

BOARD ORDER: MGB 057/07

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF COMPLAINTS respecting linear property assessments for the 2006 tax years filed by Northern Sunrise County.

BETWEEN:

Northern Sunrise County as represented by Emery Jamieson LLP - Complainant

-and-

Alberta Ministry of Municipal Affairs and Housing, Designated Linear Assessor for the Province of Alberta as represented by Bishop & McKenzie LLP – Respondent

BEFORE:

Members:

D. Thomas, Presiding Officer
L. Atkey, Member
B. Ardiel, Member

Secretariat:

M. d'Alquen
L. Gagne

Upon notice being given to the affected parties and property owners, a hearing was held in the City of Edmonton, in the Province of Alberta on December 6, 2006. Before the decision was released, the appointment by the Lieutenant Governor in Council of Panel Member Mr. Ardiel expired. After the expiry of Mr. Ardiel's appointment, the two remaining panel members continued as a quorum to finalize this order pursuant to section 489 of the Act.

The matters before the MGB are the 2006 tax year linear assessment complaints detailed in Appendix "C" of this Board Order. All other complaints were withdrawn at the beginning of the hearing and not considered further by the MGB. Appendices "A" and "B" list the witnesses and legal counsel appearing before the MGB in this matter and the documents received and considered by the MGB. The MGB is authorized to hear complaints regarding linear property assessments under section 488(1)(a) of the Act.

OVERVIEW

This Order concerns the assessments of certain oil and gas wells. The Complainant argues that the Designated Linear Assessor (DLA) should have corrected the assessments of a first set of wells after receiving evidence that they are based on incorrect data from the Alberta Energy and Utilities Board (EUB). With respect to a second set of wells, the Complainant does not take issue with the accuracy of the EUB records. Rather, it argues that the DLA's interpretation and application of the Alberta Linear Property Minister's Guidelines (Minister's Guidelines) has resulted in inequity. In particular, it says certain multi-zone or multi-bottom hole wells that appear to be similar have been treated differently by the DLA's application of the Minister's Guidelines.

With respect to the first well set, the Respondent argues that the evidence is insufficient to show the EUB records underlying their assessments are incorrect. Therefore, it says the DLA had no reason or obligation to investigate or correct the assessments or their underlying data. The DLA's choice not to make further enquiries or changes was a proper use of its discretion, particularly given the large volume of well assessments that must be processed annually. With respect to the second well set, the Respondent argues that equity in a regulated context results from correct and consistent application of the prescribed valuation standards and procedures. Furthermore, it says the DLA applied the procedures correctly and consistently as set out unambiguously in the Minister's Guidelines.

BACKGROUND

Parties

The Complainant is a municipality in northern Alberta with oil and gas wells within its boundaries. The Respondent is the Alberta Ministry of Municipal Affairs and Housing (Ministry). The DLA is a Ministry employee designated by the Minister under section 292(1) of the Act to prepare linear assessments in the Province of Alberta.

Role of AEUB Records in to Preparing Linear Property Assessments

The DLA assesses linear property (including wells) according to standards and procedures identified in the *Matters Relating to Assessment and Taxation Regulation* (MRAT) by reference to the Minister's Guidelines, which the Act indicates must be followed in a fair and equitable manner (section 293(1)(b)). The Minister's Guidelines assign assessment formulas to wells using a process that begins with well codes and production statistics found in the records of the EUB. The four relevant EUB status classification codes are: "type" (e.g. observation or farm), "mode" (e.g. producing or abandoned), "fluid" (e.g. oil or gas), and "structure" (e.g. number of zones). Each of these characteristics has a 2-digit EUB code. Combining the four 2-digit codes for each characteristic produces an eight-digit EUB classification code for each well.

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The Guidelines use the EUB's eight-digit well code and production records to assign "well status descriptions" for assessment purposes. These descriptions include "crude oil flowing", "crude oil pumping", "crude bitumen", "gas", and "injection/disposal/storage". Wells are then assessed based on their status descriptions by reference to corresponding tables and formulas set out in the Guidelines.

As the foregoing description suggests, EUB data plays an important role in determining linear assessments. Therefore, the accuracy and upkeep of that data also affects the assessments. Much of the relevant data is generated by linear property operators, who provide the EUB with information during the well licensing process and report status changes and production information on an ongoing basis. As noted in previous MGB decisions (e.g. MGB 068/06), the EUB can conduct audits and impose penalties where information has not been reported properly. This system encourages compliance and generally keeps EUB records accurate. However, the system does not guarantee that companies will provide updated information in a timely manner or that the information is always entered correctly into the EUB records.

