

eFocus Municipal Assessment & TAXATION

cases, commentary, news, trends,
ideas, warnings & best practices

Speaking of elections, where is the Rhinoceros Party?

Kelowna's first municipal political party of three candidates—former councillors Graeme James and Carol Gran with Dale Olson—are running as the ensemble “Taxpayer First” in November's election in the BC city, pledging a four-year tax freeze. They say cuts can be made in spending as there's “fat” to trim, citing spending on projects such as new washrooms, landscaping and a new administration building. Outgoing Mayor Walter Gray said he feels the public is supportive of small annual tax increases for maintaining public services for what's needed as opposed to “what's wanted.” The trio vowed to forfeit the \$31,000 salaries they would receive as councillors if they do not bring in the tax freeze. www.kelowna.ca/CM/Page161.aspx and www.kelownacapnews.com/opinion/275329681.html

Ontario: If Ottawa Mayor Jim Watson is re-elected, he'll cap tax increases at 2% annually during the four-year term. In Windsor, most candidates saying property tax increases are not necessary: www.cbc.ca/news/canada/windsor/no-tax-hikes-some-mayoral-candidates-say-1.2789181. Chris Holt, a candidate for council wants to stop vacancy rebates: via a Freedom of Information request he found Windsor lost \$6 million in revenue 2011 to 2013 from vacant commercial/industrial properties of up to 30%, 35% for industrial. We're not mentioning Toronto's election until it's over.

If property tax stats are detrimental to a campaign, erase them...(we don't advise this) as apparently in New Jersey: “Gov. Chris Christie has expunged several years of data regarding property tax rebates, a sure sign that he is trying to hide his atrocious record. What other motive would explain it? The data Christie has hidden demolishes his claims of success in taming this beast. He liked to talk about how the rate of increase is down, and that's true. Rates bumped up only 1.7% last year, down from a peak of 7% per year a decade ago. But that's only half the story.” See Star-Ledger Editorial, www.nj.com/opinion/index.ssf/2014/10/if_property_tax_numbers_dont_suit_his_message_gov_christie_wipes_them_from_the_record_editorial.html

Fort Frances and Resolute craft a settlement

Fort Frances announced the progress in outstanding property assessment and taxation matters with Resolute Forest Product's mill which had filed appeals to the Assessment Review Board for revisions due to the mill's state and status for 2013 through 2016 tax years. The town responded to the filing by taking proactive steps to resolve assessment and taxation issues without litigation. The town engaged taxpayers and the Municipal Property Assessment Corporation in a cooperative effort to reach outcomes acceptable to all parties. Ontario's Ministry of Finance assisted in facilitating discussions. This settlement resolves the outstanding appeals against the property assessment as well as the manner in which all taxation based applications/adjustments will be disposed of for 2013 through 2016 taxation years: it is based on the known and anticipated state, use and condition of the subject property; as such and allows for the terms to be revisited should circumstances change. “The town recognizes the efforts of all parties and reiterates its commitment to pursuing solutions that reduce risk and increase predictability and fairness in respect of property assessment and taxation.” www.fort-frances.com

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Communications

Strong support for property tax increase in Winnipeg

According to a recent *Winnipeg Free Press*/CTV Winnipeg poll, 64% of residents agree that a property tax increase is inevitable to maintain basic municipal services, with 34% strongly agreeing. “Strong support for a property-tax increase was found in all neighbourhoods across Winnipeg; among a majority of supporters of the three main political parties; across gender and age groups and, income and education levels.” Scroll down, www.winnipegfreepress.com/special/civicelection2014/Probe-poll-Infrastructure-and-property-tax-278100201.html

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work word

titlewave, *n.* Changing of the guard, a shakeup with innumerable promotions, demotions, reassignments and dismissals, and a consequent spike in the business-card budget.

