

PUBLIC UTILITIES BOARD

ORDER NO. 25860

FILE: C-110-N

FRIDAY—THE TWENTY-NINTH DAY OF DECEMBER, 1961

Before:

The Public Utilities Board for the
Province of Alberta.

In the matter of The Public
Utilities Board Act;

And in the matter of The City
Act;

And in the matter of an applica-
tion by the City of Calgary for
an Order annexing to the City
certain lands.

Upon the application of The City of Calgary for an Order to include within the City certain lands adjacent thereto:

And the Board having heard the application and having rendered its Decision No. 25736 dated the 8th day of September, 1961:

And upon hearing representations made at a public hearing held at the Court House in the City of Calgary on the 19th day of December, 1961, concerning the terms and conditions to be contained in a formal order annexing such lands:

And it further appearing that notice of the hearing to be held on December 19th, 1961, was served upon all interested parties:

And upon it further appearing that while agreement had not been reached between the City of Calgary and the Town of Forest Lawn as to such terms and conditions, Forest Lawn was not represented at the hearing due to the resignation of the town council:

And the applicant having advised the Board that the matters remaining in dispute include:

1. The town's representation on the city council;
2. The carrying on of the town's future capital works programme; and
3. The continuation of the town's basis of assessing and levying business tax.

And the Board having considered these matters about which it was advised:

It is ordered:

1. That the application of the City of Calgary to annex the lands situate in the Town of Montgomery and described as follows:

That portion of the east half of section 25, in township 24, range 2, west of the fifth meridian which lies to the east of the west boundary of the north-west highway by-pass (presently being surveyed);

The east 2,058.7 feet of the road allowance adjoining the south boundary of the south-east quarter of section 25, in township 24, range 2, west of the fifth meridian, containing 3.12 acres, more or less;

That portion of the north-east quarter of section 24, in township 24, range 2, west of the fifth meridian which lies to the north and to the east of the Trans Canada Highway as shown on a plan of record in the Land Titles Office for the South Alberta Land Registration District as 8336 T.X.;

be and the same is hereby dismissed.

2. That the application of the City of Calgary, subject to conditions hereinafter set out, to annex the following lands situate within the Town of Forest Lawn, the Municipal District of Rocky View No. 44 and the Municipal District of Foothills No. 31, namely:

Those portions of section 32 and fractional section 31, in township 22, range 29, west of the fourth meridian, which lie to the north and west of the Bow River;

Those portions of sections 25 and 36 which lie to the north and west of the Bow River and to the north of the south bank of Fish Creek, and the whole of sections 31 to 35 inclusive, all in township 22, range 1, west of the fifth meridian;

The whole of fractional sections 4 and 9, the whole of sections 10, 11, 14 and 15, the whole of fractional sections 16 and 21, the whole of sections 22, 23, 26, 27, 34 and 35, all in township 23, range 29, west of the fourth meridian;

The whole of sections 1 to 12 inclusive, and those portions of sections 13, 14, 23 and 24, which lie to the east of the west bank of the Bow River, all in township 23, range 1, west of the fifth meridian;

The whole of sections 2 and 3, the whole of fractional sections 4 and 9, the whole of sections 10, 11, 14 and 15, the whole of fractional sections 16 and 21, the whole of sections 22, 23, 26 and 27, the whole of fractional sections 28 and 33, the whole of sections 34 and 35, all in township 24, range 29, west of the fourth meridian;

The whole of sections 2 and 3 and the whole of fractional section 4, all in township 25, range 29, west of the fourth meridian;

And that territory to the north, adjacent to the existing north boundary of the City of Calgary, described as follows:

The whole of fractional sections 9 and 16 and the whole of sections 10, 11, 14 and 15, inclusive, all in township 25, range 29, west of the fourth meridian;

The whole of sections 7, 8, 9, 10, 11, 13, and the north half of section 12, inclusive, all in township 25, range 1, west of the fifth meridian;

Those portions of sections 34 and 35 which lie to the north and east of the southerly bank of the Bow River and the whole of section 36 inclusive, all in township 24, range 2, west of the fifth meridian.

The whole of sections 1, 2, 10, 11 and 12 and that portion of section 3 which lies to the north and east of the southerly bank of the Bow River, inclusive, all in township 25, range 2, west of the fifth meridian;

be and the same is hereby granted.

3. The annexation of lands comprising the Town of Forest Lawn is subject to the following conditions:

(1) The by-laws of the City of Calgary shall apply to the annexed area, and the by-laws of the Town of Forest Lawn shall cease to apply except by-laws pertaining to borrowings, contracts, local improvements and local benefit improvements.

