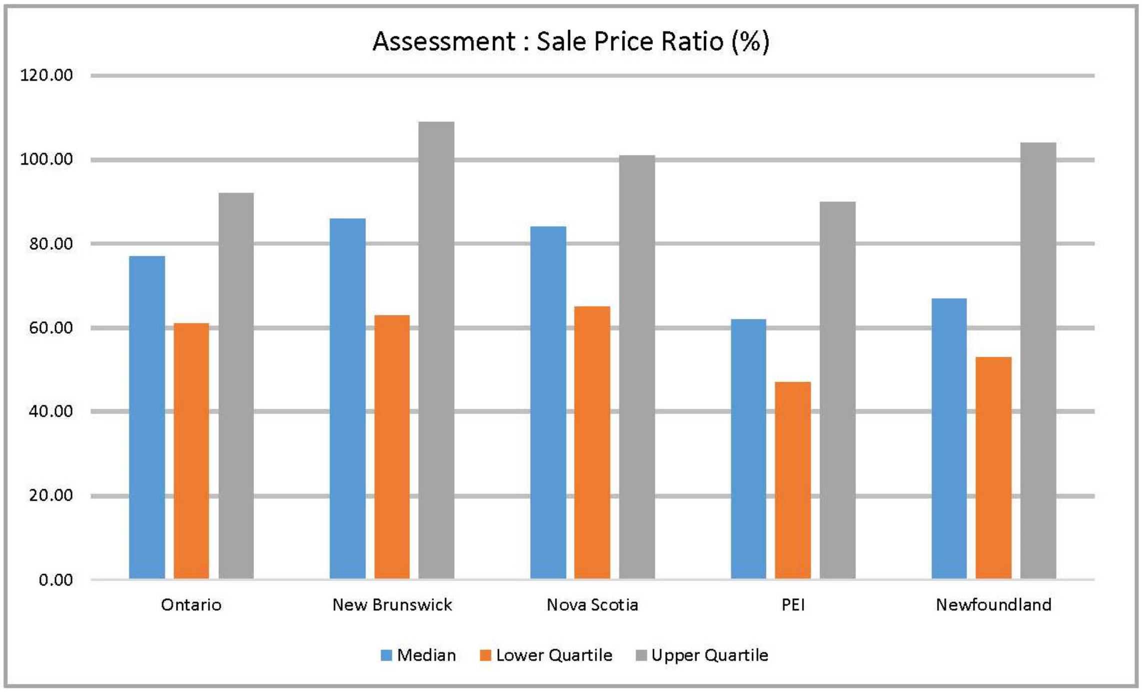
TURNER DRAKE & PARTNERS
Real Estate Counsellors, Brokers & Valuers
Registration to ISO 9001:2015

Newsletter

Winter 2017/2018

Vol. 2 No. 111 (ISSN. 1203-1410)

PROPERTY ASSESSMENTS: THE FACTS BEHIND THE FICTION



Are property owners across Canada being hoodwinked; conned into thinking they have no grounds for appealing their assessment even though they are over-assessed? Provincial assessment authorities such as MPAC (Ontario), Service New Brunswick, PVSC (Nova Scotia), Finance PEI, City of St. John's and MAA (Newfoundland and Labrador), trumpet the fact that "Market Value" is the legislated basis for property assessment … but there is clear evidence that this is **not** the metric most assessors use. In fact, they assess virtually all property *at less than its Market Value* to deter property owners from filing an appeal even though similar properties may bear vastly dissimilar assessments, resulting in an inequitable distribution of the property tax load. *Fortunately in most provinces, "Market Value" is not the only grounds on which to launch a successful assessment appeal ... indeed it is rarely the most appropriate basis on which to challenge an unfair assessment.*

