in negotiating assessments for a number of other facilities in Alberta municipalities. In 2009, increased allowances of up to 50% had been allowed.

In conclusion, Mr. D'Easum recommended that the assessment of the buildings and structures should be as set out in the Beatty appraisal (\$12,500,000). For machinery and equipment, the Wilichowski appraisal cannot be used directly because that report set out an opinion of market value for those assets but Alberta assessment regulations do not specify market value as the basis. From that appraisal however, an additional depreciation allowance of 50% is supported. The recommended machinery and equipment assessment is \$41,886,110.

### **Respondent's Position:**

Witness Grier: Mr. Kevin Grier is a market analyst and editor of grocery and meat industry publications for George Morris Centre, "Canada's Agri-food Think Tank." This witness prepared a report entitled "Independent Analysis of the Alberta Beef Packing Industry." Main findings of the report are highlighted below:

XL Foods and Cargill Foods are effectively the only companies slaughtering cattle on the prairies. The two companies combined can slaughter over 80% of the cattle in Canada. XL and Cargill have a large number of Canadian customers that typically wish to market Canadian beef. This gives the companies significant importance in the Canadian grocery and foodservice market.

The High River plant is located in one of the most important cattle producing regions of North America. Supplies of cattle are abundant and will remain far in excess of slaughter needs on the prairies. Alberta's slaughter levels have been increasing in recent years and the province has been gaining share during 2008, 2009 and 2010 relative to the U.S.

As a result of the excess of supply over demand, cattle prices in Alberta are significantly lower than in competing regions in the U. S. Furthermore, while cattle pricing is tied to the U.S., any divergence in relative costs between



Canada and the U.S. is reflected in the provincial cattle price. That is, higher operating costs in Canada are bid into a lower relative cattle price.

During the mid-2000's, the Canadian cattle and beef industry began to suffer severe stress due to factors such as the appreciation of the exchange rate, trade challenges and regulatory burdens. Each of the factors and others added costs or reduced revenues for the Canadian industry. The net result was that many Canadian firms were uncompetitive in the North American market. As such, during the past 3-4 years, six companies or plants have left the business. Essentially the survivors, XL and Cargill, have adapted to the challenges such as higher regulatory costs and the exchange rate. The adjustment took many forms, one of which is lower cattle prices. Other factors such as over capacity are no longer an issue.

Only large scale, highly efficient plants are capable of surviving, other than those plants that serve smaller local markets. The only plants that can compete in a relatively par dollar environment are those plants that are global in scale, such as Brooks and High River. The bottom line is that the challenges of the industry as it emerged from the BSE era resulted in a rationalization of plants and firms. The survivors are the strongest players in a very efficient industry.

Both Cargill and XL Foods are private companies and they do not publish financial data. With that noted, it is possible to generate a model that gives a rough indication of profits and margins in the Alberta industry. The model shows that profits are variable in Alberta but generally positive. The Alberta packing industry is making profits that are of comparable scope to plants in the U.S.

Virtually all of the issues raised by Cargill (in this complaint) were conditions that are being managed in one way or another. None of the issues constitute a permanent or insurmountable detriment to the Cargill facility.

There is no information filed by Cargill that would suggest that the plant is not profitable.

The Grier report contained graphs and charts relating to the cattle and packing industries. During the BSE era, cattle could not be shipped to the U.S. which caused the size of the Canadian herd to grow. Since the border re-opened in late 2007, the size of the beef cow herd has declined but that was relative to the artificially inflated size during the 2004-2005 BSE impact years.

Another graph shows that the Alberta and Canadian cattle slaughter numbers have been relatively stable with the exception of the BSE impact years. Similar results are in a graph that relates Alberta slaughter to that of the U.S.