(2) Assessment of lands and buildings shall be on the same level as assessments in the City of Calgary, that is, 1945 values on buildings and improvements and 1952 values for land. The mill rate as set from time to time by the Council of the City of Calgary shall apply to the assessment.

(3) The assessment as at the 31st day of December, 1961, and the assessment carried out by the Department of Municipal Affairs during the year 1961 for the assessment and taxation year of 1962 and adapted to the City of Calgary level shall be the assessment for taxation for the year 1962 and thereafter and until such time as the City of Calgary carries out a general reassessment.

(4) The Assessor of the City of Calgary shall for assessment purposes adjust improvement assessments of properties in the Town of Forest Lawn to the City of Calgary level of assessment in the following manner, namely: With respect to buildings and improvements presently assessed in accordance with the 1959 Provincial Assessment Manual, a factor of 63.83 shall be applied to each building and improvement assessment for taxation purposes.

(5) Business tax shall be assessed and levied on the same basis and at the same rate that is in effect from time to time in the City of Calgary.

(6) All arrears of taxes of any kind whatsoever owing as of the 30th day of December, 1961, shall belong to and shall be collected by the City of Calgary. The City of Calgary shall be the authority to take any proceedings that may be required under The City Act and The Tax Recovery Act to effect collection of any taxes in arrears.

(7) The City of Calgary shall assume and pay when due all debts, debentures, securities or other obligations owing by the Town of Forest Lawn existing on and owing after the 30th day of December, 1961.

(8) The Town of Forest Lawn shall turn over to the City of Calgary all its official documents, records, maps, assessment rolls, tax rolls, securities and assets, and where required shall execute any necessary assignments and transfers.

(9) All utilities shall be paid for on the same basis and rates as charged in the City of Calgary.

(10) Fire protection, police protection, garbage collection and any other municipal services provided from time to time by the City of Calgary shall be of an equivalent standard to those provided in the City of Calgary.

(11) This Order shall in no way abrogate the franchise agreement dated at the 21st day of August, 1950, and made between the Town of Forest Lawn and Canadian Western Natural Gas Company Limited or the rights of or held by Canadian Western Natural Gas Company Limited thereunder and the City of Calgary shall be bound by the terms of the said agreement to all intents as if the City of Calgary were a party thereto in place of the Town of Forest Lawn.

4. The annexation of lands from the Municipal District of Rocky View No. 44 and the Municipal District of Foothills No. 31 is subject to the following conditions:

(1) The by-laws of the City of Calgary shall be applicable in the area hereby annexed but only those by-laws that are appropriate and reasonable having regard to their nature, intent, object and purpose shall be enforced. In the case of a dispute between the City of Calgary and any owner or occupier of lands hereby annexed such dispute shall be resolved by arbitration before the Senior Judge of the District Court of the Judicial District of Calgary or some person appointed by him.

(2) No assessment shall be made and no tax or other charge shall be imposed on any land hereby annexed in respect of any public utility as defined in The City Act, being chapter 42 of the Revised Statutes of Alberta, 1955, and amendments thereto, unless the owner or occupier of such land makes use of such public utility, but such owner or occupier shall not be required to make use of the utility.

(3) No assessment shall be made or tax imposed on lands hereby annexed in respect of any local improvement as defined in the said The City Act unless at least two-thirds in number of the persons to be assessed as owners or occupiers of the lands hereby annexed abutting the street or place whereon or wherein the local improvement is to be made or of lands to be benefitted thereby, as the case may be, and representing at least one-half in value of the lands referred to in this clause signify their consent to the making of the local improvement.

(4) No business tax shall be assessed or levied in respect of businesses of—

(a) Crop or livestock production,

(b) Fur farming,

(c) Bee keeping,

within the area annexed by this Order.

(5) In the event of any lawful authority prohibiting or in any way restricting the carrying on of any existing business of:

- (a) Crop or livestock production,
- (b) Fur production,
- (c) Bee keeping,

the City shall pay to any person thereby affected all losses or damages caused by such prohibition or restriction.

In the event that a person is at the effective date of this Order, carrying on one of the said businesses, and at the date of the said prohibition or restriction, is carrying on in lieu thereof, or jointly with the business being carried on at the effective date of this Order, another one or more of the said businesses, this condition shall apply to the said business or businesses being carried on at the date of the prohibition or restriction.

