

**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:

Indgion Holdings Ltd. (as represented by Indgion Holdings Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
J. Rankin, MEMBER
A. Zindler, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	181056409
LOCATION ADDRESS:	8282 Centre ST NE
HEARING NUMBER:	62605
ASSESSMENT:	\$4,480,000

This complaint was heard on 24th day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- Mr. D. MacRae

Appeared on behalf of the Respondent:

- Ms. C. Neal – Assessor, City of Calgary

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

None

Property Description:

The subject is known as Beddington Village Mall, a 1988 "B" Class, 4-building, Retail Strip Mall of 20,818 square feet (SF) on 2.18 acres (AC) or 94,941 SF of land. It contains two single-storey single-tenant retail buildings and two single-storey multi-tenant retail buildings.

It is located at the southeast corner of Beddington Drive and Centre Street NE. It has a 3,535 SF Commercial Retail Unit (CRU) bank space assessed at \$26 per SF; 1,482 SF of CRU space 0 – 1,000 SF in area at \$18 per SF; 8,569 SF of CRU space between 1,001 to 2,500 SF at \$18 per SF; and, 7,232 SF of CRU space between 2,501 and 6,000 SF in area, assessed at \$16 per SF. The total assessment for the subject using an Income Approach to Value calculation is \$4,480,000

Issues:

1. The subject is over-assessed on a per square foot basis compared to similar properties and this is inequitable.
2. Certain social, crime, and resultant management issues occurring on the property have the effect of reducing the value of the subject.
3. Actual rents for the pub and bank spaces indicate that "typical" rent inputs in the City's Income Approach to Value calculations are incorrect."
4. The condition of the subject and targeted "cost-to-cure" remedies for it, reduce its value in the marketplace.
5. The location of the subject reduces its value in the marketplace.

Complainant's Requested Value: \$3,630,000

Board's Decision in Respect of Each Matter or Issue:**Issue #1**

"The subject is over-assessed on a per square foot basis compared to similar properties and this is inequitable."

The Complainant noted that the assessment for the subject increased from \$3,630,000 in 2010 to \$4,480,000 in 2011 – an increase of \$850,000 or 23% in one year. He considered that in a year of "economic downturn" this was excessive. He argued that the current assessment represents a value of almost \$225 per square foot (SF) for the subject, whereas he considered there were several sales of comparable properties in the \$150 per SF range. In support of this argument, the Complainant provided the following sales data and RealNet reports:

Sale date	Location	Sale price	No. Of Sq. Ft.	Value per SF	#
01/13/06	4921 Skyline WY NE	\$2,000,000	15,800	\$126.58	1
06/07/05	176 Bedford DR NE	\$1,800,000	14,756	\$121.98	2
02/22/09	6020 – 1A ST SW	\$6,100,000	40,500	\$150.62	3
08/27/10	7132 Fisher ST SE	\$21,000,000	116,077	\$180.91	4
03/29/10	920 – 36 ST NE	\$12,015,000	62,111	\$193.44	5
01/04/05	2404 Centre ST NE	\$2,050,000	14,808	\$138.00	6
05/19/06	1020 Meridian RD NE	\$2,800,000	20,566	\$136.00	7

After identifying the respective per square foot values related to his 7 sales, the Complainant clarified that in his personal calculations of value for the subject for this hearing, he had selected \$180 per SF – "a number in the upper range from this list" as a reasonable value to use.

The Complainant noted that his 7 sales are not all in the same geographic area and not all occurred in 2010. Nevertheless, he considered they were all below his 2010 assessed value of \$225 per SF. He noted that the sale closest in proximity to the subject was #2 at 176 Bedford DR NE at \$121.98 per SF. The next closest to the subject was # 6 at 2404 Centre ST NE at \$138 per SF. He suggested that they are very similar in type, age, and tenant mix to the subject, and are assessed at "roughly" \$100 per SF less than the subject is assessed.

The Respondent clarified that she had researched in detail, the several characteristics of the Complainant's 7 comparable properties, and it was her view that they were not comparable at all. Therefore the Board should not rely upon the value conclusions garnered from them by the Complainant. In support of her statements, the Respondent provided the Real Net information sheets from each of the Complainant's seven sales.

The Respondent noted that Complainant's property #1 at 4921 Skyline Way NE is/was in fact a 15,800 SF Retail Warehouse with 6,610 SF of non-retail mezzanine space. She noted that the building had been demolished in 2008/09 and a new building constructed on the site. Complainant's comparable property #2 at 176 Bedford DR NE was identified as a 1981 era Retail Strip Mall, but unlike the subject, has no stand-alone bank. Therefore it would typically have a lower value she noted.

