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:

1248493 Alberta Ltd. (as represented by AEC International Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Ivan Weleschuk, PRESIDING OFFICER
Terry Usselman, MEMBER
Alfredo Wong, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	**387001019**
LOCATION ADDRESS:	**13601 36 Street NE** **(Legal Description: SE 33-25-29 W4M)**
HEARING NUMBER:	**65103**
ASSESSMENT:	**$33,930,000**

This complaint was heard on March 28 and 30, and April 2, 25 and 26, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1. It was agreed that argument would be via written submissions, and therefore the hearing closed at noon, June 8, 2012.

Appeared on behalf of the Complainant:

- *Anthony Friend (legal counsel – Bennett Jones LLP)*
- *Brock Ryan (agent - AEC International Inc.)*
- *Robert Bilben (occupant/farmer)*
- *Rick Charlton (WAM Development Group)*
- *Dale Fedoruk (Elite Environmental)*
- *Larry Hobson (Plantain Landscaping)*
- *Ron Kellam (Kellam Berg Engineering)*
- *Steve Larocque (Beyond Agronomy Inc.)*
- *Francis Perrard (Stantec Engineering)*
- *Brian West (legal counsel – Bennett Jones LLP)*

Appeared on behalf of the Respondent:

- *Kelly Hess (assessor)*
- *Kristine Haut (assessor)*
- *Jason Lepine (assessor)*
- *Karen Moore (assessor)*
- *Tina Squire (legal counsel – City of Calgary)*
- *Susan Trylinski (legal counsel – City of Calgary)*
- *Lawrence Wong (Urban Development)*

Procedural Matters:

The hearing was held over a number of days spread out over a number of weeks, due in part to the unanticipated length of the hearing, and in part to schedules and availability of the Board Members, the parties and their witnesses. The Board appreciates the efforts of the Complainant and Respondent in finding dates that were mutually suitable. Due to the amount of evidence presented, the parties requested that argument occur in written format. The parties proposed the following schedule for disclosure. The Board concurred with the schedule proposed, specifically:

Written argument of Complainant	May 18, 2012 Before noon
Written argument of Respondent	June 1, 2012 Before noon
Rebuttal argument of Complainant	June 8, 2012 Before noon
Hearing Closed	June 8, 2012 Noon

Due to the amount and complexity of the evidence presented, the Complainant and Respondent agreed to share the cost of producing a transcript of the audio recording of the first two days of the hearing (March 28 and 30), and having a court reporter present to create a transcript for the remainder of the hearing. The Board maintained its audio recording of the entire proceedings, as is required under Matters Relating to Assessment Complaints Regulation (MRAC) Section 14(1). A copy of the transcripts were provided to the Board, and used in the preparation of this decision.

Preliminary Matters:

The Respondent raised the following three preliminary issues at the commencement of the hearing.

1. The Board preclude any evidence related to the Complainant's argument that the subject property be assessed as farmland.

2. The Board exclude Attachments 30, 31, 32, 40, 41 and 43 in Exhibit C1-B, as this relates to subsequent tax years and is therefore irrelevant to the matter at hand.

3. The evidence that will be presented by the Complainant related to correction of the "will say" statements of some of the witnesses (contained in Exhibit C1-B) should not be allowed as it was not properly disclosed.

In the opening remarks, the Complainant indicated that its complaint was being amended as presented and disclosed in Exhibit C1-A Page 26, in that a mutual agreement on the assessment of an 11.5 acre area of wetland (area zoned S-UN on the zoning maps) on the subject property was reached with the City. The two parties confirmed that they have agreed to an assessment of $500 for the wetland area of 11.5 acres, and that the issue of the assessed value of the wetland area is not an issue before this hearing. As a result, none of the evidence in either party's disclosure documents related to the assessment of the wetland area was presented or considered.

1. The Board preclude any evidence related to the Complainant's argument that the subject property be assessed as farmland.

The subject property was part of a larger group of similar properties that filed assessment complaints for the 2011 tax year (assessment date July 1, 2010 and condition date December 31, 2010). A number of the complaints in this group were withdrawn before their scheduled hearings. Some of this group of complaints proceeded to be heard before the Composite Assessment Review Board. The complaint related to the subject property was one of those withdrawn and not heard. Subsequent to the complaint being withdrawn, the City issued an Amended Notice of Assessment, apparently to correct some errors in the original assessment. The land owner then filed a complaint related to the Amended Notice of Assessment in accordance with the procedures of the MGA and its regulations.

The Respondent argued that when the Complainant withdrew its complaint related to the original assessment, which was based on a market value approach, this action was an acknowledgement that the valuation method used by the City (market value) was indeed the appropriate approach. By not proceeding to hearing on the original Notice of Assessment, the Respondent argued that the Complaint forfeited its right to have this issue considered at this hearing. Therefore, the Respondent requested that the Board not hear or consider any evidence related to classifying the subject property as farm land, and applied to dismiss this as an issue properly before this Board. In response to Board questions, the Respondent acknowledged that a tax payer has the right to appeal an Amended Notice of Assessment, similar to a Notice of Assessment.

The Complainant argued that the Board did not have the authority under the Municipal Government Act and its Regulations to preclude any evidence simply because a complaint related to a previous Notice of Assessment that had been withdrawn, nor could the Board preclude hearing any evidence that a Complainant believed was germane and relevant to its case. Furthermore, there is no evidence before this Board indicating the reasons why the complaint related to the original Notice of Assessment was withdrawn. Therefore, the Board cannot and should not draw any inferences from that action.

The Board reviewed the Municipal Government Act (MGA) and specifically Part 11, Matters Relating to Assessment and Taxation Regulation (MRAT) and Matters Relating to Assessment Complaints Regulation (MRAC) and found no authority upon which it could preclude hearing evidence of a Complainant, provided that the evidence was properly disclosed. The subject Complaint relates to an Amended Notice of Assessment filed in accordance with all requirements, so was property characterized and disclosed. The complaint can be characterized as relating to an assessment and/or assessment class, in accordance with Section 460(1) of the MGA. Disclosure of the evidence was in accordance with Section 9 of MRAC. It is the Board's interpretation of Section 453 that an Amended Notice of Assessment triggers the complaint process anew. The Board has the authority to ensure that the hearing proceeds in an efficient manner and that issues presented are relevant, but this relates to how the hearing is managed. Based on this analysis, the Board decided to proceed with this matter without limiting or precluding any of the evidence that the Complainant has properly disclosed and intends to speak to. The Board will give that evidence appropriate weight in making its final decision on merit.

