

## MEMO

June 27, 2017

To: The University of Alberta  
From: Paul Girgulis, Field Law  
Subject: **The West 240 Lands**

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The University of Alberta (the “**University**”) owns a large parcel of land in the City of Edmonton known as the “**West 240**.” The name refers to the fact that the lands consist of approximately 240 acres, or about one and a half quarter-sections of land. The West 240 is bordered by 62<sup>nd</sup> Avenue to the north, 52<sup>nd</sup> Avenue to the south, 122<sup>nd</sup> Street to the east, and to the edge of Whitemud Creek Ravine on the west, all as shown on the attached Land Titles Plan Map.

Field Law has been asked to summarize how the University came to own the West 240 lands, and also whether there are any restrictions on the possible uses of the lands by the University.

As a preliminary step, we will offer a quick overview of the statutory framework that governs how the University may own and develop land, then discuss some of the general principles of land ownership in Alberta which apply to this analysis. Then, we will detail how the parcels in the West 240 were created by subdivision, and how the University acquired the various parcels in the 1930s-1940s. Then, we will examine the current state of title for the various parcels in the West 240 and detail any restrictions shown there.

In the process of creating this document, we have reviewed the various titles to lands in the West 240 (both current and historical), copies of the original transfer documents when the University acquired the various parcels of lands, documents regarding the processes of subdivision which created the parcels, as well as minutes of meetings of the University’s executive body from the period during which the West 240 lands were acquired.

### **1. The statutory framework: the *Post-Secondary Learning Act***

The University is governed by the provisions of the *Post-Secondary Learning Act* (the “**PSLA**”). The PSLA permits the University to acquire any interest in land to further the purposes of the University (though note that the University acquired the West 240 long before the PSLA’s existence). The PSLA also grants the University several powers similar to a municipality’s in respect of land – for example, the University is a subdivision authority and thus is capable of subdividing its own land. The University is also generally exempted from compliance with some municipal bylaws, including land use bylaws.

However, the PSLA also imposes certain restrictions on the University with respect to the disposition of land. For example, the University cannot, without the prior approval of the Lt-Gov. in Council:

- Sell or exchange any interest in land (other than land that was donated to the University by someone other than a municipality or a provincial or federal government) that is held by and being used for the purposes of the University; or
- Lease any land for a term greater than 5 years, unless the lease is to a person that will use the land for the purpose of providing support services to the students, faculty or staff of the University.

The PSLA also requires the University to create and provide to the responsible Minister, in accordance with the regulations to the PSLA, a long-range land use and development plan (“**LRDP**”) relating to lands owned by or leased to the University. Passing or amending an LRDP requires the University to follow a consultation protocol contained in the regulations to the PSLA with neighbouring land owners and the appropriate municipality regarding the terms of the LRDP. Further, every LRDP must set out a consultation protocol for the University to follow when undertaking a ‘substantial development.’ The current LRDP was passed by the University’s Board of Governors in 2002, which has been updated several times since.

The University has also entered into a Memorandum of Understanding (“**MOU**”) with the South Campus Neighbourhood Coalition (the “**SCNC**”)<sup>1</sup> as of May 5, 2012, which was renewed for a further 4 years in March 2016. The MOU establishes a mechanism for ongoing, regular consultation between the University and the SCNC on the development of South Campus (including the West 240). The MOU recognizes, however, that the ultimate decision on how the South Campus is used rests with the University.

## **2. What are the general principles surrounding land ownership in Alberta?**

The Land Titles system in Alberta is a “Torrens” title system, so-called as it is based on a system of land created by Robert Torrens in South Australia in 1858. A Torrens System has several key principles, two of which are important to this discussion:

### **(a) The Mirror Principle**

The Mirror Principle means that the register / certificate of title accurately and completely reflects all rights in the land. This means that all interests must be shown or registered on title to be effective. If an interest in land existed but was not registered before a transfer of title, then the new owner is granted title to the land free of that interest. For example, if a person had a right over certain lands (for example, a right-of-way), but that interest was not registered on title, a purchaser of the lands without knowledge of that right would be entitled to ownership of the lands free of it. There are some exceptions to this absolute rule, which are set out in Section 61 of the *Land Titles Act* (lease interests for a term of less than 3 years do not have to be registered, the government’s right to collect unpaid taxes, expropriation rights, etc.).

### **(b) The Curtain Principle**

The Curtain Principle means that the certificate of title contains all relevant information regarding the ownership and rights in the land. There is no need to “look behind the curtain” and trace the chain of ownership that led to the current owner. A person examining a current certificate of title is entitled to rely on it without further examination. There are some minor exceptions to this principle, for example if a current owner gained title via a fraud that they participated in.

Generally speaking, in Alberta’s Torrens system, a certificate of title from the Land Titles Office is expected to be complete, and a person examining such title is able to rely on it. If a person has an interest in land, but does not register it on title, then a bona fide purchaser for value of that land is entitled to own the land free of that unregistered interest.