In the event that the City and any person affected by the said prohibition or restriction cannot agree upon the losses or damages to be paid by the City, the amount of such losses or damages shall be determined pursuant to the provisions of The Arbitration Act, being chapter 15 of the Revised Statutes of Alberta, 1955, or any amending or substituting Act. Provided, however, that with respect to any improvement the construction of which is commenced after the effective date of this Order, the City's liability for losses or damages in respect of such improvement shall, if such improvement can be moved, be restricted to the cost of moving it to a location not more than five miles from its location at the time of such prohibition or restriction and placing it upon a foundation or basement comparable to that which it was on at the time it was moved. In the event that it is impractical to move such improvement, the City shall be liable for the losses or damage in respect thereof suffered by any person as a consequence of such prohibition or restriction.

(6) Any parcel of land containing 20 acres or more from which the owner or tenant derives an income sufficient to provide a livelihood from the production of crops, or livestock, or from fur production, or bee keeping or hog raising shall be assessed as farm lands and shall be taxed at the current mill rate prevailing within the Municipal District from which the lands were annexed and the dwelling house or houses, buildings and improvements necessary for the said operation shall be exempt from taxation.

(7) Any parcel of land containing 20 acres or more and from which an owner or tenant does not derive an income sufficient to provide a livelihood from the production of crops, or livestock, or from fur production or bee keeping or hog raising shall be assessed and taxed as follows:

- (a) the land shall be assessed as farm lands, and
- (b) the dwelling house or houses and other improvements shall be assessed at the same level as they would have been assessed had they remained in the Municipal District from which the lands were annexed.

The conditions stated in paragraph 4, subparagraphs (6) and (7) shall be applicable to any parcel of land which as of the effective date of this Order is 20 acres or more and is subsequently reduced to less than 20 acres by compulsory purchase or expropriation.

Such lands, dwelling house or houses and improvements shall be taxed by applying thereto the current mill rate of the Municipal District from which the lands were annexed.

(8) Any parcel of land containing less than 20 acres shall be assessed and taxed as follows:

- (a) The land shall be assessed on the same level as it would have been had it remained in the Municipal District from which the lands were annexed,
- (b) The dwelling house or houses and other improvements shall be assessed on the same level as they would have been assessed had they remained in the Municipal District from which the lands were annexed, and
- (c) If an owner or tenant derives his principal livelihood from the production of crops or livestock or from fur production or bee keeping then the dwelling house or houses or other improvements necessary for the said operation shall be exempt from taxation.

Such lands, dwelling house or houses and improvements shall be taxed by applying thereto the current mill rate of the Municipal District from which the lands were annexed.

Parcel of land as used in paragraph 4, subparagraphs (6), (7) and (8) shall mean land consisting of one or more parcels not separated otherwise than by a road, public way or road allowance.

(9) Any person carrying on gravel, quarrying or mining operations shall be entitled to continue such operations subject to the terms of any permit issued by the Municipal District or its predecessors or the District Planning Board. New gravel, quarrying or mining operations shall be subject to the approval of the Technical Planning Board.

(10) All taxes owing on any lands in the annexed area as at the 30th day of December, 1961, shall belong to the Municipal District from which the said lands were annexed but the City of Calgary shall be the collecting authority and may take any proceedings required under **The City Act and The Tax Recovery Act to enforce payment**. Any taxes owing to the Municipal District prior to the 30th day of December, 1961, and collected by the City of Calgary shall be remitted to the Municipal District. The Municipal District shall give to the City of Calgary the assessment rolls and tax rolls respecting the annexed lands.

(11) If at any time during the currency of this Order the Municipal Districts or either of them reassess the lands and improvements in the Municipal Districts, the basis of assessment used by the Municipal District for the reassessment shall apply to the lands and improvements in the annexed areas, and taxes shall be levied on the basis of the said reassessment at the current mill rate in effect in the Municipal District from which the lands were annexed.

(12) The assessment as at the 31st day of December, 1961, and the assessment as carried out by the Municipal Districts during the year 1961 for the assessment and tax year 1962 shall be the level of assessment for taxation for the year 1962.

(13) The conditions of this Order shall not apply to any parcel of land subdivided into parcels of less than 20 acres after the date of this Order.

5. The assessor of the City of Calgary shall have 60 days from the date of this Order within which to complete the assessment of the areas

annexed to the City of Calgary by this Order and to place same on the Assessment Roll and to send notices of the assessments.

6. Anyone interested in or affected by this Order shall be at liberty at any time to apply to the Board then empowered to hear such application to vary or amend the terms of this Order.

7. This Order shall be effective the 30th day of December, 1961.

PUBLIC UTILITIES BOARD
R. D. HENDERSON (Chairman).

Certified a true copy.

A. E. FAHLMAN (Secretary).