From *The Devil's Dictionary of Business Jargon* by David Olive

“Taxes make people care”

An article on loss aversion in relation to taxes and public spending
www.theatlantic.com/business/archive/2014/10/taxes-make-people-care/381237/?utm_medium=referral&utm_source=pulseneews

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Coast to Coast to Coast

Canada

British Columbia

The **City of Fort St. John** could change its tax exemption policy so non profits and churches would pay taxes on vacant land or undeveloped parking lots. Currently, the city provides a full exemption for 31 property owners, which would otherwise see estimated \$777,000 in revenue to the city. As presented to council, the city “has the highest allocation of permissive tax exemptions” when compared to seven other cities. North Vancouver, with a population more than twice Fort St. John, had approximately \$520,000 in permissive tax exemptions. www.alaskahighwaynews.ca/news/fort-st-john/changes-proposed-to-non-profit-tax-law-in-fort-st-john-1.1422030#sthash.GXju26lg.dpuf and www.fortstjohn.ca.

Ontario

Matthew Dawe, Vice President of Public Sector Digest asset advisory management firm suggested a 1.2% property tax increase over five years would close **Woodstock’s current infrastructure funding gap**. According to the plan, \$5.834 million is needed but total funding available is \$3.424 million.

“So why all the kaffuffle because our elected officials wanted clear, open and transparent accounting for one of the services offered to our residents?” writes B.M. MacMeehan in an opinion piece citing recreation funding. “That’s what you expect your representatives to do,” noting the real issue is **Ottawa Valley’s McNab-Braeside quarry expansion** that will affect the water supply, residents apparently unable to sell and who will ask for reassessments on diminished home values fighting the quarry at an Ontario Municipal Board hearing. [www.mcnab-braeside.com/_documents/2013%20Minutes/05-06-2013%20\(600pm\)%20Public%20ZA%20&%20OPA%20%20Miller%20Quarry.pdf](http://www.mcnab-braeside.com/_documents/2013%20Minutes/05-06-2013%20(600pm)%20Public%20ZA%20&%20OPA%20%20Miller%20Quarry.pdf) and www.

Tender Notice from Public Works and Government Services Canada Property Assessment

On behalf of Transport Canada (TC), Public Works and Government Services Canada requires appraisal services for the disposition of 10 parcels in Ontario managed by St. Lawrence Seaway Management Corporation. In accordance with the Treasury Board Policy Directive on the Sale or Transfer of Surplus Property and Appraisals and Estimates Standard for Real Property regarding the sale of federal property, the appraisal is being commissioned on behalf of TC. The properties are under consideration for sale to Canada Lands Company Limited.

The assignment requires separate market value appraisal reports for the subject properties; of the 10 parcels, eight are in the City of Cornwall and two are in the Village of Iroquois. The majority of the properties are waterfront land with manufacturing, residential or open space zoning designations. Some are improved with structures and subject to leases or licenses. Information on the parcels is summarized in Table 1 and Table 2 in the Statement of Work on the website. It is the responsibility of the appraiser to verify the legal description and other property information. EQ421-150814/A closes October 29, 2014.

Contact Tammy Weaver, tel: 613-545-8059 , fax: 613-545-8067, Kingston Procurement/Des Acquisitions Kingston, 86 Clarence Street, 2nd floor, Kingston ON, K7L 1X3

<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-KIN-508-6423>

insideottawavalley.com/opinion-story/4906434-recreation-not-the-only-issue-in-mcnab-braeside.

United States

Voters might be asked to renew a \$1.2 million **property tax for flood protection**. The Special Levee District Improvement Tax was first approved in 1973, renewed by voters in 1983 for 30 years, expiring late 2015. The Southeast Louisiana Flood Protection Authority West set a 12.56-mill tax rate for the levy and two others, to bring in \$2.4 million. www.nola.com/environment/index.ssf/2014/10/algiers_residents_could_be_ask.html

The **Ohio Supreme Court revived Kohl’s Illinois Inc.’s \$1.59 million property tax valuation complaint**, saying the Marion County Board of Revision and Ohio Board of Tax Appeals had improperly tossed the suit because of a tax increment financing agreement covenant that bars the filing of such complaints since the agreement’s beneficiaries never argued the provision.

www.law360.com/articles/585687/ohio-supreme-court-revives-kohl-s-1-6m-property-tax-suit

The City of Milwaukee is **borrowing more than \$33 million to fill the budget gap created by delinquent property taxes** of more than \$33.4 million for 2014.