Following a review of documentation filed by Cargill for this hearing, Grier noted that much of Cargill's evidence addresses many challenges that the industry faced during the difficult years of 2007 and 2008. The difficult situation was temporary and in-fact has already improved for packers. Virtually all of the issues raised by Cargill were conditions that are being managed in one way or another. None of the issues constitute a permanent or insurmountable detriment to the Cargill facility. There followed discussions on exchange rates, trade issues, capacity utilization, regulatory burden and cattle supplies. Much of the focus was on the time around mid-2009 versus the poorer performance years of 2007-2008.

The Brooks, Alberta sale from Tyson Foods to XL Foods: Grier quotes sources that opined that the plant was struggling to make money since a labour strike in 2005. Cattle supply and a strong Canadian dollar were contributors as well. Tyson is also in the chicken and pork industries and, as both a producer and processor of chickens, it was susceptible to factors such as the cost of feed. Fiscal 2008 operating results declined relative to 2007 because of increased input costs including increased grain costs, other feed ingredients and cooking ingredients. The chicken operation operating income was negative. Tyson was looking at all of its operations, including beef. In early 2008, it announced the closure of a U.S. beef slaughter plant, stating that there was an over-capacity. Tyson was going through these assessments and rationalizations during 2008 when there was turmoil in the production and processing industries. Brooks was relatively isolated from the standpoint of labour supply and Tyson recognized that labour would likely continue to be a problem. XL Foods, on the other hand, was in an expansion mode, having purchased other operations in the years just prior to entering into the Brooks purchase. Mr. Grier summarized the sale as one between a motivated seller and an opportunistic purchaser.

Witness Gettel: Brian S. Gettel is an Accredited Appraiser with extensive experience in appraising a variety of property types and as an expert witness.

Mr. Gettel did not appraise any component of the subject Cargill plant. His mandate was to provide commentary on matters relating to appraisal. In particular, his commentary focused on the Beatty appraisal report of the buildings, structures and land.

Beatty had used a widely used cost manual published by Marshall & Swift. Marshall & Swift is U.S. based and while it provides adjustment factors for locations such as Alberta, these can be subjective. Mr. Gettel's experience with the cost manual was that Marshall & Swift was often out of step with trends actually at play. He noted that Mr. Beatty's total cost estimate for buildings and structures of \$56,714,161 was well in excess of the estimate developed by the assessor utilizing the 1984 Alberta Assessment Manual. Marshall & Swift covers a wide range of building types and classes which sometimes causes difficulties in properly costing buildings or structures.

With respect to building life spans, Gettel noted that the assessor had placed the buildings into a 50 year economic life class while Beatty used a 45 year economic life estimate. The difference was not significant, however, Beatty had placed some components of buildings into shorter life expectancy periods which resulted in a higher overall rate of depreciation when all building components were taken into account. Gettel considered the buildings to be more indicative of those classed in the 50 year economic life class.

The assessor and Mr. Beatty each handled depreciation differently. For physical deterioration and normal functional obsolescence, each relied upon age-life tables. Mr. Beatty used a table in the Marshall & Swift manual while the assessor relied upon a similarly structured table in the assessment manual. The assessor estimated the effective age of the buildings at 17 years. From the 50 year economic life column in the depreciation table, the depreciation rate was 22%. Mr. Beatty, on the other hand, set the effective age at 15 years. From the Marshall & Swift depreciation table for buildings with a 45 year economic life expectancy, the depreciation rate was 14%. He

also applied a straight line analysis which indicated 33% depreciation. He reconciled the two rates to a 20% allowance. However, because Mr. Beatty had considered some building components as having shorter life expectancies (short-lived items), the overall depreciation rates varied amongst buildings but it ranged from 27% to 45%. When the overall average depreciation rate of 34% is located in the Marshall & Swift table, it implies an effective age of 25.5 years. Mr. Gettel stated that Mr. Beatty's utilization of short-lived and long-lived component depreciation was one way of handling depreciation but that it required a highly detailed analysis and that it was a method seldom used by assessors or appraisers. The methodology employed by the assessor was found to be realistic and in line with the methodology used by other assessors in Alberta.

