



# Alberta Assessors' Association E-Clipboard

Promoting *QUALITY* through membership excellence

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## The Selection of the Approach to Value is a Question of Mixed Fact and Law

Carol M. Zukiwski and Greg D. Weber, Student-at-Law  
Reynolds Mirth Richards & Farmer LLP

The “cost approach” and the “income approach” are two potential methods for identifying market value. Justice Yungwirth of Alberta’s Court of Queen’s Bench has recently denied leave to appeal when the “cost approach” was used to value income properties under construction at the time of assessment. After denying leave, the Court heard a judicial review application for questions of mixed fact and law when statutory leave to appeal was not available.

In *St Albert Housing Society v St Albert (City)*, 2014 ABQB 556, the St. Albert Housing Society challenged the assessment levied by St Albert before the St Albert Composite Assessment Review Board (“the Board”). At the time of assessment, St. Albert Housing Society was in the process of building two apartment buildings. One of these buildings was provincially funded to serve as regulated affordable housing. St. Albert did not take this into account in its assessment, opting to use the “cost approach” according to the city’s practice for all buildings under construction.

Using the “cost approach,” St. Albert assessed the property’s value at \$9,464,477. However, St. Albert Housing Society obtained a subsequent appraisal for the purposes of acquiring financing that assessed the property at \$8,886,000 according to the “income approach.”

St. Albert Housing Society argued before the Board that failing to use the “income approach” in such situations would render low income housing (ironically) unaffordable for property owners due to the unrealistically inflated assessment. The Board rejected this argument in finding that St. Albert’s policy of using the “cost approach” for all buildings under construction was the best way to value the property in the absence of evidence of actual income generated by the property. Unhappy with this decision, St. Albert Housing Society sought leave to appeal.

There are two ways to apply for review of an assessment. First, an applicant may apply for leave to appeal a question of law or jurisdiction under s 470 of the *Municipal Government Act*. Alternatively, a party may seek judicial review according to the broad jurisdiction of superior courts under Canada’s constitution. In this case, St. Albert Housing Society did both concurrently in the same application.

## **The Selection of the Approach to Value is a Question of Mixed Fact and Law *Continued***

In considering the application for leave to appeal, Yungwirth J found that the selection of the appropriate assessment method concerned a question of mixed fact and law because it required assessors to meet statutory standards of assessment in the unique factual setting of the construction of low income housing. As a question of mixed fact and law, Yungwirth J denied St. Albert Housing Society's application for leave to appeal.

However, the possibility of judicial review remained. Yungwirth J found that judicial review is available for questions of fact or mixed fact and law because the statutory right of appeal is not an adequate alternative remedy for these questions. After examining previous decisions, she further found that the Board's decision should be reviewed according to whether it was reasonable, rather than if it was the correct decision. On that basis, Yungwirth J found the Board's decision met the reasonableness standard of review because its reasons identified the correct law and issues at play, considered and understood St. Albert Housing Society's arguments, and arrived at a conclusion that appreciated the difficulty of the "income approach" in the absence of determinable expenses and income for the property.

This case is important for at least two reasons. First, it solidifies the trends that an applicant may request leave to appeal under the *MGA* and judicial review at the same time. Second, it underscores the deference owed to the Board by adopting a standard of reasonableness.

## **Employment Opportunities**

*New postings since the last eClipboard*

- City of Red Deer - [Assessment Coordinator/Analyst](#), September 13, 2015
- DuCharme, McMillen & Associates, Inc.- [Senior Tax Manager](#), Open until a suitable candidate is found
- Town of Canmore [RPF Regional Assessment Services](#), September 15, 2015
- Sturgeon County - [Assessor II](#), September 18, 2015
- Special Areas Board -[Assessment Supervisor](#) September 18, 2015

Competitions are still currently open so check regularly on the Association website [Employment](#) page.

## **Beginner Farmland**

We are putting together a list of members interested in the Beginner Farmland course and would like to schedule an offering for Winter 2015 until Spring 2016. The course cost is \$445 (+GST) and is worth 10 learning credits for accredited members. It currently runs for approximately 10 weeks online with a lab component in the final module. If you are interested, please contact the Association office for more information or to be added to our wait-list.

## **RANDOM QUOTE**

*“When you catch a glimpse of your potential, that's when passion is born.” -zig zigar*