Furthermore, the Board does not have any evidence before it as to why the original complaint related to the Notice of Assessment was withdrawn, other than the opinions of Respondent and Complainant. The Board cannot infer any reason or motive for a complaint being withdrawn before a hearing commenced, as the Board did not see any of the material disclosed including the matters at issue or supporting evidence. It should be noted that it is not uncommon for the Board to hear complaints related to the assessment of the same property for the same reasons year after year. The complainant has a legal right to complain about an assessment, be it based on a Notice of Assessment or Amended Notice of Assessment. Provided that the proper procedures are followed, the Board would offend the principles of natural justice if it precluded evidence before the commencement of a hearing and before relevance could be deduced.

2. The Board exclude Attachments 30, 31, 32, 40, 41 and 43 in Exhibit C1-B, as this relates to subsequent tax years and is therefore irrelevant to the matter at hand.

The Respondent opined that the captioned sections contain Complainant's evidence that is after the date of assessment, July 1, 2010, and/or after the condition date (December 31, 2010) for the 2011 tax year. The Complainant stated that it believes that this information is germane to the matters at hand and supports the case it intends to make.

In part following from the Board's consideration of Preliminary Issue 1 above, the Board has not yet learned the matters before it at this hearing nor has the board seen this evidence, and so is not in a position at this point in the hearing to determine whether the specific portions of the evidentiary package are relevant to the matters at hand. The Board decided to proceed with hearing the merits of the matters before it, with the understanding that the Respondent should object to any specific evidence it feels in inappropriate at the time this evidence is presented. Objections raised at such time will allow the Board to better consider those objections within the context of the hearing.

3. The evidence that will be presented by the Complainant related to correction of the "will say" statements of some of the witnesses (contained in Exhibit C1-B) should not be allowed as it was not properly disclosed.

The Respondent stated that it had received an email the previous day (March 27, 2012) from the Complainant (specifically Mr. Ryan) indicating some corrections to the "will say" statements included as part of the Complainant's disclosure package. The Respondent characterized this matter as a "concern" rather than an "issue", but asked the Board for direction.

The Complainant's evidentiary package was properly disclosed. The Complainant stated that the purpose of the email was not to introduce new evidence, but merely to provide the Respondent with a "heads up" to what certain witnesses were going to say, to more accurately or better characterize their "will say" statements. It was the Complainant's position that the exchange was a courtesy and a notice of corrections that would be typically made at the hearing when the witnesses presented their evidence.

The Board considers "will say" statements to be an indication of the type of evidence that will be provided by the witness, not necessarily the exact statement that will be made by a witness. The purpose of these "will say" statements is to give the other party notice of the areas that will be canvassed in direct evidence, so that it may prepare itself to cross-examine on those topics, and/or to prepare rebuttal evidence, and/or present rebuttal expert opinion. The Board understands that the issues that will be discussed by the witnesses whose "will say" statements have been "corrected" have not changed. Therefore, the Respondent's ability to respond to this evidence has not been prejudiced or adversely impacted.

The Board decided to proceed with the hearing, with the understanding that the Respondent should raise an objection if and when it believed that the Board was receiving evidence that was not properly disclosed.

Property Description:

The subject is a 116.94 acre property located in the Stonegate Landing District of northeast Calgary, southeast of the intersection of Stoney Trail and Deerfoot Trail. It is part of a larger, 1,100± acre land holding by this group of owners, destined for a mix of retail, office and industrial uses. WAM Development Group is the managing entity. This block of land was assembled between 2005 and 2006. There is a concept plan in place and development of this block of property has begun west of Deerfoot Trail.

The subject property is a more or less square 116.94 acre parcel located at 13601 36 Street NE, or legally described as SE 33-25-29 W4M. It is zoned for various industrial uses, including Commercial-Regional 3 (C-RE), Industrial-Business (I-B), Industrial-General (I-G), Special Purpose-Urban Nature (S-UN) and Special Purpose-City and Regional Infrastructure (S-CRI), with the majority of the property zoned as Industrial-Business. There are no buildings on the property.

The subject was stripped and recontoured as part of a larger 600± acre project that resulted in the construction of a large storm water (and in future, a treatment) pond located south of the subject. The stripping and recountouring occurred late in August 2008, after the crop had been harvested by Mr. Robert Bilben, the occupant who was farming the property at the time. The stripping and grading activity was completed some time in the summer of 2009, including the replacement of about 2 inches of topsoil across the subject property. In late fall 2009, the subject was seeded to a hay mixture with a fall rye nurse crop by Plantain Landscaping. In the summer of 2010, the germination of the grass was deemed insufficient and an additional 4 inches of topsoil was spread over the subject, which in essence eliminated the soil storage piles on the subject. The subject was seeded to a hay mixture by Viterra in the late fall of 2010.

Regional sanitary sewer and storm water trunk pipelines were installed in a common right of way along the southern boundary of the subject property some time in 2009. These lines are to provide sanitary and storm sewer services to a large area including the Skyview Ranch residential development east of the subject and developments along Metis Trail, south and east of the subject. This project involves a number of developers along the line, and is currently servicing active developments east of the subject.

Issues:

The Board has characterized the issues raised as follows:

A. Did the condition of the subject property and activity thereon as of the December 31, 2010 condition date meet the statutory definition of "farming operations" under the Municipal Government Act and Regulations?

B. If the subject property does not meet the statutory definition of "farm land" as of the December 31, 2010 condition date, is the market value assessment of "non-residential" property correct?

C. If the subject property does not meet the statutory definition of "farm land" as of the December 31, 2010 condition date, is the assessment equitable?

Complainant's Requested Value: $414.879 (as farm land)

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

The Board was presented with a considerable amount of evidence and argument. Only that evidence that the Board found particularly relevant to its consideration of the issues or its conclusions is identified in this decision.

The Board notes that both parties agreed that the subject property was assessable for the purpose of taxation. At issue is the assessment class, and then potentially the quantum of the assessment.

A. Did the condition of the subject property and activity thereon as of the December 31, 2010 condition date meet the statutory definition of "farming operations" under the Municipal Government Act and Regulations?

The Board was presented with considerable evidence related to the condition of and activity on the subject property as it may have related to the December 31, 2010 condition date (MGA, Section 289(2)), with the purpose of demonstrating that said condition and activity did (Complainant) or did not (Respondent) meet the definition of "farm land" in the MGA and Regulations. If the subject property is indeed "farm land" as defined under the MGA, the assessment is as prescribed in the 2010 Farm Land Assessment Minister's Guide and all other issues are moot.

There was general agreement (or at least no disagreement) between the parties as to the activities on the subject property in 2009 and 2010, and to a lesser extent, into 2011.

1. Definition of "farm land" and the Standard Applied

The MGA provides the following statutory test for "farm land".