The assessor had given a 10% functional obsolescence to most of the buildings and structures. Mr. Beatty did not specifically consider functional obsolescence but used a measurement method that combined it with external obsolescence.

External obsolescence was not considered by the assessor except for one minor 10% adjustment to one small component of the total buildings and structures. Mr. Beatty spent considerable analysis time on this form of depreciation. Mr. Beatty used a market extraction method which was based on sales of other properties. Mr. Gettel opined that the method is not as reliable for use when valuing complicated properties such as the Cargill beef processing plant because of the diverse locations of the sale properties analysed by Mr. Beatty. One of the properties was only listed for sale and had not sold. Mr. Beatty considered each property to have three components: land, buildings/structures and machinery/equipment. Mr. Gettel would have given consideration to the business aspects that went with the properties. Variables such as debt, accumulated tax losses, cash and inventory require consideration. For example, the Ranchers' Beef plant sale, near Balzac, Alberta was a property that was no longer operating and it was in foreclosure at the time of its sale. These factors could have motivated the parties to the transaction. Based on the Grier analysis of the Brooks, Alberta sale, Gettel also felt that some consideration of seller or buyer motivations would be necessary. None of the sales were adjusted for market changes over time even though some of the sales were quite old compared to the July 1, 2009 valuation date. In order to develop an accurate result from a market extraction process, the analyst would need to have considerable knowledge about the properties themselves as well as the parties to the transaction. cursory consideration of land value was criticized as was the derivation of building costs. While the market extraction method is suitable for determining full depreciation within a property, it was not adequately applied in the subject instance to produce a reliable indicator.

With regard to land value, Mr. Gettel thought that the sale discussed by Mr. Beatty at \$44,187 per acre in July 2009 was most indicative of value for the subject. He would not have applied a lower value to the acreage that was not being utilized by the plant.

Although Mr. Beatty did not rely heavily on his Direct Comparison valuation of the subject plant, Mr. Gettel expressed the same concerns about the seven comparable properties used by Mr. Beatty.

Witness Driscoll: Mr. Dan Driscoll is an Accredited Municipal Assessor Alberta with extensive experience in assessment in Alberta, including many complex properties.

Mr. Driscoll did not prepare an assessment valuation of the subject property. He prepared a report outlining assessment factors that he would consider if he were assessing the property. He reviewed the assessment but did not provide details. Much of his focus in the report was on the assessment of machinery and equipment.

Mr. Driscoll did not find the evidence put forward by Cargill witnesses to be sufficient to warrant additional depreciation.

The report contained a lengthy statement and interpretation of relevant legislation and the Alberta Machinery and Equipment Assessment Minister's Guidelines. Mr. Driscoll provided excerpts from past MGB orders to support some of his interpretations. He did not rely on MGB 109/09 that had been quoted by Mr. D'Easum. In Mr. Driscoll's opinion, 109/09 is inconsistent with the governing legislation in several areas. He places emphasis on MGB 052/05 and 086/05 wherein the MGB decisions support his interpretations.

Mr. Driscoll's position is that the regulated calculation process for assessing machinery and equipment bears no relationship to market value, so market value concepts cannot be used to quantify Schedule D depreciation. "*M & E is not measured in relation to other properties and is not assessed using a market value, valuation standard.*" Again quoting from a prior MGB order, Mr. Driscoll added ". . . acceptable evidence of a loss in value for the purposes of Schedule D must involve permanent and unexpected negative impact on the utility, productivity, economic viability or useful life of the asset in question." Cargill has presented evidence about the meat packing industry in general but has not shown that the subject Cargill plant has experienced a loss in value. If it was found that the property did suffer from abnormal depreciation, then it would have to be measured in a fashion consistent with the regulated assessment process. It is measured in relation to the age life tables in Schedule C of the Minister's Guidelines. The total depreciation cannot reduce an assessment below the 40% minimum point in the Schedule C tables.