Properties under complaint

The parties sorted the properties under complaint into four groups:

Group 1: Wells that the Complainant argues should be assessed as "crude oil pumping" instead of "crude oil flowing" to reflect their physical status - that is, their use of pumps to generate production as of October 31, 2005. This group consists of 17 wells or Linear Property Assessment Unit Identifiers (LPAUIDs), ten of which were appealed on similar grounds during prior years and dealt with in MGB 068/06.

Group 2: Wells that the Complainant argues should be assessed as "crude bitumen pumping" instead of "crude oil flowing" to reflect their physical status as of October 31, 2005. This group consists of a further 17 wells.

Group 3: Multi-zone wells that the Complainant argues should be assessed as "injection wells" instead of the well status description chosen by the DLA from Table 4.8 of the Minister's Guidelines. This group consists of seven LPAUIDs, each of which contains two or more non-producing zones, at least one of which is shown by EUB records to have logged injection hours (8571 hours on average).

Group 4: Multi-zone wells that the Complainant argues should be assessed as "gas" instead of the well status description chosen by the DLA from Table 4.8 of the Minister's Guidelines. This group consists of two LPAUIDs, each with two zones, one of each pair having produced gas in 2005.

ISSUES

Issue 1: Was the physical status of Groups 1 and 2 “pumping”? If so, does this imply that the EUB data upon which their assessments are based was incorrect, or that the assessments should be changed to reflect “Crude Oil Pumping” and “Crude Bitumen Pumping” status descriptions?

Issue 2: Did the DLA’s interpretation and application of the Minister’s Guidelines result in unfair or inequitable assessments for Groups 3 and 4 within the meaning of the Act?

LEGISLATION

In order to decide the above issues, the MGB examined the following key legislative directions.

Municipal Government Act

Section 284 defines linear property and includes wells as a subcategory under pipelines:

284(1) In this Part and Parts 10, 11 and 12,
(k) “linear property” means
(iii) pipelines, including
(C) any pipe in a well intended for or used in

Section 292 of the Act gives a broad outline of the standards, procedure and practice for the assessment of linear property and it is the starting point for this process.

292(1) Assessments for linear property must be prepared by the assessor designated by the Minister.
(2) Each assessment must reflect
(a) the valuation standard set out in the Regulations for linear property, and
(b) the specifications and characteristics of the linear property on October 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the linear property, as contained in
(i) the records of the Alberta Energy and Utilities Board, or
(ii) the report requested by the assessor under subsection (3).
(3) If the assessor considers it necessary, the assessor may request the operator of linear property to provide a report relating to that property setting out the information requested by the assessor.
(4) On receiving a request under subsection (3), the operator must provide the report not later than December 31.
(5) If the operator does not provide the report in accordance with subsection (4), the assessor must prepare the assessment using whatever information is available about the linear property.

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Section 293 directs the DLA (as well as municipal assessors) to follow the direction given in the Regulations in a fair and equitable manner.

- 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,*
- (a) apply the valuation 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.*

Section 305(1) addresses the remedy available to an assessor where an assessment notice is issued for a linear property and where the notice contains a specified defect.

- 305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,*
- (a) the assessor may correct the assessment roll for the current year only, and*
 - (b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.*

Section 312 allows for correction of an assessment notice that is incorrect.

- 312 If it is discovered that there is an error, omission or misdescription in any of the information shown on an assessment notice, an amended assessment notice may be prepared and sent to the assessed person.*

The MGB has the authority to make a change with respect to an error related to the preparation of a linear assessment. The MGB may not use this authority to change an assessment that is fair and equitable.

- 499(2) The Board must not alter*
- (a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality, and*

...

Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

In defining the valuation standard, section 8 of MRAT makes reference to processes and procedures set out in the Minister's Guidelines.

- 8(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).*

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(2) In preparing assessments for linear property, the assessor must follow the procedures set out in the Alberta Property Assessment Minister's Guidelines established and maintained by the Department of Municipal Affairs, as amended from time to time.

2005 Alberta Linear Property Minister's Guidelines

The Guidelines establish the process for preparing linear property assessments.