> *297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:*
> *(a) Class 1 – residential;*
> *(b) Class 2 – non-residential;*
> *(c) Class 3 – farm land;*
> *(d) Class 4 – machinery and equipment.*
>
> *(3) If more than one assessment class or sub-class is assigned to a property, the assessor must provide a breakdown of the assessment, showing each assessment class or sub-class assigned and the portion of the assessment attributable to each assessment class or sub-class.*
>
> *(4) In this section,*
> *(a) "farm land" means land used for farming operations as defined in the regulations;*
> *(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;*
> *(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.*

The parties argued that the subject either was or was not farm land, as defined under the MGA, and, if not farm land, then that the subject was non-residential land (and argued as to the correct amount of the assessment). So, if the test of "farm land" is not met, the property is then assessed as "non-residential". These are the two options before the Board regarding classification for the purpose of assessment.

The MGA refers the reader to MRAT for the definition of "farm operations".

> *1(i) "farming operations" means the raising, production and sale of agricultural products and includes*
>
> *i. Horticulture, aviculture, apiculture and aquaculture,*
> *ii. The production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the Livestock Industry Diversification Act, and domestid camelids, and*
> *iii. The planting, growing and sale of sod.*

With regard to determining the assessment class of the subject property, both parties agreed that the "farm" activities purported on the property was the production of hay. Both parties agreed that the "raising, production and sale" of hay is a farming operation. The disagreement is whether such activity was occurring as of the condition date, and if so, met this definition.

The Board recognizes that the definition of "farm land" is broad and not well defined in the MGA or its regulations. It interprets the MGA and the regulations specific to "farm land" to apply to a class of land that includes bona fide agricultural operations occurring in any municipality in the province. The application of the "farm land" criteria is relatively obvious for properties in a rural municipality when applied to an on-going and active commercial farming operation. The application of the "farm land" criteria is not as obvious when considering a property in an urban municipality, recognizing that the purpose of this assessment class is not to provide tax benefits to developers of land. The Board comes to this interpretation as a result of its review of the legislation and a number of previous Board decisions on this matter referenced during the hearing and in written argument.

The Board notes the lack of a detailed definition in the MGA and its Regulations, and that assessors are required to annually consider classification of land for assessment purposes. Where the tax payer does not agree with the assessor's classification, the complaint process is available, and it falls to this Board to make a case specific interpretation and provide a decision on classification. In such a case, the Board relies on the evidence presented specific to the subject property as of the assessment date and condition date.

The Board is mindful that the test to meet the standard of "farm land" be reasonable and applied in a practical way, based on the status/activities on the subject property as of the condition date. The Board interprets Section 1(i) of MRAT to not be a strict application requiring the demonstration of the "raising, production and sale of agricultural products" (emphasis added) from a property every year, as of the condition date. Rather, the Board interprets Section 1(i) to mean a reasonable expectation for the "raising, production and sale of agricultural products" on the property, recognizing that vagaries of weather and markets, and normal agricultural practices may dictate that the "raising, production and sale of agricultural products" may not occur every "year" or production cycle. In other words, the raising, production and sale of agricultural products is a process that may extend beyond a twelve month period (regardless of how the twelve month period is defined) so is not to be defined using a strict temporal framework.

So, how is a "reasonable expectation" defined? After reviewing a number of previous MGB decisions on this matter and considering the tests or standards applied in those cases, the Board finds the following useful in its considerations, and notes that not all of these criteria may apply in each situation.

To be classified as "farm land" under the MGA:

- The management of a property must apply the appropriate science and husbandry with the purpose being to conduct a bone fide agricultural enterprise, as opposed to a haphazard attempt to one day harvest a crop. There is a distinction between a property being managed to "stabilize the soil and manage weeds" and a property being managed to provide a reasonable expectation of revenue from the sale of agricultural products.
- The revenue generated by the sale of agricultural products must be commensurate with the size of the property or scale of the improvements for agricultural production purposes. In other words, the fact that there is "token" or "nominal" agricultural revenue generated from a property does not automatically meet the test of "farm land". The property must generate agricultural revenue based on what "normal or typical" levels of production would be from that property, recognizing its productive quality, size, other physical attributes and the vagaries of weather.
- The property need not be "farmed" by the owner, Farming can be undertaken by a lessee or contract operator under some mutual arrangement that reflects reasonable conditions for such an arrangement, recognizing the physical attributes of the property. The arrangement need not be a formal written document, and the presence of a lease document does not automatically define the property as "farm land". The Board, in applying this criteria, must have regard for the arrangement, and whether the arrangement leads to a reasonable expectation of the "raising, production and sale of agricultural products".

The Board will therefore consider the evidence presented in light of the criteria, test or standards for "farm land" as stated above, applied to the subject land that is purported to be used for the production of hay.

2. How the Assessment is to be Calculated if Determined to be Farm Land

MRAT further directs the valuation standard based on assessment class, as follows.

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 value.

(2) In preparing an assessment for a parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines.

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

(a) A parcel of land containing less than one acre;

(b) A parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(c) An area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;

(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;

(e) Any area that

i. Is located within a parcel of land,

ii. Is used for commercial or industrial purposes, and

iii. Cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;

(f) An area of 3 acres or more that

i. Is located within a parcel of land,

ii. Is used for commercial or industrial purposes, and

iii. 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,

With regard to Section 4(3) the Complainant, by its calculation of the requested farmland assessment, conceded that three acres of the subject parcel are to be valued using a market value approach (page 28, Exhibit C1-A). Since the predominant zoning is I-B, the Board will assume that that is the zoning on this hypothetical three acre parcel for purposes of determining the assessment. Therefore, if the subject is determined to be classed as "farm land" for the purpose of assessment, a hypothetical three acre parcel zoned I-B will be used in that calculation.

There are no buildings on the subject, so there is no need to consider this aspect of assessment.

Neither party considered or indicated that there may be more than one assessment class on the subject.

Should the Board conclude that the subject be assessed as non-residential vacant land, the parties have agreed that the assessment on the 11.50 acres of wetland is a total of $500.

3. Complainant's Evidence

The Complainant presented a number of witnesses that spoke to the activities on the subject property and how those activities demonstrated that the subject met the definition of "farm land" within the MGA. A summary of the evidence of the various witnesses is presented below.

a. Richard Charlton – Senior Vice President – Asset Management – WAM Development Group

Mr. Charlton stated that the subject property is part of a 1,100± acre commercial development. The land holding was consolidated in 2004-05, and included as part of the Northeast Industrial Area Structure Plan (Bylaw 2P2007, January 8, 2007). Development Permit CP2007-2521 (Land Use Bylaw No. 2P80) was released on November 19, 2008 allowing "Stripping and Grading" of the subject, as part of about a 600± acre project involving the development of a large surface runoff pond immediately south of the subject property. Stripping and grading of the larger area began in the fall of 2008. The subject parcel, being part of a larger holding, has limited access, awaiting development of some of the proposed roadways.

b. Brock Ryan – Agent (AEC International Inc.)