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<sup>1</sup> The SCNC consists of the following community leagues: Grandview, Parkallen, Belgravia, McKernan, Lansdowne, Malmo, Lendrum and Aspen Gardens.

### 3. How were the West 240 lands created, and how did the University acquire them?

What is now the West 240 originally consisted of the following quarter-sections of land:

- A portion of the North-West Quarter of Section 13, Township 52, Range 25, West of the 4<sup>th</sup> Meridian (81.20 Acres) (the “**North-West Quarter**”).
- The North-East Quarter of Section 13, Township 52, Range 25, West of the 4<sup>th</sup> Meridian (160 Acres) (the “**North-East Quarter**”).

After going through several subdivisions and amalgamations in the early part of the 20<sup>th</sup> century, the West 240 now consists of 4 titled parcels owned by the University:

- PLAN 4971AJ, Block A (Area 8 on the attached Land Titles Plan Map) (“**Parcel 1**”)
- PLAN 4971AJ, BLOCK B (Area 9 on the attached Land Titles Plan Map) (“**Parcel 2**”)
- PLAN 4971AJ, BLOCK C (Area 10 on the attached Land Titles Plan Map) (“**Parcel 3**”)
- PLAN 3347EO, LOT A (Area 11 on the attached Land Titles Plan Map) (“**Parcel 4**”)

In the West 240, there is also 1 titled parcel owned by Her Majesty the Queen in Right of Canada (Forestry Canada): PLAN 4971AJ, BLOCK A (Partial), which is Area 21 on the attached Land Titles Plan Map. That parcel is not part of this discussion.

A discussion of the various ways Parcels 1-4 were created by the process of subdivision and amalgamation and how each parcel was eventually acquired by the University follows.

#### (a) The North-East Quarter:

The North-East Quarter was subdivided on May 11, 1912, by the registration of Plan 4971AJ. On the face of it, that plan of subdivision was intended to create a dense residential area named “Tuxedo Heights.” Plan 4971AJ / Tuxedo Heights contained 32 blocks, with 14-38 lots apiece, totaling 1,065 separately titled residential lots in the area of the subdivision. However, Tuxedo Heights was never extensively developed as far as we are aware, and the various lots were eventually consolidated into three blocks (A, B, and C), which correspond to Parcels 1, 2 and 3 noted above.

#### (i) *Parcel 1: PLAN 4971AJ, Block A*

Sometime after the registration of Plan 4971AJ, a large portion of Plan 4971AJ (consisting of 24 blocks, containing a total of 855 lots) was consolidated into a single parcel and a new title issued (Plan 4971AJ, Block A). Block A was purchased on September 27<sup>th</sup>, 1921 by Lillie May Ross (“**Ross**”).

By a letter dated January 3, 1930 (as noted in the minutes of the University’s Executive Committee dated March 28, 1930), Ross offered the University an option to purchase Block A, and a number of other lots in Tuxedo Heights, which option was to expire on April 1, 1930. The option was for approximately 145 acres at \$125.00 per acre, and Ross was to apply for a cancellation and consolidation of several of the titles involved into a larger parcel.

On March 28, 1930, the University’s Executive Committee decided to purchase the lands Ross was offering as soon as she completed her exchanges and cancellation of the subdivision plan had been effected. Soon after that, the Executive Committee was advised that the property being transferred was actually about 135 acres,

and the purchase price was to be \$10,000.00 (which amount may have changes since the minutes of the Executive Committee, given the final price set out on the transfer, see below).

Ross subsequently sold all of her estate and interest in Block A, and 14 other remaining lots in Tuxedo Heights, to the University for the aggregate amount of \$16,250.00 (\$15,000.00 for Block A and the 14 lots). According to the transfer document, this transaction was the “greater portion of a sale of land which the consideration is \$16,250.00[.]” From the various documents, it seems that the acquisition of Block B (see below) was related to this transaction as well. These lands were first registered in the name of the University on June 2, 1930.

(ii) *Parcel 2: PLAN 4971AJ, Block B*

On November 7, 1930 Alberta’s Department of Public Works issued Utility Order 6003, which consolidated another portion of Plan 4971AJ (consisting of 7 blocks, containing a total of 182 lots), and ordered that a new title be issued for that area (Plan 4971AJ, Block B). Per the order, the title to Block B was issued in the name of the University, which was done on November 19, 1930. Several of the lots were owned by individuals who received other lots in Tuxedo Heights as consideration for their lots in what became Block B. The lots they received were located in what became Plan 4971AJ, Block C (see below).