1.002 Process for Calculating Linear Property Assessments

- c. Pursuant to section 8(2) of the Regulation, the process for calculating pipeline linear property assessments is found in section 4.000 of the 2005 Alberta Linear Property Assessment Minister's Guidelines.

The 2005 Guidelines set out the valuation standard and procedures for assessing linear property. Section 4.002 requires assessments to reflect the AEUB records as of October 31.

4.002 CHARACTERISTICS AND SPECIFICATIONS

- (c) For linear property defined in section 284(1)(k)(iii)(C)(D)(E) and (E1.1) the assessment must reflect the characteristics and specifications contained in the records of the AEUB as of October 31 of the assessment year.

Specific directives in the Guidelines also outline the manner in which depreciation is to be granted. In particular, the MGB noted section 4.008 that describes how the ACC is to be determined when linear property has more than one well status description.

PROCESS FOR DETERMINING THE ACC OF LINEAR PROPERTY DESCRIBED IN 4.002 (C) OR 4.002(D)

- (a) Determine how many well statuses the linear property has.
- (b) If the linear property has:
 - (i) exactly one well status, locate the well status description determined in 4.005 on Table 4.7 to determine the ACC.
 - (ii) more than one well status description, use Table 4.8. From the well status descriptions of the linear property determined in 4.005, identify the well status description that occurs first in Table 4.8.

Also, note Tables 4.5, 4.7, 4.8, 4.9, 4.10, 4.12 and Schedule D, which between them assign well status descriptions and formulas for assessment based on the eight-digit AEUB well code. For the sake of brevity, these tables are not reproduced in this Board Order.

Issue 1: Was the physical status of Groups 1 and 2 “pumping”? If so, does this imply that the EUB data upon which their assessments are based was incorrect, or that the assessments should be changed to reflect “Crude Oil Pumping” and “Crude Bitumen Pumping” status descriptions?

Summary of Complainant’s position

The Complainant argued that the physical status of the wells was “crude oil pumping” (Group 1) or “bitumen pumping” (Group 2) as of October 31, 2005. In support, it pointed to letters from well operators confirming that most of the wells were “pumping” as of the relevant date. It also provided pictures of well sites. Most of these are dated July 25, 2006, but some date from the previous summer and were used in the prior year’s complaint. The Complainant also provided EUB records establishing that the wells were in production as of the relevant date.

In view of the evidence provided, the Complainant concluded that the wells were in fact pumping. Since the DLA assessed the wells as “crude oil flowing” - and presumably applied the Minister’s Guidelines correctly - the Complainant suggested that the assessments must be based on incorrect EUB records. Therefore, it said the assessments should be corrected to match their true pumping status.

In further support of its position, the Complainant argued that having been presented with evidence that the wells were physically pumping rather than flowing on October 31, 2006, the DLA had a responsibility to either correct the assessments or issue requests for information from the property owners to confirm their status directly. In this regard, it noted that property owners have a duty under the Act to respond to information requests from the DLA, but not to requests from municipalities. It also noted the MGB’s decision in MGB 068/06, which dealt with many of the same properties. In that decision, the MGB noted that a municipality cannot easily initiate changes in the EUB record. Thus, where a municipality brings forward undisputed evidence of an error, a decision not to exercise the powers available under the Act to correct the assessment or request further information from the operator to determine the true status of the property is not a fair and equitable application of the procedures set out in the Minister’s Guidelines. In light of the evidence now before MGB that the wells were in fact “pumping” as of October 31, 2005, the Complainant requested that the assessments be changed to “crude oil pumping” or “bitumen pumping”, following the same reasoning adopted in MGB 068/06.

Summary of Respondent’s Position

The Respondent argued that the Complainant’s evidence does not prove that the EUB records were incorrect or that the correct description of the subject wells was “crude oil pumping” or “bitumen pumping” under the Minister’s Guidelines. In support of this position, it relied on the evidence of Ms. Uttley, a senior official employed by the Respondent to supervise the preparation of linear property assessments for wells in Alberta.

