



## ASSESSMENT REVIEW BOARD

Churchill Building  
10019 103 Avenue  
Edmonton AB T5J 0G9  
Phone: (780) 496-5026

### NOTICE OF DECISION NO. 0098 930/11

Altus Group  
17327 106A Avenue  
EDMONTON, AB T5S 1M7

The City of Edmonton  
Assessment and Taxation Branch  
600 Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on April 24, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10202513	14640 137 Avenue NW	Plan: 1025923 Block: 2 Lot: 1	\$1,869,000	Annual New	2011

#### Before:

Patricia Mowbrey, Presiding Officer  
Dale Doan, Board Member  
Mary Sheldon, Board Member

**Board Officer:** Jason Morris

#### Persons Appearing on behalf of Complainant:

John Trelford, Altus Group  
Jordon Nichol, Altus Group

#### Persons Appearing on behalf of Respondent:

Bozena Andersen, Assessor, City of Edmonton  
Don Strandberg, Assessor, City of Edmonton  
Meghan Richardson, Assessor, City of Edmonton

## **PROCEDURAL MATTERS**

There was no allegation of bias raised by any party to the hearing nor by any Board member.

## **PRELIMINARY MATTERS**

At the outset of the hearing the Respondent advised the Board that there may be a preliminary matter to consider. The Complainant objected to this preliminary matter being raised and the Respondent elected to proceed without raising the preliminary matter.

## **BACKGROUND**

The subject property is located at 14640-137 Avenue NW in City of Edmonton. The property is a parcel of 2,571,938 square feet (59.04 acres) with a single family residence on the property and a commercial component in the form of a landscaping operation. The actual zoning is AGI and the effective zoning is AGU.

## **ISSUES**

1. Is the subject property farm land?
2. Is there a 3-acre residential farm site pursuant to the requirements of the Farm Land Assessment Regulations?
3. Does the 2.5-acre commercial site meet the requirements of the Farm Land Assessment Regulations?
4. Is the 2011 assessment correct for the subject property?
5. What is the correct value percentage split for the subject?

## **LEGISLATION**

Excerpts of the *Municipal Government Act*, RSA 2000 c M-26

### **Decisions of assessment review board**

**467(1)** An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

**(2)** An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

**(3)** An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

**(4)** An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.

...

### **Interpretation provisions for Parts 9 to 12**

**284(1)** In this Part and Parts 10, 11 and 12,

- (h) “farm building” has the meaning given to it in the regulations;
- (i) “farming operations” has the meaning given to it in the regulations;

...

#### **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.

...

#### **Assigning assessment classes to property**

**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.

Excerpts from *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004

#### **Valuation standard for a parcel of land**

**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.

**(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.
- (5) The valuation standard for strata space, as defined in section 86 of the *Land Titles Act*, is market value.

## **POSITION OF THE COMPLAINANT**

The position of the Complainant is that the 2011 Assessment is incorrect.

The Complainant argues that the subject is being farmed and as such should be assessed using regulated values pursuant to the Alberta Farm Land Assessment Minister's Guidelines, the *Municipal Government Act*, RSA 2000 c M-26 [MGA] and the *Matters Relating to Assessment and Taxation Regulation*, AR 220/2004 [MRAT].

The Complainant provided assessments of similar properties (C1 page 11) to demonstrate that the regulated farm land value of \$350 per acre was too high and that \$315 per acre was appropriate (C1, pages 36 through 83).

The Complainant pointed out to the Board that there is a residence on the subject (C2 pages 4 and 5). The Complainant argued that in view of the residence the subject should have a 3-acre residential parcel assessed at residential market values.

In support of the Complainant's position that the assessed value per acre of the 3-acre residential site was too high, the Complainant presented a sales comparison chart of nine comparable properties (C1 page 10) as well as third party documents for those comparables (C1 pages 14 through 35). The Complainant argued that this evidence indicated that a market value of \$273,800 per acre for the residential site was appropriate.

The Complainant advised the Board that the subject property was not serviced except for a possible power line and pointed the Board to an aerial photograph of the subject (C1 page 7) as well as a servicing map (C1 page 84).

The Complainant advised the Board that the subject included a commercial component in the form of a landscaping business which was comprised of 2.5-acres.

The Complainant argued to the Board that the Regulations allow for only one 3-acre site to be assessed at market value separate from the farmland. The Complainant submitted further that there was already one 3-acre parcel assessed at market rates for residential use and that the 2.5 acres attributed to commercial use did not meet the requirements of the MRAT to be assessed at market value.

The Complainant submitted to the Board that the correct way to assign value to the commercial portion of the subject was to combine the 2.5 acres of commercial use within the 3-acre residential parcel. This would result in 2.5-acres of the 3-acre parcel being attributed to commercial use and 0.5 acres to residential use. In support of this position he referred the Board to the MGB Board Order 038/05 ("Virginia Park Greenhouse") (C2 pages 10 through 17).

The Complainant agreed with the Respondent that the value of the improvement on the 3-acre residential site was correctly assessed at \$31,972.00.

