

**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-26.1, Section 460(4).

between:

Altus Group Limited, COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

R. Roy, MEMBER

A. Zindler, 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 2010 Assessment Roll as follows:

ROLL NUMBER:	201491834
LOCATION ADDRESS:	29 Barlow Cr. NE
HEARING NUMBER:	56467
ASSESSMENT:	\$5,410,000

This complaint was heard on the 10th of December, 2010 at the office of the Assessment Review Board located on the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

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

New Issue raised at hearing

Respondent's position:

The Complainant in preamble stated that the issues being argued were a further adjustment for shape and reinstatement of farmland status. The Respondent objected to submissions with respect to an adjustment for shape, stating that this had not been identified as an issue. The original complaint form listed a number of issues including a reference to adjustment for shape, but it was not mentioned in the Complainant's disclosure submission, which stated in the Executive Summary - Objectives:

1. The classification of the subject property is requested to be Farmland
2. Numerous decisions and assessor practice have suggested that parcels be adjusted based on negative influences. Adjustments include no services, limited access, topography, size, partial services, size etc.
 - a. Additional adjustments requested to the city's adjustment: 25%; \$166,500 per acre
 - b. 3 acres at \$166,500 equals \$499,500

No reference was made to an adjustment for shape, therefore the Respondent requested that shape not be argued in the hearing.

Complainant's position:

The Complainant stated that size was listed twice in point 2, and it was obviously a typo. The shape issue was listed on the original complaint form and should be considered in the hearing.

Decision and Reasons:

The Board agreed that "size" mentioned twice in point 2 appeared to be a typo and one of them should have read "shape", and that shape was listed in the original complaint form. However, the complaint form listed a number of issues that were not pursued in the disclosure submission for the hearing. On review of the Complainant's submission, there was no documentation supporting an argument for a further adjustment for shape, therefore the Board found that the Respondent could not have reasonably been prepared to argue a shape factor adjustment. Accordingly the Board decided the shape issue was not properly before the Board and declined to hear verbal argument with respect to that issue.

Meeting of Onus

Respondent's position:

A second preliminary matter was brought up by the Respondent after the presentation of the Complainant, and related to whether the Complainant had met onus. The lands referenced in the lease evidence submitted were a list of quarter sections and the legal description of the subject parcel (Plan 0913802 Block 4 Lot 2) was not listed anywhere in the lease. In order to be valid a lease must properly reference the lands under lease. The Respondent's position was that the lease did not apply to the subject property and therefore no evidence to support the

Complainant's position had been led. Therefore there was no need for the Respondent to enter evidence as the Complainant had not met onus.

Complainant's position:

The subject lands are part of the quarter sections referenced in the lease. The partial plan of survey (C2 p9) shows the outline of the subject lot and boundaries of the quarter sections: SW ¼ Sec 34-25-29-4, NW ¼ Sec 27-25-29-4 and NE ¼ Sec 28-25-29-4.

Decision and Reasons:

Under "Schedule "A" Legal Description of Lands" in the lease evidence, all of the quarter sections from which the subject lot was subdivided are listed. The Board does not agree with the Respondent's position that subdivision of a parcel renders the original quarter section descriptions null and void. A plan of subdivision always references the quarter sections from which the lands are subdivided, and the Alberta Township Survey (ATS) references always remain, as can be seen on any certificate of title. Accordingly, the Board found that the lease did refer to the subject land and that the Complainant had provided sufficient information to necessitate evidence and argument in support of the assessment.

Property Description:

The subject property is a 1,061,356 SF (24.37 ac) vacant parcel in the Northeast quadrant just west of Metis Trail NE between Stoney Trail and Country Hills Blvd NE. It is part of a larger land holding that had been previously used for hay production and assessed as farmland. In late 2008, topsoil was stripped and in 2009 the land was subdivided, creating the subject parcel. The subject roll number was newly created for the 2010 assessment and did not exist in 2009. The parcel is located on a curved section of Barlow Crescent NE at the intersection of 128 Ave NE along the LRT tracks, a block west of Metis Trail NE. None of the streets, other than Metis Trail NE, currently exists, and the LRT tracks do not currently extend into this area.

The property is zoned Commercial-Regional 3 (CR-3) and it is assessed at the base rate per square foot for CR-3 land, with negative adjustments of 50% for no services and 25% for limited/restricted access to arrive at the assessment under complaint.

Issues:

The Complainant identified a number of issues on the Complaint form, however at the hearing the only issue argued was whether the parcel should be classed as farmland and assessed on its agricultural use value. No market valuation evidence was submitted

Complainant's Requested Value: \$225,000 revised to \$500,000 at the hearing.