Mr. Ryan provided an overview of the activities on the subject property, as follows:

- The subject was farmed by Mr. Robert Bilben under an agricultural lease in 2008. Mr. Bilben harvested a cereal crop in the fall of 2008.
- After the harvest in the fall 2008, stripping and grading under the supervision of Stantec Engineering began, which involved the stripping of about six inches of topsoil which was stock-piled, the excavation of the storm water pond and distribution of the clay from the excavation to grade the site for future development.
- In the summer of 2009, a depth of about 2-inches of topsoil was spread across the subject land and the land was seeded to an agricultural grass mix (as part of the larger 600± acre project). Mr. Bilben held an agricultural lease on the property in 2009 but did not harvest a crop.
- Early in 2010, the management of the project was transferred from Stantec to Kellam Construction.
- In the summer of 2010, after an inspection of the site, the germination of the grass seed was deemed to be poor. An additional 4-inches of topsoil was spread (source was stock piles on the property) across the property, and in the fall of 2010 a grass mixture was seeded (broadcast) on the property. Mr. Bilben held an agricultural lease on the property in 2010, but did not harvest a crop.

Mr. Ryan also stated that the procurement of Development Permit DP 2007-2521 was to allow the storm water pond to be constructed, as was agreed to by the developers in the area and City. This project included the stripping and grading of the subject property, along with other adjacent properties. The Development Permit requires that the disturbed area be "rehabilitate", which Mr. Ryan understood to mean returned to its previous condition and status as farm land. The developer is also required to "control noxious weeds and excessive vegetation growth" on

the disturbed land, and the method selected to meet this requirement was to return the land to an agricultural use. The subject is part of a larger inventory of land in the area, and is not expected to be developed for a number of years. In the interim, the land is to be returned to its agricultural use.

Mr. Ryan spoke to a package of photographs that he took on or about November 8, 2010 showing the status of the subject property, as well as the status of other properties in the area that will be referred to later in the discussion regarding equity comparables.

Mr. Ryan referred to Assessment Request for Information (ARFI) for the subject property for 2009, 2010 and 2011, which indicated that Mr. Bilben was farming the property. These documents also provided a summary of crop production and estimated value, provided by Mr. Bilben. Copies of agricultural leases between WAM and Mr. Bilben were presented as evidence.

Mr. Ryan contended that these activities on the site, the involvement of Mr. Bilben in the management of the property, the ARFI information submitted and the agricultural leases demonstrated that the subject was "farm land" as defined in the MGA.

c. Robert Bilben – Occupant/Farmer

Mr. Bilben stated that he operates a large farming operation in the Airdrie area, and has for some years been involved with the farming of the subject property, as well as the larger WAM land holding (some 1,100± acres). He began farming the subject, and the larger land holding, in 2006, and produced cereal crops up to and including 2008.

Mr. Bilben was apparently consulted with regard to some of the decisions made on the subject related to adequacy of top soil replacement, seed selection and other reclamation issues, and did engage certain contractors to undertake certain operations in 2009 and 2010. He did not provide specific details of this involvement. Receipts were presented indicating that Mr. Bilben engaged and paid for certain contract operations, including the two seeding activities. In response to questions, Mr. Bilben stated that these expenses were then passed on to WAM, who reimbursed him for his costs as well as the costs for undertaking various cultivation operations. The first activity that occurred on the subject property at Mr. Bilben's sole expense as lessee was harrowing the land in the fall of 2010 after the second seeding activity.

Mr. Bilben stated that he did not harvest a hay crop in 2009, as it had not germinated properly, resulting in a sparse cover of grass plants. In 2010, WAM had a contractor spread an additional 4 inches of topsoil across the property and then another contractor apply a hay-mixture type of seed blend. No crop was harvested in 2010 because of a wet fall which would have resulted in the creation of ruts in the field from the haying operations.

The Respondent questioned Mr. Bilben with regard to the information provided in the ARFI documents, as the ARFI indicated that Mr. Bilben was producing and selling grain from the subject property in 2010. Mr. Bilben replied that the ARFI was completed before the crop was planted and indicated what his intentions and expectations were for the following year. Mr. Bilben also acknowledged that the lease agreements included a large number of parcels, some of which he was no longer farming because they had been developed. He could not comment on why those parcels continued to be part of the lease agreement. He acknowledged that he was asked to take on the lease in 2006 as a result of an ongoing relationship with WAM (or some of its principles), and did not know the reasons as to why he was selected as the renter.

d. Larry Hobson – Plantain

Mr. Hobson introduced himself as the owner of Plaintain, which is a landscape contractor that has undertaken a number of landscaping projects on larger sites such as schools and parks, within the boundaries of the City of Calgary and Rocky View County. His company was contracted to develop an appropriate seed mixture, obtain that seed and apply the seed on the subject (and larger disturbed area) property in the fall of 2009, at the direction of Stantec. The grass mixture was intended as a hay crop, and included a nurse crop of annual rye.

e. Dale Fedoruk – Elite Environmental

Mr. Fedoruk introduced himself as a professional agrologist and accredited certified crop advisor. He operates Elite Environmental and provides agricultural and environmental consulting services. He also operates a grain farm.

His evidence related to a site visit on January 10, 2012, during which he only made visual observations. From that site visit, he concluded that some of the plants on the site were commercial hay species. Based on his observations, he concluded that the hay was not harvested in 2011. He indicated that he relied on information provided by Mr. Charlton with regard to what had occurred on the site prior to his visit.

Mr. Fedoruk indicated that there is a considerable cost involved in establishing a hay crop, and that it was typical to not harvest a hay crop in the year it was seeded and often even the year following seeding, in order to allow for the grass plants to establish. It was his opinion, based on the information he was provided and his site inspection, that the subject was farm land and that it was being managed as such. The actions taken on the site, allowed him to conclude that the intent was to return the land to farm land.

The Respondent asked questions regarding Mr. Fedoruk's conclusions and how he could come to those conclusions based on one visit and no analysis of the soil. Mr. Fedoruk replied that he relied on information provided to him by Mr. Charlton as well as his understanding of typical forage operations.

f. Steve Larocque – Beyond Agronomy

Mr. Larocque introduced himself the owner of Beyond Agronomy, which is an independent crop consulting company based out of Three Hills, Alberta. He is a certified crop advisor and an Articling Agrologist.

