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:

1225403 Alberta Ltd., COMPLAINANT
(as represented by Altus Group Limited)

and

The City of Calgary, RESPONDENT

before:
J. Dawson, PRESIDING OFFICER
J. Mathias, MEMBER
A. Zindler, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	**201491610**
LOCATION ADDRESS:	**4440 Country Hills Boulevard NE**
HEARING NUMBER:	**62919**
ASSESSMENT:	**$5,780,000**

[1] This complaint was heard on the 11th, 13th and 14th days of October, 2011 at the office of the Assessment Review Board (ARB) located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

[2] Appeared on behalf of the Complainant:

- *R. Charlton* *Senior Vice President Asset Management, WAM Development Group*
- *D. Genereux* *Agent, Altus Group Limited*
- *R. Brazzell* *Agent, Altus Group Limited*
  (Member of the Law Society of Alberta. Before the Board for the purposes of a Tax Consultant only)
- *K. Fletcher* *Agent, Altus Group Limited*

[3] Appeared on behalf of the Respondent:

- *K. Hess* *Senior Assessor, City of Calgary*
- *K. Haut* *Assessor, City of Calgary*
- *J. Lepine* *Assessor, City of Calgary*

[4] References have been made to numerous sources of material using the following abbreviations, relevant sections of these resources are found in Appendix "C":

"the Act"	**The Municipal Government Act** *Chapter M-26, Section 460, Revised Statutes of Alberta 2000*
"MRAT"	**Matters Related to Assessment and Taxation** *Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 330/2009*
"MRAC"	**Matters Related to Assessment Complaints Regulation** *Alberta Regulation 310/2009*
"ARB Policy"	**Calgary Assessment Review Board Policies and Procedural Rules** *Revised – March / 2011*
"Guidelines"	**2010 Alberta Farm Land Assessment Minister's Guidelines** *Ministerial Order No. L:268/10*
"Manual"	**1984 Alberta Assessment Manual** *Schedule 7*
"Tax Act"	**Income Tax Act** *Interpretation Bulletin: IT-322R (Farming Business)*
"Black's Law"	**Black's Law Dictionary** *Bryan A. Garner (Editor-in-Chief). © 2009. Black's Law Dictionary (9th ed.). St. Paul: Thomson Reuters*
"Oxford"	**The Canadian Oxford Dictionary** *Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada*
"Macaulay & Sprague"	**Macaulay and Sprague Hearings Before Administrative Tribunals** *Robert W. Macaulay, Q.C. and James L. H. Sprague, B.A., LL.B. (Authors). © 2010. Macaulay and Sprague Hearings Before Administrative Tribunals (4th ed.). Toronto: Thompson Reuters Canada Limited*
"Notre-Dame"	**Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours, [1994] 3 S.C.R. 3** *Case law, Supreme Court of Canada*

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

[5] At the commencement of the agenda on October 11th, 2011 the Board had two files on the docket set for hearings. The Complainant alerted the Board to an additional fourteen files which had the same Complainant and Respondent parties and is controlled by the same organization; WAM Development Group. Seven of these files were scheduled for the Board later in the week, two more were scheduled with a different Board on October 17th and the remaining five were scheduled for a third Board on October 18th.

[6] Below are all sixteen of the files impacted by the first issue of the preliminary, procedural and jurisdictional issues raised:

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
413003807	11626 Stonehill DR NE	63486	$4,410,000
201491610	4440 Country Hills BV NE	62919	$5,780,000
201506029	13030 – 36 ST NE	62945	$18,310,000
201491818	12331 – 36 ST NE	62923	$42,870,000
201505690	12414 – 36 ST NE	62942	$15,980,000
200765055	2626 Country Hills BV NE	62913	$32,890,000
412003006	12210 Barlow TR NE	63388	$14,640,000
387001019	13601 – 36 ST NE	63473	$13,130,000
388005209	13621 – 36 ST NE	63392	$5,580,000
201276383	12200 – 15 ST NE	63147	$12,770,000
201569308	11900 – 18 ST NE	62955	$13,710,000
413003708	11404 Stonehill DR NE	63382	$4,610,000
388002313	13440 – 36 ST NE	63397	$12,950,000
388002206	13440R – 36 ST NE	63422	$3,020,000
201491834	29 Barlow CR NE	62940	$5,780,000
201491826	30 Barlow CR NE	62937	$11,020,000

Issue 1 - Postponement / Witnesses

[7] The Complainant requested a postponement of this hearing and an additional 15 hearings for the following reasons:

1. The issues to be heard include utilization of the land for *farming operations*.
2. September has been, and October, is the annual harvest period making it unreasonable to force the farmer from fields at this time to appear at assessment appeal hearings.
3. The assessor has not yet disclosed sufficient information in accordance with MGA section 299.
4. All of these assessment accounts have similar issues and evidence and it would be more expedient to have all heard in conjunction with each other.
5. The commonality of the matters to be decided dictates that all 16 complaints heard in conjunction with each other would be most efficient.
6. There has been difficulty in coordinating the parties for the purpose of pre-hearing meetings in order to attempt resolving certain issues.

[8] The Respondent argued against the postponement request for the following reasons:

1. Complaints against these assessments were filed on or before March 7th, 2011.
2. Hearings have been scheduled for 6 months with hearing notices being sent on April 12th, 2011. The Complainants could have and should have made the requested postponements months ago, rather than 2 business days before the first hearing. The Complainant has known that October is harvest season and could have requested a change in hearing date previously to avoid this conflict.
3. There is no signed witness reports within the Complainant Disclosure Document as required in *MRAC* 8(2)(a). In fact, on the cover page of Complainant Disclosure Document it specifically states in point number 4 that, *"The Complainant does not plan to present any witness or witness reports"*. There are no witnesses properly before the Board so even if witnesses were available they cannot speak before the Board.
4. The assessor has disclosed information in accordance with MGA section 299 on January 17th, 2011 in response to the requests made on January 4th, 2011. Two additional requests were made with one using the wrong, altered form from 2010. The second request form was incorrectly filled out by asking for more than one file from one form. No complaint has been made to the Minister as permitted in *MRAT* section 27.6.
5. There was a meeting with the Complainant to discuss settling numerous other files. During that meeting there was the suggestion of a meeting to be set to perhaps settle some of these 16 files. No meeting was set and the Complainant had 6 months to sit down and discuss the files. There is no need to postpone now for that purpose.

[9] The Complainant rebutted the Respondent on its postponement request with the following information:

1. The weather this year had impacted the lateness of harvest and this was not foreseen in time to request an earlier hearing date.
2. Aerial photographs of October 2010 were not available to the Complainant until mid-September 2011.
3. The farmer, Mr. Bilben, will be able to clarify for the Board information on the *farm land.*
4. The engineer, Mr. Thomson, will also provide valuable information.

[10] **The Board found no exceptional circumstances to grant a postponement as required in *MRAC* 15(1) and has denied the request for the following reasons:**

1. **The farmer, Mr. Bilben, is not a witness who can be heard by the Board because this was not disclosed as required in *MRAC* 8(2)(a)(i) and 8(2)(c). The fact Mr. Bilben is not currently available does not provide a reason for a postponement.**
2. **Mr. Thomson, a Civil Engineering Technologist (CET), is not a witness who can be heard by the Board because this was not disclosed as required in *MRAC* 8(2)(a)(i) and 8(2)(c). The fact Mr. Thomson is not currently available does not provide a reason for a postponement.**
3. **The claim that the Respondent has failed to comply with an information request under section 299 of *the Act* is something that can be dealt with through a complaint to the Minister as found in *MRAT* 27.6. The Respondent contends they have answered completely all valid request forms.**
4. **The 16 hearings scheduled with three separate Boards over six days were amalgamated and rescheduled to this Board. This provided the Complainant the efficiency desired to hear all complaints by one Board. This accommodation mitigates the need for a postponement.**

5. **With no evidence of fruitful discussions regarding possible resolution to the files and with plenty of opportunity for the parties to speak during breaks there is no need to postpone for negotiation purposes.**

Issue 2 - Presentation of Rebuttal

[11] The Complainant requested the Board to hear the Rebuttal Document even though the Respondent chose not to present its Disclosure Document.

