

## 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:

***J E C ENTERPRISES INC. (as represented by Altus Group Limited), COMPLAINANT***

and

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

before:

***L. Loven, PRESIDING OFFICER  
P. Grace, BOARD MEMBER  
J. Lam, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

FILE NUMBER:	ROLL NUMBER:	ADDRESS:	ASSESSMENT:
74147	386000608	2202 128 AV NE	348,000
74079	413000803	2221 128 AV NE	783,000
74072	385000609	13311 15 ST NE	754,000
74074	385000500	1221A 128 AV NE	751,500
74078	385000708	1350 128 AV NE	278,500
74092	385000807	1430 128 AV NE	102,500

This complaint was heard on 13<sup>th</sup> day of August, 2014 at the office of the Assessment Review Board located at, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *M. Robinson, Agent, Altus Group Limited*

Appeared on behalf of the Respondent:

- *F. Taciune, Assessor, City of Calgary*

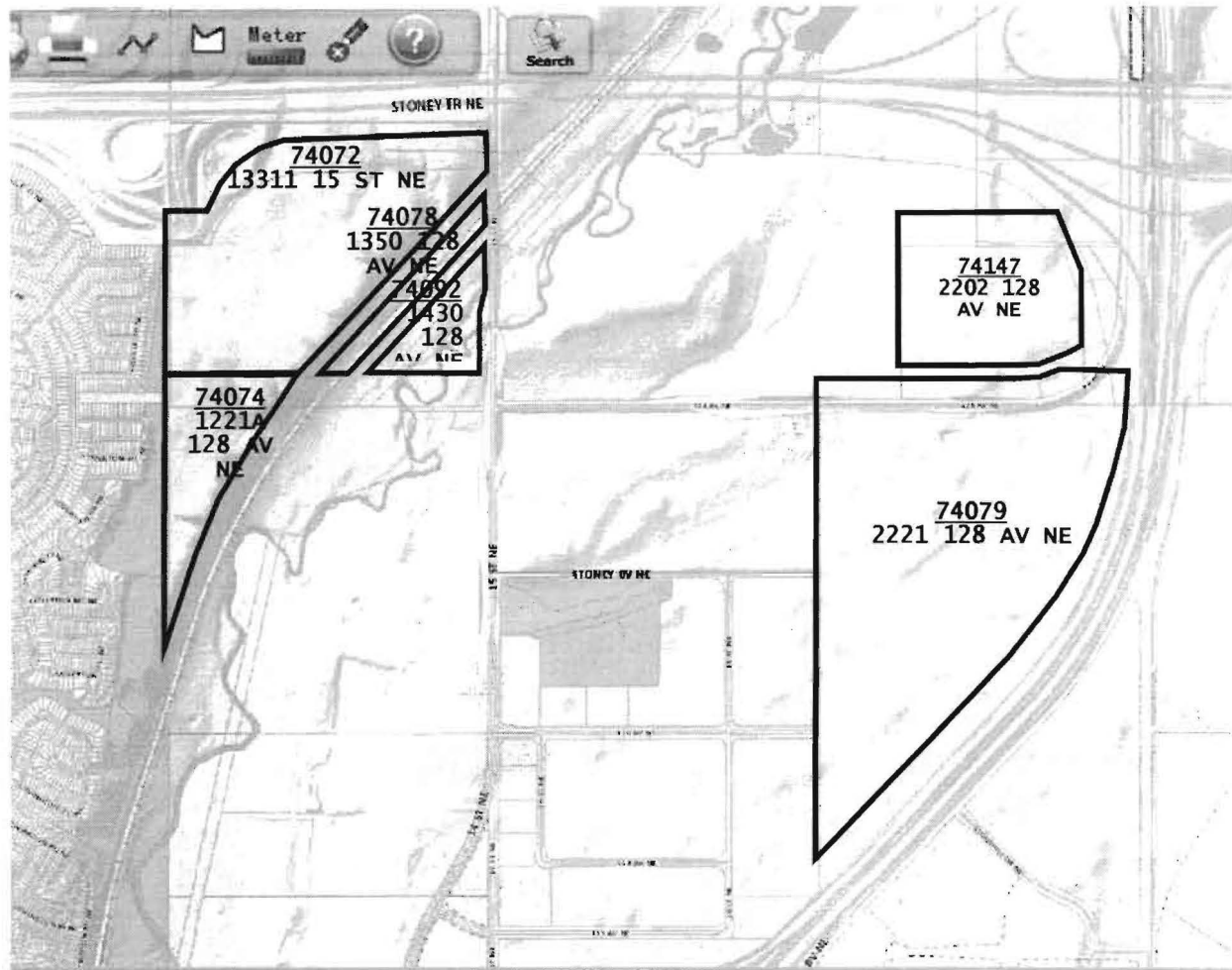
#### **Board's Decision in Respect of Procedural or Jurisdictional Matters:**

