

**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:

COMPLAINANT, Altus Group Ltd.

and

RESPONDENT, The City Of Calgary

before:

***Board Chair, J. P. Acker
Board Member 1, D. Pollard
Board Member 2, Y. Nesry***

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

ROLL NUMBER	LOCATION ADDRESS	HEARING NUMBER	ASSESSMENT
201465846	7100 57 Street S.E.	59123	\$ 6,650,000
201465853	6955 68 Street S.E.	59127	\$ 10,380,000
201465879	7340 64 Street S.E.	59131	\$ 6,340,000
201465838	5855 68 Avenue S.E.	59253	\$ 9,700,000

This complaint was heard on 24 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. Robert Brazzell*

Appeared on behalf of the Respondent:

- *Mr. James Greer*

Board's Decision in Respect of Procedural or Jurisdictional Matters:

The central issue to the complaints in respect of the four property assessments listed on page one herein is whether the properties ought to be classified as farmland for assessment purposes. The properties are adjacent to one another and the parties agreed to argue all four as a group. Upon completion of the evidence and argument by both parties, the issue was more clearly defined as one of interpretation of *Matters Relating to Assessment and Taxation Regulation 310/2009 (MRAT)* section 11 (b) and additional context as might be available from their review of other legislation, regulation and policy such as the *Land Use Framework of the Province of Alberta*.

The Board therefore adjourned the hearing and ordered the parties to provide written arguments and supporting documentation as required per Board Order ARB J0019/2010-P.

Property Description:

These four properties are adjacent to one another and were formerly farmed as a unit. Following annexation, these parcels were created by subdivision and subsequently zoned as Industrial (IG) by the City of Calgary. The lands were stripped and graded and the topsoil was stockpiled in preparation for development as industrial lands. In June, 2009 the subject lands were leased to an individual for agricultural use and were seeded to clover for use as livestock feed.

Issues:

Should the subject properties be classified as farm land pursuant to s. 297(1) & s. 297(4)(a) of the *Municipal Government Act*

Complainant's Requested Value:

Roll Number	Requested Value
201465846	\$ 1,600,000
201465879	\$ 4,715,000
201465853	\$ 1,662,000
201465838	\$ 3,968,500

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

Both parties agreed that the subject lands were removed from agricultural production and stripped of their topsoil which was stockpiled on one of the properties. The lands were then graded to prepare them for industrial development.

The complainant argues that the lands were returned to agricultural use through the lease agreement entered into in June 2009 which resulted in the lands being seeded for hay production that year. In the spring of 2010 it was found that the seed had not properly germinated and further work was done to reseed the lands with a different crop.

The respondent argues that the lands, having been taken out of farm land use through the topsoil removal, became subject to the Land Use Bylaw which provides neither permitted nor discretionary use of lands for agricultural use. Accordingly, the lands properly were assessed as non-residential as required by legislation.

The Board considered the testimony of the parties and the written argument and supporting documentation provided. Several perspectives on legislation and regulation surfaced during that review:

MRAT Section 11

In *Matters Relating to Assessment and Taxation Regulation 330/2009*, section 11 deals with the impact of planning changes including the Land Use Bylaw of the municipality. It directs the assessor to value the property in accordance with its residential or agricultural use value if the property is used for farming operations unless section 4(3) applies.

Section 4(3) requires that the valuation standard must be market value if, under subsections 4(3) (e and f) the land *"is used for commercial or industrial purposes"*:

The Board focused its attention on the land use as of December 31, 2009 insofar as the condition as of that date would reflect the appropriate land use classification for assessment purposes

Land Use Bylaw

A land use bylaw, under the authority of s 640(1) may prohibit or regulate and control the use and development of lands and buildings in a municipality. It further provides extensive clarification of the various *development* issues governed by a Land Use Bylaw.

The definitions in the *Municipal Government Act* for Part 17 are contained in s 616. S. 616(b) defines 'development' as :

- i. *An excavation or stockpile and the creation of either of them*
- ii. *A building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,*
- iii. *A change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or*
- iv. *A change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;*

The Board finds that the subject lands were the subject of development which changed their use to that of industrial properties. Specifically, the stripping and stockpiling of the topsoil is a 'development' within the meaning of the Act which changed the nature of the lands from agricultural production to industrial.

After having completed this development, the complainant alleges that the lands were returned to farm land use within 6 months, thus avoiding loss of non-conforming use protection under s. 643(2) of the Act which states: "*A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.*"

The Board was not persuaded that the tilling and seeding of stripped land meets the requirements of s. 616(a) of the Act "*agricultural operation*" means an agricultural operation as defined in the *Agricultural Operation Practices Act*.". Accordingly, the classification of the subject lands as farm land for the purposes of assessment cannot be supported.

Board's Decision:

The appeals are denied and the assessments are confirmed.

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DATED AT THE CITY OF CALGARY THIS 17th DAY OF OCTOBER, 2010.



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.*