[12] At issue is the intention of the legislation. Did the legislators intend to allow for exchange of evidence to occur including rebuttal just to have the Respondent not present its disclosure in order to block the rebuttal evidence of the Complainant?

[13] There are two diverging opinions on this issue:

1) the Respondent accused the Complainant of holding back evidence until rebuttal to remove the Respondent's ability to refute that evidence, and

2) the Complainant charges that they could not provide some evidence during disclosure because they do not know how the Respondent assessed the property. The Complainant further argued that once evidence has been disclosed within the regulated timeframe that they should be permitted to present it to the Board.

[14] The Board finds that both positions have merit however it is the legislation, regulation and policy that dictates how the Board operates.

[15] The Complainant reviewed the disclosure process for the Board as found in *MRAC* 8(2)(a)(i), *MRAC* 8(2)(b)(i), and *MRAC* 8(2)(c) pointing out that the rebuttal disclosure is similar to the initial disclosure provisions and offers no suggestion that this evidence may not be heard by the Board. The Complainant reviewed some Composite Assessment Review Board (CARB) decisions and *the Act* section 464(1) where it reads the Board can decide for itself what evidence to hear.

[16] The Complainant reviewed Municipal Government Board (MGB) decision DL 183/05 where, in that case, the Board was concerned about breaching *Natural Justice* and prejudicing a party by allowing the rebuttal to be heard. The Complainant reviewed MGB decision DL 063/09 where, in that case, the Board was concerned about providing the Respondent additional opportunity to respond to the rebuttal.

[17] The Complainant then reviewed some passages found in *Macaulay & Sprague* section 12.2(a) paragraphs 1 and 3 to suggest that the hearing process is to hear all the evidence including witnesses. The Complainant seemed to be arguing not just for the inclusion of the Rebuttal Document but also rearguing a decision already made by the Board to exclude witnesses not previously disclosed as required in *MRAC* 8(2)(a)(i) and 8(2)(c).

[18] The Complainant led the Board through a decision of the Alberta Queen's Bench by Justice A. W. Germain: *Edmonton (City) v. Edmonton (City) Assessment Review Board*, 2010 ABQB 634, wherein paragraph 40 on page 8 reference is made to a *"fair, complete and comprehensive hearing"*. The Respondent pointed out that the facts in that case are significantly

different and the process as outlined within *the Act* and attendant regulations provide for a fair, complete and comprehensive hearing.

[19] The Respondent drew the attention of the Board to *MRAC* 14 wherein evidence before the Board is not filed until marked as an exhibit by the Board. Whereas evidence has not been marked for the Respondent then there is no rebuttal and must not be heard as per section 9 of *MRAC*.

[20] The *ARB Policy* was also reviewed by the Respondent wherein section 37 states that: *"no disclosure, document, record, diagram, photograph, writing, or other thing, is evidence at a complaint hearing until marked as a full exhibit by the Board."* What the regulation and policy do not address is whether the Board should mark evidence properly disclosed even if the party disclosing it now wishes not to present it.

[21] The Board referred to section 36 of *ARB Policy* and noted the Rebuttal Document is to be presented "*if any*" exists and the policy does not suggest that rebuttal cannot be heard if the Respondent chooses not to present its Disclosure Document.

[22] The Board discussed the issue at length. In making the decision the Board is mindful of the potential ramifications to each party. By allowing the rebuttal and giving the weight it deserves, it is less harmful then denying it altogether. On the other hand, there could be a breach of *Natural Justice* caused to the Respondent by hearing rebuttal when in fact the evidence contained therein should have been disclosed previously.

[23] The Board read portions of *Macaulay & Sprague* and found section 12.2(b) paragraph 3 where the authors are also concerned about *Procedural Fairness*, *Natural Justice* and preserving the integrity of the Board process by allowing the procedural structure to work as intended with ample opportunity for both parties to provide its disclosure. By allowing parties to produce new evidence at a late hour is not fair to the Board or the parties before the Board.

[24] **In this case the Board permitted the inclusion of the Rebuttal Document and in doing so permitted the Respondent to make a new decision on whether they wished to present their evidence.**

[25] **The Board recommends that each party disclose all its evidence and prepare their strongest case for its Disclosure Document. Rebuttal Disclosure is not for new evidence and the Complainant runs a risk of important evidence being rejected for procedural reasons.**

Issue 3 - Onus

[26] The Respondent requested the Board to decide on a question of *onus. Onus* is short for *onus probandi* which is Latin for burden of proof. The Respondent wants the Board to decide whether the Complainant has made a *prima facie* case by proving there is an error with the assessment.

[27] The burden of proof is on the Complainant to prove its case in the Disclosure Document. The Complainant must prove the assessment is incorrect.

[28] The Complainant's main request is to reclassify the entire parcel as *farm land*; the alternative is to reduce the assessment on the 60.00 acres classified as non-residential. A final option presented orally is a variation of the second option.

[29] The Respondent argued:

> There is nothing in evidence regarding a *farming operation* in 2010 as defined in *the Act* in 284(1)(i). A photograph taken in August 2011 of hay does not prove a *farming operation* existed in 2010. There is another photograph taken on an unknown date with snow on the ground. There is a *farm land* lease for 2011/2012 however no lease for 2010, the valuation period. There is a secondary request at $23,958 per acre when the Complainant's own evidence shows I-G designated land in the North East ranges between $300,000 and $925,000 per acre. There is no Sales Comparison Approach, no Income Approach, and no valuation approach at all to support the $23,958 per acre request.

[30] The Respondent continued by stating:

> There is an expectation in legislation for the taxpayer to show what is wrong with the assessment and what ought to be corrected. The Complainant should have known what the correct information is and disclosed evidence to prove that position in its Disclosure Document. The Complainant is effectively asking for an exemption. It is incumbent upon the Complainant to prove that the assessment is incorrect.

[31] The Respondent argued:

> In *the Act* section 289(2) it states that each assessment must reflect the condition as of December 31 the previous year and in *MRAT* regulation section 4(1) it states the valuation standard is *market value*. *MRAT* 1(i) defines what a *farming operation* is.

[32] The Respondent asserted that there is:

> a) no evidence before the Board to prove that in 2010 there was a *farming operation*,
> b) no evidence to prove its *market value* assertions,
> c) no evidence to support its Income Approach, and
> d) no sales information to show to the Board what the parcel would sell for as of July 1, 2010, with a condition date of December 31, 2010.

[33] The Respondent accused the Complainant of failing to show there is anything wrong with the assessment.

[34] The Complainant explained, as paraphrased below:

> *"We're caught unaware by this onus application. We're interested in seeing these hearings proceed so we will endeavour to respond to this application at this time though we are feeling disadvantaged by the process we are being obliged to follow throughout this hearing."*

[35] The Complainant further charged:

If the Board accepts this *onus* test then it defeats a previous Board decision to accept the Rebuttal Document. The evidence from Mr. Charlton is that the subject property has been farmed continuously since 2006 and there has been no change in the use and development of the lands except for a storm retention pond completed in 2009.

[36] The Complainant continued by indicating:

The Respondent recognizes that a portion of the subject property is *farm land.* What we're talking about is the allocation or apportionment of *farm land* on the parcel, where is the line drawn. The photograph showed some of the land is *farm land*, if it was not *farm land* in 2010 it would be reflected in the photograph from August 2011.