[1] At the request of the Complainant and the agreement of the Respondent, the Board heard file numbers 74079, 74072, 74074, 74078, 74092, and 74147 together with file 74079 as the lead or master file.

#### **Property Description:**

[2] The properties are land only described below and are located south of Stoney Trail and west of Deerfoot Trail as shown on the map below.

FILE NUMBER:	ROLL NUMBER:	ADDRESS:	LAND AREA (ACRES):	LAND USE:
74147	386000608	2202 128 AV NE	40.50	S-FUD
74079	413000803	2221 128 AV NE	144.98	S-FUD
74072	385000609	13311 15 ST NE	52.94	S-FUD
74074	385000500	1221A 128 AV NE	23.90	S-FUD
74078	385000708	1350 128 AV NE	8.31	S-FUD
74092	385000807	1430 128 AV NE	10.81	S-FUD

**Issues:**

- [3] Should an influence adjustment for topography be applied to 13311 15 Street NE and 121A 128 Avenue NE?
- [4] Is a market value correctly applied to 3 acres of 1350 128 Avenue and 1430 128 Avenue NE?

**Complainant's Requested Value:**

- [5] The Complainant's requested values are shown in the table below as follows:

FILE NUMBER:	ROLL NUMBER:	ADDRESS:	VALUE:
74147	386000608	2202 128 AV NE	\$ 348,000
74079	413000803	2221 128 AV NE	\$ 783,000
74074	385000609	1221A 128 AV NE	\$ 532,315
74072	385000500	13311 15 ST NE	\$ 542,479
74078	385000708	1350 128 AV NE	\$ 2,909
74092	385000807	1430 128 AV NE	\$3,784

[6] The Board acknowledges that the Complainant does not dispute the 2014 assessments of 2202 and 2221 128 Avenue NE.

**Board's Decision:**

[7] It is the decision of the Board to:

- 1) Confirm the assessments of five of the six properties as follows,

FILE NUMBER:	ROLL NUMBER:	ADDRESS:	VALUE:
74147	386000608	2202 128 AV NE	\$ 348,000
74079	413000803	2221 128 AV NE	\$ 783,000
74074	385000500	1221A 128 AV NE	\$ 751,500
74072	385000609	13311 15 ST NE	\$ 754,000
74078	385000708	1350 128 AV NE	\$ revise
74092	385000807	1430 128 AV NE	\$102,500

- 2) And, revise the assessment of 1350 128 Avenue NE from \$278,500 to \$191,500.

**Legislative Authority, Requirements and Considerations:**

[8] The Act reads:

**s 1(1)(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;

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

**s 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.

*Matters Relating to Assessment and Taxation, A.R. 220/2004 (consolidated to 184/2012) (MRAT)* reads;

**s 4(1)** The valuation standard for a parcel of land is:

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value

**(2)** In preparing an assessment for the parcel of land based on agricultural use value, the assessor must follow the procedures set out in the Alberta Farm Land Assessment Minister's Guidelines

**(3)** Despite subsection (1)(b), the valuation standard for the following property is market value:

- (a) a parcel of land containing less than one acre;

- (b) a parcel of land containing at least one acre but not more than 3 acres that is used but not necessarily occupied for residential purposes or can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
  - (c) an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;
  - (d) an area of 3 acres that
    - (i) is located within a parcel of land, and
    - (ii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
  - (e) any area that
    - (i) is located within a parcel of land,
    - (ii) is used for commercial or industrial purposes, and
    - (iii) cannot be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel;
  - (f) an area of 3 acres or more that
    - (i) is located within a parcel of land,
    - (ii) is used for commercial or industrial purposes, and
    - (iii) can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel.
- (4) An area referred to in subsection (3)(c), (d), (e) or (f) must be assessed as if it is a parcel of land.