The **US Supreme Court declined to hear a challenge to Alabama’s property tax system**. Civil rights attorneys representing families in two counties had asked the court to review the case lost in US District Court and the 11th US Circuit Court of Appeals where they challenged the fairness of the property tax system.

Quotable Quote

“It was hard to say exactly when winter arrived. The decline was gradual, like that of a person into old age, inconspicuous from day to day until the season became an established relentless reality.”

Alain de Botton
The Art of Travel



MPAC Working Papers – Should They Be Used or Not?

by Stephen Posen, Stephen Messinger & Christina Kobi of Minden Gross LLP

In 1998

, Ontario revamped its property tax assessment system and legislation eliminated the requirement to create separate tenant assessments on the assessment roll. Although the Municipal Property Assessment Corporation (MPAC) no longer prepares separate tax bills or assessments for each tenant of a commercial building, multitenant properties are valued by assessors using the Capitalization of Income approach. An assessor prepares a valuation summary that lists the tenancies at the property and then each tenancy is ascribed a market rent (not actual rent) that is capitalized. These valuation records are often referred to as the “assessor’s records” or “working papers.”

There have been many attempts by landlords and tenants to rely on the assessor’s records as a basis for allocating taxes. In *Orlando Corporation v. Zellers Inc.*, the Ontario Court of Appeal held that the assessor’s records do not constitute separate assessments. In *Sophisticated Investments Ltd. v. Trouncy Inc.*, the court held that the assessor’s records do not constitute assessed values. In *658425 Ontario Inc. v. Loeb Inc.*, which affirmed *Orlando Corporation v. Zellers Inc.*, the Court ruled that assessor’s records do not constitute a separate value of the Tenant’s premises for property tax purposes.

At issue in *Indigo Books & Music Inc. v. Manufacturers Life Insurance Co.*, was the reliability of using MPAC working papers as a basis to determine a tenant’s contribution to property taxes. The Court in *Indigo Books* noted that

- (i) the calculations in the working papers are informal and discretionary,
- (ii) they are not governed by legislation, and
- (iii) working papers are not intended to apply to individual premises; rather they demonstrate a value for the entire property.

The Ontario Court of Appeal concluded that working papers could not be considered accurate or reliable on an individual basis. Based on the precise wording in that Lease (which provided that if the Landlord was unable to obtain “other information deemed sufficient by the Landlord to make the calculations of Additional Rent,” then the Tenant’s contribution would be determined on a proportionate share basis) and concluded that it was within the Landlord’s discretion to deem the information in the working papers insufficient to complete the calculation of additional rent and allocate the Tenant’s realty taxes on a proportionate share basis.

Given the recent trend of cases, a few recent decisions come as a surprise. In *Terrace Manor Ltd. v. Sobeys Capital Inc.*, the Tenant (Sobeys) leased space to operate a grocery store. The Lease required Sobeys to pay its share of realty taxes according to the separate assessments issued by the taxing authority. Where no such assessments were available, the Lease required the parties to make reasonable efforts to obtain “sufficient official information” to determine what such an assessment would have been. If no such information was available, the Landlord was required to allocate taxes to Sobeys having regard to “the generally accepted method of assessment utilized by the assessment authority.”

The Tenant argued that the working papers produced by MPAC provided sufficient information to determine what a separate assessment would have been for its store. As such, the Tenant argued that the Landlord was obligated to bill the Tenant’s share of realty taxes based on the working papers. The Landlord’s position was that the working papers were not “official information” as required by the Lease and maintained that the proper method of (continued on pg 4)

Quirky but true...