[37] The Complainant asserted:

We have a *prima facie* case, it's that simple. The legislation is set up to give the taxpayer the right of appeal of their assessment. If there is any doubt it must go in favour of the taxpayer as per the *Notre-Dame* decision.

[38] The Complainant stated:

The Respondent wants the legislation to read that there must be evidence of an annual crop. Look at the definition of horticulture – tree farming is not an annual crop. Land sits in fallow for various reasons, such as rotational grazing, *crops* which require multi-year growth, including forage. There are many good reasons to allow *farm land* to sit idle. Weather can affect what you can do; rain may prevent equipment from seeding, and harvesting. Many things can impact on the ability of having a crop in a particular year, such as; dryness or draught, heavy rain, hail, even pestilence. To suggest that because there is no evidence of taking a crop doesn't mean that the subject lands are not farmed. Mr. Charlton's evidence is sufficient to find that the parcel is *farm land.*

[39] In rebuttal, the Respondent expressed:

This decision is not to decide if we should let the Complainant have a chance to prove a case in rebuttal. There is no second chance as they had their chance during the initial process and they did not prove a case to the Board. To allow the hearing to continue when *onus* has not been met effectively allows them to do a minor job up front and a major job as a second chance. The Complainants must prove that they met *onus* with a *prima facie* case within its initial disclosure.

[40] **The Board found that the question of *onus probandi* is always germane. The Complainant should be prepared to defend a burden of proof question at every hearing. The Board found that making a verbal decision with respect to *onus* at a hearing on such a complex issue takes away the Board's ability to fully deliberate and examine the evidence in private and render a written decision. In this case, the Board reserved its decision on the question of *onus* and rendered a decision on the merits.**

Issue 4 - Production of Materials – Abridgement of Time

[41] During the hearing there was a suggestion to compel evidence or a witness as permitted

in *the Act* section 465(1). In addition, through *MRAC* 10, time can be abridged to shorten the disclosure timelines so not to unnecessarily delay the proceedings.

[42] **The Board considered this approach and decided to hear the remainder of the hearing first, placing the appropriate weight on the evidence. If the Board finds additional evidence is necessary in order to make a decision, then it would compel additional evidence or witnesses prior to the end of the hearing.**

Issue 5 - Eligibility of an Assessor to speak at hearing

[43] The Complainant directed the Board's attention to the fact that Ms. Hess, a Senior Assessor for the Respondent, is not a signatory to the Disclosure Document R1 and therefore should not speak to it.

[44] The Board considered this tactic as misguided and asked the Complainant if they wished to proceed with this issue. It is noted that Mr. Genereux, an agent for the Complainant, also did not sign its Disclosure Document C1 and therefore perhaps should not speak to it, using the same rationale.

[45] **No action was taken and the hearing continued.**

Issue 6 - Presentation of Evidence versus Argument

[46] The Complainant objected to the fact that Ms. Haut, an Assessor for the Respondent is drawing conclusions and making argument in addition to presenting evidence which is contrary to the *ARB Policy* 36.

[47] The Board reminded Mr. Brazzell that this is not a courtroom, but rather a quasi-judicial board and as per *the Act* section 464(1) the Board is not compelled to follow the rules of Court. Instead the Board will hear the presentation from the Respondent in the same manner the Board heard the presentation from the Complainant, which also contained conclusions and argument.

[48] **No action was taken and the hearing continued.**

Issue 7 - New Evidence in Rebuttal Documents

[49] The Respondent objected to all the evidence contained within the Rebuttal Documents C2 and C3 as being new evidence which should have been disclosed during the Disclosure Document.

[50] **The Board determined it would hear the evidence contained within the Rebuttal Documents C2 and C3 and would place the appropriate weight on them when deliberating.**

No additional preliminary, procedural or jurisdictional issues were raised.

SECTION B: Issues of Merit

Background:

[51] The subject parcel, though registered to a numbered company, is one of the 16 parcels before the Board controlled by WAM Development Group. The subject is located in North East Calgary and is destined for development into an 1100 acre industrial and commercial development called *'StoneGate Landing'*. The Complainant acquired the parcels sometime prior to 2006. In 2008, work had begun with nearly two-thirds of the 1100 acres being stripped and graded in preparation for development at which time economic activity deflated, dramatically changing the timelines for new industrial and commercial development.

Property Description:

[52] The subject is a land-only assessment of almost a full quarter section in North East Calgary west of Metis Trail and north of Country Hills Boulevard. The land is comprised of 146.50 acres destined for future industrial and commercial uses. Currently, the Land Use Designation (LUD) is predominantly Industrial General (I-G) with Special Purpose – City and Regional Infrastructure (S-CRI) LUD and Special Purpose – Future Urban Development (S-FUD) LUD. For assessment purposes the Respondent does not indicate how many acres are assigned to each LUD. Rather, the land is broken into classes of *Farm Land* at 86.50 acres and Non-Residential at 60.00 acres.

Matters and Issues:

[53] The Complainant identified six Matters on the complaint form for the Board to adjudicate:

Matter 1 the description of the property or business,
Matter 3 an assessment amount,
Matter 4 an assessment class,
Matter 5 an assessment sub-class,
Matter 6 the type of property, and
Matter 9 whether the property or business is assessable.

[54] Upon review of the complaint form, the Complainant acknowledged that only the following Matters are relevant to this hearing:

Matter 3 an assessment amount,
Matter 4 an assessment class, and
Matter 9 whether the property or business is assessable,

[55] A multitude of grounds were attached to the complaint form with two underlying questions:

1. Is the subject property *farm land* or non-residential?
2. If the subject property is non-residential, then at what value should it be assessed?

[56] The Board thoroughly investigated the disclosure documents, relevant legislation and regulations, and other reference materials to answer these three questions:

Question 1 **Should the subject property be classified as *farm land*, non-residential land or a combination of both?**

Question 2 **When does the storm pond become non-assessable as a public utility?**

Question 3 **When does future urban development land reach its full *market value*?**

Complainant's Requested Value:

$ 51,000	(complaint form)
$ 51,275	(alternative 1 in disclosure)
$ 1,467,770	(alternative 2 in disclosure)

Findings of Fact:

[57] The Board considered all information disclosed from each party and determined the following findings of fact. In Appendix "B" lists the documentary information disclosed to the Board.

1. Magnitude

[58] The Board is aware of the significance of the decision being made on the subject property. At the time of the first hearing the Board was prepared to hear all 16 complaints from WAM Development Group. For the reader to understand the magnitude of this decision and the remaining fifteen decisions, below, is a chart showing the assessment of each of the sixteen parcels in 2011 versus 2010.

ROLL NUMBER:	2010 ASSESSMENT	2011 ASSESSMENT	2011 AGREED VALUE	STATUS
413003807	$1,610,000	$4,410,000	$2,710,000	RECOMMENDATION
201491610	$51,000	$5,780,000		CARB 2502/2011-P
201506029	$19,420	$18,310,000	$18,310,000	WITHDRAWN
201491818	$39,500	$42,870,000		CARB 2514/2011-P
201505690	$24,000	$15,980,000		CARB 2515/2011-P
200765055	$26,510,000	$32,890,000		CARB 2513/2011-P
412003006	$14,010,000	$14,640,000		CARB 2872/2011-P
387001019	$32,500	$13,130,000	$13,130,000	WITHDRAWN
388005209	$2,880	$5,580,000		CARB 2873/2011-P
201276383	$6,240,000	$12,770,000		CARB 2663/2011-P
201569308	$0	$13,710,000	$13,710,000	WITHDRAWN
413003708	$3,420,000	$4,610,000	$2,960,000	RECOMMENDATION
388002313	$4,210	$12,950,000	$12,950,000	WITHDRAWN
388002206	$3,910	$3,020,000	$3,020,000	WITHDRAWN
201491834	$5,410,000	$5,780,000		CARB 2598/2011-P
201491826	$10,150,000	$11,020,000	$16,500,000	RECOMMENDATION
TOTAL	$67,527,420	$217,450,000		

[59] The Board is conscious that the decisions being rendered by the Board have real financial implications on the taxpayer. The Board invested significant time conducting an extensive review of evidence, case law, legislation, regulations and resource materials in order

to arrive at a fair and equitable decision. In the end, the Complainant and Respondent were able to agree on the assessment value of 8 complaints.