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Ms. Uttley reviewed the well assessment procedures established under the Minister's Guidelines and described the EUB data they rely upon. In doing so, she noted that the EUB production data presented by the Complainant does not include the same data elements used to prepare the assessment; rather, it merely shows that the wells were producing. While this evidence proves that the property in question is linear property as defined under the Act, it is not relevant to its correct description as pumping or flowing under the Minister's Guidelines. Similarly, the letters and photographs shown do not show that there is an error in the relevant EUB records, since the status descriptions for property assessment are assigned by the tables and procedures in the Minister's Guidelines. These procedures are based on specific EUB data elements and the resulting descriptions need not match either the EUB status descriptions or the status indicated by the operators. In short, there is no evidence of an error in the EUB records, and the Complainant does not contend that the DLA has applied the Guidelines incorrectly. Therefore, the Complainant has failed to show that there is an error in the assessment. Neither has it provided compelling justification for the DLA to alter the assessment under section 305 or 312 of the Act or request a report from property owners under section 292(3).

In further support of its decision not to amend the assessments or request a report from operators, the Respondent noted that it is responsible for assessing over 200,000 wells in the province, and must treat all properties equitably. In previous decisions, the MGB has found that equitable application of the Minister's Guidelines requires correct and consistent application of the procedures they set out. Requesting reports for such a large number of properties would not be possible given the limited resources available. In this regard, the Respondent also noted that the regulated assessment procedures embodied by the Act, Regulations, and Minister's Guidelines show a clear policy decision to base assessments on the EUB records. This decision was taken to achieve efficiency in the assessment process with the understanding that there may be occasional errors in the record.

The Respondent acknowledged that similar issues were raised during the prior two years' complaints in connection with pumping wells and the accuracy of EUB records. However, it indicated that the evidence and argument now before the MGB support different conclusions to those reached in MGB 068/06. In MGB 068/06, the Board concluded on the evidence then before it that the EUB records were incorrect. In addition, it found that if the second two digit EUB code is "10", then the well is flowing, but if it is "11", it is pumping. The testimony of Ms. Uttley and Minister's Guidelines now before the MGB show that this finding does not apply. Instead, the evidence shows that the Minister's Guidelines sometimes assign two different well status descriptions – only one of which is pumping – to two 8 digit codes with the same second pair of digits. The Respondent suggested that the evidence currently before MGB does not demonstrate an error in the EUB records. Furthermore, there is no evidence to suggest the pool code or statuses would be different had an operator's report been requested, and no evidence to suggest the DLA incorrectly applied the valuation standards and procedures. Accordingly, there is no basis for changing the assessments or requesting operator reports.

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In summary, the Respondent indicated that it based its assessments on the same EUB data that it did for all property owners with similar properties. No evidence was brought to its attention to suggest that the appropriate EUB characteristics and specifications underlying its assessments were in error. On this basis, it exercised its discretion in good faith not to request further information or amend the assessment. The MGB should not interfere with this exercise of discretion. The actual physical status of the wells as pumping is an irrelevant consideration that would be improper for the DLA to consider. Operational status is likewise not a relevant characteristic under the Guidelines, which must be applied consistently.

Findings

- The physical status of the wells in question was pumping as of October 31, 2005.
- The most appropriate status description for the Group 1 wells under the Minister's Guidelines was most likely Crude Oil Pumping.
- The most appropriate status description for the Group 2 wells under the Minister's Guidelines was most likely Crude Bitumen.

Reasons

As with the 2004 and 2005 complaints, the Complainant presented compelling evidence that the subject wells were most likely physically pumping as of October 31, 2006. This evidence included EUB data establishing that all the subject wells were producing as of October 31, 2005. It also included letters from well operators concerning most of the wells in Groups 1 and 2, as well as personal observations of Mr. Gagnon.

Group 1

While the Complainant was unable to provide letters for some of the Group 1 wells, four of these were repeat complaints from the prior year. Mr. Gagnon, the municipal assessor, testified that he had visited these wells personally and noted no change in status between the summer of 2004 and the summer of 2005 - years for which the MGB ordered assessments as "crude oil pumping". Mr. Gagnon also visited and photographed the remaining wells during the summer of 2006, and - although his observations are after the assessment date - they are consistent with pumping well status as of October 31, 2005. The Complainant suggested that the foregoing evidence establishes on a balance of probabilities that the physical status of the wells under complaint was "pumping". The MGB agrees with this conclusion. The MGB notes that the well identified by the Complainant as item 1.01 (LPAUID 3489023) is not a repeat complaint from prior years and has no supporting operator's letter to show that it was pumping as of the relevant date. In this respect, the evidence provided to show pumping status as of October 31, 2005 is somewhat weaker than for the other wells. Nevertheless, the evidence is strengthened by the fact that unlike most of the other wells in Group 1, the EUB status provided shows item 1.01 as "Pmp Crude Oil" suggesting that its

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true status was likely pumping. At the very least, this circumstance – based as it is in the EUB records – introduces enough doubt with respect to the “flowing” status initially assigned by the DLA to trigger further investigation. However, taken together with the other evidence, including Mr. Gagnon’s photograph from July 2006 featuring a pump jack, the MGB finds that well 1.01 was pumping and that the assessment should be amended accordingly. In this connection, the MGB also notes that the “in production” status for item 1.01 is listed as October 31, 2005.