Northern Rio Grande Sportsman’s Club shooting range owed Santa Fe County largest delinquent property tax bill, being \$143,888. The county began taxing the 148-acre range in 2005 after decades of it not being on tax rolls. The club’s land patent from the US Bureau of Land Management restricts use to a shooting range. Incorporated in 1965 as a domestic nonprofit, it is not in good standing according to the Secretary of State’s Office, now registered as a social club. The county agreed to reduce valuation in 2011, trying to collect six years of arrears; \$91,047 for 2005 to 2010 and almost \$55,000 in interest and penalties. In June 2011, the club sued the Santa Fe County Commission, Assessor and Treasurer, arguing it should be exempt because it doesn’t own the property. A State District judge dismissed the complaint in March 2012, ruling he lacked jurisdiction because the club never applied for an exemption. The assessor’s \$3 million valuation was then appealed and valuation was reduced to \$98,460 so annual property taxes are some \$600 instead of \$6,000 as in 2005 and 2006 and \$20,857 in 2010.

(continued from pg3)

allocation was a proportionate share calculation. The Court agreed with Sobeys and held that the working papers qualified as “sufficient official information,” noting that municipalities are required by law to use MPAC’s assessment data in levying taxes. Further, the Court found that the documents provided sufficient information on how to calculate the current value of each property and had, in fact, been used by the Landlord between 2004 and 2009 to determine the Tenant’s share of realty taxes. In light of this, the Landlord could not then take the position that the MPAC records could not be used to determine the Tenant’s share of taxes. The Court dismissed the Landlord’s application and concluded that “MPAC’s assessment for the plaza was created from assessment data, on a unit by unit basis, as shown on the evaluation records [and that] the information they contained was sufficient to determine what the taxes to the Tenant would have been if a separate assessment had been made.” The Ontario Court of Appeal upheld the trial Court’s decision and dismissed the Landlord’s appeal. Oddly enough, the Indigo Books case was not specifically mentioned in the decision, but the Landlord’s counsel did argue that working papers produced by MPAC were “not sufficiently reliable or created for the purpose of apportioning the tenant’s share of property taxes.”

Sobeys was also successful in a more recent case. In *Sobeys Capital Inc., (c.o.b. Price Chopper) v. Bayview Summit Development Ltd.*, Sobeys leased space from the Landlord to operate a grocery store. The property tax clause of the Lease provides:

“The parties shall use their best efforts to obtain all necessary information from the municipality or other taxing authority, based on the assessor’s working papers, notes and/or calculations to determine the manner in which such authority would have allocated the assessment for Taxes in respect of the Shopping Centre to the Leased Premises had an assessment...been prepared by such authority. The Landlord agrees to provide the Tenant on request, a letter of authorization to the appropriate assessing authority allowing the Tenant access to the assessor’s working papers, notes and/or calculations...If such information is not available, the Tenant agrees to pay the Tenant’s Proportionate Share of Taxes. If such information becomes available in the future, the Tenant’s Proportionate Share of Taxes shall thenceforth be based upon such allocation, and shall not be adjusted retroactively ...”

The Landlord calculated the Tenant’s contribution to Taxes on a Proportionate Share basis and the Tenant brought an application to determine the proper method for calculating its share of Taxes. Not surprisingly, Sobeys argued that the Landlord ought to have calculated its share based on MPAC’s working papers. Relying on the strict wording of the realty tax clause in the Lease, the Landlord maintained that MPAC was neither a “municipality” nor a “taxing authority.” Relying on Indigo Books, the Landlord argued that the MPAC working papers cannot be considered accurate or reliable in individual circumstances.

The Court allowed Sobeys’ application, noting that although assessing property value and levying property tax are two separate steps, “they are part and parcel of the overall process.” The Court also noted that the parties had specifically referenced the “working papers” in the Lease (which both sides acknowledged refers to the MPAC valuation reports), and by taking the position that the MPAC is not a “taxing authority,” the Landlord was “splitting hairs.”