Mr. Larocque visited the subject property on December 12, 2011 and again on December 18, 2011. During his visits, he inspected five random sites on the subject property to identify plant density and species. He interviewed Mr. Charlton and Mr. Bilben to get the history of the property. He also reviewed precipitation records from the Calgary Airport for the fall of 2011. He concluded based on his observation of the plants on the property and precipitation records that not harvesting the hay in 2011 was a prudent management decision on the part of Mr. Bilben. This decision preserved the surface condition of the field, as well as allowed the grass plants to reseed the area and improve the density of the grasses.

The Respondent questioned Mr. Larocque on his conclusions, based on his involvement on the property beginning in December 2011. Mr. Larocque replied that his examination of plant carcasses allowed him to draw conclusions, coupled with his years of experience.

g. Francis Perrard – Stantec Consulting

Mr. Perrard introduced himself as a Professional Engineer that provided consulting services to the Stonegate Landing project from 2007 to 2010. This included the design and cost estimates for the site grading and construction of the storm pond, as well as the supervision of this project, including the replacement of 2 inches of topsoil in October 2009. He indicated that Stantec requested a cost estimate from Plantain to do the seeding in the fall of 2009, and recommended to WAM that Plantain be retained to do so. Mr. Perrard discussed the rationale behind the scope of the project, which was to minimize the number of times that topsoil and subsoil excavated from the storm pond would be handled. Each time the same soil is handled, there is a considerable cost. By stripping a larger area, the subsoil excavated from the storm pond and surrounding area via the grading could be used to fill low areas thereby increasing the area graded, all in one soils handling process.

The Respondent questioned Mr. Perrard about his understanding of the word "rehabilitate" and its meaning in the Development Permit. A conversation ensued as to what it might or could mean.

h. Ron Kellam – Kellam Construction Ltd.

Mr. Kellam introduced himself as a Professional Engineer with many years of construction experience, especially with regard to land development. He was involved in the Stonegate Landing project since early 2010, taking over from Stantec in the construction management of the site. Mr. Kellam agreed with the statements made by Mr. Perrard regarding the efficiency of grading a larger site area to minimize the number of times soil is handled. He also confirmed that the second loaming operation occurred in the summer of 2010, adding about another four

inches across the disturbed area, including the subject, which essentially used all the loam stockpile.

The Respondent questioned Mr. Kellam about his understanding of the word "rehabilitate" and its meaning in the Development Permit. A conversation ensued as to what it might or could mean.

4. Respondent's Evidence

The Respondent also presented a number of witnesses.

a. Lawrence Wong – Urban Development Section

Mr. Wong introduced himself as a Professional Engineer in the City's Urban Development Section with responsibilities to address various engineering aspects of new projects on behalf of various City Departments. He began with a description of the development process, and to a lesser extent about the interpretation of "rehabilitation" used by the City. He stated that the City uses a "practical" definition of "rehabilitate" and considers this to mean the stabilization of the soil and control of weeds.

Mr. Wong also described the zoning on the subject and what that zoning allowed, in general terms.

During cross-examination by the Complainant, Mr. Wong stated that he was not personally on site, and recently was assigned this file so did not have a long history with the site. He indicated that "rehabilitation" is standard wording in a Development Permit to ensure that the developer does not leave a parcel of land bare, causing erosion and weed issues. He reiterated that the City uses more of a practical or informal application of this concept and does not have a regulated or otherwise formal definition.

b. Christine Haut - Assessor

Ms. Haut provided evidence with regard to the events that occurred related to the assessment of the subject and how the decision was made to change the classification from farm land to non-residential. She also presented some photographs of typical farm land.

Ms. Haut then referred to various aerial photographs tended as evidence that showed the subject property as farm land, and then photographs taken in the fall of 2009, 2010 and 2011 as a property stripped and under rehabilitiation. The aerial photographs are typically taken in late fall of each year, and typically used to represent the condition of lands around the perimeter of the City on December 31 of each of those years. In addition, she presented photographs taken on the subject property at various times after the condition date, showing that the status of the property was not farm land.

Ms. Haut presented the ARFI documents and questioned their validity, as the information provided did not correspond to what was actually occurring on the site. She also revisited some of the issues the Respondent identified in the lease agreements when cross-examining Mr. Bilben, Mr. Charlton and Mr. Ryan.

Ms. Haut stated that because of the amount of assessment work involved, it is not possible to stay abreast of every change in condition or status of every property in the City. As a result, a change in classification may not be reviewed until a year after that change occurs. In part, its a function of the availability of the aerial photography used to track changes, which is available late in the assessment year and not always before the end of the assessment year. In this case, the subject property should have been reclassified for the 2010 tax year, but due to an oversight or error, the reclassification was done for the 2011 tax year. She stated that the 2010 assessment as farm land was an error, based on its status as of the condition date for 2010.

Ms. Haut described the process used in reclassifying property, and specifically that a letter is sent to the tax payer to indicate that the City intends to change the classification out of "farm land". She also discussed the consultation process that is available, should the tax payer respond to the letter. She noted no such response was received from this tax payer to the letter. She also stated that the letter is a form letter and is not really part of the formal assessment process, and that the formal appeal process is the more typical route to challenge a reclassification.

The Complainant cross examined Ms. Haut with regard to the assessment process, the body of information used in deciding to reclassify the subject, the definition of "farm land" under the MGA and how that definition is applied by the City assessors. There was considerable discussion on these points.

c. Karen Moore - Assessor

Ms. Moore introduced herself as an assessor with the City, with experience in farm land assessment prior to joining the City, and currently responsible for farm land assessment within the City. She has a degree in Agriculture from the University of Saskatchewan. She presented considerable evidence on weed management and weed control that might have been considered for the subject property.

Ms. Moore in direct evidence and during cross-examination discussed the process used by the Assessment Department to decide what properties would be reclassified out of "farm land" and the information used to make such a determination. She supported the evidence provided by Ms. Haut, and expanded on certain aspects. She also discussed the application of Section 643(2) of the MGA, which refers to non-conforming uses, and states that:

> *"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."*

Ms. Moore stated that the current zoning did not support an "agricultural use", and that the stripping and grading process took more than six months, therefore the non-conforming agricultural use no longer exists. (Mr. Wong also addressed this in his evidence related to the zoning and permitted uses.)

During cross examination, she explained the process used by the Assessment Department when considering to reclassify property out of "farm land". She stated it was a decision made by a number of assessors, based primarily on the visual status of the property. The Assessment Department did not have a defined criteria that they applied, other than their interpretation of Section 1(i) of MRAT.

d. Mr. Lepine – Assessor

The majority of Mr. Lepine's evidence will be discussed later in the report. He did discuss zoning and how it may or may not affect property values. He also discussed how different zoning classifications were or were not considered similar or comparable to other zoning classifications.