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

Complainant's position:

In 2008 a large area of land including the subject parcel had been stripped in preparation for development, but in 2009 it was decided to return it to farmland. The loam that had been stripped had been stockpiled on the site; and in mid 2009 this parcel was re-loamed and

seeded. Therefore, at December 31, 2009 this parcel was farmed. In support of this position the Complainant presented a number of documents:

- Assessment Request for Information (ARFI) – Farmland returns for 2010 for NW ¼ 27-25-29-4 and 2011 for the subject parcel. The 2010 return, submitted in August 2009, indicated 160 acres of land leased for 1 year from April 1, 2009 to March 31, 2010 used for grain crop (Winter Rye). The 2011 return, submitted August 2010, indicated 24.37 acres of land leased for 3 years from April 1, 2010 to March 31, 2011 also used for grain crop (Winter Rye). The lease fee in each case was \$1.
- Four leases each for one year terms dated effective April 1, 2007 through April 1, 2010 between six numbered companies including the owner of the subject parcel, and Robert Bilben, a farmer in the Airdrie area to use the land for farming operations.
- Progress payment certificates from Stantec Consulting Ltd. dated Oct 27, 2009 and November 10, 2009 for invoices from Kidco Construction Ltd. dated October 1, 2009 and Plantain dated October 14, 2009. The Plantain invoice listed the work as "Seeding – Stonegate Phase I" detailed as 196 acres of seeding @100.00/acre. The Kidco invoice did not have details but referred to the project as "Rough Grading". The Complainant stated that this invoice related to re-loaming the site, after which the area was seeded. The invoices would have been submitted after the work was completed.
- Government of Alberta publication titled "Fall Rye production" from Alberta Agriculture and Rural Development detailing the characteristics and recommendations for seeding, growing and harvesting fall (winter) rye.

The Complainant presented excerpts from legislation and numerous MGB orders confirming farmland status, as well as photographs and Assessment Summary Reports for equity comparables that were assessed as farmland.

Respondent's position:

The Respondent noted that the invoices do not specify the land on which the work was done, and questioned whether there was any evidence that this work had taken place on the subject parcel. Photographs of the subject site taken about July, 2009 were submitted. These are taken when farmland status is requested but denied. The photographs show the land is stripped and not being used for farming operations. An orthophotograph was also submitted showing there was no vegetation on the site. The Respondent highlighted the lack of photographs of the subject in the Complainant's evidence and suggested that photographic evidence was lacking because it would not support the Complainant's position. Clearly, there was no farming operations taking place in the relevant time frame and therefore the parcel cannot qualify as farmland.

Complainant's rebuttal:

The Complainant stated that photographs of the subject were not taken due to lack of roads which hindered his ability to access the site. He noted that the Respondent's photographs show power poles which only exist along Metis Trail NE and suggest the photographs are not of the subject parcel. The orthophotograph clearly shows lighter areas where the land has been stripped and a darker area including the subject parcel where the land was re-loamed. The Complainant noted that the parcel to the east, at 30 Barlow Crescent NE is part of the lighter area and had not been re-loamed; farmland status was not being sought for that parcel. The subject parcel was clearly seeded before December 31, 2009 and should be assessed as

farmland.

Decision and Reasons:

The *Municipal Government Act* sets out the requirements for assessment of 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.
- ...
- 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;

For the 2010 assessment under appeal, the characteristics and physical condition of the parcel at December 31, 2009 is of relevance. The valuation and other standards are set out in Alberta Regulation 220/2004 Matters Relating to Assessment and Taxation Regulation (MRAT):

- 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.

MRAT defines farming operations:

- 1** In this Regulation,
- ...
- (i) "farming operations" means the raising, production and sale of agricultural products and includes
 - (i) horticulture, aviculture, apiculture and aquaculture, ...

The Complainant provided evidence that a lease was in place in the relevant time period between a number of owners including the subject landowner and a farmer to cultivate an area of land that includes the subject parcel. Evidence of earthworks and seeding in or before October 2009 was presented but it did not specify the land on which the work took place, and no photographic evidence was entered by the Complainant. It was unclear whether the photographs submitted by the Respondent was of the subject parcel, as the land for which farm status was applied for in the July 2009 time frame was the NW ¼ 27-25-29-4 of which the subject is a relatively small portion. The Respondent's orthophotograph appears to support the Complainant's position that the subject area was re-loamed in preparation for farming operations and that the 196 acres seeded in October 2009 comprises the area in the aerial photograph. If the land were to be assessed on its agricultural use value, more detailed evidence would be required to substantiate that position.

However, detailed evidence is moot for the year under appeal as the Board finds that the subject parcel was not used for farming operations in 2009. The Board accepts that winter rye is planted in the fall; however in the opinion of the Board, conditions that existed at the time of seeding could not have led to a reasonable expectation of a saleable crop. In the subject

situation, the Board finds that in order for the parcel to be considered used for farming operations evidence of production and sale, not only seeding, is necessary. The Board did not consider the estimated values listed in the ARFI to be evidence of production and sale, and the only other information available was the Complainant's statement that the farmer was not satisfied with the crop and the land would be reverting to hay production. Accordingly, the evidence submitted is insufficient to demonstrate the subject parcel was used for farming operations and to change the classification of the parcel to farm land.

Board's Decision:

The complaint is denied and the assessment confirmed at \$5,410,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF December 2010.


H. Kim

Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

NO.	ITEM
C1	Complainant Form
C2	Complainant's submission
R1	Respondent's submission

APPENDIX "B"

ORAL REPRESENTATIONS

PERSON APPEARING CAPACITY

Giovanni Worsley	Altus Group Limited, Complainant
Scott Powell	Assessor, City of Calgary, Respondent

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;

- (b) *an assessed person, other than the complainant, who is affected by the decision;*
- (c) *the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) *the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) *the assessment review board, and*
- (b) *any other persons as the judge directs.*