The conclusion of Mr. Driscoll was that Schedule D depreciation is limited to unexpected events which have a permanent negative impact or shortens or lessens the life of the regulated asset.

#### **Rebuttal:**

Witness Beatty: Mr. Beatty commented on the assessor's method of using costs and the difficulty in separating building costs from non-building costs. He also defended the use of the Marshall & Swift manual. It is widely used by appraisers and it does provide Canadian cost factors. The Segregated Cost Method from the manual directly reflects the quality and quantity of materials actually used in construction.

The selection of the 45 year life span is founded on the range of building types along with quality ratings and with consideration to cold storage and freezer space within buildings which is a major component in the subject.

Mr. Gettel expressed a preference for the depreciation table in the 1984 assessment manual, however, that table is based on extended life theory and stops depreciation at 80%. Extended life theory is based on periodic refurbishing of the asset which has not been done in the subject. The breakdown method of handling depreciation wherein long life items are separated from short life items is the most comprehensive method for measuring depreciation. While it requires more detailed analysis which could be difficult for assessors to do on an annual basis, it nevertheless reflects the actual condition of the asset. The assessor's simple method may be quicker and easier to apply but it does not provide a comprehensive analysis which is provided by the breakdown method. Functional obsolescence was not measured separately by Beatty but it was considered in conjunction with external obsolescence and was therefore taken into account. The market extraction method of measuring external obsolescence is based on actual sales of properties similar to the subject and therefore the superior measurement methodology, even though the property is of a complex type. If there was machinery and equipment in one of the sale properties, that was accounted for in isolating buildings and structures. Since none of the sales were of going concern businesses, there was no need to consider financial factors as suggested by Gettel. There was no evidence that the Brooks sale was a duress sale. Locations of the sale properties are not a major problem because specialized properties such as these tend to sell on a regional, national and sometimes international basis. The Gettel commentary does not provide evidence that disputes the calculations made in the Beatty appraisal – it merely criticizes the Beatty analysis. In fact, the Gettel report contains no market evidence at all. The Beatty appraisal uses a comprehensive valuation method, with market support and that has to be preferred for the valuation of a complex property.

Witness D'Easum: This rebuttal is in response to the report of D. Driscoll. Mr. D'Easum repeated that consideration should be given to the most recent MGB order, 109/09 which is directly applicable to the subject complaint.

Attached to this report were a number of bulletins and papers wherein depreciation was a topic. The maximum depreciation allowance was stated in a Commissioner's Bulletin (6/83) as not being regulated and the practice of setting a maximum depreciation for industrial improvements was not encouraged unless the assessor can demonstrate through market analysis that a residual value is warranted. The February 2009 Assessment Bulletin clarified the application of Schedule D depreciation, setting out the differences between Schedule D application to machinery and equipment versus its application to linear assessable property.

Witness Entz: Mr. Scott Entz, General Manager of the High River Cargill plant, did not provide direct evidence but he appeared as a rebuttal witness to address the report of Kevin Grier.

From the supply and demand perspective, Mr. Entz maintained that cattle producers control the supply of animals and the beef consumer controls the demand side. Cargill is a processor that is between the producers and the consumers.

In recent years, there has been around a 20% increase in boxed meat product being imported into Canada from the United States. This arises from a number of factors, including the loss of U.S. buyers of Canadian meat due to country of origin labelling, exchange rates and market access. Exchange rates favour U.S. purchasers as well as producers who can now export product at competitive prices to those of Canadian produced product. Under cross-examination, Mr. Entz stated that moving Canadian beef into the U.S. has always been a struggle. Country of origin labelling changed Canadian processors ability to sell to U.S. customers because of the complexity of labelling required under the new regulations.

There is not an abundance of cattle available to Alberta processors when the entire market for those cattle is considered. There is over-capacity in the processing end and analysts have stated that one or two North American plants need to close in order to restore the leverage balance.