The Respondent identified Complainant sale #3 at 6020 – 1A ST SW and noted that it is a Suburban Office building with I-G (Industrial General) Zoning, and not a Commercial Retail Strip Mall like the subject. Therefore, she argued, it is not comparable to the subject at all.

In addition, she identified sale #4 at 7132 Fisher RD as a 1970 vintage Industrial Warehouse and part of a portfolio sale. The subject is a newer building of 1988 vintage. Therefore because the value attributed to one building in a portfolio sale of several buildings is questionable, the value ascribed to the 7132 Fisher RD building is unreliable she asserted.

The Respondent identified Complainant sale #5 at 920 – 36 ST NE, noting it is a 1980 era Retail Strip Mall that was used in the City's Capitalization Rate analysis. She noted that the assessment to sale ratio for it is 1.04. The Respondent identified Complainant sale #6 at 2404 Centre ST NE, a 1971 Retail Strip Mall of 14,808 SF of which 5,989 SF is below grade storage.

Finally the Respondent identified Complainant sale #7 which she noted is an I-2 (Industrial) zoned 1967 Industrial Warehouse which she argued was not comparable to the subject.

The Respondent argued that four of the Complainant's seven sales - #'s 1, 2 and 6, 7 were old and very "dated" sales from 2005 and 2006 and hence were unreliable as to current value for the subject. In addition she identified Complainant's sale # 4 as being Post Facto and unreliable. Only sale # 5 at 920 – 36 ST NE was noted to be an in-time sale, except that the buildings were older – i.e. 1980 year of construction whereas the subject was constructed in 1988.

The Respondent also noted that comparing properties on a per square foot basis as the Complainant has done, is not a reliable comparative valuation tool unless the properties being compared are remarkably similar in almost every characteristic. She noted that having analyzed the widely variable characteristics of the Complainant's comparable property sales, it was clear that a per square foot comparison of the subject to them would be seriously flawed.

In summary therefore, the Respondent argued that the Complainant's 7 comparable properties, are largely not comparable to the subject and therefore should be disregarded as indicators of alternate value, particularly on a per square foot basis, for the subject.

The Respondent introduced the "Income Approach to Value" calculations used by the City to value the subject for assessment purposes. She clarified each of the various inputs, and noted that each was a "typical" value required under Mass Appraisal. On page 36 of her Brief R-1 she provided a matrix of 14 time-adjusted, "in time" market sales which, after analysis, identified a typical Capitalization Rate, which was then used in calculating the assessed values of the subject, and properties similar to the subject. She also provided the assessment calculations for a comparable property at 4812 Centre St NE. The Complainant however considered the property at 4812 Centre St NE to be part of a portfolio sale of 5 properties and therefore not indicative of value for the subject.

In its review of the oral and written evidence by the parties, the Board notes from the Real Net transaction sheets for each of the Complainant's seven sales comparables, that they do not appear to be comparable for many of the reasons cited by the Respondent. Several are Industrial properties and not Retail Strip Malls like the subject, and at least four of them are "dated" sales from 2005 and 2006. Therefore, the Board concurs with the Respondent that the Complainant's seven sales comparables are not comparable to the subject and hence are

considered to be unreliable as indicators of alternate value for the subject, particularly on a per square foot basis.

Moreover, the Board concurs that comparing the market value of properties using per square foot values is generally unreliable unless the properties being compared are remarkably similar to each other in almost every characteristic. In the case of the Complainant's 7 comparables, it was clear to the Board that they were not only dissimilar to the subject in most characteristics, but were significantly dissimilar to each other.

The Board therefore concludes that it is unable to find for the Complainant on this issue.

Issue #2

"Certain social, crime, and resultant management issues occurring on the property have the effect of reducing the value of the subject".

The Complainant provided an extensive written and oral narrative, including a rebuttal document, regarding several incidences of alleged criminal activity, said to have occurred on the property. He indicated that he had personally been accosted while carrying out normal maintenance. He noted issues of break-ins, daylight robbery, graffiti, noise, overcrowding, fisticuffs, improper parking, garbage, rodents, and Public Health complaints associated with some tenants.

The Complainant clarified that these problems have resulted in significant management problems such as delinquent rents, lease terminations, additional maintenance requirements, theft of safety equipment, illegal casual drinking, vacancies, evictions and the like. He provided a series of coloured pictures (Exhibit C-1) of graffiti and other property damage in the subject.

