



## **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:

***1198769 Alberta Ltd. (as represented by Altus Group Ltd.), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***K. D. Kelly, PRESIDING OFFICER***

***P. Charuk, BOARD MEMBER***

***K. Farn, BOARD 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 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201644176</b>
<b>LOCATION ADDRESS:</b>	<b>4041 Country Hills BV NE</b>
<b>FILE NUMBER:</b>	<b>73661</b>
<b>ASSESSMENT:</b>	<b>\$17,170,000</b>

This complaint was heard on 10<sup>th</sup> day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- A. Izard - Altus Group Ltd.
- D. Mewha - Altus Group Ltd.

Appeared on behalf of the Respondent:

- N. Domenie – Assessor – City of Calgary
- G. Foty – Assessor – City of Calgary

### **Regarding Brevity**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] At the commencement of the hearing the parties confirmed the issues to be debated before the Board as follows;

1. Should the overall Market value of the 144.33 Acres (Ac) comprising the subject lands, be reduced from the assessed \$17,170,000 to \$6,310,000 pursuant to the following:
  - a) That the approximately 25.48 Acres (Ac) of subject lands designated in the City's Land Use Bylaw 15Z2007 as **S-UN** (Special Purpose – Urban Nature District), and, the 2.247 Ac of **S-CRI** (Special Purpose – City and Regional Infrastructure District) lands be valued for assessment purposes at a "nominal" value; or, "zero dollars"?
2. Should the approximately 53.05 Ac portion of the subject lands, described as being used for farming purposes in 2012, be assessed at "farmland value" pursuant to section 289 of the Municipal Government Act ("The Act")?

[3] Subsequently the hearing proceeded in established fashion, with the Complainant – using maps and photographs, first identifying in some detail, the location and physical characteristics of each of the parcels at issue before the Board. Secondly, the Complainant focused exclusively on maps and photos to specifically and in great detail, "frame" Issue #2 above for the Board and Respondent. He continued his presentation on Issue #2 for much of the morning session. The Board recessed the hearing at 12 noon.

[4] At the hour of 1:30 pm, the Board prepared to call the hearing back to order. However the parties indicated that they had been in successful conference over the lunch hour and, with the Board's indulgence, wished to continue with that process. It was their combined view that with additional discussion, most of the issues before the Board could possibly be resolved. The Board accepted this joint recommendation and continued to retire until the parties were finally able to return to the hearing.

[5] At the hour of 3:00 pm the Board called the hearing back to order. The parties advised the Board that pursuant to their discussions, they had reached agreement on several matters. Therefore, and pursuant to this newly-forged agreement, the Complainant advised that he wished to withdraw Issue #1 above (in paragraph [2]). The Respondent confirmed the Complainant's position in this matter as stated by the Complainant to the Board.

(6) However, the Complainant and Respondent also advised that the parties still disagree regarding Issue #2. Consequently he noted, the parties are still jointly seeking the Board's ruling with respect to issue #2. Accordingly, the Complainant reminded the Board that during the morning session, he had provided an extensive and complete presentation and argument using his documents C-1 and C-2 (including several sub-sets of these documents such as C-2 A, and C-2-B etc.) regarding this issue. He noted that the Respondent would also be making a similar presentation regarding this issue using his Brief R-1.

(7) The Complainant reiterated that he argued extensively in the Board's morning session that in 2012 the farmland portion of the subject was being used for farming purposes, and therefore should be assessed at a lesser farmland value pursuant to section 289 of the Municipal Government Act ("The Act"). He noted that the Respondent will argue extensively that it was not used for farming purposes, and therefore does not qualify pursuant to section 289 of the Act. The parties clarified that should the Board decide this issue in favour of the Respondent, then the parties concur that, given certain mutually-agreed adjustments to the assessment calculation, a revised value of \$16,100,000 instead of the assessed \$17,170,000 should result.