Mr. Grier's suggestion that all increases in costs are passed onto the producer is not correct. Cargill competes for cattle through a bidding process (price discovery) with other Canadian and U.S. processors.

The sale of the Brooks plant did nothing to reduce the slaughter capacity in Alberta. It was simply a change of ownership of an operating plant.

### **FINDINGS and DECISION WITH REASONS:**

After considering the circumstances and merits of the case, the Board determined:

The underlying aspect of this complaint, in the view of the CARB, is whether or not the beef processing industry was in an economic state that was perceived to have a long term negative impact on the values of properties of participants in that industry, such as Cargill Foods. It was up to the Complainant to convince the CARB that the beef processing industry had suffered to the extent that the value of the subject Cargill plant was negatively impacted and that the value would remain lower than indicated by the assessment.

The CARB finds that the Complainant has not met the challenge. The Board is not convinced by the evidence and argument that the beef processing industry was suffering any long term negative economics that caused the value of the subject plant to be lower than indicated by its 2010 assessment.

Each of the Complainant's witnesses addressed the state of the industry in their evidence. One of the problems the CARB dealt with was determining which evidence was most relevant as at the relevant time period. The Board heard much about the problems faced by the industry throughout the BSE era (2003-2007) and the years 2007 and 2008 when things seemed to be at their lowest point. There was little in the way of evidence pertaining to the first half of 2009, the period most relevant to a July 2009 valuation date.

Another problem the Board faced with respect to the evidence was the determination of the impacted segment of the industry. There are clearly two major segments: Cattle producers and beef processors. Economic conditions that impact on one of those segments does not necessarily have a similar impact on the other. In fact, a negative

impact on one segment could potentially have a positive impact on the other segment. For example, a decline in live, fed cattle prices could make the processing segment even more profitable if processed beef prices do not decline.

Mr. Grier's evidence was most compelling with respect to the 2009 time period. The Board accepts that the beef processing industry, while perhaps not fully recovered from BSE and other subsequent setbacks, was improved from recent past years and, more importantly, there were no signs of prolonged negative industry woes. In the view of the Board, the evidence showed that the beef processing industry is a cyclical one and it had just gone through a negative cycle in the period leading up to the 2009 valuation year.

The sale of the Brooks processing plant from Tyson Foods to XL Foods was a central piece of evidence and it was given considerable discussion and analysis by the parties to this complaint. The CARB heard that Tyson Foods was a profitable company, according to financial statements filed with U.S. authorities. It also heard that some of Tyson's divisions were less profitable than others which prompted the company to reassess its position in beef, pork and poultry sectors. Was Tyson a motivated seller? Was XL Foods an opportunistic purchaser? Much of the testimony in response to these questions was unsubstantiated speculation based on interpretation of press releases or documents inspected by the witnesses. The CARB finds that there has been no definitive response to these questions. The motivations of Tyson Foods, the vendor, remain unclear. XL Foods was probably an opportunistic purchaser but how did that impact on the purchase price? XL Foods was probably the only purchaser for the Brooks facility at the time. What was the appropriate price allocation to the beef processing plant? Two witnesses for the Complainant did independent analyses of the sale transaction and came to similar conclusions – the plant was priced at approximately \$66,900,000. The two witnesses placed a market value on the feedlot that was one of the asset components of the sale. The valuations of the feedlot were quite elementary and there was no analysis by either valuer that spoke to the market for the feedlot industry. The CARB heard that the producer side of the market underwent tough economic times following the BSE find. That could have impacted on the market value of the feedlot but no witness addressed that possibility. The facts relating to the sale make it clear that the sale was negotiated in early 2008, more than one year prior to the effective date for the assessment. There was no evidence before the CARB to indicate whether there were changes in the property market between early 2008 and July 2009. There was evidence that the beef processing industry had undergone changes over that period of time but there was no link made between the two. The CARB remains unaware of the need for any adjustment for market changes over time. In the end, the CARB finds that it does not have sufficient detail of all aspects of the Brooks facility sale to rely upon it as the best evidence that the problems faced by the beef processing industry manifested themselves in the price paid for the Brooks facility.

