

MINISTÈRE DES AFFAIRES MUNICIPALES ET DE LA MÉTROPOLE**EFFET DE LA PROXIMITÉ D'UNE PORCHERIE SUR LA VALEUR DES RÉSIDENCES**

Réponse à la question de la Commission sur le développement durable de la production porcine
adressée à la suite de l'audience publique tenue à Baie-Saint-Paul le 10 décembre 2002 (soirée)

Québec, le 31 janvier 2003

1. ÉTAT DE LA QUESTION

À l'occasion des audiences de la Commission sur le développement durable de la production porcine du Bureau d'audiences publiques sur l'environnement (BAPE), des citoyens se questionnent sur la possible perte de valeur des propriétés résidentielles sises près de nouvelles exploitations porcines. Un des citoyens affirme même avoir en sa possession une étude albertaine qui démontrerait un lien entre la proximité de porcheries et la perte de valeur résidentielle, la diminution des valeurs s'intensifiant à mesure qu'on se rapproche de la porcherie.

La Direction de l'évaluation foncière (DEF) du ministère des Affaires municipales et de la Métropole (MAMM) a alors examiné s'il existe de la documentation démontrant les effets de la proximité des porcheries sur la valeur des résidences.

2. COMMENTAIRES

Selon les recherches effectuées (Internet, disque optique compact des décisions du Bureau de révision de l'évaluation foncière du Québec 1980 - mars 1998, praticiens, etc.), aucune étude exhaustive n'existe au Québec démontrant une relation entre la proximité d'une ferme porcine et un quelconque effet sur la valeur d'une résidence.

De plus, les praticiens de l'évaluation foncière qui ont été contactés ne disposent pas de données claires à ce sujet. Il n'est pas étonnant de constater cet état de fait. Effectivement, il n'existe que deux méthodes pour déceler s'il y a un effet tangible d'un événement sur la valeur des résidences.

2.1 Méthode de revente des propriétés

La première méthode consiste à trouver des propriétés résidentielles achetées avant l'annonce de l'implantation d'une porcherie et qui ont été revendues après la construction de cette porcherie.

De telles données sont très rares et, en plus, il faut s'assurer qu'aucun autre facteur n'influence le prix de vente, tel la fluctuation des valeurs immobilières locales entre les deux dates des transactions. Étant donné la rareté de telles informations et le nombre minimal d'observations nécessaires pour être crédible, il n'est pas étonnant qu'il n'existe aucune étude de ce type.

2.2 Analyse comparative des ventes résidentielles sises près des porcheries

La seconde méthode consisterait à analyser des ventes de résidences situées près des fermes porcines et à les évaluer par la méthode de comparaison en utilisant des ventes de propriétés similaires du même secteur, mais situées en dehors de la zone d'influence des porcheries. La comparaison entre l'évaluation obtenue et le prix de vente d'une résidence permettrait alors de déceler si la valeur fluctue en fonction de la proximité d'une porcherie.

Encore une fois, une telle méthode nécessiterait de nombreuses indications pour être valide. Une recherche similaire a été faite récemment par M. Pierre Turcotte, É.A., pour le compte d'Hydro-Québec. Le but de l'étude était de démontrer si la proximité des lignes de transport d'électricité avait une influence sur la valeur des propriétés. Malgré le grand nombre de données disponibles dans la municipalité de Terrebonne, l'étude a été longue et coûteuse à réaliser. De surcroît, la perte de valeur démontrée était relativement peu élevée, soit de l'ordre de 4 %. Un tel écart est inférieur à la variation généralement mesurée quant aux valeurs probabilistes recherchées.

Bien que les conclusions de cette étude ne puissent être transposées aux effets des exploitations porcines, elles démontrent la difficulté de réaliser une telle étude et l'importance des ressources requises pour effectuer un tel travail, d'autant plus que, dans ce cas, cela nécessiterait d'analyser des données provenant de plusieurs municipalités.

2.3 Existence d'une étude albertaine

Les responsables de la DEF ont communiqué avec M. Steve White, directeur du Service de l'évaluation municipale albertain. Ce dernier a mentionné n'avoir jamais entendu parler d'une étude sur l'effet de la proximité d'une porcherie sur la valeur des résidences. M. White a transmis, à ce sujet, à la DEF des copies de deux décisions récentes du «*Municipal Government Board*» (MGB), l'instance albertaine qui entend les litiges relatifs à l'évaluation foncière (voir copies en annexe).

Il est important de souligner que les lois albertaines régissant l'évaluation foncière sont relativement différentes de celles du Québec. En effet, en l'absence d'une analyse claire et détaillée démontrant la valeur marchande d'un immeuble, le MGB utilise la notion de la «*valeur juste et équitable*» comme point de référence. Le MGB ne fait alors que vérifier si les méthodes et ajustements utilisés par l'évaluateur, lors de son évaluation de masse, ont été appliqués uniformément à l'ensemble des dossiers du rôle d'évaluation. Si tel est le cas, l'évaluation est alors réputée adéquate et le MGB n'intervient pas.

La première décision (MGB 070/02) se base justement sur ce principe de «*valeur juste et équitable*», où le traitement de l'évaluateur à l'égard des conséquences de l'implantation d'un élevage de 10 000 têtes de bétail (bovins) est perçu comme équitable. L'évaluateur, sans aucune justification claire, avait décidé de réduire arbitrairement les valeurs des résidences, selon leur proximité de l'élevage et le sens du vent dominant. Ainsi, les valeurs des propriétés résidentielles situées à moins d'un demi-mille de l'exploitation ont été réduites de 50 % (site résidentiel et maison), les résidences situées entre 0.5 et 1.5 mille ont reçu une réduction de valeur de 30 %, et ainsi de suite. Le MGB, en l'absence de données claires, a décidé que les valeurs au rôle des propriétés étaient équitables, car l'évaluateur avait appliqué uniformément ce traitement à l'ensemble du rôle. Par contre, la décision mentionne aussi qu'aucune donnée ou transaction de propriétés ne vient confirmer que ces évaluations sont représentatives de la valeur des propriétés.

En effet, les ventes soumises par l'évaluateur dans cette décision n'ont pas été jugées suffisantes, représentatives et justificatives d'une perte de valeur liée à la présence d'un élevage bovin de 10 000 têtes. D'ailleurs, la seule vente de résidence soumise au MGB par l'évaluateur a été écartée par le tribunal, ce dernier la jugeant non crédible.

L'évaluateur municipal cité dans la deuxième décision (MGB 096/02) mentionne que la prolifération des élevages porcins et bovins dans une communauté favorise l'économie locale et peut même stimuler à la hausse la demande pour des propriétés et la valeur de ces dernières. Le MGB conclut alors, en l'absence de preuves du contraire, qu'il n'y a aucune démonstration que la présence d'un élevage porcin situé près de la résidence étudiée a une influence négative sur la valeur de celle-ci.

Enfin, même si une étude canadienne, albertaine ou américaine existait à ce sujet, il est loin d'être clair qu'elle pourrait s'appliquer au Québec, les perceptions quant à l'attrait d'une résidence étant différentes d'un endroit à l'autre.

2.4 Causes devant les tribunaux du Québec

A) Bureau de révision de l'évaluation foncière du Québec (1980 à mars 1998)

Les recherches effectuées à l'égard des décisions du Bureau de révision de l'évaluation foncière du Québec (BREFQ), de 1980 à mars 1998, ont permis de découvrir deux décisions à ce sujet (voir copies en annexe).

Dans la première décision (Marjolaine Marois c. Paroisse de Saint-Cléophas, M91-0031), datant de janvier 1991, le président M^c Jacques Forgues a décidé que la preuve faite par le demandeur, à l'effet qu'une porcherie voisine diminuait la valeur de sa propriété, avait prépondérance sur les prétentions de l'intimée. Il a ainsi réduit de 15 % l'évaluation de cette résidence. La propriété s'était pourtant transigée sensiblement au même prix que sa valeur au rôle. Cependant, comme la porcherie s'est agrandie substantiellement après cette transaction, M^c Forgues a décidé de réduire l'évaluation pour ce motif. Aucune donnée qui permettait de quantifier ou de vérifier l'existence de cette diminution de valeur n'avait été présentée au tribunal.

La seconde décision (Louis Trudeau c. Paroisse de Saint-Cléophas et MRC D'Autray, M91-0030-C), datant de février 1991, provient de la même municipalité que la première et sa conclusion, comme son déroulement, sont identiques à la précédente. M^c Forgues justifie sa décision en mentionnant qu'il lui apparaît « *que sur le marché libre, un acheteur ayant le choix de se porter acquéreur de la résidence du plaignant et d'une résidence semblable située à Saint-Cléophas mais non affectée par les vents dominants transportant les odeurs de la porcherie, paierait plus cher pour cette dernière que pour celle du plaignant* ».

B) Tribunal administratif du Québec (avril 1998 à aujourd'hui)

Le Tribunal administratif du Québec (TAQ) a transmis à l'attention du MAMM deux autres décisions directement reliées à la problématique des résidences sises près de porcheries (voir copies en annexe).

La première décision (Rolande Larochelle c. Paroisse de Sacré-Cœur-de-Marie, partie-sud, et MRC de L'Amiante, Dossier 31070-5009-54-4505), rendue le 15 septembre 1999, concerne une résidence située près d'exploitations porcines et de lieux d'épandage de lisier de porcs. L'évaluateur de l'intimé a présenté en preuve un plan des zones d'épandage de la municipalité sujette de Sacré-Cœur-de-Marie. Il a ainsi démontré que l'ensemble des comparables utilisés subissait sensiblement les mêmes ennuis que la propriété étudiée. Le TAQ a donc maintenu l'évaluation en mentionnant que le marché utilisé tenait compte de la présence des porcheries et que cet inconvénient était déjà reflété dans l'évaluation foncière.

La seconde décision (Angelbert Fafard c. Paroisse de St-Cuthbert et MRC D'Autray, Dossier 52065-2512-94-2085), rendue le 9 octobre 1998, est moins pertinente. Dans sa décision, le TAQ réduit la valeur en tenant compte d'un ensemble de facteurs, notamment des fondations de la résidence qui sont à refaire au coût de 32 000 \$. Dans cette décision, le TAQ n'a pas quantifié séparément les différents aspects qui affectent à la baisse la valeur de la propriété. Il a plutôt présenté un résultat global de l'effet de celles-ci. Il est donc impossible, à la lecture de la décision, de déduire la partie de la réduction qui serait attribuable à la porcherie voisine.

3. CONCLUSION

La perception générale des propriétaires est à l'effet que la proximité d'une production porcine devrait réduire la valeur des propriétés résidentielles.

Toutefois, cette perception n'est appuyée par aucune étude ou analyse exhaustive, les données nécessaires à la réalisation d'une telle démonstration étant très rares. On ne peut donc clairement quantifier les possibles diminutions de valeurs associées à la présence de porcheries ni identifier la dimension de la zone influencée par ces installations.

La lecture des décisions rendues par les tribunaux compétents en cette matière révèle qu'une réduction de valeur est fréquemment accordée aux résidences situées près des productions porcines, bien que ces tribunaux n'aient pu quantifier ou identifier clairement cette réduction.

Les résidences rurales subissent toutes, à un certain degré, les désagréments causés par les activités agricoles. Compte tenu de cette observation, les tribunaux reconnaissent habituellement un ajustement supplémentaire de moindre importance (5 à 15 %) pour les propriétés situées près d'une porcherie.

De plus, lorsque l'évaluateur utilise des ventes comparables qui sont situées dans la même zone agricole que le sujet, lesquelles subissent les mêmes inconvénients, il est reconnu que la méthode de comparaison tient compte de l'influence de ces aspects négatifs sur la valeur. Une analyse de ce genre ne requiert donc pas la quantification de telles pertes de valeurs.