The Respondent argues that evidence concerning the physical status of the wells is irrelevant. In support, it says that the reason the wells were assessed as flowing instead of pumping may have more to do with the application of the rules prescribed by the Minister’s Guidelines than a mistake in the EUB records. Furthermore, it notes the Complainant did not suggest that the Minister’s Guidelines were applied incorrectly.

The MGB does not accept this line of argument. The evidence presented establishes that the wells in Group 1 were attached to an operating pump and were in production. These wells were classified by the Respondent itself as crude oil wells; accordingly, it is reasonable to conclude they were producing oil or condensate and using a pump to do so. Such circumstances strongly suggest that the property description used for assessment purposes was incorrect and that it is based on a mistake at some point in the process – either in the EUB records or the application of the well status description by the DLA. If the DLA applied the correct process, the most likely explanation for the incorrect property tax status description is that the EUB data elements relied upon needed correction. A fair application of the procedures in the Minister’s Guidelines requires that the assessment be corrected, or – at the very least – that further action be taken as authorized under the Act to verify the correct status description.

Group 2

With respect to the Group 2 properties, the MGB notes that the Complainant has requested a status description for assessment purposes of “crude bitumen pumping”. “Crude bitumen pumping” does not appear under Table 4.5 or other relevant Tables in the Minister’s Guidelines as a well status description, and seems to be a phrase unique to the EUB (see, for example, the first spreadsheet under Tab 5 of the Complainant’s materials). The closest description used in Table 4.5 of the Minister’s Guidelines is simply “crude bitumen”. The MGB concludes that Complainant’s request is that the Group 2 wells be assigned the “crude bitumen” status description listed in Table 4.5 instead of “crude oil flowing”.

The evidence presented by the Complainant was clear that the Group 2 wells are bitumen wells for which a pump of some kind is being used to generate production. This evidence includes EUB status description as “bitumen pumping” as well as letters from well operators documenting the well’s pumping status. Whether crude oil or bitumen was produced, the “flowing” aspect of the DLA’s status description for assessment purposes (“crude oil flowing”) for these wells would appear to be incorrect. The EUB status description shown in Tab 5 of C1 also suggests the product was in fact bitumen, and no evidence was presented to the contrary. This circumstance introduces

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considerations similar to those mentioned above in relation to “item 1.01” in Group 1. In view of the totality of the evidence before it, MGB is satisfied that the circumstances warrant revising the assessment by substituting a “crude bitumen” well status description for “crude oil flowing”.

Both sides made submissions concerning the Respondent’s decision not to request further information from operators to establish the true status of the wells under complaint. The Respondent argued that there was no evidence to suggest anything was wrong with either the EUB records or the ultimate assessments. For the reasons expressed above, the MGB does not agree with this conclusion.

Ms. Uttley also suggested during her testimony that one reason behind the decision not to request further information from property owners was that if the DLA were to send requests for information (RFIs) for the wells under complaint, they would have to go out for all 200,000 wells in Alberta. The MGB does not accept this argument. There is nothing inequitable in sending RFIs for properties concerning which a municipality has raised strong evidence that something is amiss with the property description used to assess it. In such circumstances, equity would not require RFIs for all 200 000 properties in the Province. While the Respondent must exercise its discretion to decide when an RFI is required, it may not hide behind the excuse that if an RFI is sent for one property, it must be sent for all in order to avoid requesting further information when meritorious circumstances are brought to its attention by a municipality.

Issue 2: Did the DLA’s interpretation and application of the Minister’s Guidelines result in unfair or inequitable assessments for Groups 3 and 4 within the meaning of Act?

Summary of Complainant’s position

The Complainant argued that the DLA’s interpretation and application of the Minister’s Guidelines to wells in Groups 3 and 4 has resulted in similar properties being assessed dissimilarly. It says this circumstance renders the assessments unfair and inequitable, contrary to the requirements of the Act.

