

**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 Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

J. Pratt, MEMBER

D. Julien, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	201644176
LOCATION ADDRESS:	4041 Country Hills Blvd. NE (Legal Description: NW 22-25-29 W4M)
HEARING NUMBER:	68689
ASSESSMENT:	\$25,620,000

This complaint was heard on August 3, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Andrew Izard - agent*

Appeared on behalf of the Respondent:

- *N. Domenie – assessor*
- *C. MacMillan - assessor*

Jurisdictional and Procedural Matters:

- [1] No preliminary matter related to jurisdiction or procedure was raised. Prior to the hearing, the two parties agreed not to have Complainant's Rebuttal submitted as an exhibit or entered as evidence. The hearing proceeded to hear the merit of the complaint. The parties did not have any objection to the Board as constituted to hear this file.

Property Description:

- [2] The subject is a 144.33 acre property located in the Stoney 3 District of northeast Calgary, south of Country Hills Blvd and west of Metis Trail. The property consists primarily of the parent quarter section, with a portion of the northeastern corner, and portions of the eastern side of the parent quarter section taken for roadway development. The subject is "kitty corner" from the Sky View Ranch residential development, but is zoned predominantly for industrial uses (Industrial General) via a Direct Control Land Use Bylaw with small portions of the property zoned CR-2, S-CRI and S-UN.
- [3] The subject property was farmed by Simpson Ranching Limited for a number of years. Most recently the property was used to produce hay. Simpson Ranching Limited is owned and operated by the Simpson family, just as is the subject assessed party, being 1198769 Alberta Ltd. Development Permit DP2009-3722 was issued in July 2011 allowing for the stripping and grading of the subject. Stripping and grading began in the fall of 2011, sometime between mid August and mid October 2011. As of December 31, 2011 the subject was essentially all stripped and graded, except for the two wetland areas.
- [4] The 2012 Property Assessment Notice, dated January 3, 2012 indicated that the subject was assessed as farmland, for a total of \$50,500. An Amended 2012 Property Assessment Notice was issued April 3, 2012, assessing the property as non-residential using the sales comparison approach, resulting in an assessment of \$25,620,000.

Issues:

[5] The Board has characterized the issues raised as follows:

A. What is the correct assessment class for the subject property?

Complainant's Requested Value: \$50,500 (as farm land)

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

A. What is the correct assessment class for the subject property?

- [6] The Complainant presented an "Assessment Request for Information (ARFI): Farmland Properties" completed by Simpson Ranching Limited, dated August 11, 2011 (page 22-28, Exhibit C1). A farm lease is also presented for 2011 demonstrating that the property was being farmed (page 29-36, Exhibit C1). These documents indicate that the subject was part of a larger farming operation. The Complainant stated that the subject property was used to produce hay in 2011 and after the hay was harvested, the property was stripped and graded. Therefore, Complainant argued that the property was "farmed" in 2011, as the stripping and grading occurred after the subject was harvested. The property should be considered and assessed as farmland, as it is used for the "raising, production and sale of agricultural products" as defined in Section 1(i) of the Matters Related to Assessment and Taxation Regulation (MRAT).
- [7] The Complainant argued that if the Board did not accept the position that the property was farmland for all of 2011, that in the alternative, the Board should apportion the assessment, recognizing that the property was clearly farmland until sometime on or about September 2011, and that it was not farmland for about the last four months of 2011. In response to Board questions, the Complainant indicated that the appropriate method to do this would be via a supplemental assessment that could be issued to recognize the change in use and value of the property. The Complainant did not offer details as to how the Board could do this, nor any authority under the Act or its Regulations.
- [8] Other than the issue of the assessment classification, the Complainant did not dispute the assessment as presented in the Amended 2012 Property Assessment Notice.

- [9] The Respondent presented evidence showing that Development Permit DP2009-3722 was issued in July 2011 allowing for the stripping and grading of the subject (page 40-41, Exhibit R1). An aerial photograph taken in September 2011 (page 42, Exhibit R1) is presented showing that the subject property was in the process of being stripped and graded as of the date of the photograph. A set of photographs taken on February 10, 2012 (page 43-45, Exhibit R1) and another set taken on June 10, 2012 (page 46-53, Exhibit R1) shows the status of the subject on those dates. The Respondent stated that the photographs demonstrate that the subject was stripped and graded and not capable of being used for the "raising, production and sale of agricultural products" as of the condition date of December 31, 2011.
- [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". The Amended 2012 Property Assessment Notice is for the 2012 taxation year. As of December 31, 2011, the subject was stripped and graded and not farmland, therefore the assessment as non-residential land is correct.
- [11] Both parties agreed that the property was farmland through the summer of 2011, and that it was stripped and graded some time in the fall of 2011. An exact date as to when the stripping and grading began was not presented by either party.

- [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.*

(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.*

[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 domestid camelids, and
- iii. The planting, growing and sale of sod.

[14] With regard to determining the assessment class of the subject property, both parties agreed that the "farm" activity on the property was the production of hay. Both parties agreed that the "raising, production and sale" of hay is a farming operation. Both parties also agreed that as of the condition date of December 31, 2011, the farming operation had ceased.

[15] The Board notes that the Complainant appeared to be arguing for a change to the assessment for the 2011 taxation year, as the evidence and argument related to apportioning the assessment to reflect the change in the use of the property during 2011. The Board notes that the 2011 Assessment of the subject property was as farmland for the entire year.

[16] The complaint before this Board is for the 2012 taxation year. The Board concludes that the municipality correctly identified the status of the subject as of December 31, 2011, the condition date for the 2012 taxation year, as non-residential. As only the assessment class (is the subject farmland for the 2012 taxation year) is at issue before this Board, the Board confirms the 2012 assessment at \$25,620,000

Board's Decision:

[17] For the reasons above, the Board confirms the 2012 assessment of \$25,620,000.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF August 2012.



Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
C1	Complainant Evidence
R1	Respondent Evidence

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.*