The "Market Value" Myth

It is true that most, if not all, provincial Assessment Acts cite "Market Value" as the primary basis for assessing property. "Market Value" is the price you would expect to receive for your property if you were under no pressure to sell and the buyer was not especially motivated to purchase (technically Market Value is "*the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus").* However this is not the basis actually used by the provincial assessors: indeed most, perhaps all, provincial assessment bodies do not even directly assess their own performance by measuring property assessments against Market Value; instead they utilise a technique called the Coefficient of Dispersion which "represents the average percentage deviation from the median ratio" of the assessment to sale price … in other words they focus on how closely the assessment/sale price ratios are grouped around the median (a positional statistic) assessment/sale price ratio. Arcane? Absolutely! Mind boggling? Undoubtedly! The conclusion? Provincial assessment authorities such as MPAC (Ontario), Service New Brunswick, PVSC (Nova Scotia), Finance PEI, City of St. John's and MAA (Newfoundland and Labrador), or any other Assessment Authority, are more interested in the *uniformity* of the assessment process than whether the assessment reflects Market Value. The latter is the subterfuge they use to discourage appeals: indeed the only time the assessment will approximate Market Value is when the property is sold close to the assessment Base Date. In that unhappy event the

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provincial assessor will attempt to defend their assessment, citing the Market Value criteria.

"Uniformity": The Hidden Gem

Hidden in the bowels of most, but not all, provincial Assessment Acts is a provision that assessments have to be uniform, or similar, for comparable properties (New Brunswick is the exception that proves the rule, but even there the more competent assessors recognise the inequity of assessing similar properties for dissimilar amounts). It is true that some provincial Assessment Authorities make a passing reference to "uniformity" on their web sites, not however as grounds for appeal, but to buttress and justify their purported use of Market Value as the benchmark for property assessment … the implication being that since all properties are assessed at Market Value, comparable properties will bear similar assessments … as indeed they would were they to be so assessed ... but they are not! And if they were under-assessed by a similar amount, it would not matter either since the tax load would still be distributed more or less equitably … but as our research demonstrates such is not the case. The uniformity provision is sometimes buried in the appeal section of the Assessment Act and can be spelled out, as in the Ontario legislation; the result of case law, as in Nova Scotia; or be at the whim of a New Brunswick assessor. It matters not where it lurks, its existence is the key to saving you money on your property taxes … and now, as Monty Python was wont to say, for something entirely different …

"Market Value". Again!

Although Market Value is only used by the provincial assessor to discourage appeals, we need to dwell upon it a little longer because, whilst its relationship with your property assessment is tenuous at best, it does influence the uniformity metric. Market Value is pinned to a moment in time (the "Base Date"), having regard to its occupation on a "Classification Date" and physical condition on a "State Date". (These are our own labels; true to form most provinces cannot even agree to call "Market Value" by its name … Ontario terms it "Current Value", New Brunswick "Real and True Value", Newfoundland "Actual Value", and miracle of miracles, Nova Scotia *and* Prince Edward Island, "Market Value"). Sadly it does not mean the same thing in Ontario as the rest of the world. In Atlantic Canada, it refers to the value of the property in its *existing use* ... in Ontario *highest and best use* is the order of the day. Take a property comprising an old warehouse worth \$0.5 million (including its industrial site) sitting on land worth \$3.0 million for redevelopment … its Market Value for assessment purposes would be the former in Atlantic Canada and the latter in Ontario. Oh woe! And that's just the start. Your assessment should only include the "real" estate: "personal" property is excluded. So if your motel carries a "flag", as most do, the value of the brand and any referral or other business which accrues as a result is not assessable … even in Ontario. The same principle applies to automotive dealerships, fast food outlets, gyms, muffler shops, et al … the value of the franchise is not assessable. Nor is machinery and equipment assessable as part of the realty, so storage tanks and piping which are part of the manufacturing process are similarly exempt … unless the provincial Act and/or Regulations have decreed otherwise. This can get a little tricky: some buildings are so process designed, identifying the demarcation is often a matter for negotiation.

"Uniformity".

What are the facts? What evidence exists to support our bold assertion that "Market Value" is routinely ignored by provincial assessors and is nothing more than a strategy to make their lives easier and to rob property owners of their democratic right of appeal? Atlantic Canadians will need the least convincing, businesses there operate in a hard scrabble world where the margin between success and failure is razor thin … Ontarians on the other hand may be a more trusting bunch … Recognising that burning questions such as these turned you off your turkey over the festive season, we decided to find out where the bodies are hidden. Stick with us, we are about to save you money.

