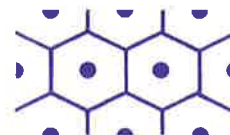


newsletter



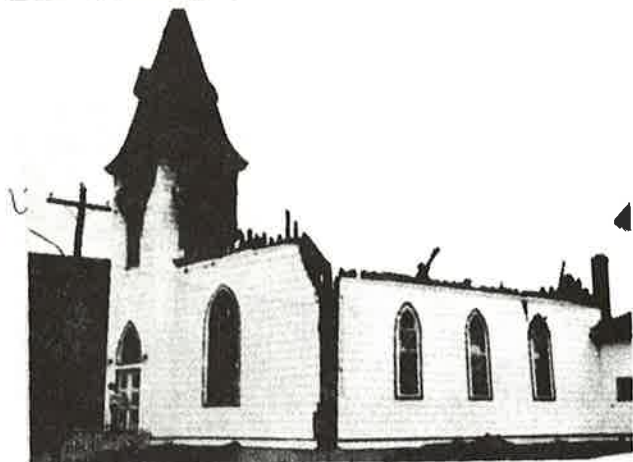
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Update

Newsletter's mailing list is now climbing steadily towards the two thousand mark and keeping track of the various individuals and firms taxes even our secretary's patience at times. We would also like to direct specific issues such as this one, to those clients most affected by the information contained therein. We are therefore committing you to the tender care of our COMPUTER. Be forewarned! If you wonder why you receive two copies of some issues, and none of others....you ain't seen nothing yet!

Fire Insurance



Nova Scotia

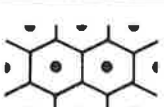
It is surprising how many property owners still only carry "actual cash value" as opposed to "replacement cost" insurance. If you fall in this category, you may wish to review the situation with your insurance broker. Sometimes a Wing and a Prayer are just not enough....

You may also find the enclosed brochure of some assistance.

Better Buys at Eatons?

Assessment Appeals

Ask Us!

	<p>TURNER DRAKE + PARTNERS LTD. real estate consultants and appraisers 6182 north street halifax, n.s. b3k 1p5 tel. (902) 429-1811</p>
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The recent decision by the Nova Scotia Municipal Board in the matter of an appeal by the T. Eaton Co. Ltd. from a decision of the Dartmouth Regional Assessment Appeal Court respecting their *business occupancy assessment* has far reaching effects for all owners and tenants of multiple use buildings in the Province.

Background

Unlike New Brunswick, Nova Scotia levies an "occupancy tax" on the occupiers of most types of commercial property. Although the actual tax rate is set by each individual municipality, the actual assessment is determined by the Provincial Department of Municipal Affairs.

The business occupancy assessment is based on the following percentages of the property assessment:

- 25% - service stations, restaurants, hotels, motels, campgrounds, trailer parks, motor vehicle dealers.
- 75% - banks, credit unions, loans or investment companies, trust companies, investment dealers and brokers, mortgage brokers and lenders, collection agencies.
- 50% - everybody else.

The property assessment in turn, is based on the market value of the property at a particular base data (currently 1st January 1983), but 1st January 1980 in the case of the Eaton's appeal.

Foreground

Mic Mac Shopping Centre, Dartmouth, N.S. is a regional centre anchored by Eaton's and Simpson's department stores. Secondary anchors include a Dominion supermarket and Shoppers Drug Mart. The Centre has proved successful and added a second floor to Simpsons and opened a third level to the mall, a couple of years ago. It is presently owned by The Hudsons Bay Company and has a total G.L.A. of 529 977 ft.².

None of the anchors are free standing buildings. The mall is a conventional dumbbell design with Eatons at one end and Simpsons at the other. Eatons, a single storey department store, is connected at the lowest mall level. Simpsons, now a two storey store, has connections at the second and third mall levels.

The First Appeal

Mic Mac Shopping Centre Ltd., the mall's owners successfully appealed their *property assessment* to the Dartmouth Regional Assessment Appeal Court on December 6th, 1982 after first negotiating a reduction from \$36,775,000 to \$35,985,000 with the municipal assessor. The Appeal Court 'rubber stamped' the reduction. During the hearing the assessor asked the Court to approve new *business occupancy assessments* for each of the tenants in the centre. This was necessary because the business occupancy assessment is always a proportion of the property assessment. If the latter changes, it follows ipso facto that the former must too. However, the assessor also increased the anchor tenants' economic rents he used for apportioning the business occupancy assessments between each of the mall tenants. *Although the total property assessment went down, Eaton's business occupancy assessment increased from \$1,504,100 to \$1,815,800. Eatons appealed.*

The Second Appeal

The Board

The Nova Scotia Municipal Board is the last assessment appeal court on matters of fact. Matters of law can be appealed from the Board to the Nova Scotia Supreme Court. The Board comprises three permanent members, two of whom are lawyers. It hears planning as well as assessment appeal cases and has been involved with the latter since June 1982. Prior to that date, assessment appeals proceeded to the County Court.

