

**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, Revised Statutes of Alberta 2000 (the Act).

between:

J E C Enterprises Inc.(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member, D. Pollard
Board Member, J. Kerrison***

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 2012 Assessment Roll as follows:

ROLL NUMBER: 385000807

LOCATION ADDRESS: 1430 - 128 Avenue NE

HEARING NUMBER: 68093

ASSESSMENT: \$600,500

This complaint was heard on the 18th day of September, 2012, at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Six.

Appeared on behalf of the Complainant:

- *B. Neeson*
- *K. Fong*

Appeared on behalf of the Respondent:

- *J. Lepine*

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

- (1) None

Property Description:

(2) The subject is an 10.812 acre triangle of undeveloped land lying north of the 128 Avenue alignment, east of the Coventry subdivision in NE Calgary. In this location, 128 Avenue is physically non-existent. Nose Creek meanders through the subject, essentially severing the parent parcel into four pieces. Based on the evidence submitted, the parcel appears land-locked, with no physical access. The land is designated Special Purpose - Future Urban Development (S-FUD), in accordance with the City of Calgary Land Use Bylaw.

Issues / Appeal Objectives

(3) This is a complaint regarding the land assessment. The land is currently being assessed as farmland in accordance with the procedure as set out in Section 4 of the Matters Relating to Assessment and Taxation Regulation (MRAT). The assessment is made up of three acres assessed at the City's market value rate of \$200,000 per acre, and 7.81 acres at a farmland rate of \$83.99 per acre.

(4) The Complainant bases much of the complaint on the assertion that the land is designated as Special Purpose - City and Regional Infrastructure (S-CRI), according to the Land Use Bylaw. That designation restricts the use of the subject to all non-private institutional uses for which virtually no open, competitive market exists. And, on that basis, the Complainant argues that all of the land should be assessed using the agricultural use value, as set out in the Alberta Farm Land Assessment Ministers Guidelines.

(5) The S-CR1 designation is the designation shown on the City of Calgary Assessment sheet.

(6) The Respondent stated that the land is not designated S-CRI, but is in fact designated S-FUD, which is a "holding pattern" for future development to urban densities. The Respondent stated that the S-CR1 designation was shown on the assessment record in error.

(7) At this juncture, it is thought useful to outline the appropriate portions of the applicable legislation and Land Use Bylaw.

(8) The purpose of an S-CRI district is as follows;

"The Special Purpose - City and Regional Infrastructure District is intended to provide for ;

- (a) infrastructure and utility facilities*
- (b) vehicle maintenance, work depots, and training centres related to infrastructure development and maintenance.*
- (c) facilities and systems for public transportation; and*
- (d) uses operated by Federal, Provincial and Municipal levels of government."*

For the most part, the list of permitted and discretionary uses is restricted to institutional and public uses.

(9) The purpose of an S-FUD district is given as follows;

"The special Purpose - Future Urban Development District is intended to;

- (a) be applied to lands that are awaiting urban development and utility servicing*
- (b) protect lands for future forms of development and density by restricting premature subdivision and development of parcels of land.*
- (c) provide for a limited range of temporary uses that can easily be removed when land is redesignated to allow for urban forms of development; and*
- (d) accommodate extensive agricultural uses prior to development to urban uses."*

(10) In part, Section 4 of MRAT states;

4(1) *The valuation standard for a parcel of land is*

- (a) market value, or*
- (b) if the parcel is used for farming operations, agricultural use value.*

(3) *Despite subsection (1)(b), the valuation standard for the following property is market value:*

- (d) an area of 3 acres that*
 - (i) is located within a parcel of land, and*
 - (ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.*

(4) *An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.*

(11) The issues before the Board are these;

- (a) What is the correct land Use classification of the subject land?
- (b) Does the error in Land Use Classification represent valid grounds for an assessment to be reduced?
- (b) Does the assessment comply with Section 4 of MRAT.

Complainant's Requested Value: \$656.00

Evidence / Argument

(12) The Complainant stated that he was led to believe that the land was designated S-CR1, since that is the designation shown on the assessment summary sheet.