**Property Description:**

[8] The subject consists of approximately 144.33 Ac of vacant land, a remnant of a former quarter section of land located precisely at the SW corner of the intersection of Country Hills BV NE and Metis Trail NE. The subject is currently undergoing various forms of urban development which occupy, or will occupy, various parts of the site. Some 26.28 Ac are to be devoted to wetlands, pathway, and similar "utility" uses, while approximately 65 Ac are to be used for commercial purposes. The remaining approximately 53.05 Ac are described as being currently used for farming purposes growing a hay crop. The subject 144.33 AC site is assessed at \$17,170,000.

**Issue:**

[9] Pursuant to the prior negotiations between the parties during the hearing as described in paragraphs [2] to [7] above, the only issue currently before the Board is:

“Should the approximately 53.05 Ac portion of the subject lands, described as being used for farming purposes in 2012, be assessed at “farmland value” pursuant to section 289 of the Municipal Government Act (“The Act”)?”

**Complainant's Requested Value:**

[10] The Complainant originally requested that the assessment be reduced to \$6,310,000 – however, see paragraph [7] above..

**Board's Decision:**

[11] The Board reduced the assessment to \$16,100,000.

**Legislative Authority, Requirements, and Considerations:**

[12] Under the *Municipal Government Act* (MGA), the Board cannot alter an assessment which is fair and equitable.

[13] MGA 467 (3) states:

“An assessment review board must not alter any assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations; and the assessments of similar property or businesses in the same municipality.”

[14] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

**Positions of the Parties****(a) Complainant's Position:**

[15] The Complainant provided his information package C-1 and spent considerable time presenting and clarifying in great detail, a large number of coloured photographs he had taken of the subject property. He meticulously related each photo he had taken to a defined point on a generalized "land use" map of the site, noting the direction of view. In particular he focused on several photographs that related to identifying the several current physical landscape features (ponds, sloughs, etc) on the parent parcel of 144.33 Ac. He also pointed out and clarified the general location of each onsite proposed parcel of land, parcels that are currently zoned for uses pursuant to initial issues one and two in paragraph [2] above.

[16] The Complainant presented a large number of photographs of the 53.05 Ac portion of the subject, which he argued was used for farming purposes in 2012. He clarified that a hay crop had been seeded on the land in 2012 which was grown and harvested in 2013. The Complainant argued that this information demonstrates that the subject was used for farming purposes in 2012 and therefore qualifies to be assessed as farmland pursuant to section 289 of the Municipal Government Act. Section 289 of the Act states in part as follows:

**"Assessments for property other than linear property**

**289(1)** Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

**(2)** Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property."

[17] Referencing page 39 of his evidence document C-2B, the Complainant provided a memorandum dated June 11, 2012 from the lessee. The memorandum identified that a general grading program was to commence on the subject 144.33 Ac parcel June 30, 2012. Thereafter, the owner's contractor was to "re-spread topsoil" on the subject,

"in order for a new hay crop to be seeded, which will reach maturity during the 2013 growing season."

[18] On pages 41 to 43 of his document C-2B the Complainant provided a duly completed copy of the City of Calgary's "Assessment Request For Information - Farmland - Tax Year - 2013" (ARFI) which had been returned to the City by the Lessee as requested. On page 43 of C-2B section 2341 of the ARFI, the following was recorded:

"the landowner began their stripping and grading operations in the fall of 2011. During the 2012 growing season, no crop or forage was harvested from this property, however our lease remains in place. A hay forage seed blend was planted on available portions of the site in August 2012 for harvest in the 2013 season"

[19] The Complainant provided several historical Municipal Government Board (MGB) decisions and orders which he argued supported his position in this matter. In particular he referenced on page 53 of his document C-2B, page 6 of the decision of the MGB being "*Associated Developers Ltd. v. Edmonton (City)*, [2012] CARB (Edmonton) 9567801-2010-P." arguing that the principles enunciated in this decision are relevant in the current case before the Board.