5. Board's Conclusions on this Issue

The Board is charged with determining the classification of the subject property as of the condition date of December 31, 2010. While the Board may have some regard for what has happened since that date in its deliberations, its decision is based on its understanding of the status and condition of the subject as of December 31, 2010.

During the hearing, the Board attempted to understand the definition of farm land as applied by the City, or to understand the criteria used to trigger a review of the classification of farm land. The Respondent's witnesses did not provide any definitive answers. It appeared that the City assessors applied a somewhat subjective and intuitive definition, and in some way included zoning as a consideration. The Professional Agrologists presented by the Complainant also defined farm land using a very broad and intuitive perspective. As a result, the Board reviewed the various Decisions tendered as evidence, along with various suggestions as to what the definition was, was not, may, or may not include. The Board was left to determine its own definition, applicable to this situation, as described earlier in this Decision.

The Board agrees that Mr. Bilben is a bona fide farmer. That, however, is not at issue at this hearing. The fact that Mr. Bilben is a farmer and in some way involved in the management of this property does not de facto make the subject "farm land".

Mr. Bilben has an agricultural lease with six numbered companies that apparently represent the larger 1,100 acre land holding managed by WAM. These leases are signed annually, and Mr. Bilben pays a total of $1 per year for the entire leased area. The lease allows the owners to exclude lands from the lease. It appears that the lease document is not updated annually or on a regular basis. Based on the evidence from a number of the Complainant's witnesses related to the leases, the Board considers these leases as an administrative exercise. There does not appear to be much review, negotiation or consideration of the terms of the lease documents prior to being signed. As a result, the Board places little weight on this evidence.

There was apparent confusion on Mr. Bilben's part, regarding the information he provided in the ARFI documents, and the basis of that information. Based on his testimony and response to questions, the Board has no confidence in this evidence and therefore assigns it little weight.

The Board understands that Mr. Bilben harrowed the subject property in the fall of 2010, after it was seeded by Vitterra, and has not conducted any agricultural operations on the site since, as of the date of his appearance at this hearing. Mr. Charlton indicated that Mr. Bilben was the individual that was central to managing the property once the grading and first topsoil application was completed in the fall of 2009. Mr. Bilben's testimony was not quite that definitive, and indicated that there were a number of parties that had a hand in the management of the property. Mr. Bilben did not state that he was on site on a regular basis, assessing its suitability for agriculture. Testimony by Mr. Perrard indicated that Stantec was directly involved in the determination of reseeding the subject in the fall of 2009. The Board interprets this line of evidence as being somewhat contradictory, or at least confused and inconclusive, and therefore puts little weight on this evidence.

The Board explored the issue of whether the seeding of the subject after topsoil replacement was really being done to return the land back to an agricultural use or whether it was being done to "rehabilitate the site" in accordance with the Development Permit (stabilize and manage weeds). Witnesses presented by the Complainant acknowledged that reclamation or rehabilitation could be done for either reason. No explanation was offered as to why after grading, only two inches of topsoil were initially replaced. If the original objective was to return the land to its original or pre-disturbed status as farmland (rehabilitate as defined by the Complainant), then why not replace all the topsoil initially? The Board recognizes that this decision to only apply two inches of topsoil initially delayed the site from being returned to a condition that may have had the potential to support an agricultural operation. By not replacing all the topsoil removed, it is likely that the productive capability of the property was altered, which is contradictory to the definition of "rehabilitate" offered by the Complainant.

The Complainant presented Mr. Larocque and Mr. Fedoruk, who both stated that it was their opinion that the subject is farm land. These two witnesses were not on the subject property until December 2011 and January 2012 respectively, both substantially after the December 31, 2010 condition date. Both relied on information provided by Mr. Charlton and Mr. Bilben regarding the activity that occurred on the property since the fall of 2008. Because both these individuals have little actual knowledge of the subject property as of the December 31, 2010 condition date and undertook little if any actual analysis of the productive capability of the property, the Board gives little weight to their testimony or conclusions. Furthermore, they did not explain how they

translated what they saw in December 2011 or January 2012 to a conclusion of the status of the land as of December 31, 2010.

Both the Complainant and Respondent presented photographs taken on the subject property, but in all cases, these were photographs taken in 2011, after the condition date. Both parties also presented various aerial photographs of the subject taken at various times. The Complainant did not have dated aerial photographs. The Respondent provided aerial photographs taken in the fall of the year, for 2008, 2009, 2010 and 2011. While not specifically taken on the condition date, the Board considers the Respondent's aerial photographs the best visual evidence of the status of the subject and is consistent with the testimony and written evidence provided by both parties as to activities on site over this time period.

As of the fall of 2010, and as of December 31, 2010, another four inches to topsoil were applied, and a hay mixture seeded on the subject. Other than selecting a seed mix that could be used for hay production, there was no evidence presented that more "science" or husbandry was applied to increase the prospects of this being a productive hay field. Because it was fall seeding, it was unknown as of December 31, 2010 if the seeding would result in a potential hay crop in 2011 or if the exercise would again fail, as did the fall 2009 seeding. Therefore, as of the date of condition, the Board concludes that there was no reasonable expectation for the raising, production or sale of an agricultural commodity, in this case hay.

This conclusion is supported by evidence presented by the Complainant that there was no "production or sale" of hay in 2011. A number of reasons were raised, including reference to the density of the grass plants being less than ideal for a hay crop. The argument that the weather in the fall of 2011 resulted in the subject land being "too wet" to harvest is dismissed, as hay is typically harvested during the summer. There was some opinion presented that there may be a hay crop produced and sold from the subject property in 2012, but this is still speculation, and well after the condition date for the 2011 assessment year.

The lease arrangement appears atypical, being the lease of some 1,000+ acres of land for an agricultural purpose for a total cost of $1, and raises a number of questions as the real purpose of the lease agreement. It is unlikely that a lease with such favourable conditions to the renter would be required to support a bona fide agricultural enterprise.

The Board had regard for the evidence presented by Mr. Perrard and Mr. Kellam on the issue of land development, stripping and grading and the matter of efficiently handling soil. Their evidence was that a developer attempts to minimize the number of times a soil is handled when stripping and grading, and therefore a formal program is designed before work begins. Evidence provided by a number of the Complainant's witnesses regarding the stripping and recontouring program (which included the replacement of topsoil in whole or in part) appeared somewhat haphazard and "evolving" rather than part of a well developed program. No stripping and grading plan was presented by the Complainant showing that the objective of this activity was to return the area back to its former agricultural capability.