In order to test whether the Assessment Authorities in Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland, relied on Market Value as their criteria for computing assessments we compared sale prices with assessed values. We ignored properties that had sold close to the assessment Base Date, our thesis being that the provincial assessor **would** have assessed these properties at Market Value because the property owner would be behind the proverbial eight ball in an assessment appeal. Instead we selected property sales that occurred after the assessment Base Date or close to the issuance of the Assessment Roll, on the assumption that these sale prices would not have been utilised in computing the assessment. The time period we selected was designed to give the Assessment Authority the benefit of the doubt by about six months, given that some provinces issue their Assessment Rolls within a few months of the Base Date and others about a year later. We also chose industrial properties, the easiest property to appraise, to control for incompetence (we had to expand our sample in PEI to include all commercial property since there were insufficient industrial sales to produce a reliable result). The results are shown on the bar chart on Page 1. If the properties were really assessed at Market Value their Assessment/Sale Price ratio would be 100%. However the median (middle of the pack) ratio, shown as a blue bar, ranges from 62% (PEI), 67% (Newfoundland), 77% (Ontario), 84% (Nova Scotia) and 86% (New Brunswick). Nor are the properties assessed below Market Value by a consistent amount. The inter quartile range, which shows the middle 50% of properties, is represented by the orange (lower) and grey (upper) bars. These middle 50% of properties range between 53% - 104% (Newfoundland), 47% - 90% (PEI), 63% - 109% (New Brunswick), 65% - 101% (Nova Scotia) and 61% - 92% (Ontario).

As a final verification that the provincial assessors only use Market Value to compute the property assessment where there is compelling market evidence, we analysed the data for properties that had sold around the time of the Base Date. "Chasing sales" i.e. using sale prices close to the Base Date to establish the assessed value, unfairly distributes the tax load unless all property is assessed at its Market Value. If the assessor has "chased sales" to arrive at the Market Value a comparison of the assessments arrived at by this method, with other assessments, will also establish whether Market Value is the metric generally in

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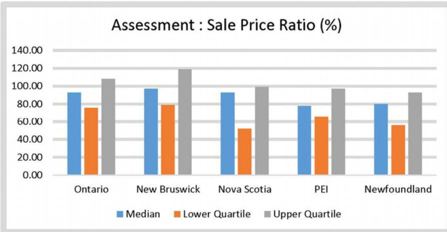

use by the Assessment Authority. If such is the case there would be no significant difference between the Assessment/Sale Price ratio for the two samples. The results are shown on the bar chart above. If the Assessment Authority is "chasing sales" their Assessment/Sale Price ratio would be closer to 100%, and there would be less variability than in the bar chart on Page 1. This would also be prima facie evidence that little reliance is placed by the Assessment Authority on Market Value unless the property sold close to the assessment Base Date. In the "Chasing Sales" bar chart above the median (middle of the pack) ratio, shown as a blue bar, ranges from 78% (PEI), 80% (Newfoundland), 93% (Ontario), 93% (Nova Scotia) and 97% (New Brunswick). The properties are still assessed below Market Value but generally by a more consistent amount. The inter quartile range, which shows the middle 50% of properties, is represented by the orange (lower) and grey (upper) bars. These middle 50% of properties range between 56% - 93% (Newfoundland), 66% - 97% (PEI), 79% - 119% (New Brunswick), 52% - 99% (Nova Scotia) and 76% - 108% (Ontario).

The Bottom Line

Provincial assessment authorities such as MPAC (Ontario), Service New Brunswick, PVSC (Nova Scotia), Finance PEI, City of St. John's and MAA (Newfoundland and Labrador) only use Market Value (sale price) as their benchmark for computing the property assessment when the property is sold close to the assessment Base Date. In every other case they are more interested in the *uniformity* of the assessment process than whether the assessment reflects Market Value. The latter is the subterfuge they use to discourage appeals by citing it as the mandated benchmark whilst actively assessing property below its Market Value, often by 40% to 50%. However most Assessment Acts do include a uniformity provision so even when property is assessed at less than its Market Value, or there is a sale of the property close to the Base Date, it will be possible to successfully appeal the assessment. The application of the uniformity provision can differ by province, through practice or case law, and a wealth of supporting sales and assessment data is required to prosecute a successful appeal … but our Property Tax Division does so all the time.

