

**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:	201276383
LOCATION ADDRESS:	12200 15 Street N.E.
HEARING NUMBER:	56466
ASSESSMENT:	\$8,320,000

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 51.24 acre property in northeast Calgary is in an area undergoing development to industrial use. 11.24 acres of this land have been stripped of topsoil and graded in preparation for development while the remaining 40 acres 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: \$ 1,380,000

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. The copy of the Assessment Request for Information (ARFI) submitted to the City of Calgary, signed by the owner and the farmer indicates a lease in place through to March 1, 2010 and that the subject had produced 1,281 bushels of winter rye in the 2009 crop year on 51.24 acres of land. Additional evidence by way of an invoice indicated that a third party company (Plantain) had seeded 40 acres in the period before June 12, 2010. Valuation for assessment purposes reflects the condition of the subject as of December 31, 2009.

Aerial photos and maps submitted in evidence clearly show the parcel to have an irregular shape.

The complainant relies on the evidence of farming activity indicated by the lease agreement, ARFI information provided to the City by the farmer for valuation years 2009, 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 productivity of the land in agricultural production and that the land is being actively farmed.

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. The fall 2008 orthographic photo suggested that if there were any production from the land, it most certainly would have been located in the eastern 20 acres as the balance of the lands are stripped of topsoil and appear to have been levelled.

Board's Decision:

The board considered the evidence and testimony of the parties and determined that the evidence of 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 ARFI submitted by the farmer and owner for the 2009 crop year does not appear to represent the physical reality demonstrated in the fall 2009 orthographic photo provided by the respondent.

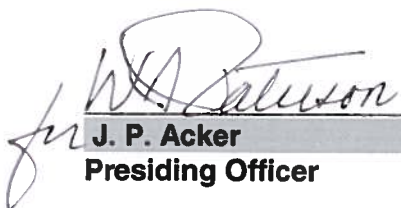
The Board therefore is not persuaded that the evidence supports the requirements contemplated under the *Municipal Government Act (MGA)* and its regulations to attract a farmland classification. *MGA* s297(1) identifies four classes of property to be assessed and sets out farm land as class 3. S 297(4)(a) 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).

As to the issue of whether or not the subject lands attract a 25% shape adjustment, the Board finds that the parcel is indeed of irregular shape and the assessment is reduced by 25% to reflect equity with other assessed properties in the City of Calgary.

The assessment is reduced as follows $\$8,320,000 - 25\% = \$6,240,000$. It is so ordered.

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



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.*