The Board notes that the initial activity in 2009 only put a portion of the topsoil back over the disturbed site (two inches depth), leaving about two-thirds of the topsoil still stockpiled on site. Apparently the trigger to come back and add the rest of the topsoil in 2010 was due to poor germination. If the germination of the 2009 seeding had been "adequate", it was implied that the topsoil stockpiles would not have been touched for some years. This activity does not seem consistent with the position stated by Mr. Charlton and Mr. Ryan that the objective of the soils handling program was to "rehabilitate" the site back to its former, agricultural use (which presumably would require six inches of topsoil).

The Respondent discussed the process used to notify, and apparently engage, a tax payer whose property was to be reclassified out of "farm land". The Board concluded that this is not a formal process and that the fact the tax payer did not respond to the form letter sent by the Assessment Department is of no consequence in its consideration of this matter.

The Board found the evidence and logic relating to the Section 643(2) argument somewhat convoluted and confusing. The Respondent's witnesses did not explain how zoning factored into the Section 1(i) MRAT definition of "farm operation", and therefore how this part of the MGA (Part 17 – Planning and Development) directly applied to the matter at hand. The Board notes that there is no reference to Section 643 of the MGA or to Part 17 of the MGA in the sections of the Act or Regulations that refer to classification of property for assessment. Zoning may be a factor considered by the Assessment Department in their process used to classify land, but is not a consideration for this Board in determining "farm land".

After considering all the evidence presented, the Board concludes that the subject is not farm land as defined by the MGA or its Regulations, as of the December 31, 2010 condition date.

- Much evidence was presented to give the illusion that the subject land was being farmed, but it was not demonstrated that the subject property was used for the raising, production or sale of hay as of the condition date.
- No evidence was presented indicating that the land had been rehabilitated to a state in which it was capable of sustaining the raising, production or sale of agricultural products as of December 31, 2010, therefore the expectation of a farming operation was not demonstrated.
- The Complainant failed to demonstrate that the management of the subject reflected the application of any "science or good husbandry", as the description of the post-grading activities appeared reactive rather than part of a well thought out management process aiming to achieve the raising, production and sale of agricultural products.

B. If the subject property does not meet the statutory definition of "farm land" as of the December 31, 2010 condition date, is the market value assessment of "non-residential" property correct?

The Complainant presented six sales comparables (Comparable #1 to #6 in Exhibit C-1A, Tab 51) and five equity comparables (Comparable #7 to #11 in Exhibit C-1A, Tab 51). The Complainant disputed the market value of the land that would be assigned to the first three acres in accordance with the farmland assessment calculation, and in the alternative that the Board concluded that the subject was not farmland, the appropriate rate to apply to the 97.94 acres of developable land (116.94 total acres less 11.5 acres of wetland zoned S-UN and 7.50 acres of S-CRI zoned land).

The Respondent presented their assessment valuation, in which the 11.5 acres of Industrial – General (I-G) land, 7.5 acres of Special Purpose-City and Regional Infrastructure (S-CRI) land and 86.44 acres of Industrial-Business (I-B) land were all assigned a value based on the City's 2011 Land Rates and Adjustments (Exhibit R-2, Tab 3). Note that the parties had agreed on the assessment for the 11.5 acres of pond, zoned Special Purpose-Urban Nature (S-UN) at a total of $500.

In addition to the rates assigned, the Board is also required to address what portion of the total property should be assessed, and specifically if the 7.5 acres of S-CRI land is assessable. The equity issue is discussed in the next section.

1. Complainant's Evidence

This portion of the evidence was presented by Mr. Ryan. He presented information on each comparable sale along with supporting documents, and then described how he arrived at his conclusion of value.

In considering the City's assessment, he pointed out that there was no size adjustment applied and no adjustment for lack of services of -25%. The only adjustment was for lack of developed access. Mr. Ryan, as well as other Complainant witnesses stated that the property was not "serviced" in the typical meaning of the word, as the "services" were sewer and strom water main trunk lines buried substantially deeper than lines used to extend services from developed into developing areas. In order to tie into these main truck lines, the cost would include the need to construct suitable infrastructure that would serve an area much larger than just one titled property.

In addition, Mr. Ryan stated that the City's own sales data shows that the value of larger parcels in the northeast quadrant, regardless of zoning, decreased from the 2011 to 2012 assessment years. This information is post facto, but was presented to characterize the market as declining.

Mr. Ryan recalculated a table originally presented on pages 14-15 of Tab 51 Exhibit C1-B, and filed as Exhibit C3. In the table, Mr. Ryan compared the actual selling price of Comparables #1 to #6 to his calculation of the assessed value of those respective properties using the City's assessment calculation. He indicated that in all cases, the assessment overstated the actual sale price, and in some cases considerably. He concluded that the correct market value of the subject land as vacant non-residential land is $125,000 per acre.

In cross examination, the Respondent attempted to examine the comparability of the comparable sales presented, and explored the impact that zoning and restrictions imposed by zoning would have on price.

2. Respondent's Evidence

The Respondent's evidence was presented by Mr. Lepine. The Respondent essentially rebutted the comparable sales presented by the Complainant. Mr. Lepine stated that Complaintant's Comparables #1, #2, #4, #5 and #6 were all zoned Special-Future Urban Development (S-FUD), and therefore not comparable to the subject which was largely zoned Industrial-Business (I-B). Only Comparable #3 was zoned Industrial at the time of sale, was located in the southeast quadrant which generally has a lower price, is discontinuous and post facto the valuation date. The Respondent was of the opinion that the Complainant did not provide any evidence to shift the burden of proof onto the Respondent, and certainly no evidence to support a value of $125,000 per acre.

Mr. Lepine did not go into any detail regarding the data used to arrive at the rates applied to various land use classifications and adjustment factors used by the City, other than to indicate they were what was used in the 2011 tax year and based on the City's market analysis.

Mr. Lepine, in cross examination, discussed the issue of services and how this factors into the assessment. Mr. Lepine indicated that it was the City's practice to designate a property as serviced if it had deep services adjacent to or proximal to its boundaries. He did not discuss the application of the "no services" and "partial services" adjustments in detail, nor in what situations each was applied.

3. Board's Conclusion on this Issue

The detailed calculation of the assessment, as done by the City, is presented on page 7, Tab 51 Exhibit C1-B. This calculation applies the City's typical rates along with the appropriate size adjustments.

The Board accepts the rates and size adjustments used by the City in preparing the 2011 assessment. The Board was not persuaded with the Complainant's sales evidence, as it was based largely on S-FUD land, not I-B, I-G and S-CRI zoned land as constitute the subject. Furthermore, that Complainant's evidence did not show that zoning has no influence on price.