The Board heard the Eaton's appeal in June 1983, and received the last brief in September. They rendered their decision on the 10th November 1984.

The Issues

The appellants (Eatons) and respondents (Province of N.S.) agreed on the various valuation figures involved. The issue in dispute concerned whether Eatons were responsible for their proportionate share of the business occupancy assessment applicable to:

- (1) The Mall Common Areas
- (2) The Mall Car Parking Area
- (3) The Mall "Synergism".

The Decision

The Board decided that:

- (1) The Mall Common Areas could not be assessed for business occupancy tax *at all*.
- (2) The Mall Car Parking area had to be assessed for business occupancy tax purposes to the *owner of the mall*.
- (3) The "synergistic" effect of the mall, i.e. the additional value which accrues to all of the stores as a result of their being located in close proximity to each other rather than being dispersed throughout the city, was not assessable for business occupancy purposes.
- (4) The only property that could be assessed for business occupancy purposes to Eatons was the portion of the building they actually occupied and the land directly beneath that building.

The Impact

We expect that the Department of Municipal Affairs will attempt to appeal the Board's decision to the Supreme Court. If they prove unsuccessful, the majority of the shopping centre business occupancy assessments in the Province of Nova Scotia will be reduced. The 1985 assessment year is almost here: the business occupancy assessment notices will be mailed out in January and the 21 day appeal period will lapse before the Supreme Court hands down its decision. *We strongly advise all clients who own, or are tenants in multiple tenancy buildings, especially shopping centres, to review their assessments and, if warranted, file a notice of appeal to safeguard their position.*

If necessary, the appeal can be withdrawn if the outcome of the Supreme Court action is unfavourable.

The P.E.I. Connection



Bob Wilson, FRI, CRA

In 1978 we established an affiliation with Wilson Real Estate of Charlottetown, Prince Edward Island within which our respective firms agreed to assist each other in the field of real estate consultancy and appraisal. The liaison works well, being complimentary rather than competitive. It gives us a listening post on the Island, together with local knowledge, contacts and expertise: factors which are crucial to any firm working in the Atlantic Provinces. We undertake assignments in P.E.I. every few weeks and by teaming up with Wilson Real Estate are able to complete them in the most expeditious and cost effective manner. They in turn can call on our experience and expertise for appraisal assignments requiring a regional or national perspective.

Wilson Real Estate is active in the brokerage field and have also, in recent years, built up a brisk appraisal business under the aegis of Bob Wilson. He is qualified as a Fellow of the Real Estate Institute (F.R.I.) and is a Canadian Residential Appraiser (C.R.A.). Bob enclosed a note with his photograph explaining that he used it to scare the field mice from around his home and found it very effective. He, his wife Marg, and their three children live in a solar heated home in the lush rolling farmland overlooking the banks of the Wheatley River.

David MacLean, AACI joined Bob last year to undertake land and farm appraisals. He was formerly employed as an appraiser and credit advisor with Farm Credit Corporation Canada.

New Brunswick

Monkey Business in Moncton

We recently acted for a large retailer in New Brunswick on an assessment appeal. The company occupied a store on a long term lease in downtown Moncton. New shopping malls such as Champlain Place in Dieppe have bled trade from the central business district and this has resulted in falling property rents for large retail space. The lease was therefore at a rental which was well above market levels. The New Brunswick Assessment Department appraised the property *having regard to the lease* with the result that the assessment was approximately 50% higher than comparable properties which were owner occupied or leased at market rents. The matter of whether the lease should have been ignored was not resolved by the Regional Assessment Review Board. The Assessment Department made a compromise offer of a reduction which our client decided to accept. We are therefore very interested in hearing from owners or occupiers, of property held on long term leases at low rents, who are interested in appealing their property assessment. If the Department is correct in their interpretation of the Assessment Act, it would appear that all a property owner has to do to reduce his/her assessment is to lease his/her property to a subsidiary company at a low rent.