He argued therefore that given the perceived magnitude of the crime problem, the subject should receive a negative reduction of about 20% which would result in a reduction of \$800,000 in assessed value. While the Complainant was unable to provide market data as evidence to support his 20% request, he nevertheless firmly believed that this reduction was warranted, given the issues he must deal with on a daily basis as owner/manager of the site. He suggested that in 2008 the subject had received a \$400,000 reduction in assessed value by the Calgary Assessment Review Board for these ongoing problems.

The Respondent clarified that there is no adjustment in the assessment process or calculations for crime. She noted that crime unfortunately occurs throughout the city and it is an unfortunate fact of life in large metropolitan areas. She suggested that crime is transient and can randomly occur at any location in the city at any time of day or night.

The Respondent noted that there is no meaningful way to accurately quantify the impact that criminal activity might or might not have on properties. In addition, she noted that the Complainant was also unable to provide any market evidence to assist him in firmly quantifying his estimate of perceived loss in assessed value of the subject. Therefore she declined to accept the Complainant's unsupported estimate of a 20% loss in assessed value for such activities.

In reviewing this matter, the Board accepts the Respondent's position that there was no documentary evidence presented at this Hearing to accurately quantify the net financial impact – or indeed any financial impact, on the subject from alleged criminal activities and enhanced management requirements as a result thereof.

The Complainant's request for a 20% reduction in assessed value is entirely speculative and completely unsupported. While the Board acknowledges that based on the testimony of the Complainant, several management challenges related to the subject have emerged, there was no quantifiable evidence before the Board to deal with that aspect of this issue either.

The Board therefore finds for the Respondent in this issue.

Issue #3

"Actual rents for the pub and bank spaces indicate that "typical" rent inputs in the City's Income Approach to Value calculations are incorrect."

The Complainant provided Document C-2 being a rebuttal document in which he disputed the \$26 per SF "typical" value used by the City for the Bank of Montreal's 3,535 SF of space in its Income Approach to Value calculations for the subject's assessment. He indicated that the actual "building revenue" for the Bank's 10 year lease is \$23 per SF for 5 years, and, \$25 per SF for another 5 years. However, he did not provide any documentary evidence to support either the per square foot values stated, or for the 5 year terms noted. In addition, there was no information as to when the Bank's lease was signed, or the terms thereof.

The Respondent noted that the Complainant failed to support his evidence of Bank of Montreal "actual" lease values, but clarified that the City does not use site-specific values, but instead researches the market for lease rates for stand-alone banks like the subject. Thereupon it determines a "typical" lease rate for all similar bank properties which it uses in its assessment calculations city-wide. She noted that this is a requirement of the Mass Appraisal process mandated by the province. Therefore, she considered the complainant's information regarding this matter to be unreliable.

The Complainant also argued in his rebuttal document C-2 that the net effect of current tenant issues with the 4,500 SF stand-alone pub, could be that "zero" dollars per square foot could be realized in 2011, and not \$18 per SF. Therefore some \$81,000 per year of estimated value identified in the City's assessment calculations might not materialize this year. In addition, he suggested that a negative revenue position would develop if/when the property is vacated and rebuilt. However, it was unclear as to precisely when in time these issues would/could occur or be resolved.

The Respondent again noted that the Complainant had not provided any documentary evidence to support his position in this matter. Moreover, there was no time frame attached to the alleged potential tenant rent default activities, which appeared to be speculative "future-date" activities. Therefore, she noted, the City could not reasonably be expected to evaluate the impact of these "future-date" activities on the subject today.

Indeed, the Board noted that there was no documentary evidence before the Board to support the Complainant's position in either of these two matters. There was no documented lease or rent roll information to address the "actual" Bank of Montreal lease rates, nor was there any

evidence that the "typical" lease rates assessed for either the Bank or pub space were incorrect. The Complainant failed to provide any comparable leases from any comparable spaces whatsoever. In addition, the Board accepts that the City must use "typical" and not "actual" values under provincial Legislation governing Mass Appraisal.

Therefore, the Board finds for the Respondent in this issue.

Issue # 4 "The condition of the subject and targeted "cost-to-cure" remedies for it, reduce its value in the marketplace."

The Complainant argued that the subject, built in 1988, suffers from a significant number of deferred maintenance issues, most pressing are 14 HVAC units costing about \$10,000 each. With new base support fixtures, they would cost in the order of \$14,000 each. He also referenced two major roof issues.