**(b) Respondent's Position:**

[20] The Respondent provided his brief R-1 containing a large number of coloured "summertime" (June 10, and September 23, 2012) photographs of the subject which he described in certain detail for the Board. In particular, he noted the more precise location onsite the subject from which the photos were each taken, and the particular point he wished to make with each one. He also proceeded to draw to the Board's attention that, unlike the testimony of the Complainant, and according to his photographic evidence, the 53.05 Ac of the subject were not "farmed" or capable of being farmed during 2012 as alleged.

[21] The Respondent provided several Calgary Composite Assessment Review Board (CARB) Decisions which have dealt with various issues regarding the subject, but primarily whether or not at various times and in various assessment years, the subject is or is not farmland and should or should not be assessed as such. CARB decision 1084/2012-P provided by the Respondent is relevant. It refers to Alberta Regulation AR 220/2004 being Matters Relating to Assessment and Taxation Regulation (MRAT). On page 235 of the Respondent's Brief R-1 the following from CARB 1084/2012-P is noted:

"[10] The Respondent stated that Section 289(2)(a) of the MGA requires that an assessment reflect the 'characteristics and physical condition of the property on December 31 of the year prior to the year in which the tax is imposed'.....As of December 31, 2011 the subject was stripped and graded and not farmland, therefore the assessment as non-residential land is correct....."

[12] The Board recognizes that the Act 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.....

(4) In this section,

- (a) 'farm land means land used for farming operations as defined in the regulations;.....

[13] The Act 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 domestic camelids, and
- iii. The planting, growing and sale of sod"

[22] In his Brief R-1 the Respondent provided a copy of the "2012 ARFI – Farmland" for the subject. The subject's 2013 ARFI – Farmland was provided by the Complainant (paragraph [18] above), and contains comments from the Lessee that the 53.05 Ac of the subject was not farmed in 2012. Pursuant to the Complainant's evidence, paragraph [17] above, the subject was to be graded in June 2012 to prepare it to later receive topsoil in order to plant a hay crop to be harvested in 2013. The Respondent's evidence argues that the Complainant's evidence confirms that the 53.05 Ac of the subject lands do not meet the specific "farmland" definitions in either the MGA or MRAT to qualify for a farmland assessment.

**Board's Reasons for Decision:**

[23] The Board finds that for the current assessment cycle, in 2012 the 53.05 Ac segment of the subject did not comply with the definition of "farm land" pursuant to the Municipal Government Act (MGA) and Alberta Regulation AR 220/2004 (MRAT).

[24] The Board finds that the memorandum dated June 11, 2012 from the lessee, as noted in paragraph [17] above, confirms that 53.05 Ac of the subject were not capable of growing or sustaining crop production in 2012 because, as of June 30, 2012, it was being graded in preparation for the later (that year) placing of topsoil over the site. Subsequently a hay crop was to be seeded to the land with the clearly stated intention that the hay be harvested in 2013. Therefore, given the foregoing, the 53.05 Ac does not qualify for assessment as "farm land".

[25] The Board finds that the Lessee confirms in the City's 2013 ARFI document for the subject, that "During the 2012 growing season, no crop or forage was harvested from this property"... Therefore the Board finds that given the foregoing, and particularly paragraph [24] above, 53.05 Ac of the subject do not qualify for assessment as "farm land".

[26] The Board finds that while the parties provided several Board decisions in support of their respective positions, and the Board does not ignore them, it is not bound by those decisions. The Board makes its decision based on the evidence and argument heard at this hearing.

[27] Given the Board's determination above that 53.05 Ac of the subject is not farm land and does not qualify for assessment as farm land, the Board accepts the joint recommendation from the parties that the assessment should be reduced to \$16,100,000.

DATED AT THE CITY OF CALGARY THIS 30<sup>th</sup> DAY OF October 2013.

  
K. D. Kelly  
Presiding Officer

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure
2. C-2 (A)(B)	Complainant Disclosure
3. C-3 (A)(B)(C)	Complainant Disclosure
4. R-1	Respondent Disclosure

*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.*

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<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Vacant Land	Farm Land	market value	Farm land value