Enfin, le volume 1 du Manuel d'évaluation foncière du Québec retient, parmi les principales causes externes de réduction de valeur d'un immeuble, « *la proximité de nouvelles constructions moins harmonieuses, comme l'implantation d'une nouvelle usine ou d'un nouveau commerce rendant un voisinage moins attrayant* » et « *les changements de mesures législatives comme des règlements de zonage et de construction qui peuvent contribuer à amorcer le changement de vocation d'un voisinage* ». L'implantation d'une grande porcherie, ou l'agrandissement important d'une porcherie existante, s'apparente certainement à ces situations.

p.j. Décisions du MGB albertain
Décision du BREFQ de 1991
Décisions du TAQ 1995 et 1999

Préparée par : Robin Hémond, évaluateur agréé
Direction de l'évaluation foncière
Ministère des Affaires municipales et de la Métropole

BOARD ORDER: MGB 070/02

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26.1 of the Statutes of Alberta 1994 (Act).

AND IN THE MATTER OF AN APPEAL from a decision of the 2001 Assessment Review Board (ARB) of Lamont County (County).

BETWEEN:

Steve Lewyk, Timmy Lewyk, Adolph Kucy, Howard and Helen Rich, Joyce Smith, Joe Hrycyk, Michael and Elaine Hrycyk, Tom and Geraldine Mae Adamyk, Brian and Lorraine Dziwenko, John Pacholek, Evelyn Kucy, Kelly and Rhonda Andruchow, Ron and Shelley Andruchow, and Emil and Geuina Gulayets - Appellants

- a n d -

Lamont County - Respondent

BEFORE:

Members:

J. Gilmour, Presiding Officer
L. Lundgren, Member
T. Robert, Member

Secretariat:

D. Hawthorne

Upon notice being given to the affected parties, a hearing was held in the Hamlet of St. Michael (Hamlet), in the Province of Alberta on February 12, 2002.

This is an appeal to the Municipal Government Board (MGB) from decisions of the 2001 ARB of Lamont County with respect to property assessments entered in the assessment roll of the Respondent municipality as follows.

BOARD ORDER: MGB 070/02

Appealed Property Located Within the Hamlet of St. Michael

Name, Roll No. & Distance from Feedlot	Assessment Before Feedlot Location Factor Applied			Assessment After Factor Applied			% Reduction
	Land	Imp.	Total	Land	Imp.	Total	
S. Lewyk, 007004000 northeast - 3/4 mile	510	23,850	24,360	360	16,700	17,060	30%
T. Lewyk, 007044000 northeast - 3/4mil	1,140	19,970 800 530	22,440	800	13,980 560 370	15,710	30%
T. Lewyk, 007048000 Northeast - 3/4 mile	530	20,820 1,600	22,950	370	14,580 1,120	16,070	30%
A. Kucy, 007038000 northeast - 3/4mile	630	30,990	31,620	440	21,690	22,130	30%
Rich, 007006000 northeast - 3/4 mile		360 1,010 1,010	8,210 10,230	250	5,740 710 710	7,410	30%
Smith, 007045000 northeast - 3/4 mile	720	16,610	17,330	500	11,630	12,130	30%
J. Hrycyk, 007029000 northeast 3/4 mile	410	10,780 620	11,810	290	7,550 430	8,270	30%
J. Hrycyk, 007026000 northeast - 3/4 mile	330	10,540	10,870	230	7,380	7,610	30%
E. Hrycyk, 007046030 northeast 3/4 mile	660	60,340 13,310	74,310	460	42,240 9,320	52,020	30%

BOARD ORDER: MGB 070/02

Appealed Property Outside the Hamlet of St. Michael

Name, Roll No. & Distance from Feedlot	Assessment Before Feedlot Location Factor Applied			Assessment After Factor Applied			% of Reduction
	Land (3 ac.site)	Imp.	Total	Land (3 ac. site)	Imp.	Total	
Adamyk, 68181000 1 mile north (Note: Farm residence exemption applied before location factor calculated - exempt reduced to 45,210)	6,500	79,930	86,430	5,200	63,940	69,140	20%
Dziwenko, 68053020 3/4 mile southeast (Note: Farm residence exemption applied before location factor calculated - exempt reduced to 36,220)	6,500	74,230	80,730	4,550	51,960	56,510	30%
Pacholek, 68033000 2.5 miles southeast (Note: Farm residence exemption applied before location factor calculated- exempt reduced to 15,810)	7,000	60,330	67,330	7,000	60,330	67,330	0%
E. Kucy, 68164000 1 mile northeast (Note: Farm residence exemption applied before location factor calculated - exempt reduced to 20,020)	6,500	116,510	123,010	4,550	81,560	86,110	30%
K. Andruchow 68064000, 1/2 mile southwest (Note: Farm residence exemption applied before location factor calculated - exempt reduced to 21,010)	5,300	62,740	68,040	4,550	43,920	48,470	30%
R. Andruchow 68044000 1 mile southeast (Note: Farm residence exemption applied before location factor calculated - exempt reduced to 30380)	5,300	61,728 113,860	180,888	4,550	43,210 79,700	127,460	30%
E. Gulayets, 68184000 1/2 mile northwest (Note: Farm residence exemption applied before location factor calculated - exempt to 38960)	6,500	88,030	94,530	3,900	52,820	56,720	40%

INTRODUCTION

Sixteen appeals were lodged with the MGB by the Appellant parties listed above, all of whom own property situated within the Hamlet of St. Michael or farmland outside the Hamlet boundaries. The appeals are all premised on the same concerns, namely the nearby location and alleged impact of the Cam-A-Lot Feedlot (feedlot) on lifestyle, health, enjoyment of property and the potential for negative effects on property value.

BOARD ORDER: MGB 070/02

All of the Appellants consented to a joint appeal hearing with the MGB in order to minimize repetition and efficiently utilize resources. Two Appellants, Mae Adamyk and Evelyn Kucy made submissions representing the Appellants' common positions. Other Appellants also made submissions respecting individualized concerns about their respective property.

Prior to the hearing, all of the Appellant property owners and the County assessor were provided with a summarized package of materials prepared by the MGB staff, so as to facilitate full disclosure for all involved.

2001 Assessments

In preparing the property assessments for 2001 for the Hamlet and the farms in the vicinity of the feedlot, the County's assessor relied on sales of three vacant lots and two improved lots in the Hamlet. There was also one sale of improved rural property about one mile southeast of the feedlot. As a result of reviewing the sales, the assessor determined that a 30% reduction should apply to the Hamlet properties due to the location of the feedlot. The assessor also applied a 50% reduction for farm residences and the three acre farm residence site for rural property within the first one-half mile of the feedlot, a 30% reduction to farm residences and the three acre farm residence site for rural property located within a mile of the feedlot on the west, north and south and one and one-half miles on the east. A 15% reduction was applied to the farm residence and three acre farm residence site for rural property located one-half mile beyond the 30% reduction zone.

Even though the assessor recognized the potential valuation problems associated with the feedlot by using limited sales data, these assessments were not reduced to the extent of the previous years reductions which were based on an agreement between the Appellants and the assessor. Those reductions for the 2000 assessments reflected a 50% reduction for the farm residence and three acre farm residence site for rural property within a two mile radius of the feedlot. This reduction also applied to all property within the Hamlet.

As a result of this change for the 2001 assessments, the Appellants complained to the ARB. The ARB dismissed all the complaints and confirmed the assessments for the following reasons:

1. The Appellants did not provide any market evidence to support the complaint.
2. The assessor provided the ARB with market information that supported the assessed value.
3. The assessor demonstrated that the assessments were prepared in a fair and equitable manner and that assessments of similar properties were taken into account.

Following the issuance of the ARB decisions, the Appellants lodged appeals to the MGB within the required time.

BOARD ORDER: MGB 070/02

BACKGROUND AND HISTORY

In 1998, the County approved a development permit for the feedlot located in the southeast quarter section 1-56-18-W4, approximately three quarters of a mile southwest of the Hamlet. The feedlot is designed for and operates as a feedlot for approximately 10,000 head of cattle.

Assessments for the 1998 tax year

Two complaints were made to the ARB for property assessments. The complaints were made based on the alleged negative effect of the feedlot. Before the ARB conducted a hearing, the assessor issued amended assessment notices pursuant to section 305(1) of the Act, reducing the farm residence and the three acre site by 25% for Brian and Lorraine Dziwenko. The assessor also issued an amended assessment notice under section 305(1) of the Act reducing the farm residence and three acre site by 20% for Ron and Shelly Andruchow. Upon hearing the complaints, the ARB further reduced the Dziwenko assessment to reflect a minus 30% reduction and the Andruchow assessment to a minus 25% reduction.

Ron and Shelly Andruchow did not appeal the ARB decision however, Brian and Lorraine Dziwenko did appeal to the MGB. The MGB applied an additional 20% reduction bringing the total reduction from the original assessment for the Dziwenko property to 50%. The MGB decision was an oral decision and there is no documentation of the reasons for the decision.

Assessments for the 1999 tax year

The assessor did not have market evidence to support the reductions previously given for the Dziwenko and Andruchow properties. However, the assessor respected the previous decisions of the MGB and the ARB and tied in other properties while preparing the assessment. Adjustments to the assessment were prepared based on the premise that the winds were primarily from the northwest. Properties lying immediately south, east and southeast of the feedlot were deemed to be in a minus 50% zone. Properties within a half-mile of the minus 50% zone were deemed to be in a minus 25% zone and properties within a half mile of the south and east boundaries of the minus 25% zone were deemed to be within a minus 15% zone.

All of the properties within the Hamlet fell within the minus 25% zone, however, the assessor inadvertently overlooked the inclusion of the properties when applying reductions to the assessments.

Assessments for the 2000 tax year

The MGB received 19 property appeals from 13 landowners who were located within a two-mile radius of the feedlot. This included property within the Hamlet. Rather than hear each of the appeals separately, the assessor for the County approached the MGB and suggested that the circumstances surrounding these appeals might well make the appeals appropriate for

BOARD ORDER: MGB 070/02

determination through the MGB's then new initiative of "Alternative Dispute Resolution" for difficult or unusual appeals. The MGB considered the request and set up a meeting between all of the parties. The MGB made it clear to all the parties involved that this meeting in no way prejudiced the parties' right to formally argue their case in front of a full panel of the MGB if the results of the meeting were unsatisfactory.

During this meeting, a settlement was reached between the property owners and the assessor, without intervention by the MGB, wherein the assessments were to be reduced and revised assessment notices issued for the 2000 tax year. The settlement resulted in assessments reduced according to four categories where:

- Settlement
- 1 A 50% reduction would be granted to property located within a two-mile area of the boundaries of the quarter section containing the feedlot.
 - 2 A 25% reduction would be granted to property located within the next one-half mile beyond the above two-mile boundary on the north, west and south sides of the feedlot.
 - 3 A 25% reduction would be granted to property located within the next one-mile beyond the above two-mile boundary on the east side of the feedlot operation.
 - 4 A 15% reduction would be granted to property located within the next one-half mile beyond the boundaries described in numbers 3 and 4 above.

For rural property the reductions applied only to the farm residence and the three acre farm residence site.

There was very little in the way of tangible market evidence upon which this determination was made, which lent itself to the overall difficulty of the appeals in the first place. However, the assessor cited several reasons for his decision to issue amended assessment notices for the properties surrounding the feedlot. Specifically, the factors which he deduced would impact the marketability and potential values of the properties at issue were:

- 1 Potential contamination and possible depletion of groundwater supplies.
- 2 Heavy truck traffic associated with the feedlot on county roads and roads within the Hamlet creating unsafe conditions for children and others as well as the extended effects of dust and noise from heavy traffic.
- 3 The fact that the prevailing winds appeared to be blowing from the west which, therefore, justified the extension of the easterly boundary for the assessment reduction zone because of the distinct smell emanating from the feedlot.
- 4 The unsightly residue left from the hauling of silage to and from the feedlot.

ISSUE

1. Is there any loss in value of the subject properties owing to their proximity to the feedlot relative to the following:
 - (a) impact on water supply and quality
 - (b) impact of increased traffic
 - (c) impact of odours from feedlot
 - (d) impact on land values

2. Are the reduced assessments fair and equitable with similar properties in the County?

LEGISLATION

In order to decide these appeals the MGB looks to the direction provided for in the legislation. The MGB is limited in its jurisdiction to deal with the valuation of the property for assessment purposes and has no jurisdiction to supervise the operation of the feedlot or the activities of the local government regarding land use development and controls.

Municipal Government Act

An assessment on each property must be prepared on an annual basis.

