

**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 Assessment Advisory Group Inc.),  
COMPLAINANT***

**and**

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

**before:**

***D. Trueman, PRESIDING OFFICER  
J Massey, MEMBER  
D. Cochrane, 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: 072023005**

**LOCATION ADDRESS: 3820 17<sup>th</sup> Ave. SE.**

**HEARING NUMBER: 62602**

**ASSESSMENT: \$965,500**

This complaint was heard on ninth day of September, 2011 at the office of the Assessment Review Board located at Floor Number three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Darrell MacRae, Troy Howell*

Appeared on behalf of the Respondent:

- *Scott Powell*

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

The parties advised the panel that there were no procedural or jurisdictional matters with respect to this hearing.

**Property Description:**

The subject property is a former Shell gas station site which was the probable source of environmental concerns in the past. Currently it operates as a small, locally tenanted, fast food outlet. The improvements consist of a 900 ft.<sup>2</sup> building constructed in 1973 on a land base of 14,153 ft.<sup>2</sup> or 0.32 of an acre, located in the Forest Lawn community. For assessment purposes the property is described as "retail food/beverage" and has been given a quality rating of C.

**Issues:**

The complainant offered that the city assessor over assessed his property because:

- 1/ he had not taken into account a reduction that had been awarded in decision ARB 2271/2010-P for the 2010 tax year.
- 2/ he did not take into account an environmental assessment report outlining contamination for the land.

**Complainant's position**

The complainant argued that, as there have been no physical changes to the subject property, or changes otherwise to market conditions, the decision (reduction from \$895,000 to \$676,500) of the 2010 Composite Assessment Review Board should be brought forward to this year's assessment. In support of this contention the complainant testified that the O'Connor environmental assessment report was still current and to this end he testified that a recent purchaser was unable to obtain financing due to contamination. The complainant also outlined property sales from the "Commercial Edge" which suggested that there were no recent similar sales comparables available. He also provided financial information for the tenant which suggested that the size and use of the improvements would not financially support tax costs arising from the current assessment. And finally he provided a valuation calculation from publicly reported data that suggested an assessment value of \$213,840.

Respondent's position

The City assessor testified that for this year, unlike the 2010 assessment, a land value only was the basis for the assessment. The improvements to the property were not contributing to its value for assessment purposes. He said that for similarly developed property throughout the City a large scale land valuation research had revealed that a 20,000 ft.<sup>2</sup> core area should be valued at either \$64 or \$65 a square foot with the remainder of each site attracting a value from \$7 dollars a square foot to \$28 a square foot. He said that this valuation process was being applied uniformly throughout the City of Calgary for commercial sites that demonstrated redevelopment potential. A chart for a summary of these land values is found at page 21 exhibit R1. He went on to say that the City believed that a highest and best use study was not a requirement because the values he had ascribed were the amount that a prudent buyer would pay a prudent seller. He said that highest and best use studies were only necessary when there were existing improvements and that the value of the property, as between buyer and seller, was going to be based upon a "value in use". The respondent advised the panel that their review of the O'Connor Associates Environmental Inc., report dated December 8, 2004, revealed at page 53 of document R1, that 'no further remedial work is warranted for this property' and that therefore it had been assessed for 2011 without an adjustment for environmental concerns. He said that an adjustment for environmental concerns had been applied in former years assessments based upon their understanding of former site conditions. However, for this year the City were taking the position that the site had been remediated.

Complainant's Requested Value: \$676,500Board's Decision in Respect of Each Matter or Issue:

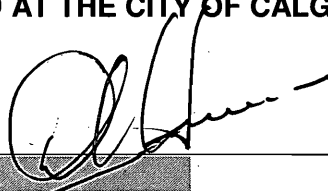
The panel firstly noted that former years assessments had been based upon the cost approach to value. This approach combines a land value added to a depreciated value for the improvements. Given that the Composite Assessment Review Board hearing in 2010 contemplated this scenario this panel decided that little instruction could be taken from their decision. The Board is critical of the City assessor practice of not basing his market value conclusion on a determination of highest and best use however, in this case, the panel heard from the complainant that the improvements were unable to support operating costs. This suggests to the panel that the improvements are unable to contribute to land value and have thus reached the end of their economic life. Nevertheless, a highest and best use study is a requirement leading to any market value conclusion, which is otherwise described as "value in exchange". The notion that improved property, where the improvements contribute value to the land, is a value in use or "use value", as opposed to "value in exchange" is completely erroneous. "Use value" refers to improvements whose form and function is unique and facilitates an additional business value. Turning to the O'Connor environmental assessment report, which both parties were relying upon, the Board accepts the interpretation of the City that at page 53 'no further remediation work required' means that the property is no longer contaminated. This means that no adjustment to value for environmental concerns is required. This also means that the decision from 2010 is not instructive. The Board noted the dated nature of the environmental report produced, December 8, 2004, and the recent report which concluded that there were no recent comparable sales available. If the complainant is to allege a market value below the assessed value and contamination, then it is his responsibility to

provide market evidence and current environmental status documentation. The Board finally examined the income approach valuation, supplied by the complainant, which suggested a market value of \$213,840. At hearing the complainant testified that this valuation was presented for illustrative purposes and that he would not sell the property for this amount. The Board therefore determined it to be meaningless.

**Board's Decision:**

The assessment is confirmed at \$965,500.

DATED AT THE CITY OF CALGARY THIS 27<sup>th</sup> DAY OF SEPTEMBER 2011.



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	Complainant Rebuttal

*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.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Contamination	Petro-chemical contamination