The first roof issue related to what the Complainant suggested were longer term, but only recently discovered, ruptures in the roofing membrane over the stand-alone pub building, allegedly caused by improperly-installed satellite dishes. The resulting leakage was said to have also soaked and damaged the insulation. The Complainant referred to several pictures he had taken of this issue.

Regarding the second roof issue, the Complainant suggested that while \$12,000 per year had been spent on temporary roof repairs generally for the subject in each of the last two years, it would take \$300,000 to effect permanent repairs for the whole complex. In addition, the Complainant noted that the subject's pavement and fencing are getting old and deteriorating.

The Respondent noted that while the Complainant had identified several deferred maintenance issues, the overall value of which he suggested should be deducted from the subject's assessed value, he had failed to provide any documentation from any qualified repair professionals as to Cost to Cure. It was noted that the Complainant acknowledged that he was not professionally qualified in these maintenance matters. Therefore the Respondent argued that the cost to cure estimates by the Complainant were largely unsupported speculation and hence unreliable.

The Board noted that the Complainant relied solely on his personal knowledge in arriving at Cost to Cure estimates for the subject's aged HVAC systems, damaged roof areas, and pavement. He failed to provide any written estimates for the required repairs from industry professionals to support his position.

In addition, in the Respondent's Brief R-1, the Respondent had provided the RealNet sheets detailing the July 2000 sale of the subject to the Complainant for \$2,900,000. The Board noted the following under the "General Remarks" section:

"Our discussions with industry professionals familiar with this transaction indicated that approximately \$100,000 in capital expenditures were required at the time of purchase for roof repairs. The foregoing results in an overall adjusted sale price of \$3,000,000.The asking price for the property was approximately \$3,300,000."

Therefore, it would appear that the matter of possible major capital expenditures for the subject's roof has been ongoing, and hence the Board would have expected that professional

estimates to permanently repair the damage would have been submitted to it. None have been provided to the City or the Board.

Therefore the Board is unable to precisely determine the extent of the roof damage; the cost to cure by qualified professionals; the extent of the pavement damage and its cost to cure, and hence any quantified potential impact on the subject's market value. Consequently the Board is unable to find for the Complainant in this issue.

Issue # 5

"The location of the subject reduces its value in the marketplace."

The Complainant provided photographs and argued that the subject is in an inferior location relative to the City's comparable at 4812 Centre ST NE. He argued that he had researched the matter and found that traffic counts were substantially higher past the City's comparable than the subject. He also argued that a "bus trap" three blocks north of the subject reduces the flow of traffic past the subject, Centre ST at that point essentially becoming a dead end street.

The Complainant also argued that the topography in the area limits visibility of the site from northbound traffic, unlike the Safeway and Co-op stores to the south. He also argued and provided photos of a tandem bus, which, he suggested continually block one of the Centre street entranceways to the mall.

In summary therefore, the Complainant argued that the location of the subject is inferior to other comparable properties and hence this factor reduces its value in the marketplace.

The Respondent however noted that other than a reference to 4812 Centre ST regarding traffic counts, the Complainant did not provide any market data to support his claims regarding the subject being in a negative location. Therefore, she considered that the Complainant had not met the onus required of him in this issue.

The Board noted that while the Complainant had raised several personal observations regarding the location of the subject, there was no comparative market evidence submitted to confirm the conclusions he had reached. While the Complainant had calculated and compared traffic counts between a City comparable and the subject, he provided no estimates of value differential which might have existed between the two. And as noted, there was no market evidence submitted which might have supported such estimates.

Therefore, the Board is unable to find for the Complainant on this issue.

Board's Conclusions

The Board has carefully examined the evidence from both parties in this complaint and has separately outlined its reasons above for deciding each of the five issues raised by the Complainant.

In general, the Board found that the Complainant had either failed to provide documentary evidence from qualified third parties for certain required repairs; had attempted to substitute actual for typical rental values in Mass Appraisal; was unable to quantify via market evidence

certain negative site characteristics; or had attempted to compare the subject to other similar properties using flawed per square foot methodology and non-comparable properties.

On the other hand, the Board received credible market evidence and argument from the Respondent which appeared to not only support the assessment, but also effectively refute the Complainant's arguments and evidence.

Therefore, on balance, the Board is unable to find for the Complainant in this complaint and opts to confirm the assessment.

Board's Decision:

The assessment is Confirmed at \$4,480,000.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF July 2011.


K. D. Kelly
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure Brief
2. C-2	Complainant Rebuttal Document
3. Exhibit 1	Complainant photos
4. R-1	Respondent Disclosure Brief

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.*