(iii) *Parcel 3: PLAN 4971AJ, Block C*

On February 11, 1941, Alberta’s Department of Public Works issued Utility Order 9126, which consolidated the final portion of Plan 4971AJ (consisting of the remaining 28 lots in Tuxedo Heights), and ordered that a new title be issued for that area (Plan 4971AJ, Block C). Per the order, the title to Block C was issued in the name of the Municipal District of Strathcona No. 518. Those lots were issued in the name of the Municipal District due to unpaid taxes. The Municipal District then offered them for sale to the public at \$50.00 per acre, the entire parcel being approximately 5 acres.

Minutes of the University’s Executive Committee from 1941 detail the University’s decision to acquire the land, after being advised that it was for sale by a professor from the Department of Animal Husbandry.

On May 9, 1941, the University purchased Block C from the Municipal District of Strathcona No. 518 for the sum of \$250.00.

(b) The North-West Quarter:

The North-West Quarter was subdivided on November 21, 1930 by the registration of Plan 3347EO. That plan carved out an 81.20 acre parcel referred to as Lot A. The owner of that land at the time the plan of subdivision was submitted was Gertrude A. Calder (“**Calder**”), who accordingly became the owner of Lot A.

(i) *Parcel 4: PLAN 3347EO, LOT A*

Sometime in 1930, the University’s Executive Committee was informed that the President was approached by Calder to sell approximately 80 acres of land to the University. On September 26, 1930, the Executive Committee decided to offer \$6,000 for the entire 80 acres, of which approximately 50 acres was usable land.

On November 21, 1930, Calder sold all of her estate and interest in Block A to the University for \$6,000.00.

(c) Conclusions

The University acquired the various parcels in the West 240 in fairly typical ways – directly from the owners, via tax sales from a municipality, etc. Prior to the University acquiring them, there were plans to develop most of the area as dense residential.

There is no indication in any of the documents that we have examined that any party from which the University acquired the various parcels intended to impose any conditions on the future use of any of the lands in the West 240 by the University.

**4. Current state of the titles to the parcels in the West 240**

Parcels 1-4 of the West 240 have, as of the date hereof, the following registrations on title:

(a) Parcel 1:

<b>Registration Number</b>	<b>Date Registered</b>	<b>Type of Registration</b>
779JF	24/09/1952	UTILITY RIGHT OF WAY

This Utility Right of Way (“**URW**”) is in favour of Trans Mountain Pipeline Inc., which grants that corporation a right-of-way over these lands to operate and maintain a pipeline.

2779NU	07/05/1964	UTILITY RIGHT OF WAY
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This URW is in favour of the City of Edmonton, which grants the City a right-of-way to construct and maintain a sanitary sewer and telephone and electrical lines.

042 047 239	29/01/2004	UTILITY RIGHT OF WAY
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This URW is in favour of the City of Edmonton, which grants the City a right-of-way to construct and maintain a “public work.”

(b) Parcel 2:

There are no registrations on title to this parcel.

(c) Parcel 3:

<b>Registration Number</b>	<b>Date Registered</b>	<b>Type of Registration</b>
042 047 239	29/01/2004	UTILITY RIGHT OF WAY

This URW is in favour of the City of Edmonton, which grants the City a right-of-way to construct and maintain a “public work.” (This URW is the same noted above under “Parcel 1”, as it straddles both parcels.)

(d) Parcel 4:

Registration Number	Date Registered	Type of Registration
7695JC	24/09/1952	UTILITY RIGHT OF WAY

This URW is in favour of Trans Mountain Pipeline Inc., which grants that corporation a right-of-way over these lands to operate and maintain a pipeline.

2695MD	28/02/1961	UTILITY RIGHT OF WAY
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This URW is in favour of the City of Edmonton, which grants the City a right-of-way to construct and maintain a storm sewer.

2779NU	07/05/1964	UTILITY RIGHT OF WAY
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This URW is in favour of the City of Edmonton, which grants the City a right-of-way to construct and maintain a sanitary sewer and telephone and electrical lines. (This URW is the same noted above under "Parcel 1", as it straddles both parcels.)

952 211 770	15/08/1995	EASEMENT
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This easement is for the benefit of the remainder of the North-West Quarter (Whitemud Ravine, essentially), which is owned by the City of Edmonton. A portion of a trail constructed and maintained by the City is granted an easement to cross over a portion of this parcel.

The various documents noted above do set out some restrictions on the University, but only in relation to non-disturbance of the works installed by Trans Mountain or the City, as the case may be. Otherwise, there is nothing registered on any of the titles to the parcels in the West 240 that restricts the possible uses of the lands by the University.

## 5. Conclusion

From our examination of historical land titles records, the University's own past minutes of its Executive Committee, and current and historical certificates of title, we can conclude with high certainty that there is no evidence that any restrictions have been placed on the University's use of the West 240.

In general, the University can put the West 240 to any use it wishes, so long as it follows the provisions of any laws applicable to the West 240 or the University, including the PSLA and any LRDP pursuant to the PSLA, and that the surrounding communities are consulted with pursuant to the MOU.

PHWG/tn