2. Understanding the Issues

[60] During the proceedings, there was confusion at times by some parties as to Land Use Designation, property classification for assessment purposes and in fact the Matters (correctly) before the Board. Additionally, under any given Land Use Designation, the uses are either: permitted, discretionary or legal but non-conforming. To assist the reader in understanding the issues and the decision, the Board offers the following explanation.

[61] As per *the Act* there are ten Matters which can be adjudicated by the Board. Two of the Matters before the Board were assessment amount and assessment class.

[62] An appeal of the assessment amount deals with the valuation and sometimes the valuation methodology. In Alberta there are three accepted valuation methodologies; the Direct Sales Comparison Approach, the capitalized Income Approach and the Cost Approach. The legislation and attendant regulations do not dictate which valuation approach is to be used by the assessment authority in preparing an assessment for non-residential property. However, the Direct Sales Comparison Approach is the accepted norm when dealing with vacant land because typically there is sufficient comparable sales information to prepare an accurate assessment. When utilizing the Direct Sales Comparison Approach the comparable sales used are from the same or similar Land Use Designations. For example: industrial are compared with industrial, commercial with commercial, *et cetera*.

[63] An appeal of the assessment class deals only with the classification for assessment purposes of the property. In Alberta, as per *the Act*, there are just four classes the assessment authority can utilize; residential, non-residential, *farm land*, and machinery and equipment. Machinery and equipment is a special classification primarily for oilfield related industry and not pertinent to the subject property. The classification for assessment purposes and the Land Use Designation are typically the same. For instance: a single-family home in a properly zoned residential neighbourhood is classified as residential. And a convenience store on collector road is classified for assessment purposes as non-residential and its use is either permitted or discretionary in that location.

[64] Where confusion sets in for many people is on transitional land. Land in transition is usually found in urban settings and typically is vacant or, in some cases, may have been previously developed. The classification for transitional land follows its use until that use ceases. If the transitional land has had a change in its Land Use Designation, which is typically the case in an urban environment, the use on the transitional land may no longer be permitted or discretionary. Therefore it becomes a non-conforming use. In *the Act* section 643(2) it provides for non-conforming uses to continue for as long as the use does not cease for a period greater than six months.

[65] When transitional land is not being used, the classification follows the Area Structure Plan or Land Use Designation for its intended future use, either residential or non-residential. However, if the transitional land is being used and that use was either a permitted or a discretionary use prior to the land use redesignation, it is a legal but non-conforming use.

[66] What this means is; if the current Land Use Designation or 'zoning' of some transitional

land is residential, for an example, and if the zoning does not permit an industrial use, and if at the time the rezoning occurred there was an industrial use on the land as either a permitted or a discretionary use, then that industrial use may continue legally as a non-conforming use until that use ceases for a period greater than six months.

[67] In this case, the use that existed prior to land use redesignation was a *farming operation.* The assessment authority classified this transitional land as *farm land* and the land owner enjoyed the regulated assessment rate for *farm land* because the land was being farmed as a legal but non-conforming use.

[68] The Respondent alleges that at some point the use as a *farming operation* ceased for a period greater than six months. Because the various Land Use Designations in place, for the most part, do not permit *farming operations*, the transitional lands can no longer be classified for assessment purposes as *farm land.*

[69] Sometimes the Land Use Designation permits a *farming operation,* however if it is not being used as a *farming operation* it is still classified at its future intended use; as either residential or non-residential. When it comes to classifying land as *farm land*, which is regulated by *the Act*, the use is the determinate factor.

[70] Some of the subject land or land adjacent to the subject has a Land Use Designation that permits a *farming operation.* However, because the Respondent alleges the land is vacant and is not being used for farming it has been classified as non-residential.

3. Farm Land

[71] The Board, as have most Albertans, has seen plenty of *farm land* through our daily lives without giving much thought of what *farm land* is. The question is of vital importance to the Board in order to determine the matters at hand. In some ways the definition of *farm land* is subjective. While the legislation and regulations seem to contemplate a *bona fide farming operation*; however they provide little guidance in establishing exactly what that is.

[72] The key issue the Board has to determine is: *what exactly is farm land for assessment purposes?* The obvious first place to look is the legislation itself and the Board found in section 297(1)(c) guidance that differentiated *farm land* from other classes and in section 297(4) *the Act* points the Board to the term *farming operation*s with the definition found in *MRAT* regulation 1(i). The Board found that the definition of *farming operation*s clearly contemplates work involved in farming as: *"raising, production and sale of agricultural products"* as opposed to a haphazard approach, hoping that a crop might someday appear and then be harvested. The word agricultural is used in the regulation's definition which led the Board to *MRAT* 1(b) where *agricultural value* is defined as: *"the value of a parcel of land based exclusively on its use for farming operations."*

[73] The Board sought definitions in both *Oxford* and *Black's Law* dictionaries where the Board is most intrigued by the phrasing in *Black's Law* of what *agriculture* is: *"the 'science' or 'art' of cultivating soil, harvesting crops, and raising livestock."* The use of the terms *'science'* and *'art'* clearly paid deference to the *bona fide* farmers whom carefully and methodically groom land to produce viable agricultural *crops.*

[74] Of note is the Legislature's choice of wording; ***farm land*** versus ***farmland.*** The Board is

curious if this is an intentional wording choice to describe land used for a *farm* rather than the mere suitability of land for farming as the definition of *farmland* suggests.

[75] Not all resources reviewed by the Board provided the same standard of *'science'*. One definition simply stated *"tillage of soil"*, and the Income *Tax Act* section 248(1) also used the loose term of *"tillage of the soil"*, however, the full reading of the interpretation bulletin IT-322R brings out the *'science'* of farming referred to in *Black's Law*. This interpretation bulletin, loosely paraphrased, indicates that there must be a plan to produce a viable crop and an investment in capital to be considered a *bona fide farming operation*. In addition the interpretation bulletin speaks to the intentions of the owners at attempting to produce a viable crop rather than holding land for capital gain. In addition the Legislators' decision to produce a comprehensive *farm land* assessment *Manual* speaks volumes to its intent.

[76] Upon extensive review it became apparent that *farm land* is not a loosely used term to describe land that is merely suitable for farming. Rather it is land actually suitable and used for the agricultural purposes. The term agricultural implies more than tilling the soil and hoping one day to harvest a meagre crop. It is the *'science'* that many Albertans practice which sees cultivation and effort placed into making a harvestable and saleable crop in the context of a *bona fide farming operation* whose business is the production of products in a real, ongoing business.

4. Lease – Farm Land (C1 pages 75 – 86)

[77] The *farm* lease is for a one year term commencing April 1, 2011. According to verbal testimony this is a renewal. However, there is no evidence within the lease to support that position. The Complainant often referred to the lease as 1,000 acres however upon calculation it is determined to be 928 acres. According to the lease, 100% of the subject is leased for farming. Many areas under lease for farming, including within the subject parcel, are areas which have been developed for future roadway, city and regional infrastructure, and for future commercial and industrial uses. The lease term and signing dates are outside of the valuation period as found in *MRAT* 1(f) and *the Act* in sections 284(1)(x) and 289(2)(a). Based primarily on the lease term being outside the valuation period the Board placed little weight on this evidence.