Regarding the assessment, while the Board accepts the rates and adjustment factors used by the City (page 12, Tab 51, Exhibit C1-B), it does not accept their application as presented on page 7, Tab 51 Exhibit C1-B.

The Complainant argued that the subject is not serviced, while the City assessed the property as serviced land. Serviced land typically refers to land that has water, sanitary sewer and storm water sewer (deep services) located at or near its boundaries with a capacity that will allow the developer to tie into the lines and extend the services to individual lots. Serviced land also implies that the developer is able to extend paved roads, surface drainage and shallow services onto its property. The Complainant referred to Tab 22 Exhibit C1-B to demonstrate that the lines located in a right of way adjacent to the south boundary of the subject are regional sewer and strom water trunk lines. Mr. Lepine's position was that deep service lines near a property designate that property as "serviced" for the purpose of the City's assessment calculation. The Board found Mr. Lepine's explanation for this approach or convention somewhat arbitrary. The Board is persuaded by the evidence presented by the Complainant, that the subject is not "serviced" land in the vernacular of the land development industry. The Board concludes that an adjustment factor is appropriate. Since the "services" in the right of way adjacent to the south boundary of the subject are regional sewer and storm water trunk lines; since there is no developed access therefore no prospect of extending paved roads, curbs and surface drainage; and since the Board did not hear any evidence regarding how water would be provided to the subject land, the Board concludes that the "no services" adjustment (-50%) should be applied.

The Complainant contended that S-CRI land was designated for infrastructure use so could not be developed, therefore should be assessed a rate of $0. The zoning map of the subject shows the area designated as S-CRI adjacent to the S-UN area in the northwest portion of the subject. The Respondent did not address this issue directly, other than to indicate that such land was normally assessed and present the rates applied.

The Board notes that the rates used for assessment purposes are to reflect market value, but the Respondent did not provide an explanation as to how a market value is determined for land that is designed for public infrastructure use, and therefore of no value to a developer. No evidence was presented indicating the market value of S-CRI land, nor how this rate was determined by the City. For these reasons, the Board concludes that S-CRI land should be assessed at $0/acre.

The Board concludes that the appropriate value for assessment purposes is:

I-G		11.50 ac	$ 7,415,000
I-B		86.44 ac	$36,332,000
S-UN		11.50 ac	$ 500
S-CRI		7.50 ac	$ 0
		Subtotal	$43,747,500
	Less:	25% access adjustment	-$10,936,875
		50% servicing adjustment	-$21,873,750
		Calculated Assessed Value	**$10,936,875**

C. If the subject property does not meet the statutory definition of "farm land" as of the December 31, 2010 condition date, is the assessment equitable?

1. The Evidence

On behalf of the Complainant, Mr. Ryan presented five equity comparables (Comparables #7 to #11 Page 3 Tab 51 Exhibit C1-B). He had photographs of the status of these comparables and 2012 assessment information. The purpose of this evidence was to demonstrate that the subject was being unfairly assessed, while properties in a similar condition continued with a "farm land" classification.

The Respondent stated that Comparable #7 and #8 are located adjacent to the Stonegate development and appeared to be in the process of being stripped and graded, with some topsoil replaced and both were assessed as farmland for 2012.

With regard to Comparable #7, the Respondent acknowledged that the 2012 assessment was in error and the property should have been reclassified as non-residential. The Respondent also stated that a Complainant should not benefit from an error in an assessment.

With regard to Comparable #8, the Complainant argued that the property was zoned I-B and marketed as such. Further, there was a Development Permit in place that required stripping and grading to begin before April 24, 2010. The Respondent stated that the property has not been disturbed as of December 31, 2010 and has been in an agricultural use since it was annexed. The Complainant agreed that regardless of the Development Permit, no surface disturbance had occurred and so the property was still classified as agricultural.

Comparable #9 is located adjacent to the west boundary of the subject, and is zoned Direct Control to allow for an auction site use. The Complainant indicated that even with an industrial use, the 2012 assessment is $132,722 per acre, which is more than the subject and therefore inequitable. The Respondent argued that the site has very restrictive zoning which impacts value, as well as makes this property not comparable to the subject.

Comparable #10 and #11 are essentially two portions of the same property. The Respondent argued that these two properties are under a different annexation agreement than the subject, and the assessment provisions in the annexation agreements are different, so these two properties are not comparable to the subject.

The Respondent did not provide any comparables to support its position that the subject is assessed equitably.

2. Board's Conclusion on this Issue

The Board agrees that a Complainant should not benefit from an error in an assessment of "comparable" properties, as is the situation with Comparable #7. The Board acknowledges that the Assessment Department has to monitor the status of many properties and that keeping current is a daunting task. Errors happen from time to time. That said, where the Assessment Department acknowledges that they make an inordinate amount of errors within a particular assessment category, they would be expected to pay more attention to this assessment category, to ensure equity and fairness. Systemic or chronic errors within an assessment class are not acceptable, and if they persist, may be considered in an equity argument.

The Board is not persuaded that the equity comparables presented are truly comparable to the subject with regard to classification as "farm land" or as to assessment. Furthermore, the Board has reduced the assessment, therefore it is not clear how the arguments presented apply to the revised assessment. The Board concludes that there is no evidence to indicate that the revised assessment is not fair or equitable.

Board's Decision:

As discussed above, the Board concludes that the subject property, as of the condition date of December 31, 2010 is not farm land, as defined in the Municipal Government Act and its Regulations. The Board was not persuaded by the sales evidence presented by the Complainant, and adopted the rates and adjustments used by the City for the 2011 assessment year with the exception of the rate applied to S-CRI zoned land. The Board was persuaded by the Complainant's argument that there was no market for S-CRI land, and the Respondent did not provide any evidence as to how they arrived at their rate. The Board concluded that the subject land was not serviced, and applied the City's rate for this factor.

Applying these modifications results in the Board varying the assessed value, reducing it to $10,936,875.

DATED AT THE CITY OF CALGARY THIS 3rd **DAY OF** July **2012.**

Ivan Weleschuk
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
C1-A	Complainant Summary of Evidence
C1-B	Complainant Evidence – Attachments (Tab 1 – 51)
C-2	Complainant Rebuttal
C-3	Complainant Recalculation of Pages 14-15, Tab 51, Exhibit C1-B
R1	Notice of Correction of Evidence Submitted by Complainant (two page email dated March 27, 2012)
R2	Respondent Evidence (two binders, Tab 1 – 26)
R3	City of Calgary Orthophoto October 2010

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.