285 Each municipality must prepare annually an assessment for each property in the municipality, except the property listed in section 298.

The basis upon which the subject properties must be assessed is market value, which is defined in the Act as:

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; ...

And further, the MGB must be satisfied that the assessment and assessor must follow the characteristics and physical conditions of the subject properties as of the end of the assessment year.

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) the valuation standard set out in the regulations for that property.*

BOARD ORDER: MGB 070/02

When preparing property assessment, the assessor has limited latitude in determining value.

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.*

The MGB's jurisdiction to alter an assessment is restricted jurisdiction of the MGB.

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, ...*

Matters Relating to Regulation 289/99

The regulations establish market value as the valuation standard for non-farmland properties. The valuation standard for farming operations is agricultural use value.

3(1) *The valuation standard for a parcel of land is*

(a) *market value, or*
(b) *if the parcel is used for farming operations, agricultural use value.*

(3) *Despite subsection (1)(b), the valuation standard for the following property is market value:*

- (a) *a parcel of land containing less than one acre;*
- (b) *a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;*
- (c) *an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;*
- (d) *an area of 3 acres that*
 - (i) *is located within a parcel of land, and*
 - (ii) *can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;*
- (e) *any area that*
 - (i) *is located within a parcel of land,*
 - (ii) *is used for commercial or industrial purposes, and*
 - (iii) *cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;*
- (f) *an area of 3 acres or more that*
 - (i) *is located within a parcel of land,*
 - (ii) *is used for commercial or industrial purposes, and*

BOARD ORDER: MGB 070/02

(iii) *can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.*

4(1) The valuation standard for improvements is

- (a) the valuation standard set out in section 5, 6 or 7, for the improvements referred to in those sections, or*
- (b) for other improvements, market value.*

8 When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value

- (a) unless the land is a parcel used for farming operations, in which case the valuation standard in section 3(1)(b) applies to the land, and*
- (b) unless the improvement is railway, linear property or machinery and equipment, in which case the valuation standard in section 5, 6 or 7, as the case may be, applies to the improvement.*

* (The MGB must be satisfied that the assessments of the subject properties must be prepared using mass appraisal, be an estimate of the fee simple value, and reflect typical market conditions of similar property.

12 An assessment of property based on market value

- (a) must be prepared using mass appraisal,*
- (b) must be an estimate of the value of the fee simple estate in the property, and*
- (c) must reflect typical market conditions for properties similar to that property.*

SUMMARY OF APPELLANTS' POSITION

The positions of the Appellants were submitted both in written and oral form. The overall position of the Appellants is that the value of their properties is continuously decreasing as a result of the proximity of the feedlot to the subject properties. The Appellants argue that the construction and operation of this feedlot has essentially destroyed their previous ways of life and lifestyle enjoyed in the community and that there are several issues that feed into this. The issues raised by the Appellants are:

- impact of feedlot on water supply and quality
- impact of increased traffic
- impact of odours from feedlot
- impact on land values
- assessment comparables

The Appellants expanded their position on each of these issues as outlined below.

Impact of Feedlot on Water Supply and Quality

First, the Appellants addressed the issue of water depletion in the area. The Appellants submit that there was an insufficient water supply for the area in existence prior to 1998 when the feedlot was approved, and that this was demonstrated by a hydro geological study conducted in the area some time ago. Since the introduction of the feedlot, the Appellants assert that this shortage has become acute, whereby all residents in the area have to extensively conserve and manage their water use in an unprecedented manner. The Appellants argue that this is the result of the feedlot having diverted the main artery flowing to Limestone Creek for its own use as well as the feedlots drilling of a well, which was pumped continuously for several months without proper authorization or licence. The Appellants noted that during this timeframe, all of the other wells in the area had a significant drop in their water levels. The Appellants also noted that a stop work order lodged against the feedlot by the Alberta Environment Appeal Board with respect to the pumping of the well was not adhered to for over a month, exacerbating the problem and the residents' resentment towards the lot. The Appellants relay that the feedlot then erected a temporary pipeline from Wostok Lake, but that the water levels in the area did not significantly recover as a result. The Appellants further submit that not only did the levels not recover, but also that several homes now suffer from temporary losses of water altogether and that those who do get water receive water that is murky, odorous, and ridden with high levels of bacteria and minerals.

Related to the condition of this water are the Appellants' concerns over the significant health risks associated with poor quality and contaminated water supplies. The Appellants assert that they are concerned that contamination could occur from several sites associated with the feedlot, such as the abandoned well drilled by the lot, the coal seams accessed beneath the site that may carry bacteria through aquifers, the run-off of contaminated water from areas where manure has been spread and from the manure falling off un-tarpaulined trucks into waterways in the area. The Appellants submitted several newspaper articles in support of the notion that the integrity of the well water supply is substantially threatened by the existence of the feedlot and noted in particular that not only is regular water testing recommended for areas impacted by feedlots, but that it has actually been instigated by mandatory order of the Department of Health for the subject area as a result of the numerous complaints and tangible concerns. The Appellants are of the opinion that properties without a secure water supply would not be able to achieve any significant sale value in the rural real estate market.

Water well testing showed the Adamyk water quality was satisfactory before the feedlot was developed, however, after the feedlot was in operation, testing showed that the Adamyks did suffer from the presence of coliforms in their drinking water. That contamination has since disappeared. This may be owing to the fact that a coal seam runs under the Adamyk farm as well as the feedlot.

Impact of Increased Traffic

The next issue addressed by the Appellants is the substantial increase in the volume of traffic which has been created by the feedlot operation. The Appellants relay that in order for the lot to operate, it must haul cattle, silage, grain, bales and manure on a constant basis, which translates into almost 100 large vehicles passing to and from the lot per day. The Appellants submit that this has caused problems with respect to the safety of the area, choking and voluminous dust, continuous and substantial debris on the roadways and destruction of the roadways themselves which were not designed for this sort of intensive operation.

The Appellants report that regardless of the numerous calls made to the feedlot operators, the County, and the RCMP, the safety violations committed by the truck drivers simply continue. The Appellants submit that these vehicles constantly fail to stop at posted STOP signs, drive at excessive and dangerous speeds, drive blind in their own dust and fail to follow the County designated truck routes, choosing instead to endanger residents on non-designated County residential roads. The Appellants suggest that neither children nor adults are able to use the roadways for any recreational purpose without significant concern for their safety and that such fears are well grounded as accidents have already occurred. The Appellants also further submit that significant damage is being done to the roadways as a result of this traffic such as potholes, cracks in pavement and sidewalks, and substantial ruts, all of which must be repaired by the County at the taxpayer's expense and which, in the meantime, causes significant damage to resident vehicles. The Appellants assert that these costs are certainly not being covered by the less than \$400 per year in taxes paid by the feedlot.

The Appellants also submit that other problems caused by the traffic include things such the spillage of manure, urine and silage on the roads from these transports and the spread of weeds around the County attributable to this spillage as well. Then there are also the tremendous vibrations caused by the vehicles that shake homes causing surface and potentially structural damage to improvements situated on the properties. Related to this is the noise factor associated with over 100 semi-trailers, cattle liners, feed and silage trucks running all day and most of the night, plus the 10,000 head of cattle bellowing.

Lastly related to the issue of traffic, the Appellants submit that the dust created by these vehicles serving the feedlot have created considerable health and safety risks. The Appellants assert that the dust created by these vehicles is so thick that often residents suffer from breathing problems to the point where most outdoor activities for both children and adults must be severely curtailed. The Appellants submit that this is especially so for those residents of the community who suffer from asthma. The Appellants relay that dust control, which is mandated in the Road Use Agreement has not be properly implemented and that due to the topography of the area, without proper control the dust simply hangs over the area.

Impact of Odours from Feedlot

The third argument for a reduction in the assessments advanced by the Appellants is based on the impact of the extreme odours associated with the feedlot. The Appellants submit that the penning of 10,000 head of cattle in a relatively small area has an odour unto its own, indescribable in words but unmistakable and unforgettable when one experiences it. Added to this odour is the scent associated with the transport from the feedlot of solid and liquid manure, the spreading of this manure in fields, which is often not immediately incorporated into the fields as it is supposed to be and also the definitive smell of the open silage piles. Together these things create an olfactory experience like no other which is exacerbated by such factors as the topography of the area because it is in a natural basin, the temperature and humidity associated with the area, rain, the wind speed and direction, periods of stagnant air movement and atmospheric pressure. While the Appellants recognize that the County has no control over most of these weather related factors, the Appellants submit that this is only half the equation. The County did and does have control over the issues associated with the feedlot and if it is unwilling to exercise this power, then it should compensate the residents affected by duly decreasing their tax responsibility over it.

The Appellants wanted both the County and the MGB to understand the impact that this odour has on the lives of the residents and as such spent some time relaying these effects. The Appellants assert that these odours have destroyed a way of life that they all cherished in the community and that now their use and enjoyment of the property, a fundamental tenant of property ownership, has been severely limited. The Appellants convey that when the odours start to get stronger as the result of the aforementioned factors, residents must rush to close doors and windows and cease all outdoor activities. Decks, fire pits, barbeques and yards cannot be used and no laundry can be hung outside to dry, all of which adds to the residents' expenses and general level of stress. The Appellants also assert that this odour permeates inside their homes as well, becoming lodged in the carpets, draperies and even interiors of vehicles causing significant embarrassment and discomfort.

As a result of these odours, the Appellants also express health concerns. The Appellants submit that the gasses given off by cattle manure include such things as hydrogen sulphide, methane and ammonia, all toxic to the human body. The Appellants note that in any other industry these gasses are controlled by government environmental legislation and are monitored, but that no such legislation or monitoring exists for Intensive Livestock Operations (ILO). The Appellants further note that in an industrial setting, an individual's exposure to these gasses is measured on a ratio basis of strength of the gas versus the number of minutes of exposure, but that for the subject area, that exposure would have to be measured by the number of years and the intensity of the gasses would shift with the weather. The Appellants suggest that the health risks posed by this type of operation would never be tolerated in an urban setting and should not be unduly foisted upon the residents in the area of Cam-A-Lot. The Appellants submit that some of the manifestations of health problems associated with this and other feedlots have included things such as headaches, nausea, vomiting, burning or watery eyes, burning nose, stress that causes

BOARD ORDER: MGB 070/02

further depression and anxiety, aggravation of pre-existing conditions such as asthma, allergies and other lung diseases and increased bacterial and intestinal infections. The Appellants further submit that there has been a noticeable increase in the number of bacteria and disease carrying flies in the area since the feedlot came into existence.

The Appellants submit that the County has done nothing to address these issues surrounding the feedlot, which have been brought up by the residents at every available opportunity. The Appellants' also submit that the County does not even adhere to or enforce its own bylaws with respect to the feedlot and, in particular, that it has failed to uphold conditions of the Development Permit, it has refused to enforce the Road Use Agreement with respect to the designated truck routes or the dust control; it has failed to monitor test wells and inform residents of the results; it has contributed to unsafe conditions on narrow roads and to the use of illegal driveways and it has failed its community by repeatedly helping and/or giving into the feedlot rather than assisting residents that built this land into a community able to be taxed in the first place.

With respect to the sale information relied upon by the assessor as the basis for the increase in the assessments, the Appellants submit that these properties were not sold to full time residents but rather were purchased either without knowledge of the feedlots existence and impact or simply as temporary residences for transient summer employees, in which case the above factors were not a consideration.

Impact on Land Values

In the absence of any sales evidence, the Appellants argued that the loss in value of the property should be as determined in the previous year's assessment. That is, the following should be applied:

- 1 A 50% reduction granted to property located within a two-mile area of the boundaries of the quarter section containing the feedlot, excluding farmland.
- 2 A 25% reduction granted to property located within the next one-half mile beyond the above two-mile boundary on the north, west and south sides of the feedlot, excluding farmland.
- 3 A 25% reduction granted to property located within the next one-mile beyond the above two-mile boundary on the east side of the feedlot operation, excluding farmland.
- 4 A 15% reduction granted to property located within the next one-half mile beyond the boundaries described in numbers 3 and 4 above, excluding farmland.

Assessment Comparables

The Appellants provided no assessment comparables and argued that the assessment from the previous year would achieve an equitable assessment with other similar properties.