5. Assessment Request for Information – Farm Land (C1 pages 93 – 98)

[78] The Assessment Request for Information (ARFI) for the 2012 assessment year made an assertion that 126.50 acres is being farmed in 2011, creating an estimated crop value of $3,795, which is to be harvested in the future, perhaps in 2012. The Board finds the ARFI evidence of little value as it is outside of the valuation period as found in *MRAT* 1(f) and *the Act* in sections 284(1)(x) and 289(2)(a).

6. Photographs (C1 pages 17, 18, C2 pages 5 – 28, and R1 pages 16 – 26)

[79] The photographs provided by the Complainant were purported to be taken either by Mr. Genereux, Mr. Charlton or Mr. Thomson in 2011. Some of the photographs provided by the Complainant were purported to be taken by Mr. Charlton in August 2011. Upon inspection (C1 pages 17 and 18) everyone present, including Mr. Charlton, agreed that the substance pictured on the ground, in at least one picture, is snow. Mr. Charlton, on further recollection, revised his position that one picture was taken in August 2011 by him and the other picture was taken by an unknown person on an unknown date. The Board notes both pictures are of poor quality but appear to have been taken at the same time or during identical weather conditions and lighting.

The Board determined that both pictures appear to have snow or a snow-like substance. The Board notes that there is absolutely no verifiable evidence to show when, where and who took the pictures. The Board provided little weight on this evidence as it is not consistent with testimony and not proven to be taken during the valuation period or of the subject parcel.

[80] The Respondent provided photographs (R1 pages 16 through 26) of the entire parcel taken by aircraft in October 2010 clearly showing a large portion stripped and graded. The additional photographs clearly show agricultural activity on some portion of the subject and clearly show non-agricultural activity on the remainder of the subject. The date and location of each photograph is clearly marked however the Board prefers a map showing exactly where each photo is taken with the angle of view indicated. The Board placed appropriate weight on the photographic evidence taken by the assessment authority, within the valuation period, and of the subject.

7. Affidavit – Farmer (C3 pages 2 – 9)

[81] Contained within the Rebuttal Document, the affidavit from the farmer is deemed by the Board to narrowly rebut evidence provided by the Respondent and therefore admissible. The Board notes that, due to its general nature, this affidavit would have been better placed in the Complainant's Disclosure Document as it expanded upon evidence contained therein; however the inclusion of this evidence does not prejudice the Respondent.

[82] The Board found the affidavit of the farmer, Robert Bilben, to be of little use. It spoke predominantly in general terms on an overall area with minimal specifics to the subject parcel. The Board notes that much of the sworn information which did contain specifics is proven inaccurate by other evidence or discredited by testimony. In example:

1) in points 3 and 4; the land is described as approximately 1,000 acres, the *farm land* lease contains 928 acres. The word 'approximately' could arguably defend the 1,000 acre comments however the Board deals with specifics.
2) in point 3; Mr. Bilben states that: *"The Farm Land has been part of my farming operation continuously and uninterrupted since approximately 2006"*. Aerial photographs show a large portion of the subject parcel has been stripped and graded and therefore could not have been continuously farmed.
3) in point 5; Mr. Bilben states that: *"As of October 2010, all the Farm Land is in use for either forage or cereal grain production without exception."* The evidence from Mr. Charlton is that in mid-2008 14 acres of the subject was stripped and graded for a storm retention pond and is not in forage or cereal grain production.

8. Affidavit – Civil Engineering Technologist (C3 pages 11 – 17)

[83] Contained within the Rebuttal Document, the affidavit from the Civil Engineering Technologist is deemed by the Board to narrowly rebut evidence provided by the Respondent and therefore admissible. The Board notes that, due to its general nature, this affidavit would have been better placed in the Complainant's Disclosure Document as it expanded upon evidence contained therein; however the inclusion of this evidence does not prejudice the Respondent.

[84] The Board found the affidavit of the Civil Engineering Technologist, Ian Thomson (alternatively Ian Thompson), to be of little use. It spoke predominantly in general terms on an overall area with minimal specifics to the subject parcel.

9. Invoice – Robert & Norma Bilben (C2 pages 29 and 30)

[85] Contained within rebuttal and deemed by the Board to be new evidence and therefore inadmissible as it does not directly refute any specific evidence presented by the Respondent. Even if the Board accepted the invoice from Robert & Norma Bilben as admissible; it referred to 255 acres only and contained no specifics related to date, location or anything which would tie the invoice to the subject parcel. In addition, the invoice is billed to a company which is neither the subject nor a Complainant for any of the 16 parcels before the Board. The invoice was received on March 14, 2011, outside the valuation period, at the offices of Kellam Berg Engineering and Surveys Ltd.

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

[86] The Board carefully examined the legislation and attendant regulations and made decisions based on what a reasonable person would conclude after hearing and viewing all the evidence and resources available to the Board. In Appendix "C" are excerpts from legislation, regulations and other resources the Board examined in arriving at the decisions.

Should the subject property be classified as farm land, non-residential land or a combination of both?

[87] **The subject land has been correctly classified as a combination of *farm land* and non-residential.**

[88] The Complainant argued three possible assessment scenarios; 1) the subject property is entirely *farm land* at $350 per acre, 2) the subject property is 86.50 acres *farm land* at $350 per acre with 60.00 acres future urban development at a value of $23,958 per acre, or 3) the subject property is 130.50 acres of *farm land*, 2.00 acres of industrial at presumably $925,000 per acre, and 14.00 acres of public utility (storm pond) at a zero assessment value. These requests point directly to Matters 3, 4 and 9 on the complaint form.

[89] The Complainant arrived at its future urban development rate of $23,958 per acre by adjusting the Respondent's assessed rate of $95,833 per acre downward by 75% in recognition of partial servicing and the size of the parcel. The Complainant also mentioned the income from the site is a mere $3,795 while the taxes are over $86,000 if the assessment stands. The Complainant suggested the income and taxes should be somewhat proportionate however no Income Approach to value is provided.

[90] The Respondent maintains the property has been stripped and graded in part making the 146.50 acres previously classified as *farm land* now a combination of 86.50 acres *farm land* and 60.00 acres as S-FUD LUD at a blended rate of $95,833 per acre already adjusted for eligible influences.

[91] The Board, when adjudicating this property, considered what a parcel must be for assessment purposes in order to be considered *farm land* of a *bona fide farming operation.*

[92] The Board reviewed the *Guidelines* as set out by the Minister in relation to *farm land*

wherein the Board found that a *Manual* exists for assessment authorities to classify *farm land*; specifically in Schedule 7 of the *Manual*. The Board found in paragraph 7.010.002 of the *Manual* that *farm land* soil is rated by type and its proven capability of consistently producing, over an extended period of time, an income under average climatic conditions and typical management practices. The rating system assigns a rating through a comparability system which reflects the net income relationship between soils.

[93] With guidance from the *Manual* and the *Tax Act* the Board determined that these four things must be proven by landowners to illustrate a *bona fide farming operation*:

a) an analysis of management practices to prove a typical *bona fide farming operation*,
b) an analysis of the productive capacity of the land,
c) an analysis of the income potential under average climatic conditions, and
d) an analysis showing a history of production over an extended period of time.

[94] In making this conclusion, the Board is stating that a land lease to a farmer who sporadically tills the soil or cuts the grass and weeds is not enough to show a *bona fide farming operation*.

[95] The Board wants to evaluate a plan backed up with typical management practices showing that a parcel classified as *farm land* has a proven capability of consistently producing, over an extended period of time, income under average climatic conditions with an indication that the land has not been compromised by development. The Board wants to see effort and investment into the *farm land* with a reasonable expectation of success utilizing typical management practices. The Complainant's ARFI evidence indicates how unproductive the subject is as *farm land*. The income reported shows a meagre crop and proves the land is not viable as a *bona fide farming operation*.