In support of its position, the Complainant noted authorities from the Alberta Court of Appeal (*Calgary (City) v. Lougheed Tomasson Inc.* 2000, ABCA 81 and *Strathcona No. 20 (County) v. Alberta (Assessment Appeal Board)*, 165 AR 300 indicating that a taxpayer is entitled to an assessment that is both equitable and correct. It is common ground that the principle of equity requires similar property to be treated similarly. Furthermore, the MGB found in *GT Group Telecom v. DLA*, (MGB 117/04) that in the context of regulated linear property, similar property is property that is assessed using the same process under the legislation. The multi-zone wells in Groups 3 and 4 are all wells to which the same regulated process applies. Whether a multi-zone well in Group 3 receives 90% depreciation or none depends only on which well description appears first on the list in Table 4.8. Changing the status of the Group 3 wells to “injection” would reflect the presence of a zone for which the total injection hours were greater than zero. By the

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same token, changing the status of the Group 4 wells to “gas” would reflect the presence of a zone for which the total gas production was greater than zero.

In further support of its position, the Complainant argued that the Minister’s Guidelines are ambiguous, because section 4.004 says simply that the DLA must determine well status by looking at the “latest” well status fluid, mode, type and structure. The DLA interprets “latest” to mean it must use the most recently available record for each description. However, an alternative interpretation is that the DLA must use the latest zone in time, which can be determined through the event sequence code. Where there is ambiguity in the Guidelines, the MGB should adopt the interpretation with the most equitable result.

Summary of Respondent’s Position

The Respondent argued that fairness and equity in the context of regulated assessments require consistent and accurate application of the legislation. The MGB has accepted this principle consistently in previous orders. In this case, the DLA applied the procedures set out in the Minister’s Guidelines correctly and consistently. Furthermore, the Minister’s Guidelines are not ambiguous and the resulting assessments cannot be changed merely because the Complainant, DLA, or MGB does not like them.

Table 4.004 clearly indicates that the DLA must use the “latest” data filed at the EUB to calculate status descriptions for wells. It also contemplates that a well may have more than one well status description. The Complainant’s interpretation that “latest” means the most recent zone cannot be correct. In that case, each well would have one and only one status description. The hierarchy created by section 4.008 and Table 4.8 to choose one status description from many would then be superfluous, which cannot have been the legislator’s intent.

Findings

The DLA applied the relevant legislation to the Group 3 and 4 wells consistently and correctly.

Reasons

The MGB sees no ambiguity in the Minister’s Guidelines. Section 4.004 indicates that the DLA must use the “latest” well status fluid, mode, type, and structure contained in the records of the EUB. The most straightforward interpretation of this requirement is that the DLA must consult the latest update of information contained in the records of the EUB - not the latest event or zone. If there were any doubt about this interpretation, it is dispersed by the fact that the Minister’s Guidelines clearly contemplate that a single well may have more than one status description. As the Respondent says, the hierarchy in Table 4.8 is designed to choose amongst several descriptions when there is more than one.

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The question remains whether the DLA's application of the Minister's Guidelines has resulted in a breach of the rule that a taxpayer is entitled to the lower of correctness or equity articulated by the BC Court of Appeal in *Assessor for Area 9 – Vancouver v. Bramalea and T. Eaton Company* (1990) 52 BCLR 2nd, 218 (CA) and later applied by the Alberta Courts. To begin with, the MGB observes that the *Bramalea* principle is that a taxpayer has (a) a right not be assessed in excess of actual value, and (b) a right not to be assessed in excess of a value that can be regarded as equitable. Accordingly, it seems that application of the *Bramalea* principle should result – if anything - in taxpayers receiving decreased assessments rather than the increased assessments (for Group 3) requested by the Complainant. In any event, whether the *Bramalea* principle can support an increase in assessment need not be decided, because it does not apply directly to regulated linear property. This was found previously in *GT v. DLA* (MGB 117/04), with which the MGB is still in agreement. In that order, the MGB concluded that although section 293 means the general principle of equity applies to regulated linear property, the specific principle in *Bramalea* applies only to market value property.

As indicated in *GT*, to determine whether the legislation has been applied equitably in the context of regulated linear property, a comparison of similar properties is necessary.