For more information on property tax appeals visit our corporate web site www.turnerdrake.com > Corporate Site > Property Tax > Tax Appeals, our dedicated property tax web site www.turnerdrake.net, or call our tax team Rick Escott & Mike Turner (Ontario), Giselle Kakamousias & Greg Kerry (Nova Scotia), Andre Pouliot & Chris Jobe (New Brunswick), Matt Smith (Newfoundland and Prince Edward Island) at 1-800-567-3033 (toll free) or 902-429-1811 (in HRM).

PROPERTY TAX DIVISION

Taxing Times Nova Scotia

Apartments, Nova Scotia - $52,817 Tax Savings

If you own property in Nova Scotia you should have received your Year 2018 Assessment Notice by now: it was mailed on January 15th. You have just 30 days in which to appeal. The purported basis for your assessment is the Market Value of your property on January 1st 2017, the "Base Date", in its physical state on the date the rolls closed, December 1st 2017, the "State Date". However as you know, having read the preceding article, (you did read it didn't you?) the Market Value benchmark is honoured more in breach than observance by the assessor, the Property Valuation Services Corporation (PVSC). The latter assess property below its Market Value to forestall appeals. However Section 42 (1) of the Assessment Act does provide that, in addition to Market Value, the "*assessor shall have regard to the assessments of other properties in the municipality so as to ensure that … taxation falls in a uniform manner …* " Due to an old, and now outdated, court decision by the late Judge O'Hearn, this is interpreted narrowly to mean that commercial properties have to be compared with **all** other commercial properties in the municipality … so if they are assessed on average at 20% below Market Value this, the General Level of Assessment, is the governing metric. Now, having read the preceding article, you will know that assessments range all over the place, there is no consistent discount from Market Value. Numerous court cases since have confirmed that the General Level of Assessment has to be calculated by its dollar weighted mean. Until recently this calculation was a challenge since the only body with the data was the PVSC and, as the Utility and Review Board decision in the Homburg Realty Fund (20) Limited case determined, their math was creative, suspect and wrong (*www.turnerdrake.com > Corporate Site > Property Tax > Case Law*) Now however our CompuVal® Knowledge Base has that data. We have not calculated the General Level of Assessment yet for 2018 but a working figure would be 70% of Market Value. If your property is assessed at more than this figure, it may be over-assessed and you should file an appeal. Many office buildings in the Halifax Central Business District continue to fall in value as vacancy increases. According to our December survey it is now at a post-World War II high; Class A space vacancy is a staggering 22%! If you own an office building it should be appealed.

Our Nova Scotia Tax Team, Giselle Kakamousias and Greg Kerry are available to assist you decide whether to appeal. They can be reached at 902-429-1811 (HRM) or 1-800-567-3033.

Ontario

If you own a property in Ontario you probably did **not** receive a property Assessment Notice for Year 2018. The re-assessment year for the 2017-2020 cycle was 2017 so the assessment authority, MPAC (Municipal Property Assessment Corporation), only mailed out notices to property owners whose assessments had changed since last year. The basis for your "end of cycle" 2020 assessment (increases over the

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Big Box Retail, Ontario - $93,669 in Tax Savings

previous cycle are phased in over the current cycle) purports to be Market Value but, as we have demonstrated, is nothing of the kind. Uniformity is the benchmark if your property assessment is less than the property's Market Value. The provision, buried in Section 44(3)(b) of the Assessment Act, requires the Assessment Review Board to *"have reference to the value at which similar lands in the vicinity are assessed"*. You have until March 31st 2018 to file a Notice of Reconsideration with MPAC.

If you would like us to test whether you are over assessed you can use our Tax Checkup feature on our web site www.turnerdrake.net (free with the use of Promo Code Ont31March2018) or you can call our Ontario Tax Team Rick Escott or Mike Turner at 416-504-1811 (GTA) or 1-800-567-3033 (toll free).