In Bayview Summit the Court confirmed it is perfectly reasonable for parties to choose to rely on working papers produced by MPAC in allocating taxes among units of a building. In other words, it was immaterial whether the working papers were reliable since the Landlord and Tenant had both agreed in the Lease to base the allocation of realty taxes on those documents. The Court concluded that the working paper method was the parties’ preferred method of allocating taxes and that the Proportionate Share method was an alternative to be used only in the event that such information was not available. How does one reconcile the decisions in Indigo Books with these recent Sobeys cases? It appears that the precise wording in the lease is key — if the realty tax clause contemplates using the working papers in certain circumstances, this may imply an acceptance by the landlord of that methodology, which in turn could prevent the landlord from relying on Indigo Books to support its position that working papers are not reliable.

Reprinted with permission of the authors who are lawyers at the Toronto-based firm Minden Gross LLP, www.mindengross.com and who can be contacted via email: **Stephen Posen**, sposen@mindengross.com; **Stephen Messinger**, smessinger@mindengross.com; and **Christina Kobi**, ckobi@mindengross.com.

This article is an excerpt from “Recent Developments in Property Leasing” previously published in the 2014 Canadian Legal Lexpert Directory, Thomson Reuters, 2014.

Resources: New & Noted

Bankruptcy in Detroit—The Tip of the Iceberg

“No one truly knows what happens when a city as large as Detroit files bankruptcy,” writes Edward Poteat on his blog. With water to residents being shut off, municipal pensions and the city’s art collection at risk, he writes that if the bankruptcy filing succeeds, Detroit, “which has \$18,000,000,000 (written out for dramatic effect) in debt, or nearly \$300,000 of debt for every resident,” the “consequent negative impact on households is not unique. Detroit is the tip of the iceberg!” Poteat advocates planned shrinkage to lessen the municipal footprint of a city “by relocating tenants away from more blighted neighborhoods and concentrating municipal services into more dense yet fewer neighborhoods,” a policy that “can and should be used for any city that faces lower tax revenue due to diminishing population. www.planetizen.com/node/71345?utm_source=newsletter&utm_medium=email&utm_campaign=09222014

Dryden receives Domtar payment

In a joint release, Dryden and the Domtar Mill announced the mill made a “substantive payment” on its outstanding taxes. Dryden increased Domtar’ taxes by more than 120% this year in response to a 2012 property assessment reducing the mill’s value from \$51 million dollars to \$14 million, lowering its tax payment by \$1.1 million. www.dryden.ca/cms/One.aspx?portalId=7851&pageId=69112

Two reports: Estimating Exposure Time: Much Ado About Nothing, Inconsistencies in Value Definitions

Published by The Appraisal Research Foundation

A research project accepted by The Appraisers Research Foundation offers a perspective on the effect of exposure time as defined in the Universal Standards for Professional Appraisal Standards (USPAP). Consultant and appraiser Neill F. McDonald notes, “Reasonable exposure time is a condition of the appraisal. For market-value appraisals, exposure time is a standard and cannot be estimated. For market value appraisals, the mere assumption of a reasonable exposure time is sufficient to satisfy the standard. Reasonable exposure time merely means the seller in the hypothetical sale was assumed to have taken no action to achieve an earlier sale that resulted in a non-market-value price.”

In his report *Inconsistencies in Value Definitions*, McDonald takes issue with definitions of Disposition Value and Liquidation Value from *The Dictionary of Real Estate Appraisal, 5th ed.* (Appraisal Institute, 2010) noting that each definition contains economic inconsistencies. “Liquidation Value and Disposition Value,” as originally defined in the dictionary “are highly similar definitions that, when economic inconsistencies are corrected, are so similar that the only difference may be the amount of exposure time upon which the definitions are based,” he writes. “If the traditional definitions of market value are said to be based on an ‘unrestricted’ exposure time, which is the same as a ‘reasonable’ exposure time, then the only other definition needed by practitioners is a definition of value with a client-defined ‘restricted’ exposure time.” He offers a definition of market value, concluding, “Part of the confusion among the various definitions of value utilized in the industry today is propagated in some part by the lack of understanding of the economics on which the appraisal process is based. Utilization of a properly and correctly supported definition of value as it relates to real estate appraisal will make appraiser work-product much more understandable to the lending industry and to the public, which would be of great benefit...” www.appraiserresearch.org, click on Research Results tab.