Conclusion

The Appellants request that the MGB find that the reductions granted to the properties in 1998, 1999 and 2000 are perpetual until conditions with the feedlot change. The Appellants are of the opinion that the precedent is set and that the assessor and the County should be held to it. The Appellants make a plea to the MGB to recognize their plight both in its current context and in the history of the area, which contains over a century of emotional and financial investment and to reduce the assessments to reflect the marginal market value that is currently attributable to the subject lands as a result of feedlot operation.

The Appellants complained that the assessment reductions should be granted this year and maintained each and every year that the feedlot operates. The Appellants do not wish to appeal every year.

SUMMARY OF RESPONDENT'S POSITION

The assessor did not submit evidence or argument respecting three of the five issues raised by the Appellants. These three issues are:

- impact of the feedlot on water supply and quality
- impact of increased traffic, and
- impact of odours from the feedlot.

The assessor maintained that these issues may appear to have an effect on value, however, there is no way to measure the effect and there is no way to directly relate these factors to property value other than by sales of comparable properties in the County.

The assessor focused his argument and evidence on recent market sales of properties in proximity to the feedlot operation as outlined in the remaining two issues highlighted below. These sales indicate that the assessments bear a correct estimate and equitable estimate to recent market sales in consideration of the existing physical impacts of the feedlot.

Impact on Land Values

The assessor is aware that the issue of the feedlot has been highly emotional and turbulent for both the residents and the County. However, the assessor maintains that he is bound in oath and obligation by the legislation governing property assessments and that this legislation was followed in the preparation of the subject assessments. The assessor notes that these properties are not easily valued, partly owing to the fact that the lands seldom change ownership, but rather are passed down as family properties through the generations. Without sales data, the determination of market value can become somewhat artificial. However, in July and September 2000, five sales occurred in the Hamlet approximately three-quarters of a mile northeast of the

BOARD ORDER: MGB 070/02

feedlot which provide information to help determine property value. Details and determination of the assessment to sales ratio (ASR) for the five sales are as follows.

Roll No.	Legal Description	Area	Sale Date	Purchase Price	Assessment	ASR
68092010	0022477 - Lot 1 No Improvement	6.94 acres	July 2000	\$2,500	\$3,500 -30% = \$2,430	97%
68092020	0022477 - Lot 2 No Improvement	6.45 acres	July 2000	\$2,320	\$3,270 -30% = \$2,290	99%
68164010	0022477 - Lot 3 No Improvement	3.19 acres	July 2000	\$1,150	\$1,930 -30% = \$1,350	118%
7033000	254 1 ET-2-1 Improvement Present	6.94 acres	September 2000	\$6,250	Res: \$8,225 Land: \$410 - 30% = \$6,040	97%
7036000	254 1 ET-2-4 Improvement Present	3.19 acres	September 2000	\$750	Res: \$700 Land: \$410 -30% = \$700	94%

The assessor stated that the ASR's reflect a 30% reduction which, in the assessor's opinion, reflect all the factors related to the presence of the feedlot property. The assessor submits that these effects have already been adequately captured in the assessments at issue and that there is no other evidence to support further reductions.

In an effort to find comparable property, the assessor attempted to gain information on the effects of feedlots on property values by speaking with other assessors in rural communities in Alberta. However, these discussions did not provide helpful information because the other assessors indicated that feedlots were either a non-issue, or that there were ample sales in the area to securely base assessments. The assessor also discovered that feedlots appear to be so numerous in some of the other municipalities explored, that it was difficult to ascertain the difference or even if there were properties not affected by feedlots. In any event, the legislation requires that the determination of an assessment must be based on similar property within the same municipality. There may be a number of unknown factors in other municipalities that affect value and those factors may not be present in the County.

As additional support for the assessments on farm sites and farm residences, the assessor presented one improved sale that occurred outside the Hamlet approximately one mile southeast of the feedlot. The sale was as follows.

Roll No.	Legal Description	Area	Sale Date	Purchase Price	Assessment	ASR
58322010	NW 32-55-18-4	4.30 Acres	March 2000	\$51,900 - \$5000 =\$46,900	Res: \$44,120 Land: \$7,020 -15% = 43,460	93%

The assessor reports that the purchaser was unaware of the existence of a feedlot close to the property at the time of purchase. However, after discussions with the purchaser, the Respondent learned that he still would have purchased the property, but would have paid a lower price by approximately \$5,000 which is accounted for in the above table under "Purchase Price". The assessment was, therefore, adjusted by 15% to take into account the feedlot influence.

The assessor submits that the ASR's resulting from these sales clearly show that the assessments are very close to proper and full market value, and that they tend to be under valued rather than over valued as suggested by the Appellants. The assessor submits that this is the only tangible evidence showing the feedlot has an effect on the market value of the subject properties. The assessor argued that no direct environmental, health, or comparable sales evidence was submitted by the Appellants in support of their claims.

Assessment Comparables

The assessor asserts that his mandate is to value property, not to determine taxes or enforce bylaws, which is what the appeals essentially seem to centre around. Therefore, the assessor submits that he has followed the designated legislation, utilized all available sale information for comparable purposes and applied the appropriate reductions for all the subject properties under appeal. In order to ensure equity, these reductions have been applied to other properties not appealed to the MGB. These other properties are located both inside and outside the Hamlet where, in the opinion of the assessor, the feedlot has an influence on property value. On this basis, the assessor requested that the MGB deny the appeals and confirm the assessments.

Equity in Valuation Relative to Distance from the Feedlot

Following the review of sales of comparable properties, the assessor prepared a map reflecting the best effort to recognize the perceived effect of the feedlot on property values. With the centre on the feedlot, the map shows the following:

1. For the first one-half mile surrounding the feedlot, the properties received a 50% reduction in the assessment of farm residences and three acre site.

None of these property owners complained to the ARB.

2. For the next one-half mile on the west, north, and south and one mile on the east, all property owners received a 30% reduction in the assessment of farm residences as well as residential property within the Hamlet.

Even with the reduction of 30%, nine of the Hamlet property owners complained to the ARB and appealed to the MGB.

BOARD ORDER: MGB 070/02

Even with the reduction of 30%, five property owners within this area [Kucy, Dziwenko, K. Andruchow, R. Andruchow and E. Gulayets (note: Gulayets received an additional 10% reduction owing to the location of the County land fill site immediately adjacent)] complained to the ARB and appealed to the MGB.

3. For the next one-half mile beyond the 30% zone, all property owners received a 15% reduction for farm residences and the three acre site. Even with the 15% reduction, one property owner, (Adamyk) complained to the ARB and appealed to the MGB. (Note: Adamyk received an additional 5% owing to their proximity to the County's landfill site).
4. Beyond the 15% zone there was no reduction given. One landowner (Pacholek) complained to the ARB and appealed to the MGB.

In the assessor's opinion, the assessments prepared in this manner reflect the most fair and equitable approach to value based on the obvious effects of the feedlot and the limited market evidence available.

Recommendation

The assessor recommended that the assessment for the Adamyk property be revised to reflect a minus 15% for the feedlot and minus 10% for proximity to the landfill site on the residence and the three acre site. The assessor did not supply details for this recommendation.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows:

1. There is no loss in property value directly attributable to the feedlot operation.
2. There is no evidence to show that groundwater supply and quality have impacted the value of the subject properties.
3. There is no evidence to show that increased traffic to and from the feedlot operation affects the value of the appealed properties.
4. There is no evidence to show that odours from the feedlot operation affect the property value of the appealed properties.
5. There is no evidence to show that the feedlot operation has a negative effect on property values.

BOARD ORDER: MGB 070/02

6. The recently sold railway lots are not similar properties to the Hamlet properties under appeal.
7. There is no evidence to show that farm residences and three acre farm sites suffer a loss in value owing to the location of the feedlot.

In consideration of the above, and having regard to the provisions of the *Municipal Government Act*, the MGB makes the following decision for the reasons set out below.

DECISION

The appeals in respect to the assessments are denied and the assessments confirmed.

It is so ordered.

REASONS

* With respect to the subject properties the MGB, in adjudicating this matter, is required by the legislation to determine if the valuation standard of market value has been met and if fairness and equity has been met with similar properties within the municipality. As explained below, the MGB was not convinced by market evidence from the Appellants that the assessed values did not meet the valuation standard of market value. In fact, the MGB was not convinced that there was sufficient market evidence from the Respondent to justify the reductions given. However, the MGB was convinced by the Respondent that he had treated all properties within a similar geographic distance of the feedlot in a fair and equitable manner. It is understood tax law that a property owner is entitled to the lower of either a correct value or a fair and equitable value. In this case, the MGB found that properties received a fair and equitable assessment with similar properties in the municipality. The specific rationale is provided below.

The MGB's jurisdiction is limited to the adjudication of the valuation respecting the assessment of the subject properties. The MGB has no jurisdiction to comment or to decide on the operation of the feedlot or the operation of the County regarding its development control procedures or the enforcement of the directives of other government bodies. The assessor failed to show that the market value comparables (sales) showing a reduction of values up to 30%, were reductions based solely on the feedlot operation. There may be other factors associated with the selling price of the comparable properties inside and outside the Hamlet. The MGB did not have the benefit of a detailed analysis and appraisals of property within this area of the County. The assessor approached the purchaser of the farm site comparable for the sale that occurred approximately one mile southeast of the feedlot. The purchaser indicated he may have paid \$5,000 less for the property had he been aware of the feedlot. In the MGB's view this is anecdotal evidence. Such evidence is based on a "what if" situation and is not reliable for determining value.

BOARD ORDER: MGB 070/02

Impact of Feedlot on Water Supply and Quality, Increased Traffic, Odours from Feedlot

The Appellants spent considerable time illustrating the physical changes (water supply and quality, increased traffic and odours) which have resulted since the feedlot started operation.

The MGB acknowledges that the lifestyles of the Appellants may have been affected as a result of the feedlot operation. These effects include, but are not limited to things such as dust, noise, odour, possible groundwater depletion and the potential for ground water contamination. While these factors have an impact on the lives of the Appellants, their families and their properties, the key question left for the MGB is whether or not the assessments on the subject properties reflect market conditions and equitable assessments.

Impact on Land Values

The real difficulty for the MGB however, is finding a means to quantify the impact and determine whether or not the assessment bears a correct relationship to market value. In preparing the assessment for this area of the County, the assessor provided reduction adjustments in value based on proximity, which were without a clear factual foundation. However, the MGB takes no issue with these adjustments because section 293 of the Act requires the assessor to prepare assessments in a fair and equitable manner based on assessments of similar property in the County. The MGB believes the assessor made every attempt to meet the mandate when preparing the assessments for the Hamlet and the areas in the vicinity of the feedlot.

The Appellants provided little, if no market evidence, to illustrate the assessed values of the subject properties were either incorrect or not fair with other similar properties. In the absence of market sales, sales listings, actual and typical sales turnover rates or appraisal reports, the MGB is reluctant to become arbitrary and make any further changes to the assessments of the subject properties. The onus rests on the Appellants to convince the MGB by submitting market evidence the assessments are not correct.

The Act dictates that a property must be assessed based on its market value, which is the value attainable through an open market transaction between a willing seller and a willing buyer. The sales evidence presented by the Respondent did support the Respondent's contention that the assessed values of the properties under appeal were reflected in the market place.

Assessment Comparables

The assessment comparables used by the Respondent show that the ASRs reflect a minus 30% factor for the feedlot. The MGB could not find evidence that the 30% would be attributable to the feedlot. There could be other factors that have an effect on value.

BOARD ORDER: MGB 070/02

Recommendation

In his written submission the assessor recommended that the Adamyk property reflect a further reduction of 15% for proximity to the feedlot and 10% for proximity to the landfill site. The assessor did not provide a rationale for this recommendation. The MGB is not willing to endorse a further reduction in this regard as there is no evidence that the Adamyk property suffers in value from the feedlot or the landfill site. There is no confirmation that such a change would be fair and equitable with other property in the municipality.