New Brunswick

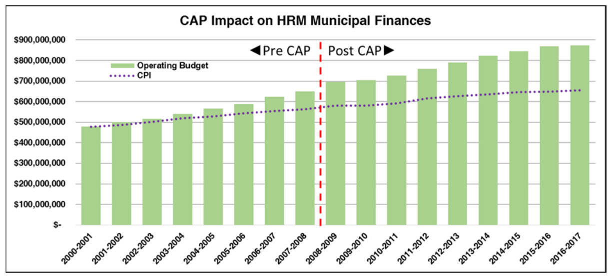
Motel, New Brunswick - $29,000 (29%) in Tax Savings

Service New Brunswick, the provincial assessment authority, prematurely rushed an automated mass appraisal system into production for 2017 with disastrous results. As a result the Premier announced they would be banished to a Gulag in an undisclosed location, never to return. They were to be replaced by an as yet unannounced body. However the Auditor General demurred and the order was rescinded. In the interim, assessments are to be frozen at their 2017 level…apart from those the victim of SNB's foray into the heady world of information technology: those, we assume, will be adjusted by the appeal process. If you own commercial property in New Brunswick your Year 2018 assessment will be based on the property's Market Value as of the January 1st 2017 Base Date. New Brunswick is a rarity in that there is no provision in their Assessment Act requiring that like properties bear similar assessments. However it has been our experience that any assessor worth their salt, and there are many, will recognise the inequity of similar properties with dissimilar assessments so uniformity does rule, albeit on a de facto rather than de jure basis. Expect to get your Assessment Notice on March 1st: you will have 30 days in which to appeal.

When the happy hour arrives, our New Brunswick Tax Team, Andre Pouliot and Chris Jobe are available to assist you decide whether to appeal. They can be reached at 506-634-1811 (Saint John) or 1-800-567-3033.

ECONOMIC INTELLIGENCE UNIT

Who Wears the Cap?



Nova Scotia, New Brunswick and Prince Edward Island have all frozen ("capped") residential home assessments. In Nova Scotia the capping, introduced in 2005, stays in place until the property is sold or extended. Rental apartments and commercial properties are excluded. The program was introduced by a Progressive Conservative government as a political knee jerk reaction to increasing residential assessments, which in turn were the outcome of inflating property values. Normally, assessments are free to track market trends, but in Nova Scotia the CAP limits annual growth in a property's taxable assessment to inflation. Nova Scotia's CAP is not like other taxpayer protection measures, such as California's famous Proposition 13 which limits growth in assessment *and* total revenue collected. In Nova Scotia, if the total assessment base is reduced because of the CAP, tax rates are simply increased. Based on our analysis for HRM (see graph), we see no evidence of any impact on municipal spending. Operating Budgets have grown consistently since 2000 and therein lies the problem. The CAP is a program that only redistributes the tax burden. Some pay less, but the taxman gets his due, and so others pay more to make up the difference. Who are the winners and losers? Our Economic Intelligence Unit (EIU) decided to find out. With governments thankfully enacting open data policies, making publicly funded data publicly accessible, they were able to crunch the numbers for more than 140,000 taxable residential assessment accounts in the Halifax Regional Municipality (HRM) to show just how ineffective this public policy has become.

What is the Problem?