Property Tax Tips for Accountants

Association of Chartered Certified Accountants

Property attracts a uniquely complex interaction of taxes. Often there are multiple stakeholders and with a wealth of structuring vehicles ranging from partnerships, corporates, unit trusts all, REITs etc...

4hr, online course

www.accaglobal.com/in/en/discover/events/global/e-learning/taxation/property-tax-for-accountants.html

Local Property Tax In China: History, Pilots and Prospects

By Yilin Hou

This book explores whether it is feasible to adopt the local property tax in transitional economies such as China. Hou began by examining issues that remain unsettled in the theory and empirics on property taxation. He took advantage of the “natural experiment” of China’s current financial reforms, via the perspective of institutional economics and political economy, to draw generic lessons that can serve as contributions to theories of taxation, public finance and governance. Published in English by Springer (New York) and Chinese by Science Press (Beijing). www.maxwell.syr.edu/news.aspx?id=124554055184

Foreign Affairs

The **international tax competitiveness** index by the Tax Foundation compares the competitiveness of taxes in 34 countries. **Canada was rated overall in 27th spot, with a rating of 23rd in the Property Tax Rank category.** Estonia, with a 21% corporate tax rate, 21% income tax rate and a property tax on land only, not buildings and structures, took top spot overall, being top also under the ranking for Property Taxes. New Zealand was second with a well-structured property tax system rated as the third best. The US was rated as being in the 32nd spot overall, at 31st for its Property Tax ranking. France was last, judged as the least competitive tax system among countries in the OECD, also last in the Property Tax Rank. <http://taxfoundation.org/article/2014-international-tax-competitiveness-index>

Kingston Mayor Angela Brown-Burke said they are pushing to increase the property tax compliance rate, which is at 39%. **Tax compliance in Jamaica has been as low as 2% in previous years.** Brown-Burke attributes the increase to the efforts of the Property Tax team in collaboration with the Tax Administration of Jamaica.

President Vladimir Putin **signed a law to calculate property tax rates from inventory to cadastral values, bringing significant tax hikes for many Russian homeowners.** The law sets the basic tax rate at 0.1% of the cadastral value. Local authorities will have authority to raise this rate up to 0.3% or lower it to zero. Though 20 times lower than the current rate of tax, on average, property owners are expecting to pay three times more under the 0.1% cadastral rate. www.themoscowtimes.com/business/article/putin-signs-law-switching-property-taxes-to-cadastral-values/508519.html

Calendar

Real Estate Talk: Property Assessment in BC:

The principle, procedure, execution, appeals and legal cases

October 23, 2014 **Vancouver, BC** **10:30am to 12noon**

www.eventbrite.ca/e/real-estate-talk-property-assessment-in-bc-tickets-13168967737

20th Annual Property Tax Seminar

American Property Tax Counsel

October 24 & 25, 2014 **Chicago, IL**

"...provides an exclusive forum where invited guests can collaborate with nationally recognized presenters and experienced property tax attorneys to develop strategies to successfully reduce and manage property taxes" including challenges and opportunities from the improving economy and the "finer topics that affect valuation in every real estate sector." www.aptcnet.com/20th-annual-property-tax-seminar

15th Anniversary National Conference

Aboriginal Finance Officers of Canada

February 17 to 19, 2015 **Winnipeg, MB**

www.foa.ca/foaen/Pro%20D%20Events/Conferences/2015_National_Conference/en/02_ProDevEvents/03_Conferences/2015_National_Conference/2015_National_Conference.aspx?hkey=5f764bc0-4506-4ea2-adae-483547f94b4e

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