The Complainant requested that the Board reduce the assessment of the subject to \$740,986.00 allocated as follows: residential \$108,900.00 (15.45%), commercial at \$544,500.00 (77.24%), agricultural \$19,614.00 (2.78%) and the residential improvement at \$31,972.00 (4.54%).

### **POSITION OF THE RESPONDENT**

The position of the Respondent was that the 2011 assessment was correct.

The Respondent pointed out to the Board s. 297(3) of the MGA which indicated that more than one assessment class or sub-class could be assigned to a property. If that is done, the assessor must provide a breakdown of the assessment showing each assessment class or sub-class and the portion of the assessment attributable to each assessment class or sub-class.

The Respondent also advised the Board that while the subject was zoned AGI it was actually industrial reserve land.

The Respondent advised the Board that there was a residence at the north end of the subject on a 3-acre residential site and at the south end of the subject there was a site occupied by a landscaping business. The Respondent advised the Board that the commercial site was also given a 3-acre site value (R-1, page 22).

The Respondent submitted that there are three land uses for the subject property and the value percentage split in the 2011 assessment was as follows: LUC code 800 (residence and 3-acre site) at 2%, LUC 856 (farmland) at 1% and LUC 836 (farmland dual use) at 97%.

The Respondent submitted to the Board that the percentage split values referenced above were incorrect and were recalculated. The Respondent indicated that 50 percent of the total assessment should be attributed to LUC 800, 1 percent to LUC 856 and 49 percent should be attributed to LUC 836.

The Respondent requested that the 2011 assessment be confirmed at \$1,869,000 and requested that the recalculated value percentage split be confirmed.

## **DECISION**

The decision of the Board is to confirm the 2011 assessment for the subject property at \$1,869,000.00, and to confirm the value percentage split as follows: LUC code 800 (residence and 3-acre site) at 50%, LUC 856 (farmland) at 1% and LUC 836 (farmland dual use) at 49%.

## **REASONS FOR THE DECISION**

The Board reviewed the Complainants evidence C1 and C2 and the Respondents evidence R1.

The Board carefully reviewed the legislation in the MGA and MRAT.

After considering the evidence and legislation, the Board is of the opinion that the subject is being farmed and should be valued as farmland as set out in the Alberta Farm Land Minister's Guidelines.

Next, the Board considered the submission of the Complainant that only one 3-acre parcel out of a larger farmland parcel can be assessed at market value rates. The Board referred to s 4(1) (a) (b) of MRAT. According to this legislation, land used for agricultural purposes is valued with agricultural values. The Board then referred to s. 4(3) of MRAT which indicates that, despite agricultural values to be applied to farmland, there are exceptions in which market value must be used.

The regulation then outlines at s 4(3)(a) to (f) inclusive six exceptions in a farmland parcel which are required to be valued at market value. In the opinion of the Board these exceptions are not mutually exclusive. In other words, any one or more of the exceptions could be valued at market value if they meet the requirement of the respective sub section. In the case under consideration the sub section that is relevant to the subject property is s 4(3)(c) which refers to a 3-acre residential site. Both parties had agreed that there is a 3 acre residential site on the subject. Also of relevance is s 4(3)(e) which indicates that 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;

With respect to the commercial area of the subject the Board heard evidence that this area is 2.5 acres in size within the larger parcel, was used for commercial purposes and as well, there was evidence brought forward by the Complainant that the subject was not serviced except possibly for power. In that regard, the commercial site could not have water and sewer service from the larger farmland parcel.

The Complainant had pointed out to the Board both in oral evidence and by reference to an aerial photograph and a servicing map the unserviced state of the subject. As an aside, the Board notes that the servicing map appears to be of a different property. However, the Board relies upon the submissions of the Complainant that the subject is unserviced.

Therefore the Board concluded that both the 3-acre residential parcel under s 4(3)(c) and the 2.5-acre commercial portion under s 4(3)(e) must be assessed individually at market value rates.

This is confirmed by the statement in s 4(4) that an area referred to in s. 4(3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

Therefore the Board is of the opinion that the Complainant's argument that there should be only one 3-acre site containing both residential and commercial uses valued at market rate is not correct.

With respect to the market rates to be applied to the residential and commercial sites the Board is of the opinion that the sales comparables brought forward by the Complainant to support the request of \$217,800 per acre are dissimilar in many respects including location and zoning.

The Board also accepts the regulated rate for farmland at \$350 per acre (C1 page 111). The Board was not persuaded by the evidence presented by the Complainant in support of the request that a regulated rate of \$315 per acre was more appropriate. In addition, the Board notes that the Complainant used the regulated rate of \$350 per acre in its final calculation of value (C-2, page 8).

In conclusion the Board confirms the 2011 assessment of the subject property at \$1,869,000.00. The Board confirms the value percentage split presented by the Respondent as follows: LUC 800 at 50 percent, LUC 836 at 49 percent and LUC 856 at 1 percent.

### **DISSENTING OPINION AND REASONS**

There was no dissenting opinion.

Dated this 21st day of May, 2012, at the City of Edmonton, in the Province of Alberta.

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Patricia Mowbrey, Presiding Officer

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*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.*

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cc: STARK BOUILLY DAVIES GP LTD