Previous Board Decisions

The MGB did examine two previous decisions of the MGB made in 1999, namely MGB 094/99 (Gamad Holdings Ltd. v. Sturgeon County) and MGB 082/99 (Kushinski et al v. City of Edmonton), both of which dealt with similar olfactory and contamination concerns in attempt to see if there was any alternative or supporting basis upon which a further reduction could be granted. The MGB notes that both parties were provided with these decisions prior to the hearing. These decisions, however, provided little assistance to the MGB, other than reiterating the requirement of convincing and substantive evidence to illustrate a loss in market value or a lack of equity between similar properties.

Annual Assessments

The MGB also understands the Appellants' frustration in not wanting to continually appeal their assessments year after year, however, it is a legislative requirement that assessments must be prepared annually. This is an appropriate directive because property values may fluctuate from year to year. Although it may be frustrating at times, it is a necessary means by which a fundamental right of appeal must be protected. This right also provides the parties with the opportunity to adduce new and better evidence to prove their position, rather than to be bound to a decision perpetually that is not in their favour, evidence such as further environmental impact reports, soil and water tests performed by independent laboratories, medical reports, and air quality reports. Market evidence showing clear declines in sale prices for other similar areas affected by these types of feedlots would also be compelling. At a minimum, there should be documented attempts showing failures to sell property at its assessed value. It is imperative to demonstrate that such failures are a direct result of the feedlot operation.

Conclusion

The MGB can act only within its legislated powers, however, it suggests that there may be other methods and other agencies open to the Appellants to address these issues in order to get at the root of the problem. The concerns raised by the Appellants relate to land use planning problems and enforcement problems. It is important to note that as of January 1, 2002 the Natural Resources Conservation Board of Alberta (NRCB) is now responsible for the location of all new

BOARD ORDER: MGB 070/02

and expanding Confined Livestock Operations (CFO). The NRCB is also establishing an inspection and enforcement service for dealing with existing and new CFOs.

For all these reasons, the MGB must deny the appeals and confirm the assessments at their current reduction rates. The strongest market evidence was provided by the Respondent and in the absence of evidence to the contrary, the MGB relies on the evidence of the Respondent. Having stated this, the MGB is still not convinced that the assessments, as reduced by the assessor for the assessment notice, are reduced values based solely on the effects of the feedlot operation. However, the MGB was convinced that the subject property assessments are fair and equitable when compared with similar properties in the municipality.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 3rd day of June 2002.

MUNICIPAL GOVERNMENT BOARD

(SGD.) L. Lundgren, Member

BOARD ORDER: MGB 070/02

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Evelyn Kucy	Appellant and Representative for the Appellants
Brian and Mae Adamyk	Appellant and Representative for the Appellants
Brain and Lorraine Dziwenko	Appellants
Joe Hryck	Appellant
Ron and Shelly Andruchow	Appellants
Kelly and Rhonda Andruchow	Appellants
John Pacholek	Appellant
Emil Gulayets	Appellant
Al McNaughton	Assessor for the Lamont County
Jeff McKinnon	Assessor for the Lamont County

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
A1	Summary of the Appellant
A2	Supporting documents for the Appellant
R1	Summary of the Respondent

BOARD ORDER: MGB 096/02

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 AN APPEAL from a decision of the 2001 Assessment Review Board (ARB) of the County of Stettler No. 6 (County).

BETWEEN:

Douglas Green and Robin Cosgrave - Appellants

- a n d -

County of Stettler No. 6 - Respondent

BEFORE:

T. Robert, Presiding Officer

L. Lundgren, Member

T. Biggs, Member

Upon notice being given to the affected parties, a hearing was held in the Town of Stettler, in the Province of Alberta on February 4, 2002.

This is an appeal to the Municipal Government Board (MGB) from decisions of the ARB of the County of Stettler No. 6 with respect to property assessments entered in the assessment roll of the County as follows:

Roll No.	Legal Description	Assessed Values	
4699.00	SW 16-41-19-4 (158 acres)	Farmland	\$6,750
		Residence	\$77,800
		3 acre site	\$19,350
		Exempt residence	<u>\$6,750</u>
		Total	\$110,650

BACKGROUND

The subject property is located adjacent to the east side of Highway 56, 13 miles north of the Town of Stettler. In 1999, the County issued a development permit for a 4,000 head hog feeder operation on the

BOARD ORDER: MGB 096/02

quarter section owned by Parkland Pork Ltd. located adjacent to the east side of the subject quarter section.

In 2001, the Appellants complained to the County's ARB that the hog operation has a detrimental effect on their property value owing to concerns about depletion of the groundwater supply. The Appellant argued before the ARB that increased dust, noise, traffic and the offensive odour from the hog operation have a detrimental effect on lifestyle and have reduced enjoyment of the subject property. The Appellants claim that the reduced enjoyment of the property and the concern about groundwater depletion should be reflected in a 50% reduction of the property's assessed value. Upon hearing the complaint of the Appellants, the ARB decided to confirm the assessment but did not supply written reasons in the notice of its decision.

Upon receiving the ARB decision, the Appellants decided to lodge an appeal with the MGB. The notice of appeal to the MGB outlined the same reasons for the complaints to the ARB.

Upon receipt of the appeal by the MGB, it was noticed by MGB administration that the Appellants had cited a situation in Lamont County whereby property owners in close proximity to an intensive livestock operation received a 50% reduction in their 1999 assessments owing to the perceived negative effects of the feedlot on property value. In December 2001 the MGB advised the Appellants that the Lamont County situation was not a decision of the MGB and the assessment reductions given to the property owners were the result of an agreement between the County's assessor and the property owners. Those appeals to the MGB were withdrawn.

ISSUES

1. Is there any loss in value of the subject properties owing to their proximity to the hog operation relative to the following:
 - (a) Impact on water supply and quality?
 - (b) Impact of odours, traffic, dust and noise from feedlot operation?
 - (c) Impact on land values?
2. Are the assessments fair and equitable with similar properties in the County?

LEGISLATION

In order to decide these appeals, the MGB looks to the direction provided in the legislation. The MGB is limited in its jurisdiction to deal with the valuation of the property for assessment purposes and has no

BOARD ORDER: MGB 096/02

jurisdiction to supervise the operation of the feedlot or the activities of the local government regarding land use development and controls.

Municipal Government Act

The basis upon which the subject properties must be assessed is market value, which is defined in the 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;

And further, the MGB must be satisfied that the assessment reflects the characteristics and physical conditions of the subject properties as of the end of the assessment year.

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
(b) the valuation standard set out in the regulations for that property.

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.

The MGB's jurisdiction to alter an assessment is restricted.

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 289/99

The regulation establishes market value as the valuation standard for non-farmland properties. The valuation standard for farming operations is agricultural use value.

BOARD ORDER: MGB 096/02

3(1) The valuation standard for a parcel of land is

- (a) market value, or*
- (b) if the parcel is used for farming operations, agricultural use value.*

(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

- (a) a parcel of land containing less than one acre;*
- (b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;*
- (c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;*
- (d) an area of 3 acres that*
 - (i) is located within a parcel of land, and*
 - (ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;*
- (e) any area that*
 - (i) is located within a parcel of land,*
 - (ii) is used for commercial or industrial purposes, and*
 - (iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;*
- (f) an area of 3 acres or more that*
 - (i) is located within a parcel of land,*
 - (ii) is used for commercial or industrial purposes, and*
 - (iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.*

4(1) The valuation standard for improvements is

- (a) the valuation standard set out in section 5, 6 or 7, for the improvements referred to in those sections, or*
- (b) for other improvements, market value.*

8 When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value

- (a) unless the land is a parcel used for farming operations, in which case the valuation standard in section 3(1)(b) applies to the land, and*
- (b) unless the improvement is railway, linear property or machinery and equipment, in which case the valuation standard in section 5, 6 or 7, as the case may be, applies to the improvement.*

BOARD ORDER: MGB 096/02

* [The MGB must be satisfied that the assessments of the subject properties must be prepared using mass appraisal, be an estimate of the fee simple value, and reflect typical market conditions of similar property.

12. An assessment of property based on market value

- (a) must be prepared using mass appraisal,*
- (b) must be an estimate of the value of the fee simple estate in the property, and*
- (c) must reflect typical market conditions for properties similar to that property.*

SUMMARY OF APPELLANTS' POSITION

Impact on Water Supply and Quality

The Appellants submit that the level of their water well has dropped about 12 feet since the hog operation began. The hog operation is licensed for 16,000 gallons of water per day and has only been using about 5,000 gallons per day. This shows that the water supply is in jeopardy. Alberta Environment has been doing some investigation into the issue. The Appellants are also concerned about the potential for seepage of bacteria into the underground water supply from the sewage lagoon site at the feedlot.

Impact of Odours, Traffic, Dust and Noise from the Feedlot

The Appellants maintain that the odour from the hog operation has seriously compromised their lifestyle. All windows in the houses have to be kept closed and the families cannot enjoy working or playing outside when the odours are strong. The Appellants are also concerned that the air quality is significantly reduced and may contain airborne bacteria and gases that could cause serious health issues.

According to the Appellants, there has been an increase in traffic to the hog operation and the combination of increased traffic, dust, noise and odours from the hog operation reduces the enjoyment of the property and, therefore, reduces the value of the property.

Impact on Land Values

The Appellants maintain that a quarter section about one mile south of the hog operation, (Larose) has not sold owing to the proximity of the hog operation. Further, the Larose residence is assessed lower than the subject but both were built in the same year. The Appellants maintain that the property would be sold at a loss owing to the effects from the livestock operation. The Appellants did contact real estate agents who indicated that the subject would be difficult to sell and suggested that a 50% reduction in property value would be appropriate.

SUMMARY OF RESPONDENT'S POSITION

Impact on Water Supply and Quality

The assessor is not aware of any studies or tests that show the subject properties suffer from groundwater depletion or groundwater contamination owing to the feedlot operation. The assessor stated that groundwater supply is generally low throughout the County and fluctuates between wet and dry years. There is no evidence to show that property values in the vicinity of the feedlot have suffered as a result of concerns about groundwater quality and quantity.

BOARD ORDER: MGB 096/02

Impact of Odours, Traffic, Dust and Noise from the Feedlot

The assessor is not aware of any studies or tests that show the air quality is detrimental to health or the environment. There is no evidence to show that property values in the vicinity of the feedlot have suffered as a result of odours, increased traffic, dust or noise from the feedlot operation.

Impact on Land Values

Agricultural Land Value

The assessor points out that farm property is assessed at predetermined rates which already reflect a considerably lower value as that which could be expected from a sale. When determining market value for the purposes of assessment, the value of farmland and its residences and farm related buildings are not included in the meaning that value is that amount that might be expected to be realized if it is sold on the open market by a willing seller to a willing buyer. The Alberta Farmland Assessment Minister's Guidelines allow the assessor to put a maximum assessment of \$350 per acre on land that is used for agriculture. Ideally the maximum a quarter section could be valued is \$56,000. In the County, the highest assessed value for farmland is \$45,330 while sales in 2001 for farmland quarter sections in the County range from \$50,00 to \$195,000.

On the subject quarter sections, all farm buildings are non-assessable. The residences on the farmland are assessable, however, the Act allows for a maximum farm residence exemption of \$61,540. On the subject properties, the allowable exemption has been applied, therefore, the market value of the residence has been distorted. The three acre site around the farm residence is assessed at market value. In the County, the market value of three acre sites ranges from \$6,500 in the southeast corner of the County to \$39,200 in the areas immediately surrounding the Town of Stettler. Owing to these special considerations, it is the assessor's opinion that the subject farm property already receives a considerable reduction in the assessment and tax burden not shared by those who live in the same area but do not qualify as a farm.

Impact on Market Value

With respect to the impact of the feedlot on assessments, the assessor drew a comparison with the impact of intensive livestock operations around the Hamlet of Erskine, located five miles west of the Town of Stettler within the County. Erskine is surrounded by intensive livestock operations on almost all sides. There is a Hutterite Colony with hogs, chickens, dairy and feeder to the immediate southeast, an old but active feedlot to the south, a dairy operation to the immediate south and a hog operation within one and one-half miles to the west. According to Agriculture Canada, the prevailing winds are not from

BOARD ORDER: MGB 096/02

the northwest as commonly believed but from the southeast. Storms frequently come from the northwest but in the majority of cases the airflow is from the southeast.