### **Position of the Parties**

#### **Complainant's Position:**

[9] In support of their position, the Complainant submitted into evidence a document, Exhibit C1 ("C1") containing 96 pages.

[10] C1 contained assessment notices and maps of the subject properties.

[11] Regarding the assessed value of the agricultural portion of the subject properties the Complainant had no issue.

[12] Regarding 2221 128 Avenue and 2202 128 Avenue NE the Complainant had no issue with the assessed value of these two properties.

[13] Regarding the assessments of 1221A 128 Avenue NE and 13311 15 St NE, the Complainant provided argument that a -30% adjustment for topography should be applied. Referring to City of Calgary maps, the Complainant showed that the south easterly 120 meters more or less of these two properties bounded by the Canadian Pacific Railway ("CPR") right-of-way sloped approximately 20 meters to the CPR right-of-way and argued that this slope could not be farmed. The Complainant applied the -30% topography adjustment to the 3.00 acres of the subject properties assessed as non-residential Special Purpose - Future Urban

Development ("SFUD3") at \$250,000 per acre and added the agricultural value to determine the requested value summarized as follows:

ADDRESS	Non-Resider	less 30% Topography	Farm Land	Request
1221A 128 AV NE	\$ 750,000	\$ 525,000	\$ 7,315	\$ 532,315
13311 15 ST NE	\$ 750,000	\$ 525,000	\$ 17,479	\$ 542,479

[14] Regarding the assessments of 1350 128 Avenue NE and 1430 128 Avenue NE, the Complainant provided argument that these two properties should not be assessed for the non-residential portion; that is, 3 acres at \$250,000 per acre. Again referring to City of Calgary maps, the Complainant showed that 1430 28 Avenue NE was physically fragmented by a watercourse (Fish Creek) and 1350 128 Avenue NW was a long narrow trapezoidal shape and both properties were negatively influenced by the watercourse. The Complainant further argued, citing s 664(1) of the Act regarding environmental reserve, that a portion of 1430 128 Avenue NE should be valued as environmental reserve as its consists of a natural drainage course and a strip of land, not less than 6 meters in width, abutting the bed and shore of a stream and as environmental reserve the subject property. The Complainant concluded that as neither of these two properties were developable, that they had no greater value than farm land, summarized as follows:

ADDRESS	Non-Resider	Watercourse	Farm Land	Request
1350 128 AV NE	\$ -	\$ -	\$ 2,909	\$ 2,909
1430 128 AV NE	\$ -	\$ -	\$ 3,784	\$ 3,784

[15] In further support of the requested values for the two properties discussed in the above paragraph the Complainant provided copies of several board decisions: for 1430 128 Avenue NE, CARB 1836/2012-P, and CARB 73357P-2013; and for 1350 – 128 Avenue NE, CARB 1835/2012-P, and CARB 73353P-2013.

#### **Respondent's Position:**

[16] In support of its position the Respondent submitted into evidence Exhibit R1 ("R1") containing 104 pages.

[17] Regarding the assessments of 2221 128 Avenue NE and 2202 128 Avenue NE;

- 1) The Respondent provided CARB 73363P-2013 and CARB 733368P-2013, supporting the assessment of 2221 128 Avenue NE and 2202 128 Avenue NE respectively.

[18] Regarding the assessments of 1221A 128 Avenue NE and 13311 15 St NE:

- 1) The Respondent provided aerial photographs of the two properties showing approximately 3 acres located on the bench land portion of the properties.
- 2) The Respondent provided decisions CARB 73348P-2013 in support of the assessment of 1221A 128 Avenue NE and CARB 73351-2013P in support of the assessment of 13311 15 Street NE.

[19] Regarding the assessments of 1350 128 Avenue NE and 1430 128 Avenue NE:

- 1) The Respondent provided an aerial photograph of 1350 128 Avenue showing a 6 meter setback from the CPR right-of-way in accordance with Rule 1090 (excerpted from <http://lub.calgary.ca/Part 9/Division 9 Special Purpose Future Urban Development...>).