The problem arises the way the CAP redistributes the

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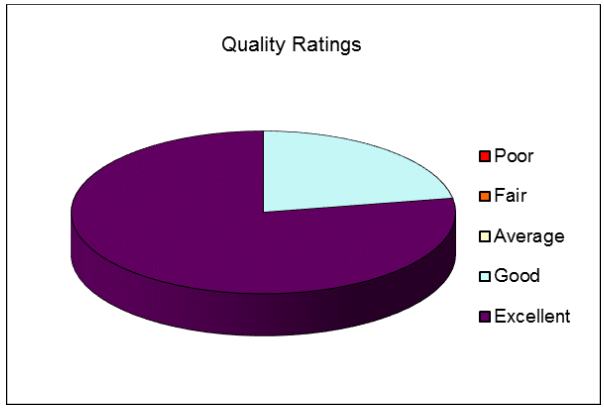
tax load. An assessment-based property tax system is not perfect, but one of its strengths is that property values generally correlate well with a household's ability to pay. Of course this is not always true, and in fact the original purpose of the CAP was to alleviate situations where rural families were being priced off their land because Ethan Hawke bought the island next door. This is a valid issue that deserves a policy response, and we know that the CAP has helped people in this regard. However, by taking a broad based approach to solving a very acute issue, the program has created far more inequity than it was ever able to solve. The CAP distorts the assessment system, reallocating tax burden based on occupancy length and tenure type. Most critics frame this issue as being arbitrarily unfair and use neighbourhood maps to illustrate the random nature of its distortions; houses on the same and adjacent streets, with the same services, but carrying different tax burdens. However the sad truth is that its unfairness is less random, and its benefit more misallocated than most assume. People tend to sort themselves into similar locations and types of housing depending on their backgrounds, economic status, and life-stage. Thus, the CAP doesn't just discriminate against certain properties on the basis of eligibility and program mechanics; it by extension discriminates against certain locations and people. The 403,000 souls in HRM are organised into just over 173,000 households; groups that occupy a single dwelling unit (usually based on family relations). Most of these pay more under the CAP. About 30% live in apartments that are not eligible for the program, and thus pay rents inflated by higher property taxes. Another 27% occupy eligible residences, but still pay more because the higher tax rate overwhelms their modest assessment discount (or lack of discount if newly purchased). So more than half, 57%, of all households in the municipality are losers, overpaying by an average of $275 per year. The majority of this unfortunate group will *always* pay more because their residences do not qualify for the program, or their capped assessment will simply not build up a sufficient discount over time. In total, the CAP extracts around $27 million from this bunch – that is in addition to the taxes they would fairly pay. Even greater inequity lies in the redistribution of the tax burden from the wealthy to the less financially endowed, a situation that arises because the higher the value of the home the greater the potential tax savings under the CAP program. There is more than one household in Halifax's tony South End that receives a larger tax break than the sum total of entire mobile home parks with hundreds of residents.

Neil Lovitt is the Senior Manager of our Planning and Economic Intelligence Unit Divisions. For more information visit our corporate web site www.turnerdrake.com > Corporate Site > Planning or > Economic Intelligence Unit.

LASERCAD DIVISION

Do you find it takes forever now to get things done?



That you have to keep pushing contractors to complete their work? That you, rather than your contractor, is expected to check that the job is done right? That increasingly *you* are having to manage the process, rather than the contractor you hired to do the job. We feel your pain: some Mondays, Fridays cannot come soon enough. Take heart, we **can** reduce your stress level and release you to concentrate on your own work. Our Lasercad® space measurement service is a *managed* process: once you have placed your order we do the rest. If you place your order through our web site it is actioned at 9:00 am the next working day. Or you can phone or email us. As soon as your order is logged into our system we send you an email notification. If you are the worrying type you can monitor progress of the assignment through your Client Area on our web site.

As with the rest of our activities, Lasercad® is covered by a quality system registered to the ISO 9001:2015 standard. We are audited three times per annum to ensure compliance. We poll every client for whom we have undertaken work during the prior six months and ask them to rate us on a five point scale (poor, fair, average, good, excellent). The pie chart above shows how clients have rated our Lasercad® service over the past three years on how well we fulfilled our mandate. We are the only space measurement company in the region with a quality system registered to the international ISO 9001 standard. Quality is our cost: not our clients'.

BOMA Office Standard

In 2017 the Building Owner's and Manager's Association (BOMA) released an update to their Standard Method of Measurement for Office Space. Changes to the BOMA Standard are of utmost importance to building owners: for leases that are calculated on a cost per square foot basis, a small change in how space is measured and allocated can have a large impact on the rents the building is capable of generating, and as such the value of the building. To determine how the changes to the BOMA Standard will impact Rentable Area calculations, we set our Lasercad® team to learn the new Standard backwards and forwards and report back to us. The major changes are summarized below:

Public Pedestrian Thoroughfare: Under previous Standards, space in an office building that is situated

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immediately adjacent to a public walking surface (i.e. sidewalk) was measured with its boundary as the outside face of the exterior wall, similar to a retail building. In the 2017 Standard this condition no longer exists and all exterior boundaries are measured in the same way, where the concept of Dominant Portion is used to determine the boundary. This will lead to equitable treatment for all tenants in a building.