This has been confirmed by the meteorological information serving aviation. Erskine has a very active real estate market where 12 parcels out of a total of 211 assessment accounts sold in 2000, 13 in 1999, and 11 in 1998. It is in Erskine where it was noticed for the first time in the County that older starter home properties would fetch considerably more in the market than was expected. Therefore in Erskine, a 25% appreciation factor was applied for the first time to a select group of properties. Only after the application of this factor did the assessment/sales ratio meet the legislative requirement. In the last four years virtually all the vacant lots have been sold in Erskine and new houses built on them. The local school has seen an increase in students in the present school year. A new business has been established along Highway 12. Nothing in Erskine indicates that it is feeling detrimental effects because of the intensive livestock operations.

The assessor indicated that in the Town of Picture Butte and Lacombe County, studies respecting property value relative to the location of intensive livestock operations illustrate that, if anything, property values have increased in the vicinity of such operations.

Assessment Comparables

With respect to the Larose comparable used by the Appellants, it is true that the Larose residence is located within a mile of the hog operation, however, the reason the assessment for the residence is lower is due to the fact that it is only 75% complete. The three acre sites for the subject and for the Larose property are assessed the same.

Unlike Lacombe County, there is a relatively low density of intensive agricultural operation in the County. The only comparisons in the County show that livestock operators are prepared to pay a premium for farmland. For example, in 2001 a hog farmer purchased the NW 23-38-20-4 for \$150,000, while the Lone Pine Hutterite Colony acquired a quarter section for \$100,000 when the going rate was \$65,000 and three pasture quarters were sold to a dairy farmer in 1998 for \$120,000 each when the going rate was \$80,000. The assessment rates for each of these quarter sections reflected the normal farmland assessment rates of \$45,330 or less.

Conclusion

The Appellants have not submitted tangible evidence as to the degree of value decrease that can be attributed to the effects of the hog operation. The assessor is of the view that problems experienced by the Appellants relate to the County's administration regarding planning matters. There is no measurement

BOARD ORDER: MGB 096/02

available to find a value attributable to the effects claimed by the Appellants in relation to the proximity of the hog operation.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows:

1. There is no loss in property value directly attributable to the feedlot operation.
2. There is no evidence to show that the groundwater supply and quality have been affected by the feedlot operation as it relates to assessed value of the appealed properties.
3. There is no evidence to show that odours from the feedlot operation nor the traffic, dust and noise associated with the operation, have a detrimental effect on the assessed value of the appealed properties.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

The appeal in respect to the assessment is denied and the assessment is confirmed.

It is so ordered.

REASONS

The MGB's jurisdiction is limited to the adjudication of the valuation respecting the assessment of the subject properties. The MGB has no jurisdiction to comment on or to decide on the operation of the feedlot or the operation of the County regarding its development control procedures or the enforcement of the directives of other government bodies. While the MGB can act only within its legislated powers, it suggests that there may be other methods and other agencies open to the Appellants to address these issues in order to get at the root of the problem. The concerns raised by the Appellants relate directly to land use planning problems and enforcement problems. It is important to note that as of January 1, 2002 the Natural Resources Conservation Board of Alberta (NRCB) is now responsible for the location of all

BOARD ORDER: MGB 096/02

new and expanding Confined Livestock Operations (CFOs). The NRCB is also establishing an inspection and enforcement service for dealing with existing and new CFOs.

In this specific appeal, the MGB must look to determine whether or not the assessment of the subject property is an estimate of the valuation standard market value and farmland rates and determine if the assessment is equitable with similar properties. In the subject appeal, the Appellants failed to convince the MGB with market evidence and assessment comparables that the subject assessment should be altered.

The MGB noted that the residential real estate market has been active in Erskine for the past three years, in spite of Erskine being surrounded by intensive livestock operations. While there were no sales of similar three acre sites in proximity to feedlots in the County, the assessor provided a satisfactory explanation of the methodology used to determine farm assessments in the County.

Impact of Feedlot on Water Supply and Quality, and Complaints of Odours, Traffic, Dust and Noise from the Feedlot

The Appellants placed considerable importance on the physical changes (water supply and quality, and odours) which have resulted since the feedlot started operation. While these factors have an impact on the lives of the Appellants, the key question left for the MGB is whether or not the assessments on the subject properties reflect market conditions and equitable assessments.

The MGB understands the concerns and frustrations of the Appellants regarding the feedlot operation, however, the Appellants could not provide tangible evidence to the MGB that a change in groundwater supply and the potential water contamination could be attributed to the feedlot operation. While the odour from the hog operation is an obvious problem, there was no evidence provided for the MGB to measure or find a loss in value as a result of the effect of odour from the hog operation. Indeed, no tests or studies have been completed regarding these concerns.

Impact on Land Values

The real difficulty for the MGB is finding a means to identify whether a loss has actually occurred and how to quantify the impact and determine whether or not the assessment bears a correct relationship to market value and farmland rates.

The Appellants advised the MGB that Realtors had advised that the subject properties may be reduced in value and difficult to sell owing to the effects of the hog operation. The Realtors were not present at the hearing and did not provide written evidence that the subject property suffered a loss in value owing to the hog operation. As a result, the MGB was unable to question the Realtors who presented the

BOARD ORDER: MGB 096/02

opinion and determine what, if any, market evidence the opinion was based on. Thus, the MGB placed less weight on this second hand information.

Other than relaying the verbal opinions offered by the Realtors, the Appellants provided no additional market evidence to illustrate the assessed values of the subject properties were either incorrect or not fair with other similar properties. In the absence of market sales, sales listings, actual and typical sales, turnover rates, or appraisal reports, the MGB is reluctant to become arbitrary and make changes to the assessments of the subject properties. The onus rests with the Appellants to convince the MGB by submitting market evidence that the assessments are not correct.

According to the Act, the subject property must be assessed based on the market value of the three acre site and residence, and regulated rates for the farmland. The MGB is satisfied that the farmland has been assessed according to the regulated rates and the three acre site reflects market value.

Assessment Comparables

In consideration of whether the subject properties are equitably assessed with similar properties, the MGB is satisfied that the assessor applied the legislation in an appropriate manner to all the three acre sites, farm residences and farmland in the County. There is no evidence that the subject property has suffered a loss in value, therefore, the MGB cannot alter the subject assessments. The Larose comparable used by the Appellants is not an acceptable comparable for purposes of determining the effect of the hog operation on the three acre site and residence. The assessor showed that both are assessed the same and the only reason the Larose residence is assessed less is because of the fact that residential construction is only 75% complete.

Previous Board Decisions

The MGB examined two previous decisions of the MGB made in 1999, namely MGB 094/99 (Gamad Holdings Ltd. v. Sturgeon County) and MGB 082/99 (Kushinski et al v. City of Edmonton), both of which dealt with similar olfactory and contamination concerns in an attempt to see if there was any alternative or supporting basis upon which a further reduction could be granted. These decisions, however, provided little assistance to the MGB, other than reiterating the requirement of convincing and substantive evidence to illustrate a loss in market value or a lack of equity between similar properties.

For all these reasons, the MGB must deny the appeals and confirm the assessments.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 26th day of June 2002.

BOARD ORDER: MGB 096/02

MUNICIPAL GOVERNMENT BOARD

(SGD.) T. Robert, Presiding Officer

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Douglas Green and Robin Cosgrave	Appellants
Gert Vande Bunte	County Assessor

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	Appellant's Brief
2R	Assessor's Brief

MAROIS c. PAROISSE DE SAINT-CLÉOPHAS

M91-0031

Nom des parties: MAROIS c. PAROISSE DE SAINT-CLÉOPHAS

Décision de: JACQUES FORGUES

Date: 10-01-1991

SOMMAIRE

MAROIS c. PAROISSE DE SAINT-CLÉOPHAS

B.R.E.F. minute M91-0031

Décision de : Me Jacques Forgues

Date de la décision : 1991-01-10

DÉSUÉTUDE EXTERNE - PORCHERIE - DÉSUÉTUDE DE LOCALISATION - MOMENT DE L'ÉVALUATION

L'existence d'une porcherie dégageant de fortes odeurs et causant du bruit, située à proximité d'une résidence secondaire, constitue une cause de désuétude externe de localisation dont il faut tenir compte dans l'établissement de la valeur. Il y a lieu, dans le cas présent, de déterminer cette désuétude à 15% compte tenu de la preuve des inconvénients.

L'apparition de la cause de désuétude externe de localisation après la date de référence, c'est-à-dire la date prévue par la loi pour saisir les conditions du marché, n'est pas une raison pour ne pas en mesurer l'impact sur la valeur puisque cet environnement existait avant et au moment du dépôt du rôle. Cette situation de fait et ses conséquences prouvées doivent donc être considérées dans l'établissement de la valeur de l'unité d'évaluation telle qu'elle est à la date du dépôt du rôle: une résidence située à proximité d'une porcherie. La désuétude de localisation s'apprécie au moment de l'évaluation (art. 46 L.F.M.)

MISE À JOUR : 1991-10-19

TEXTE INTÉGRAL

BUREAU DE RÉVISION DE L'ÉVALUATION FONCIÈRE DU QUÉBEC

MINUTE NO: M91-0031

MONTREAL, le 10 JANVIER 1991

DIVISION:

Jacques Forgues, avocat
Président

MARJOLAIRE MAROIS
Plaignante

c.

PAROISSE DE SAINT-CLÉOPHAS

et

M.R.C. D'AUTRAY
Intimées

DATE DE L'AUDIENCE: le 12 sept. 1990

IDENTIFICATION DU DOSSIER

Numéro matricule:	F-1321-73-4555-5
Unité d'évaluation:	1150, Principale
Rôle d'évaluation contesté:	1990
Valeur inscrite au rôle:	
	Terrain: 12 100 \$
	Bâtiment: 24 200 \$

	TOTAL: 36 300 \$
Proportion médiane:	100 %
Facteur comparatif:	1,00
Valeur uniformisée:	36 300 \$

DÉCISION

La plaignante demande de réduire à 18 150 \$ la valeur inscrite au rôle pour l'unité d'évaluation en cause. Elle appuie son opinion de valeur sur le fait qu'une réduction de l'ordre de 50% doit être attribuée à son immeuble étant donné la présence d'une porcherie à quelques 400 ou 500 pieds de sa maison.

Plus spécifiquement, elle allègue qu'après avoir acquis l'unité d'évaluation en cause au prix de 35 000 \$ le 19 mai 1989, le voisin qui exploitait déjà une petite porcherie, a transformé son entreprise qui est devenue beaucoup plus considérable ce qui, selon la plaignante, déprécie son immeuble de 50% pour les motifs suivants:

- Présence d'odeurs nauséabondes à un point tel qu'elle en a parfois des nausées;
- source de bruit;
- isolement social par le fait que ses parents et amis limitent leurs visites à sa résidence en raison des inconvénients causés par la proximité de la porcherie;
- conflits de voisinage provoqués par l'existence de cette situation.

Les vents dominants transportant l'odeur de la porcherie en

direction de la résidence de la plaignante, celle-ci doit tenir les fenêtres fermées et limiter ses activités à l'extérieur. Ainsi, il est souvent impossible de manger dehors même si la température s'y prête pendant l'été.

Il s'agit ici d'une résidence secondaire occupée périodiquement par la plaignante pendant toute l'année mais principalement l'été. Cette résidence ayant appartenue aux parents de la plaignante, elle la connaissait très bien, ainsi que son environnement, avant de s'en porter acquéreur en mai 1989. Elle allège toutefois que le contexte environnemental a changé du tout au tout avec l'agrandissement de la porcherie.

Quant au remplaçant de l'évaluateur municipal, il indique que la paroisse de St-Cléophas s'étend sur une longueur de 4 à 5 milles le long d'une seule route et qu'elle est strictement agricole. On y exploite surtout l'industrie du porc, l'industrie laitière et des poulaillers.

Quant à la désuétude économique, le remplaçant de l'évaluateur explique qu'il a retenu 25% pour tout l'ensemble de la paroisse de St-Cléophas et qu'il n'est pas en mesure d'apprécier l'influence de la porcherie dont parle la plaignante sur la valeur des immeubles. Il précise qu'il n'a pas tenu compte de ce fait qu'il ignorait. Il précise que la porcherie est entrée en opération avant le dépôt du rôle mais après la date prévue par la loi pour saisir les conditions du marché.