[96] The Board does not find the described activities of disking, seeding, rock picking and the application of fertilizer as a clear indication of a *farming operation*. The Board finds that these are merely activities associated with farming but not conclusive of the existence of a *bona fide farming operation*. The answer to the four questions above will determine whether the subject is actually *farm land* or vacant land being held for development on which minor farming activities are practiced in an attempt to avoid taxation.

[97] In this case the Board cannot see how stripping the topsoil and grading the topography for future industrial, commercial and utility development is typical of a *bona fide farming operation*.

[98] The Complainant testified that loam was reapplied to the subject to return the parcel to *farm land*. However the Board is not provided any evidence to show where, when, who, how and how much loam was replaced. The Board found that the preparation work for future urban development altered the land contour, drainage and organic content. It is unclear whether sufficient fertile topsoil remains for productive agricultural use. The Board wants the Complainant to provide a report from a qualified individual capable of assessing whether the parcel is viable as *farm land* after development and the reapplication of loam.

[99] The Board finds, in this case, that the evidence from the Respondent carries more weight and that the 60.00 acres which has been stripped and graded is no longer *farm land* and is correctly classified as non-residential property. The assessment should reflect the appropriate

Land Use Designations of the subject.

When does the storm pond become non-assessable as a public utility?

[100] **The Board determined that the storm pond is privately held and is classified correctly as non-residential. When the storm pond is dedicated to the Municipality it will no longer be assessed.**

[101] The Complainant asked the Board to consider 14 acres of S-CRI designated land as public utility and assign them a zero value for assessment purposes. This request points directly to Matter 9 on the complaint form where it reads: *"whether the property or business is assessable"*. The Board examined the legislation in *the Act* 1(1)(y) and 298(1)(a)(ii) and found that it clearly defined a public utility lot as land owned by a non-private identity such as a municipality. There is nothing in the legislation, that the Board could find, that provides a zero value or no assessment for privately held land. On the contrary, in *MRAT* 4(1), it indicates the valuation standard is *market value* unless it is *farm land* and in *the Act* section 1(1)(n) *market value* is defined: *"...the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer"*.

[102] No evidence is provided to the Board to value S-CRI designated land. The Respondent produced an assessment using the base rate of $125,000 an acre for S-FUD designated land and then adjusted the rate for appropriate influences arriving at $95,833 per acre. The Board finds the valuation of $95,833 per acre, for the entire portion which is not *farm land,* compensates the Complainant for the value of the future public utility.

[103] For the 2010 assessment the entire parcel was classified as *farm land.* At some point the Complainant applied to the municipality and was granted a Land Use Designation change (rezoning) which made the subject legal but not conforming as *farm land.* The evidence in Complainant's Disclosure Document C1 page 27 suggests the land use redesignation request was completed sometime prior to November 30, 2009, the date on the land use map. The Complainant testified that he received a development permit for the site and indicated that stripping and grading was completed in mid-2008. As part of the development process, the Complainant stripped topsoil from a large area and graded the land to accommodate future industrial, commercial, and city and regional infrastructure uses.

[104] The Land Use Designations applied for by the Complainant are very clear in its use tables (R1 pages 34 and 35), which does not provide for extensive agricultural as a permitted or a discretionary use. The Complainant (while developing 14 acres for the city and regional infrastructure component) opted to strip and grade an additional 46 acres. *The Act* in section 643(2) is clear that a non-conforming use may continue legally on a site if the use has not ceased for more than six months. The Complainant through testimony indicated the reapplication of loam was completed in mid-2009.

[105] The Complainant and the Respondent both agree that a *farming operation* is not being conducted on the 14 acres where a storm water retention pond is located. The non-residential classification is the only option available to the Board; therefore the storm retention pond is assessable at market value until dedicated to the municipality.

When does future urban development land reach its full market value?

[106] **All land in the province that is not regulated must be assessed at *market value* as soon as it no longer meets the requirements for the regulated assessment.**

[107] As per *MRAT* 4(1) the Board has no option of deriving a value other than *market value.* Neither the Complainant nor the Respondent provided sales or equity comparables. The Complainant failed to prove that the assessed land rate is in error. Without any evidence to establish an alternative *market value,* the Board cannot make an adjustment to the assessment as per *the Act* section 467.

[108] The Complainant argued that any change by way of 'highest and best use' to another use must first address the question; *is an alternative use reasonably probable?* And if there is a reasonably probable alternative use, is it; *physically possible? legally possible? financially feasible? and maximally productive?*

[109] The Board read with interest the evidence supplied by the Complainant in the Disclosure Document from the International Association of Assessing Officers (IAAO) (C1 pages 38 through 43): *"the concept of highest and best use is one of the most important steps in the appraisal process."* It further states: *"the determination of the highest and best use of a property, more than anything else, is what directs its market value."* Another notable quote is: *"highest and best use is a concept in real estate in which market value is achieved by the reasonably and probable legal land use that results in the highest value."*

[110] The Complainant made special note of the following contained within the IAAO evidence: "*another factor to be considered in this discussion is the revaluation timeframe in an assessment jurisdiction. Because the assessment of a property is an annual function, or at least a periodic function, the market value established is an assessment that should really reflect the highest and best of the property in the immediate future. This time frame constraint tends to eliminate the speculative element from a highest and best use analysis in an assessment valuation. If an assessor/appraiser knows the use of a property over the next year and that he/she will only be held accountable for his/her estimate of property value for a period of one year, then he/she generally does not have to speculate what the highest and best use of the property is or will be." (Emphasis added within Complainant's evidence C1 page 43)*

[111] The Board found this argument interesting, however notes that neither the Complainant nor the Respondent presented a highest and best use study. What has become obvious to the Board is without the breakdown for S-CRI and S-FUD Land Use Designations it is impossible for the Board to determine an exact value for the parcel. The Respondent while doing its calculation assessed the entire 60.00 acre non-residential classified portion as S-FUD and 86.50 acres was assessed and classified as *farm land,* which derived an assessment value of $5,780,000.

[112] The Complainant purchased the parcel for future urban development and had the land use redesignated to various uses. The Complainant asked the Board to consider the *market value* for development land which will not to be developed in the short-term. The argument is made that the future urban development envisioned for the subject lands is some 12 to 15 years away and the value placed on the non-residential classified portion reflects the value for immediately available and developable land.

[113] The Board finds that a willing seller would expect to realize a reasonable value considering the legal land use of the subject parcel, if a sale were to occur. The Complainant provided no market information for the Board to consider a value other than assessed.

[114] The Board finds it fair and equitable to classify the 60.00 acres as non-residential because it is prepared for future urban development. The Board found that the Respondent valued these 60.00 acres as S-FUD adjusting appropriately for the size and influences. The remaining 86.50 acres is classified and assessed as *farm land* because there is some evidence that a *bona fide farming operation* is taking place.

Board's Decision:

[115] After considering all the evidence and argument, the Board; determined that the subject is to be classified as *farm land* for 86.50 acres at the regulated assessment rate and as non-residential for 60.00 acres at *market value*.

CLASSIFICATION	LUD	AREA (ACRES)	ASSESSMENT PER ACRE	ASSESSMENT AMOUNT	PERCENTAGE OF ASSESSMENT
Farm Land	S-FUD, I-G and S-CRI	86.50	$350	$30,275	0.52%
Non-Residential	S-FUD, I-G and S-CRI	60.00	$95,833	$5,749,980	99.48%
		146.50		$5,780,255	100.00%

[116] The assessment is confirmed at its truncated value of $5,780,000.