Dominant Portion: Under previous Standards, Dominant Portion was defined as "The portion of the inside finished surface of a vertical exterior enclosure that constitutes 50% or more of the vertical dimension between the finished surface of the floor and the finished surface of the ceiling". In the 2017 Standard, the Dominant Portion now considers only the first 8 feet (2.44 metres) above the finished surface of the floor. The likely result (depending on individual building characteristics) is that more windows will be Dominant Portions, and as such increase the total Rentable Area of the building.

Major Vertical Penetrations (MVPs): In previous editions of the BOMA Office Standard, MVPs (stairs, elevators, HVAC shafts, etc.) were excluded from Rentable Area on all floors, including the lowest level on which they originated. In the 2017 Standard, an MVP must penetrate downward through the floor, and as such they are now included as Rentable Area at the lowest level they originate. This will lead to an increase in the Rentable Area of all multi-storey buildings as staircases are included on either the ground or basement level.

Inter-Building Area: BOMA 2017 allows for spaces that serve multiple users, but less than an entire floor, or multiple floors but less than the entire building, to be classified as Inter-Building Area and allocated amongst those who benefit from the space on a proportionate basis. This will allow for a more equitable allocation of space by aligning the gross-up of the space to those who benefit from it.

Unenclosed (Building or Occupant) Features: Previous editions of the BOMA Office Standard did not allow for the inclusion of any space that was not fully enclosed, to be included in the Boundary Area. The 2017 Standard allows for the inclusion of Balconies, Covered Galleries, and Finished Rooftop Terraces in Boundary and Rentable Area. Unsure of how this will impact your building? Chances are, unless the building benefits greatly from the Public Pedestrian Thoroughfare condition, the Rentable Area will increase due to the inclusion of MVPs on the level they originate and changes to the Dominant Portion.

Colin Walsh is the Manager of our Lasercad® division. He can be reached through any of our offices or by calling 1-800-567-3033 ext. 343. If you would like more information on our Lasercad® space measurement services, visit our corporate website www.turnerdrake.com > Corporate Site > Lasercad Space Measurement.

EGG HEAD AWARD #1

Colin A. Walsh
B. Comm

Colin joined Turner Drake in 2015 directly upon graduation with Bachelor of Commerce degree (summa cum laude) with twin majors in Management and Finance from Saint Mary's University (Sobey School of Business) in Halifax. He is currently enrolled in the University of British Columbia's Diploma in Urban Land Economics (DULE) and Bachelor of Business in Real Estate (BBRE) degree as part of our seven year mentored training program. Colin is rattling off the courses in fine fashion and consistently achieves 'A' grades. He is the recipient of our Egg Head award having achieved the top marks countrywide in Investment Analysis in January, the second time he has received this distinction (in 2016 he achieved the highest marks countrywide in Property Law). Colin was promoted to Manager of our Lasercad® Space Measurement Division last year and balances that duty with his work as a member of our Valuation Division team.

You can congratulate Colin and find out how a university major in Management squares up with the real thing by emailing him at cwalsh@turnerdrake.com or by calling him at 902-429-1811 Ext. 343 (HRM) or 1-800-567-3033 Ext. 343 (toll free).

EGG HEAD AWARD #2

James Stephens B.Sc. (Hons).
Adv. Dip. GIS DULE

James is also a January winner of our Egg Head award having achieved the top marks countrywide in the University of British Columbia's Property Development course, part of their Bachelor of Business in Real Estate (BBRE) degree. James was granted a Diploma in Urban Land Economics by UBC in 2013. If you are a Nova Scotia farmer you may have met James: he manned our booth at the Nova Scotia Federation of Agriculture AGM last December. He greeted farmers attending the Agricultural Alliance of New Brunswick AGM on January 19th and Prince Edward Island Federation of Agriculture members on January 26th at their AGM. James splits his time between our Economic Intelligence Unit where he is part of their Geographic Information Systems team, and our Valuation Division's Farm Unit, a project to offer farmers in the Atlantic Region access to high grade valuation advice at a reasonable cost.

James can be reached by email at jstephens@turnerdrake.com or by phone at 1-800-567-3033 Ext. 346.

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