Il appert de l'ensemble de la preuve que l'existence de la porcherie à proximité de l'unité d'évaluation en cause constitue une cause de désuétude économique dont il faut tenir compte dans l'établissement de la valeur. Toutefois, cette désuétude économique n'est sûrement pas de l'ordre de 50% tel que le prétend la plaignante. Elle n'a d'ailleurs pas prouvé avec précision dans quelle mesure l'existence de la porcherie influençait la valeur de son unité d'évaluation. Le fait que cette cause de désuétude soit apparue après la date prévue par la loi pour saisir les conditions du marché, n'est pas une raison pour ne pas en mesurer l'impact sur la valeur puisque la description de l'environnement faite par la plaignante est celui qui existait avant et au moment du dépôt du rôle d'évaluation qui nous intéresse ici.

Le fait qu'un pourcentage de désuétude économique de 25% est appliqué sur l'ensemble des unités d'évaluation situées à St-Cléophas n'est pas non plus un motif suffisant pour éviter de mesurer l'influence de la présence de la porcherie sur l'immeuble voisin. Il s'agit ici d'une situation tout à fait particulière.

Le soussigné est convaincu que l'existence d'une porcherie d'une telle ampleur située si près de la résidence de la plaignante, compte tenu des vents dominants, constitue une cause de désuétude économique dont il faut tenir compte et en l'absence d'une preuve précise sur sa quantification; il l'estime à 15% compte tenu de l'ensemble de la preuve.

PAR CES MOTIFS, le Bureau:

- ACCUEILLE la plainte;
- DÉTERMINE la valeur réelle de l'unité d'évaluation en cause à 30 900 \$ et;
- CONFORMÉMENT à l'article 147 de la L.F.M. DIVISE par le facteur du rôle soit 1,00 et FIXE la valeur à inscrire au rôle comme suit:

Terrain:	12 100 \$
Bâtiment:	18 800 \$

TOTAL:	30 900 \$

- ORDONNE au Ministre des finances de rembourser la somme d'argent déposée avec la plainte.

Prise d'effet de la décision: 1er janvier 1990.

Jacques Forgues, avocat
Président de la division

>12.

BUREAU DE RÉVISION DE L'ÉVALUATION FONCIÈRE DU QUÉBEC

MINUTE NO:
M-91-0030

MONTREAL, le 10 JAN, 1991

DIVISION:
Jacques Forgues, avocat
Président

LOUIS TRUDEAU

Plaignant

C.

PAROISSE DE ST-CLÉOPHAS

et

M.R.C. D'AUTRAY

Intimées

DATE DE L'AUDIENCE: le 12 sept. 1990

IDENTIFICATION DU DOSSIER

Numéro matricule: F-1321-23-8005-2
Unité d'évaluation: 1060 Principale
Rôle d'évaluation contesté: 1990

Valeur inscrite au rôle:

Terrain: 31 200 \$
Bâtiment: 42 700 \$
TOTAL: 73 900 \$

Proportion médiane: 100 %
Facteur comparatif: 1,00
Valeur uniformisée: 73 900\$

D E C I S I O N

Dans sa plainte écrite, le plaignant demande de réduire à 36 950 \$ la valeur inscrite au rôle pour son unité d'évaluation. Cette diminution de valeur serait due à la présence de deux porcheries situées à proximité de sa propriété.

Plus spécifiquement, une porcherie mise en opération en début d'été 1989 constitue le motif principal qui incite le plaignant à déposer la plainte dont il y a maintenant lieu de disposer.

Selon le témoignage du plaignant, cette porcherie qui contient 2 000 porcs et 400 truies est une cause de pollution par l'odeur et le bruit. Elle affecte grandement la valeur de l'unité d'évaluation en cause selon son témoignage corroboré sur ce point par celui de son épouse.

Plus spécifiquement, ces témoins expliquent que la forte odeur qui se dégage de la porcherie quasi quotidiennement, notamment à l'heure du souper et pendant les nuits, oblige à maintenir les fenêtres de la résidence fermées, provoque des maux de têtes et des nausées à l'épouse du plaignant, constitue une cause de tension nerveuse et engendre une situation conflictuelle en raison du stress causé par cette situation.

De plus, il est souvent impossible de demeurer à l'extérieur de la maison même par les belles températures estivales étant donné que les vents dominants transportent une forte odeur provenant de la porcherie voisine. Cette situation aurait également pour conséquence de faire fuir parents et amis.

Pour l'ensemble de ces inconvénients, le plaignant conclut que la valeur réelle de l'unité d'évaluation dont il est propriétaire doit être réduite de 50 %. Madame Claire Caron, elle-même résidente de la paroisse de St-Cléophas, corrobore le témoignage du plaignant et de son épouse quant à la forte odeur dégagée par la porcherie. Celle-ci est située dans l'environnement immédiat de l'unité d'évaluation du plaignant et de la résidence de Dame Marjolaine Marois dont le soussigné a fixé la valeur dans la décision portant minute numéro:
rendue le

Quant au remplaçant de l'évaluateur municipal, il affirme ne pas avoir considéré l'inconvénient que peut causer l'existence d'une porcherie d'une telle envergure située tout près de la résidence du plaignant parce que la mise en opération de cette porcherie s'est faite après la date prévue par la loi pour saisir les conditions du marché même si elle est survenue avant le dépôt du rôle, en septembre 1989.

Tout en admettant qu'il peut y avoir là une cause de désuétude économique pour la résidence du plaignant, le remplaçant de l'évaluateur mentionne qu'un pourcentage de 25 % a déjà été appliqué au titre de la désuétude économique sur l'ensemble des unités d'évaluation contenues dans la Paroisse de St-Cléophas.

Le soussigné est convaincu par la preuve verbale et documentaire qui lui a été faite que la présence d'une porcherie de l'envergure de celle qui a été décrite, située à proximité de la résidence du plaignant, compte tenu des vents dominants, constitue une cause de désuétude économique additionnelle qui n'est pas reflétée dans le 25 % mentionné par le remplaçant de l'évaluateur municipal.

En effet, il apparaît que sur le marché libre, un acheteur ayant le choix de se porter acquéreur de la résidence du plaignant et d'une autre semblable située à St-Cléophas mais non affectée par les vents dominants transportant les odeurs de la porcherie, paierait plus cher pour cette dernière que pour celle du plaignant. C'est la valeur de cette dernière qui est inscrite au rôle. Il faut donc effectuer une correction.

En l'absence d'une quantification précise de l'impact de cette cause de désuétude sur l'unité d'évaluation en cause, tant par le plaignant que par le remplaçant de l'évaluateur municipal, le soussigné compte tenu de l'ensemble de la preuve, l'établit à 15 %.

PAR CES MOTIFS, le Bureau:

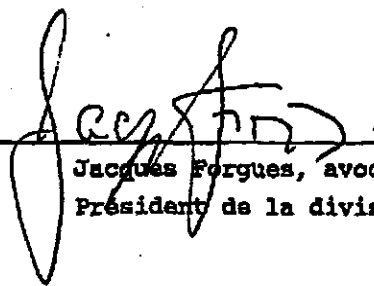
- ACCUEILLE la plainte;
- DÉTERMINE la valeur réelle de l'unité d'évaluation en cause à 62 800 \$ et;

CONFORMÉMENT à l'article 147 de la L.P.M. DIVISE par le facteur du rôle soit 1,00 et FIXE la valeur à inscrire au rôle comme suit:

Terrain:	31 200 \$
Bâtiment:	<u>31 600 \$</u>
TOTAL:	62 800 \$

ORDONNE au Ministre des finances de rembourser la somme d'argent déposée avec la plainte.

Prise d'effet de la décision: 1^{er} janvier 1990.



Jacques Forgues, avocat
Président de la division

BUREAU DE RÉVISION DE L'ÉVALUATION FONCIÈRE DU QUÉBEC

MINUTE NO: M91-0030-C

MONTRÉAL, le 11 février 1991

DIVISION:

Jacques Forgues, avocat
Président

LOUIS TRUDEAU

Plaignant

c.

PAROISSE DE SAINT-CLÉOPHAS

et

M.R.C. D'AUTRAY

Intimées

DATE DE L'AUDIENCE: 12 septembre 1990

IDENTIFICATION DU DOSSIER

Numéro matricule: F-1321-23-8005-2

Unité d'évaluation: 1060, Principale

Rôle d'évaluation contesté: 1990

Valeur inscrite au rôle:

Terrain: 31 200 \$

Bâtiment: 42 700 \$

TOTAL: 73 900 \$

Proportion médiane: 100 %

Facteur comparatif: 1,00

Valeur uniformisée: 73 900 \$

CORRECTION DE DECISION

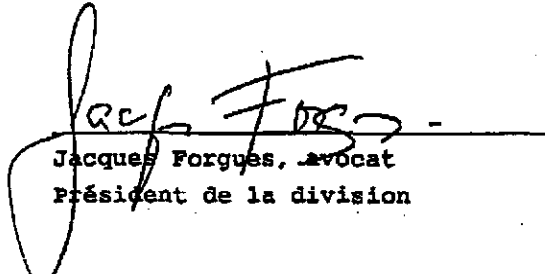
ATTENDU QU'il y a eu omission dans la décision du Bureau portant le numéro de minute M91-0030 en date du 10 janvier 1991;

ATTENDU QU'il y a lieu de corriger cette omission;

EN CONSÉQUENCE, le Bureau:

- CORRIGE la décision susdite en inscrivant au dernier paragraphe de la page 2:

"portant minute numéro: M91-0031 rendue le 10 janvier 1991".


Jacques Forques, avocat
Président de la division



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Dossier : 31070-5009-54-4505 Page :

Tribunal administratif du Québec

Section des affaires immobilières

Date : 15 septembre 1999

Dossier : 31070-5009-54-4505

Membre du Tribunal :

Christian Beaudoin, avocat

Q-99-0216

ROLANDE LAROCHELLE

Partie requérante

c.

PAROISSE DE SACRÉ-COEUR-DE-MARIE (PARTIE SUD)

et

M.R.C. DE L'AMIANTE

Parties intimées

DÉCISION

1. Le recours porte sur l'exactitude de l'inscription au rôle d'évaluation foncière pour l'unité

d'évaluation dont les caractéristiques sont les suivantes :

Numéro de matricule : 5009-54-4505
Unité d'évaluation : 90, route 269 ouest
Rôle d'évaluation contesté : Triennal 1999-2000-2001

Valeur inscrite au rôle : Terrain : 22 500 \$
Bâtiment : 77 400 \$
Total : 99 900 \$

Proportion médiane : 100 %
Facteur comparatif : 1,00
Valeur uniformisée : 99 900 \$

2. La requérante recherche une diminution de la valeur inscrite en regard de son immeuble.
3. La valeur inscrite de 99 900 \$ est censée refléter les conditions du marché au 1^{er} juillet 1997.
4. À l'audition, la requérante était représentée par procureur et a fait témoigner M. Lorien Roy, son conjoint.
5. Les motifs au soutien de la requête sont de quatre ordres.

a. Décision du BREFQ :

Le Bureau de révision de l'évaluation foncière du Québec a rendu une décision le 11 mars 1997 fixant à 84 100 \$ la valeur à être inscrite au rôle triennal 1996-1997-1998 en regard de l'immeuble de la requérante. Il n'y a pas eu d'améliorations pouvant justifier une hausse des valeurs. Au contraire, une nouvelle porcherie a été construite dans le voisinage, ce qui détériore encore plus l'environnement.

b. Absence de services :

L'immeuble de la requérante ne bénéficie d'aucun service municipal; pas d'égouts, pas d'aqueduc, la municipalité ne s'occupe plus de l'entretien des clôtures et c'est la Province et non la municipalité qui entretient la route.

c. État physique de l'immeuble :

- affaissement sous le mur entre le salon et la cuisine;
- construction inférieure due au fait qu'il s'agit d'un bâtiment préfabriqué.

d. Présence de porcheries dans le voisinage et épandage de purin dans les champs avoisinants :

La requérante expose que deux porcheries dans le voisinage détériorent énormément l'environnement et ne permettent pas une jouissance entière de sa propriété. Cette situation se trouverait exacerbée du fait que ces porcheries produisent du purin que les fermiers font étendre dans les champs voisins, ce qui, à chaque fois, occasionne des odeurs désagréables. Selon la requérante, cette situation est susceptible de faire fuir bien des acheteurs éventuels diminuant ainsi

la valeur de l'immeuble.