To summarize on the state of the industry evidence and argument, the CARB does not find that the turmoil that the beef processing industry may have gone through between 2003 and 2008 continued to plague the industry up until July 2009, the assessment date. Further, there was insufficient evidence to convince the CARB that participants in the marketplace would have considered that there were any negative economic conditions that would negatively impact the subject Cargill processing plant.

**Issue A: Is the 2010 assessment of Buildings, Structures and Land in excess of market value and in particular, has external obsolescence been adequately considered in the assessment amount?**

The only appraisal evidence before the Board was the retrospective appraisal prepared by Mr. Beatty. The Board accepts that his valuation methodology is appropriate for the property type. The assessor conducted a valuation of the buildings and structures as well, however, the actual assessment details were never entered as evidence at the hearing and the assessor was not called as a witness at the hearing. Whatever method the assessor used in making the assessment may also have been an appropriate one.

Mr. Beatty's valuation model may have been one not commonly used by assessors but if it produces a credible market value conclusion for the buildings and structures, then it could be relied upon. While the CARB accepts the methodology, it cannot accept all of the conclusions that led to the \$15,500,000 market value conclusion. The primary weakness of the application of the valuation method is the determination of external obsolescence. Evidence before the Board shows that Beatty's overall cost new of buildings and structures was \$56,714,161, 21% more than the \$46,886,699 cost calculated by the assessor. After consideration of normal physical and functional depreciation, the two were only 3.4% apart (\$37,800,000 by Mr. Beatty versus \$36,571,625 by the assessor). It was Mr. Beatty's measurement of external obsolescence, based on sales of other plants that the Board cannot accept. There has already been discussion and a decision regarding the reliability of the Brooks processing plant sale as evidence of market condition as at July 2009. The Board has found that there is not enough detail pertaining to aspects of the property and the sale to warrant it being given significant weight. As for the other comparables in the Beatty appraisal, the Board does not consider them to have been sufficiently analysed and/or explained to compel the Board to accept the 65% external obsolescence claim.

The Beatty appraisal discussed, to some extent, functional shortcomings of the subject plant. Box storage systems and kill floors were mentioned in particular. The Board accepts that either or both of these components could have been examples of functional obsolescence (abnormal depreciation) that could have resulted in a reduced assessment. The specifics of the negative impacts of these components were not, however, sufficiently detailed by the Complainant to compel the Board to make any adjustments.

The land value estimate by Mr. Beatty is not accepted. There was essentially one sale of a comparable land parcel but Mr. Beatty adjusted the rate for land within the subject parcel that is not currently utilized by the plant operations. The Board requires some market support for making that adjustment but none was provided.

**Issue B: Should the 2010 assessment of Machinery and Equipment be adjusted to reflect additional depreciation in accordance with Schedule D of the 2009 Alberta Machinery & Equipment Assessment Minister's Guidelines?**

The Complainant witness Wilichowski conducted a market value appraisal of the personal property listed by the Complainant. The valuation procedure used by the appraiser may be acceptable for that type of valuation, however, the assessment of machinery and equipment is regulated – it is not a market value assessment.

The Complainant asks the Board to accept the appraiser's measurement of economic obsolescence and apply that to the assessment for a reduction of 50%. Mr. Wilichowski discussed two methods of estimating economic obsolescence: Utilization Method and Market Extraction Method. Of the two, his preference under the circumstances was the Market Extraction Method. His application of this method was to examine sales of individual pieces of equipment on the secondary market. His valuation was described as Fair Market Value – Installed. The individual pieces of equipment (some 300 were relied upon) were not installed at the times of their sales. The individual sale prices were related to cost new for each item. Physical depreciation was accounted for on a straight line age/life basis. The difference between these amounts was attributed to economic obsolescence. While the procedure appears to be a straight forward one, the Board is not convinced that the resultant economic obsolescence rate in the appraisal is sufficiently founded to apply that same rate to the machinery and equipment assessment in the subject property. Additional discussion regarding the installed versus uninstalled status of equipment might have helped. Further, the Board is concerned about the simple calculation of physical depreciation based on actual age.