- 2) The Respondent provided aerial photographs showing approximately 3 acres located on the southerly portion of 1350 128 Avenue NE (outside of the CPR right-of-way setback area), and approximately 3 acres located on the southeasterly portion of 1430 128 Avenue NE.
- 3) The Respondent also provided an aerial photograph of these two properties showing the location of sanitary and water lines.
- 4) The Respondent provided decisions, *CARB 73353P-2013* supporting a reduced assessment of 1350 128 Avenue NE, and *CARB 73357-2013P* supporting a reduced assessment of 13311 15 Street NE, to illustrate that these decisions took the wrong approach.
- 5) The Respondent cited s 4 of MRAT relating to the valuation standard for a parcel of land, supporting the assessment of a 3 acre parcel of the subject lands at market value.
- 6) The Respondent presented a table entitled *Special Purpose Land Rates 2014* and pointed out that if the two properties located at 1350 128 Avenue NE and 1430 128 Avenue NE had been assessed as environmental reserve (S-UN) that the assessments for these two properties would have been higher.
- 7) The Respondent provided a table showing the market rate applied to the 3 acre parcel in both to be \$85,000 per acre and that a -25% shape influence was applied to 1350 128 Avenue NE and -30% topography influence was applied to 1430 128 Avenue NE.

**Board's Reasons for Decision:**

[20] Firstly, based on the Board's review of the photographs of the subject properties the Board finds that they are all vacant land, none used or occupied for residential purposes nor used for commercial or industrial purposes. Further, there is no dispute that all the subject properties are used for farming operations and meet the valuation standard under s 4 of MRAT for agricultural use, nor was there any dispute regarding the valuation of the farm land portion of the subject properties.

[21] Secondly, regarding the assessments of the subject properties located at 2221 128 Avenue NE and 2202 128 Avenue NE, as the assessed values are not in dispute, the Board confirms the 2014 assessed values of these two properties.

[22] Thirdly, regarding the assessments of 1221A 128 Avenue NE and 13311 15 St NE the Board finds the following:

- 1) S. 4(3) of MRAT does not prescribe where in the subject properties the 3 acre parcel of land must lie, therefore there is little to support the Complainant's argument that the 3 acre parcel assessed at market rate should have a -30% (negative 30%) topography influence applied.
- 2) Based on its consideration of the above finding, the Board confirms the 2014 assessment of these two properties.

[23] Fourthly, regarding the assessments 1350 128 Avenue NE and 1430 128 Avenue NE the Board finds the following:

- 1) Even though it was argued by the Complainant that no portion of these two

properties should be assessed at market value, neither the market value nor the influence adjustments applied to these two properties was disputed.

- 2) Notwithstanding the decisions of previous boards with respect to 1350 128 Avenue NE and 1430 128 Avenue NE, based on the aerial photographs submitted by the Respondent, there appears be an area of 3 acres that
  - i. Is located within the subject lands [s. 4(3)(c)(i) of MRAT], and
  - ii. Can be serviced by using water and sewer distribution lines located in land that is adjacent to the parcel [s. 4(3)(c)(ii) of MRAT].
- 3) In accordance with s. 4(4) of MRAT, an area of land referred to in s. 4(3)(c) of MRAT, **must** be assessed as if it is a parcel of land and the valuation standard is market value [s. 4(3) of MRAT].
- 4) Therefore, the Board confirms the 2014 assessment of 1430 128 Avenue NE
- 5) Regarding the assessment of the 1350 128 Avenue NE, the Board accepts the Respondent's evidence that 4.37 acres of land was assessed at market value, whereas s 4 of MRAT requires 3 acres. Accordingly, the Board reduces the assessment of the non-residential portion of the property from \$278,500 to \$191,500.

[24] Finally, based on its consideration of the forgoing findings, the Board concludes the values of the subject properties to be as follows:

FILE #	ROLL #	ADDRESS	BOARD DECISION	NON-RES per ACRE	ADJUST	3 ACRES	FARM LAND	TOTAL
74147	386000608	2202 128 AV NE	CONFIRM			338,151	9,848	348,000
74079	413000803	2221 128 AV NE	CONFIRM			749,722	33,277	783,000
73074	385000609	1221A 128 AV NE	CONFIRM	250,000		749,777	4,222	754,000
74072	385000500	13311 15 ST NE	CONFIRM	250,000		749,771	1,728	751,500
74078	385000708	1350 128 AV NE	REVISE	85,000	25%	191,250	334	191,500
74092	385000807	1430 128 AV NE	CONFIRM	85,000	30%	101,926	574	102,500

DATED AT THE CITY OF CALGARY THIS 22<sup>nd</sup> DAY OF September 2014.

  
L. Loven

Presiding Officer



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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

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

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

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

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

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