6. Les intimées n'étaient pas présentes à l'enquête. Le Tribunal a quand même entendu M. Luc Bélanger, évaluateur pour l'intimée, la M.R.C. de l'Amiante.
7. M. Bélanger a produit une étude, I-1 qui porte sur 19 ventes d'immeubles situés sur le territoire de l'intimée Paroisse de Sacré-Cœur-de-Marie (Partie Sud). Il a en outre produit un plan I-2 reportant les aires d'épandage de purin par rapport à la situation de l'immeuble objet du présent litige.
8. Le Tribunal abordera plus loin l'étude des pièces produites par l'évaluateur. Tout d'abord il y a lieu de disposer des trois premiers ordres de motifs invoqués par la requérante.
9. Décision du BREF :

Toute décision d'un Tribunal, que ce soit le Bureau de révision de l'évaluation foncière ou le Tribunal administratif du Québec, doit être rendue sur la base de la preuve faite devant lui. Chaque litige constitue un débat nouveau qui doit être décidé à son seul mérite en ne tenant pas compte de preuves qui auraient pu être faites devant d'autres décideurs. De même que les preuves peuvent être différentes d'un litige à l'autre, de même les décisions qui se basent sur ces preuves peuvent diverger l'une de l'autre.

10. Cependant le Tribunal a bien étudié la décision du BREF produite par la requérante. Il en retient les éléments suivants :

- Le BREF n'a pas retenu les arguments de la requérante en ce qui a trait à l'absence de services municipaux.

Il y a lieu de citer le paragraphe relatif à ce point en page 5 de la décision :

«L'absence des services municipaux et le coût des assurances ne peuvent non plus être invoqués par la plaignante étant donné que la situation est la même pour les propriétés qui ont fait l'objet de ventes en 1993 et que le Bureau à l'instar de l'expert des intimées, juge comparables au sujet.»

Dans le présent cas, l'évaluateur, non contredit sur ce point, a établi que la situation est la même dans toute la municipalité de sorte que l'étude des comparables tiendra compte d'elle-même de l'absence de services.

- Quant à l'état physique du bâtiment, le BREF ne voit rien que l'évaluateur n'ait relevé :

«Pour ce qui est de la brièveté de sa visite, fait qu'il ne semble pas avoir contredit, l'évaluateur a tout de même correctement apprécié l'état de la propriété.»

Le Tribunal en vient à la même conclusion. L'évaluateur a bien décrit le bâtiment, une maison préfabriquée bâtie dans les années 79-80. Évidemment, elle répond de son âge physique mais, lors de sa construction, elle satisfaisait aux normes du Code national des bâtiments et M. Roy n'a rien révélé, qui n'ait été pris en compte par l'évaluateur. D'ailleurs, M. Roy a admis que, si ce n'était de la question des porcheries et de l'épandage de purin, la valeur attribuée à l'immeuble sujet serait raisonnable.

- La présence de porcheries et l'épandage de purin :

→ Effectivement, le BREF accorde une désuétude de localisation de 15 % à ce

chapitre. Il y a lieu cependant de citer un extrait de la décision du BREF à ce sujet, au dernier paragraphe de la page 5 :

«La question est de savoir si le voisinage immédiat de la porcherie, les activités qui s'y poursuivent et les odeurs désagréables qui s'en dégagent ont pour conséquence de réduire la valeur de l'immeuble en cause. Le Bureau estime que cette situation a effectivement une influence négative sur la valeur du sujet. Les intimées n'ont jamais démontré que les propriétés comparables subissent un même désagrément de leur environnement immédiat.»

(Le soulignement est du Tribunal)

Le Tribunal voit bien que le BREF considérait que la présence d'une porcherie et d'épandage de purin comportait des inconvénients. N'ayant pas la preuve que «*les propriétés comparables subissent un même désagrément*», il a jugé en faveur de la requérante.

Il s'agit là d'une modulation qui laissait le débat ouvert sur l'influence générale des inconvénients soulevés par la requérante.

11. L'évaluateur, ayant bien appris de la décision du BREF, a pris soin, de préparer et de présenter au Tribunal une étude sur l'influence que peuvent avoir les porcheries et l'épandage de purin sur le marché local des immeubles et, par voie de conséquence, sur la valeur de ces derniers.
12. Dans son étude I-1, l'évaluateur réfère à 19 ventes étalées du 28 mai 1997 au 22 avril 1998. Il situe ces ventes ainsi que les porcheries existantes dans les environs. De plus, sur son plan I-2, il a reporté les aires d'épandage de purin, ceci à partir des déclarations des trois entrepreneurs spécialisés dans cet épandage.
13. Une surimposition de I-1 et I-2, fait constater que les immeubles vendus portés au tableau de ventes ne sont pas particulièrement mieux situés que le sujet en ce qui concerne les porcheries et l'épandage de purin.
14. L'étude du tableau des ventes en relation avec la description des immeubles objets de ces ventes démontre qu'il n'y a pas de désuétude particulière attribuable aux désagréments occasionnés par la présence des porcheries ou par l'épandage de purin. Vraisemblablement, ces désagréments (moins fréquents que ne le laisse entendre M. Roy) sont choses subies par le milieu plutôt que d'être fuies en d'autres lieux.
15. Un tel tableau de ventes démontre également un marché très actif. Dix-neuf ventes en deçà d'un an, dans une paroisse de la taille de la paroisse intimée, font état d'une certaine effervescence de marché, incompatible avec une désuétude de localisation. Les appréhensions de M. Roy à l'effet qu'un acheteur éventuel consentirait un prix moindre en raison des odeurs, ne sont pas fondées.
16. Le Tribunal, bien d'accord avec la décision du BREF à l'effet que les porcheries et l'épandage de purin causent des désagréments aux résidents, doit cependant conclure, dans le cas spécifique de la requérante, à l'absence de désuétude attribuable à ces inconvénients. En cela, le Tribunal doit respecter une preuve qui lui a été soumise et dont le BREF n'avait pas pu bénéficier.
17. Suite à cette constatation d'absence de désuétude particulière attribuable aux mauvaises odeurs, il n'y a pas de motifs justifiant une baisse de valeur. En cela, le Tribunal réfère au témoignage même de M. Roy qui admettait que, sans les porcheries et les épandages, l'évaluation serait réaliste.
18. Il n'y a donc pas lieu de modifier l'inscription telle qu'elle apparaît au rôle.
19. **POUR CES MOTIFS**, le Tribunal

REJETTE le recours de la requérante et
MAINTIENT l'inscription au rôle.

CHRISTIAN BEAUDOIN

Procureur de la partie requérante

Me Richard Côté

/sf

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DOSSIER : 52065-2512-94-2085 Page :

**TRIBUNAL
ADMINISTRATIF
DU QUÉBEC**

Section des affaires immobilières

DOSSIER : 52065-2512-94-2085

DATE : 9 octobre 1998

MEMBRE DU TRIBUNAL :

Claude de Champlain, é.a.

Q-98-0487

ANGELBERT FAFARD

Plaignant

c.

PAROISSE DE ST-CUTHBERT

et

M.R.C. D'AUTRAY

Intimées

IDENTIFICATION DU DOSSIER

Numéro de matricule : F-2512-94-2085

Unité d'évaluation : P-918

Rôle d'évaluation contesté : triennal 1997

Valeur inscrite au rôle : Terrain : 8 400 \$

Bâtiment : 43 500 \$

Total : 51 900 \$

Proportion médiane : 100 %

Facteur comparatif : 1,00

Valeur uniformisée : 51 900 \$

DÉCISION

1. Le recours porte sur une plainte qui fut déposée le 22 avril 1997 et qui était alors destinée au Bureau de révision de l'évaluation foncière du Québec⁽¹⁾. Cette plainte fait l'objet d'une décision du Tribunal administratif du Québec en vertu des dispositions transitoires prévues à la *Loi sur la justice administrative*⁽²⁾. En effet, à compter du 1^{er} avril 1998, le Tribunal administratif du Québec constitué par la *Loi sur la justice administrative*⁽³⁾ remplace le Bureau.
2. C'est M. Angelbert Fafard qui témoigne pour la partie plaignante, ce dernier informe le Tribunal que la résidence incluse à l'unité d'évaluation est âgée de quatre-vingt-six ans (86) et qu'elle n'a subi aucune rénovation depuis les vingt-quatre (24) dernières années.
3. Le plaignant informe le Tribunal que son voisin exploite une porcherie et qu'il projette d'augmenter sa capacité de production à trois milles (3 000) porcs annuellement.
4. Selon le témoignage entendu, le solage de la résidence incluse à l'unité d'évaluation sous plainte est à refaire; la plaignante a pris note des coûts engendrés par ces travaux qui furent effectués chez un voisin. Après consultation il appert que les frais d'une telle entreprise sont de l'ordre de 32 000 \$. Il y a également dix-neuf (19) châssis d'origine qui sont à remplacer. Finalement, la résidence affiche par ailleurs une déclinaison sur un côté.
5. L'expert de l'intimée dépose sous la cote I-1 son rapport. Sur la base de la technique de parité composée de trois (3) transactions, l'expert conclut à une valeur de 63 600 \$, soit la moyenne des prix de vente ajustés.
6. Nous apprenons à l'audience que lors des discussions avec la partie plaignante, il fut mention

d'une vente impliquant une propriété située sur le même «rang» que l'unité d'évaluation et qu'elle ne figure pas au rapport de l'intimée. La partie plaignante s'en déclare surprise car il la connaissait et aurait pu la commenter, le Tribunal aurait également apprécié que cette transaction fasse partie de l'analyse. Par ailleurs, la preuve démontre que les transactions retenues aux fins de comparaison ne se retrouvent pas dans une localisation spatiale comparable à l'unité sous plainte et ne souffre pas des mêmes inconvénients de voisinage, notamment.

7. En ce qui a trait à l'incidence de la présence d'une porcherie comme voisin, l'expert de l'intimée applique une moins value de cinq (5 %), lors de l'application de la technique du coût et n'en tient pas compte spécifiquement dans sa technique de parité puisque sa conclusion de valeur plus élevée que la valeur au rôle et qu'il maintient cette dernière. Dans une jurisprudence soumise par le représentant de l'évaluateur municipal⁽⁴⁾, le Tribunal prend note que dans cette cause l'intimée a tenu compte d'une moins-value touchant la municipalité d'une part en plus d'une réduction de valeur propre à l'unité d'évaluation alors sous plainte, au motif de sa proximité avec une porcherie. Il s'agissait d'une résidence secondaire alors que dans la présente affaire, il s'agit d'une résidence principale.
8. En fonction de la preuve administrée ici, tenant compte des déficiences à la bâtisse incluse à l'unité d'évaluation ainsi que de la présence comme voisin d'une porcherie, le Tribunal fait droit à la plainte.
9. **POUR CES MOTIFS**, le Tribunal:

ACCUEILLE la plainte;

DÉTERMINE la valeur réelle de l'unité d'évaluation à 36 200 \$;

DIVISE par le facteur comparatif de 1,00 (correspondant à la proportion médiane de 100 %), et

FIXE la valeur à inscrire au rôle comme suit, à compter du 1^{er} janvier 1997:

Terrain: 8 400 \$

Bâtiment: 27 800 \$

TOTAL: 36 200 \$

Claude de Champlain, évaluateur agréé

/cm

(1) Bureau de révision de l'évaluation foncière du Québec, rappelé par l'expressions «le Bureau».

(2) L.Q. 1997, c. 43.

(3) L.Q., 1996, c. 54, *Loi sur la justice administrative*, ci-après appelée par l'abréviation «L.J.A.».

(4) M-91-0031, *Marjolaine Marois c. Paroisse de St-Cléophas et M.R.C. D'Autray* ;

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