This finding should not be construed as a rejection of market based analysis for the determination of external obsolescence. The CARB finds that Schedule D of the Minister's Guidelines is applicable to machinery and equipment and the application of Schedule D does not have to relate directly to Schedule C. If market extraction methodology was comprehensively applied and adequately presented to the CARB, then it would have been given weight.

#### **Summary and Conclusion:**

The CARB finds that the Complainant has not provided sufficient evidence and argument to convince it that there needs to be an adjustment to the 2010 assessment of the subject Cargill plant. There was insufficient evidence of the distressed beef processing industry as at the valuation date. The Complainant's reliance on sales of other food processing facilities was lacking in detail and analysis which made them less useful in determining whether or not there was external obsolescence in the subject plant. Neither the buildings and structures nor the machinery and equipment assessments are altered.

The assessment of the subject plant is confirmed as it is shown on the 2010 assessment roll.

**Dated at the Municipal District of Foothills No. 31, this 31<sup>st</sup> day of December, 2010.**

  
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W. Kipp, Presiding Officer

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

<u>NAME</u>	<u>CAPACITY</u>
1. Brian Dell	Counsel for the Complainant
2. Dean Jacobs	Representative for the Complainant
3. Richard Wilichowski	Witness for the Complainant
4. D. Allan Beatty	Witness for the Complainant
5. Patrick Lambie	Witness for the Complainant
6. Jon D'Easum	Witness for the Complainant
7. Scott Entz	Witness for the Complainant
8. Matthew Pierson	Observer – DuCharme McMillen & Assoc.
9. Barry Sjolie	Counsel for the Respondent
10. Alvin Kosak	Counsel for the Respondent
11. Laura MacFarlane	Associate of Counsel for the Respondent
12. Diane Fraser	Representative for the Respondent
13. Susan Staley	Observer – M.D. of Foothills No. 31
14. Kevin Grier	Witness for the Respondent
15. Brian Gettel	Witness for the Respondent
16. Dan Driscoll	Witness for the Respondent
17. J.K. McFarland Berg	Court Reporter
18. R.L. Bailey Crerar	Court Reporter
19. Wayne Kipp	Presiding Officer
20. David Anderson	Board Member
21. B.J. Ersson	Board Member
22. Sherri Barrett	Board Clerk
23. Brenda Bartnik	Board Clerk

APPENDIX "B"

EXHIBITS

**NO. ITEM**

1. Assessment Review Board Complaint
2. Hearing Notice
3. Complainant's Disclosure Statement
  - 3A Appraisal Report – Allan Beatty
  - 3B Appraisal Report – Accuval
  - 3C Report – John D'Easum
  - 3D Report - Patrick Lambie
  - 3E Legal Brief
  - 3F Volume of Additional Documents
4. Respondent's Disclosure Statement
  - 4A Legal Brief
  - 4B Report - Kevin Grier
  - 4C Report – Brian Gettel
  - 4D Report – Dan Driscoll
5. Complainant's Rebuttal
  - 5A Rebuttal – J. D'Easum
  - 5B Rebuttal – Allan Beatty
  - 5C Rebuttal Brief – Complainant
  - 5D Rebuttal – Kevin Grier
6. Black's Law – def'n. *hearsay*  
Re: application to dismiss Driscoll report
7. Corrections to Retrospective Appraisal – A. Beatty

***Procedure for Appeal***

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- a) the complainant;
- b) an assessed person, other than the complainant, who is affected by the decision;
- c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;
- d) the assessor for a municipality referred to in clause c.

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to:

- a) the assessment review board, and
- b) any other persons as the judge directs.