DATED AT THE CITY OF CALGARY THIS 20 **DAY OF** DECEMBER **2011.**

J. Dawson
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:

NO.		ITEM
1.	C1	Complainant Disclosure
2.	R1	Respondent Disclosure
3.	C2	Rebuttal Disclosure – Photographs
4.	C3	Rebuttal Disclosure – Argument and 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.

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property	Vacant Land	Cost/Sales Approach	Land Value
		Farmland	Exemption	Storm Water Control

APPENDIX "B"

DISCLOSED DOCUMENTARY INFORMATION:

The Board had the following documentary information from the Complainant to support its argument:

1) **Farm Lease** (C1 pages 75 – 86)
2) **Assessment Request for Information – Farm Land** (C1 pages 93 – 98)
3) **Photographs** (C1 pages 17, 18, and C2 pages 5 – 28)
4) **Workshop 158** from *Highest and Best Use Student Reference Manual © 2010 International Association of Assessing Officers* (C1 pages 38 - 43)
5) **Legal Argument and other information** (C1 page 1 through 16, 19 – 37, 44 – 74, 87 – 92, C2 pages 1 – 4, 32, and C3 pages 18 – 44)
6) **Sworn Affidavit – Farmer** (C3 pages 2 – 9)
7) **Sworn Affidavit – Civil Engineering Technologist** (C3 pages 11 – 17)
8) **Invoice from Robert & Norma Bilben** (C2 pages 29 and 30)

The Board had the following documentary information from the Respondent to support its argument:

1) **Photographs** (R1 pages 16 - 26)
2) **Legal Argument and other information** (R1 page 1 - 15, and 27 - 77)

APPENDIX "C"

LEGISLATION AND RESOURCE MATERIALS:

The Municipal Government Act

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Interpretation

1(1) *In this Act,*

(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

(y) "public utility" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:

(v) drainage;

and includes the thing that is provided for public consumption, benefit, convenience or use;

Interpretation provisions for Parts 9 to 12

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

(i) "farming operations" has the meaning given to it in the regulations;

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

(x) "year" means a 12 month period beginning on January 1 and ending on the next December 31.

Assessments for property other than linear property

289(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.

297(4) *In this section,*

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

Non-assessable property

298(1) *No assessment is to be prepared for the following property:*

(a) a facility, works or system for

(ii) storm sewer drainage,

that is owned by the Crown in right of Alberta or Canada, a municipality or a regional services commission;

Access to assessment record

299(1) *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.*

299(1.1) *For the purposes of subsection (1), "sufficient information" in respect of a person's property must include*

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the

assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

299(2) *The municipality must, in accordance with the regulations, comply with a request under subsection (1).*

Proceedings before assessment review board

464(1) *Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.*

Notice to attend or produce

465(1) *When, in the opinion of an assessment review board,*

(a) the attendance of a person is required, or

(b) the production of a document or thing is required,

the assessment review board may cause to be served on a person a notice to attend or a notice to attend and produce a document or thing

Decisions of assessment review board

467(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.

467(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.*

Non-conforming use and non-conforming buildings

643(2) *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.*

Matters Related to Assessment and Taxation

Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 330/2009

Definitions

1 *In this Regulation,*

(b) "agricultural use value" means the value of a parcel of land based exclusively on its use for farming operations;

(f) "assessment year" means the year prior to the taxation year;

(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;

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.

Compliance review

27.6(1) *In this section, "compliance review" means a review by the Minister to determine if a municipality has complied with an information request under section 299 or 300 of the Act and this Part.*

27.6(2) *An assessed person may make a request to the Minister, in the form and manner required by the Minister, for a compliance review if the assessed person believes that a municipality has failed to comply with that person's request under section 299 or 300 of the Act.*

27.6(3) *A request for a compliance review must be made within 45 days of the assessed person's request under section 299 or 300 of the Act.*

Matters Related to Assessment Complaints

Alberta Regulation 310/2009

Disclosure of evidence

8(2) *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Failure to disclose

9(1) *A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.*

9(2) *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

Abridgment or expansion of time

10(1) *A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d).*

10(2) *Subject to the timelines specified in section 468 of the Act, a composite assessment review board may at any time by written order expand the time specified in section 8(2)(a), (b) or (c).*

10(3) *A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.*

Record of hearing

14(1) *An assessment review board must make and keep a record of each hearing in accordance with subsection (2).*

14(2) *A record of a hearing must include*

(a) the complaint form,

(b) all documentary evidence filed in the matter,

(c) a list of witnesses who gave evidence at the hearing,

(d) a transcript or recording of the hearing or, in the absence of a transcript or recording, a summary of all testimonial evidence given at the hearing,

(e) all written arguments presented at the hearing,

(f) a written list that is prepared at the end of the hearing that identifies those matters or issues from the complaint form about which evidence was given or argument was made at the hearing, and

(g) the decision of the assessment review board referred to in section 13.

Postponement or adjournment of hearing

15(1) *Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.*

Calgary Assessment Review Board Policies and Procedural Rules

Revised – March / 2011

Hearings – order of

36 *A complaint hearing shall be conducted in the following order:*

(a) Introduction and preliminary matters;
(b) (i) Presentation of all complainant evidence;
(ii) Respondent questions;
(iii) Board questions;
(c) (i) Presentation of all respondent evidence;
(ii) Complainant questions;
(iii) Board questions;
(d) (i) Rebuttal evidence of complainant (if any);
(ii) Respondent questions;
(iii) Board questions;
(e) Complainant summary of position and argument;
(f) Respondent summary of position and argument;
(g) Brief reply of complainant (if any);
(h) Board conclusion of hearing.

Hearings – evidence and exhibits

37(1) *Subject to subsection (2) no disclosure, document, record, diagram, photograph, writing, or other thing, is evidence at a complaint hearing until marked as a full exhibit by the Board.*

37(2) *The following forms and statements shall, at the commencement of a hearing, be considered as evidence before the Board without being marked as exhibits:*

(a) a complaint under section 460 of the Act;
(b) any form or statement of a Property Assessment Notice or Business Tax Notice;
(c) an Agent Authorization Form.

2010 Alberta Farm Land Assessment Minister's Guidelines

Ministerial Order No. L:268/10;

2.000 ***Schedule A***

2.001 ***Agricultural Use Value Base Rate***

	Dry Arable Land	Dry Pasture Land	Irrigated Arable Land	Woodlot
Base Rate	350	350	450	135

3.000 ***Schedule B***

3.001 ***Assessment Year Modifier***

Assessment Year	Dry Arable Land	Dry Pasture Land	Irrigated Arable Land	Woodlot
2010	1.00	1.00	1.03	1.00

4.000 ***Schedule C***

4.001 ***Final Rating Factor***

The Final Rating Factors for dry arable land, dry pasture land and irrigated arable land are contained in Schedule 7 of the 1984 Alberta Assessment Manual.