(13) The Respondent stated that the incorrect Land Use Classification on the assessment was nothing more than a clerical error that could have been easily discovered by simply reviewing the City's Land Use Maps that are readily available to the public. The Respondent produced Land Use Classification maps that show the subject land as S-FUD.

(14) The Complainant submitted a table containing 36 undeveloped sites throughout the City with nominal assessments. All of the sites are about two acres or smaller. No details or explanation regarding the sites or the assessments were presented. The Board also notes that all but three of the assessments shown appeared in multiples of 100. The remaining three are in multiples of 50. That is not consistent with farmland assessment. These properties are not considered comparable to the subject.

(15) The Respondent countered the Complainant's market evidence by showing that the Complainant's comparables consist mostly of required parking for neighbouring businesses. The assessments on these types of property are regulated by municipal policy and cannot be considered indicative of the subject property.

(16) The Complainant also submitted a list of 16 larger parcel transactions throughout the City. Per acre selling prices range from \$35,267 to \$501,302 per acre. The subject's current assessment calculates to \$55,540 per acre. No details relative to the transactions was submitted either in written form or verbal testimony.

(17) Except for discrediting the Complainant's comparables, the Respondent confined his submission and testimony to the validity of the assessment in accordance with section 4 of MRAT; i.e: a hypothetical three acre building site at market value, with the balance of the land at the regulated farmland rate.

(18) In order to demonstrate compliance with MRAT, the Respondent produced a map purported to show municipal servicing lines along the 128 Avenue alignment, along the subject's south boundary.

(19) The complainant did not challenge the Respondent's market value rate for the hypothetical three acres.

Board's Findings

(20) No doubt, the error in the Land Use Classification could have been misleading to the Complainant. However, the correct classification could have readily been discovered with a simple review of the appropriate maps. This Board does not consider the misinformation to be significant enough to prompt a change in the assessment.

(21) No one challenged the City's \$200,000 per acre market value rate for the hypothetical three acres. A review of the servicing maps presented by the City show that the subject land could have water and sewer distribution lines in land adjacent south. As such, the current assessment could arguably comply with section 4(3)(d)(ii) of MRAT.

(22) Section 661 of the Municipal Government Act (M.G.A.), requires that the owner of a parcel of land that is the subject of a proposed subdivision must provide environmental reserve land to the Crown or municipality without compensation.

(23) Section 664(1) of the M.G.A. states as follows;

"Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

(a) a swamp, ravine, coulee or natural drainage course,

(b) land that is subject to flooding or is , in the opinion of the subdivision authority, unstable, or

(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any lake, river, stream, or

other body of water..... "

(24) The subject appears to qualify under all three of the criteria listed.

(25) With the foregoing in mind, the idea of "carving out" a three acre parcel from a potentially environmentally sensitive triangular parcel that is already cut into four by a creek stretches the bounds of logic, particularly if much (or all) of that land could be subject to a municipal reserve requirement.

(26) Notwithstanding the specific wording of Section 4 of MRAT, this Board is of the opinion that it was not the intent of the Regulation to lead to an absurd conclusion, or an absurd application. Such a result, it seems, violates the principles of natural justice.

Board's Decision

(27) This Board will not concur with the City's application of a hypothetical three acre site on a parent parcel where a subdivision of that type is simply not practicable or logical.

(28) The City's \$83.99 per acre agricultural use value currently being applied to the 10.812 acres is applied to the entire property.

(29) The assessment is reduced to \$908.00.

DATED AT THE CITY OF CALGARY THIS 11th DAY OF Oct , 2012.


Jerry Zezulka
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
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| 1. | C1 Evidence Submission of the Complainant |
| 2. | R1 Evidence Submission of the Respondent |

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.

For MGB Administrative Use Only

Decision No. 1836/2012 - P			Roll No. 385000807	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Land only	Farmland	Section 4 of MRAT	Servicing on adjacent land Environmentally sensitive land