

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J.P. Acker, PRESIDING OFFICER

Y. Nesry, MEMBER

D. Pollard, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

| | |
|--------------------------|--------------------------------|
| ROLL NUMBER: | 412003006 |
| LOCATION ADDRESS: | 12210 Barlow Trail N.E. |
| HEARING NUMBER: | 56468 |
| ASSESSMENT: | \$14,010,000 |

This complaint was heard on the 25th day of August, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #9.

Appeared on behalf of the Complainant:

- *Mr Giovanni Worsley*
Mr. Barry Bickford

Appeared on behalf of the Respondent:

- *Ms. Kristine Haut*

Property Description:

This 108.16 acre property adjacent to the Barlow Trail in northeast Calgary is in an area undergoing development to industrial use. The land has never been stripped of its topsoil and continues in agricultural production.

Issues:

The land is improperly classified as non-residential and should be classified as farmland

Complainant's Requested Value: \$ 647,500

Board's Decision in Respect of Each Matter or Issue:

The complainant provided documentation and photographic evidence demonstrating the site attributes and vegetation on the subject lands. Evidence was produced documenting a lease agreement with a *bona fide* farmer to actively farm the lands. This lease covered the period up to March 31, 2009. Additional evidence by way of an invoice indicated that a third party company (Plantain) had seeded 196 acres in the period before October 2009. Valuation for assessment purposes reflects the condition of the subject as of December 31, 2009.

The complainant relies on the evidence of farming activity indicated by the lease agreement, Assessment Request for Information (ARFI) information provided to the City by the farmer for valuation years 2007 and 2008, and invoices supported by the photographic evidence taken at various stages in the growth cycle to demonstrate farm productivity. The complainant alleges that the body of evidence supports the clear intent of the owner to return the lands to productive agricultural use.

The respondent countered with photographic evidence and aerial survey orthographic evidence demonstrating that the nature of the lands changed in the period 2007 to 2009 demonstrating an abandonment of agricultural use and clear topsoil stripping of the south east portion of the subject. The respondent included a copy of a lease to the same farmer indicated by the complainant – this lease continuing through March 2010.

Board's Decision:

The board considered the evidence and testimony of the parties and determined that the evidence off agricultural productivity produced by the complainant was not as compelling as the photographic

evidence of the respondent. Further, upon examination, the lease to the *bona fide* farmer contained clauses allowing the property owner to withdraw lands from the lease with minimal notice. Without testimony or evidence clarifying the arrangements for the third party seeding and earthworks on the property, the Board found it difficult to determine with certainty as to what farming practices were being followed by the lessee and whether or not the activities on the land were directed to maximizing agricultural production.

The photographic and written evidence suggest that the planted crop was mixed winter rye and grass and the ARFI suggests that there were 108 acres under cultivation with no detail as to what production was achieved in 2008.

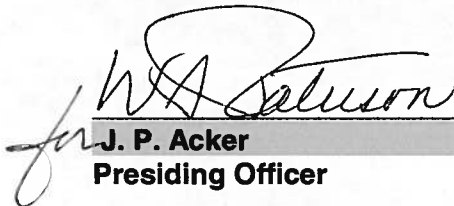
The Board therefore is not persuaded that the evidence supports the requirements contemplated under the *Municipal Government Act (MGA)* and its regulations to attract a farmland classification. *MGA* s297 (1) identifies four classes of property to be assessed and sets out farm land as class 3. S 297(4)(a) defines farm land as land being used for farming operations as defined in the regulations. *Matters Relating to Assessment and Taxation Regulation (MRAT)* s1(i) defines farming operations as the raising, production and sale of agricultural products.

Nothing in the evidence provided to the Board indicates the expectation or accomplishment of any production that would result in a sale of agricultural products taken from this land. No evidence of use of the land as pasture for livestock was advanced nor of the various other activities further defined in *MRAT* s 1(i)(i) or (ii).

It is clear, however, that the property owner is making efforts to return the lands to productive agricultural use – but they have not yet achieved this capability. Accordingly the Board finds that the lands do not meet the requirements of the regulation and therefore cannot attract the classification as farm land as contemplated in the *MGA*.

The assessment is confirmed at \$14,010,000

DATED AT THE CITY OF CALGARY THIS 15th DAY OF Sept., 2010.


for J. P. Acker
Presiding Officer

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*