1984 Alberta Assessment Manual

Schedule 7;

Farm Land

7.010.000 ***General Information***

7.010.001 *Standards and methods for the assessment of farm land, for property tax purposes, are explained in Schedule 7. The procedures are designed to measure the potential capacity of farm land to produce income from farming operations. The ratings measure the ability of the soil to produce crops, modified by climatic conditions and adjustments to reflect costs of operation under normal management practices, for each of the various agricultural regions of the Province.*

7.010.002 *The assessment value established for land under agricultural production is computed by application of a rating system that reflects the ability of the various types of soils to generate an income from the production of agricultural crops. The rating system assigns a numerical rating of 100 to the soil type proven to be capable of consistently producing, over an extended period of time, the highest net income under average climatic conditions and typical management practices. The rating of 100 also assumes that the highest net income produced under optimum physical characteristics of the soil. All other soils are rated through a comparative rating system which reflects the net income relationships that exists between other types of soils and the soil type rated at 100. Further adjustments are also made to account for less than optimum physical characteristics. In summary, soils that generate a lesser net income are assigned a correspondingly lower rating which in turn is reflected in the assessment value of the land under crop production. In extreme cases, the gross income produced from a soil under cultivation does not cover costs of production. Under such circumstances, the land is rated for its potential as improved pasture or native pasture lands. Lands only suitable for grazing are rated on the basis of carrying capacity and the rating assigned is a reflection of such factors as quantity and quality of the grass cover and the quality of the soil itself.*

7.010.003 *The application of the rating system is accomplished by firstly identifying and describing the physical properties present in a specific property. A comparative numeric rating system has been established to represent the desirability of the identified physical properties of a subject property. This comparative rating system establishes how each specific property rates on a provincial basis. The rating is then multiplied by a regulated base rate and a regulated factor to form an assessment on a per unit of area basis.*

Income Tax Act

Interpretation Bulletin: IT-322R (Farming Business)

Farming Business

4 *In determining whether or not a farming operation is a business, the following are some of the criteria which must be considered:*

(a) the extent of activity in relation to that of businesses of a comparable nature and size in the same locality. The main test is the size of the property used for farming. If it is much too small to give any hope of profit, the presumption is that the property is being held for personal use or enjoyment of the taxpayer. On the other hand, where the land is large enough to be profitable, it may also be non-business, but in limited circumstances. Where for example, the taxpayer has made no attempt at farming or developing the land and has no viable plans to do so, it is presumed the land is held for personal use or enjoyment or for capital gain.... This is particularly so where the taxpayer has a more or less regular job and devotes little time to the farm. This of course assumes that the taxpayer has not employed other persons to carry on a farming operation. The farm may also be non-business where the taxpayer, over a number of years, has demonstrated that there was no intention of utilizing more than a fraction of the land;

(b) .... If the taxpayer spends most of his or her time during the crop season attending to the farm, there is a strong presumption that he or she is carrying on a farming business. This is particularly so where the taxpayer has farming background or experience;

(c) the development of the farming operation and commitments for future expansion according to the taxpayer's available resources. This test is based on the capital investment of the taxpayer in the operation over a number of years and on the acquisitions of buildings, machinery, equipment and inventory by the taxpayer;

5 *The most usual indication that a farming operation does not constitute a business with a reasonable expectation of profit is that it reports no, or a very small amount of, gross income for several years. However, consideration must be given to the fact that such a situation may arise in the first years of a farming operation.... The fact that a taxpayer, in a given taxation year or for years before and after, had or appeared to have no reasonable expectation of profit is one of the facts to be considered in determining whether or not the taxpayer was in the business of farming in that year.*

6 *For purposes of the Act, the word "farming" is given a wide definition by subsection 248(1). It includes tillage of the soil....*

Black's Law Dictionary

Bryan A. Garner (Editor-in-Chief). © 2009. Black's Law Dictionary (9th ed.). St. Paul: Thomson Reuters;

***agriculture**: the science or art of cultivating soil, harvesting crops, and raising livestock.*
***bona fide**: made in good faith.*
sincere; genuine.
***bona fide contract**: a contract in which equity may intervene to correct inequalities and to adjust matters according to the parties' intentions.*
***bona fide operation**: a real, ongoing business.*
***crops**: products that are grown, raised and harvested.*
***farm**, n: land and connected buildings used for agricultural purposes.*
***farm**, vb: to cultivate land; to conduct the business of farming.*
***farming operation**: a business engaged in farming, tillage of soil, dairy farming, ranching, raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.*

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada;

***agriculture**, n: the science or practice of cultivating the soil and rearing animals.*
***bona fide**: genuine; sincere; in good faith.*
***farm**, n: an area of land, and the buildings on it, used for growing crops, rearing animals, etc.*
***farm**, vb: use (land) for growing crops, rearing animals, etc.*
***farmland**, n: land used or suitable for growing crops.*

Macauley and Sprague Hearings Before Administrative Tribunals

Robert W. Macaulay, Q.C. and James L. H. Sprague, B.A., LL.B. (Authors). © 2010. Macaulay and Sprague Hearings Before Administrative Tribunals (4th ed.). Toronto: Thompson Reuters Canada Limited;

Hearings are a tool to collect necessary information

12.2(a) *[Paragraph 1] The purpose of a hearing is to gather in evidence and argument that will allow the agency to fulfill its statutory mandate. A hearing which is conducted in a way that is not geared to this purpose is not being conducted properly. A hearing which is conducted in a way that obstructs the proper gathering of information by the agency is a waste of resources.*

[Paragraph 3] On the other side of the coin, one must keep in mind the ultimate hearing purpose of collecting relevant and useful evidence and argument. You hold a hearing in order to get access to individuals with information necessary or useful to the accomplishment of your mandate, and, equally, to give them access to you.

Hearings require structure

12.2(b) *[Paragraph 3] The principle purpose of a hearing is to collect the information required by an agency in order to make a decision as required by its mandate. Thus, the agency should structure its hearings in a way that contributes to that efficient and effective collection. The nature of the subject matter being dealt with by the agency, and the type of participants likely to be involved with a proceeding, will be a significant factor in this structuring. That structure should also be aimed at encouraging the flow of relevant information in a manner that assists the agency and the other participants to follow the proceedings and present their cases in both an efficient and fair manner. Unstructured hearings where information of all sorts flows in helter-skelter without rhyme or reason not only increases the difficulty for all concerned, including the agency, to follow the case and make proper notations and conclusions, but can actually result in important information being lost in the shuffle, or even worse, result in participants purposively holding back relevant information with the calculation of presenting it only if the participant feels it necessary; to preserve its position. I am not in favour of an agency adopting overly rigid rules respecting the flow of information in a hearing. At the same time the agency should structure its proceedings in a way that best ensures the flow of information and, after ensuring that the participants are aware of how that structure will operate, be prepared to support that structure by excluding information sought be submitted outside of that structure. Before an agency does exclude such information, however, it must consider the propriety of that exclusion from the perspective of the principles of fairness and the effect of the exclusion on the ability of the agency to perform its mandate (both from the perspective of its impact on agency procedural operation and of its impact on the substantive strength of the agency's decision). An agency should not become the slave of its structure, but must retain the discretion to depart from them when it is appropriate to do so in the interests of its*

mandate and fairness.

Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours, [1994] 3 S.C.R. 3

Case law, Supreme Court of Canada

V - Analysis

A. Rules for interpreting tax legislation

In this Court the appellant argued that a provision creating a tax exemption should be interpreted by looking at the spirit and purpose of the legislation. In this connection it is worth looking briefly at the development of the rules for interpreting tax legislation in Canada and formulating certain principles. First, there is the traditional rule that tax legislation must be strictly construed: this applied both to provisions imposing a tax obligation and to those creating tax exemptions. The rule was based on the fact that, like penal legislation, tax legislation imposes a burden on individuals and accordingly no one should be made subject to it unless the wording of the Act so provides in a clear and precise manner. The effect of such an interpretation was to favour the taxpayer in the case of provisions imposing a tax obligation, and the courts placed on the tax department the burden of showing that the taxpayer fell clearly within the letter of the law. Conversely, a taxpayer claiming to benefit from an exemption had "to establish that the competent legislative authority, in clear and unequivocal language, [had] unquestionably granted him the exemption claimed" (Fauteux C.J. in Ville de Montréal v. ILGWU Center Inc., [1974] S.C.R. 59, at p. 65). Any doubt was thus to be resolved in favour of the tax department. In view of this situation, it followed from the strict construction rule that in cases of doubt a presumption existed in the taxpayer's favour in taxing situations but against the taxpayer in those involving exemptions.