The only way to determine consistency and accuracy in the application of the legislation is to examine how other similar properties are being assessed. If the assessor is assessing similar properties using the appropriate legislative criteria consistently and accurately, then equity is achieved.

Supposing that the wells in Groups 3 and 4 are similar to other multi-zone injection wells or multi-bottom hole gas producing wells, there is no evidence to suggest that the DLA has applied the regulated procedures incorrectly or inconsistently. On the contrary, the DLA appears to have applied the tables and procedures outlined in the Minister's Guidelines consistently and accurately to all similar wells. This is not a case, as was alleged in *GT*, that the DLA has adopted different RFI processes for similar properties that resulted in the use of regulated rates for some properties and construction costs for others. If the processes laid out clearly in the regulations and Minister's Guidelines seem somewhat arbitrary or unfair – rather than their mode of application - it is not for the MGB to interfere.

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DECISION

The complaint is allowed in part and the Respondent is directed to recalculate the assessments using the status description “Crude oil flowing” for the Group 1 properties and “Crude Bitumen” for the Group 2 properties. No recalculations are required for the Group 3 and 4 properties.

Dated at the City of Edmonton, in the Province of Alberta, this 9th day of May 2007.

MUNICIPAL GOVERNMENT BOARD

D. Thomas, Presiding Officer

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
K. Hurlburt M. Gagnon	Emery Jamieson LLP, Legal Counsel for the Complainant Northern Sunrise County, Complainant
C. Plante J. Pawlyk C. Uttley	Bishop & McKenzie, Legal Counsel for the Respondent Bishop & McKenzie, for the Respondent Witness for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1C	Materials of the Complainant, Northern Sunrise County
2R	Written Submission of the Respondent, Designated Linear Assessor and supporting material
3R	Excerpt from the Municipal Government Act – Division 1

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APPENDIX “C”

2006 (tax year) Linear Property Assessment Complaints filed by Northern Sunrise County

GROUP 1 PROPERTIES – Assessed as Crude Oil Flowing, requested as Crude Oil Pumping

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	LPAU-ID
0496	Northern Sunrise County	03775	Arsenal Energy Inc.	3489023
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1833729
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1890239
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1911807
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1915440
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1925833
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	1950071
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	2748052
0496	Northern Sunrise County	20853	Canadian Natural Resources Ltd.	3128628
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2098721
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2098723
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2098725
0496	Northern Sunrise County	20969	Celtic Exploration Ltd.	2099631
0496	Northern Sunrise County	21584	Endev Energy Inc.	2107014
0496	Northern Sunrise County	21716	Fet Resources Ltd.	1860088
0496	Northern Sunrise County	21716	Fet Resources Ltd.	1928391
0496	Northern Sunrise County	22169	Husky Oil Operations Limited	2101481

BOARD ORDER: MGB 057/07

GROUP 2 PROPERTIES – Assessed at Crude Oil Flowing, requested as Crude Bitumen Pumping

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	LPAU-ID/Licence No.
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	3482935
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	3487251
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	3487252
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	3487253
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	3489079
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3487510
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3488953
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3489144
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3489145
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3482887
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3483327
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3483350
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3483599
0496	Northern Sunrise County	22890	Murphy Oil Company Ltd.	3483353
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	Lic No. 333917
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	333916
0496	Northern Sunrise County	20601	Blackrock Ventures Inc	333920

GROUP 3 PROPERTIES – wells with multiple zones – requested to be assessed as “injection”

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	LPAU-ID
0496	Northern Sunrise County	22930	Petrofund Corp	1834669
0496	Northern Sunrise County	22930	Petrofund Corp	1835980
0496	Northern Sunrise County	22169	Husky Oil Operations Ltd.	1842822
0496	Northern Sunrise County	24365	Thunder Energy Inc.	1902112
0496	Northern Sunrise County	22169	Husky Oil Operations Ltd.	1932366
0496	Northern Sunrise County	22930	Petrofund Corp.	1954975
0496	Northern Sunrise County	24666	Virtus Energy Inc.	1993630

GROUP 4 PROPERTIES – Multi-bottom Hole wells - requested to be assessed as “gas flow”

Municipality MA-ID	Municipality Name	Assessee MA-ID	Assessee Name	LPAU-ID
0496	Northern Sunrise County	22169	Husky Oil Operations Ltd.	1919125
0496	Northern Sunrise County	24666	Virtus Energy Ltd.	1869787