

PROPERTY TAX CASE STUDY

GETTING THE FACTS

Our Client's Challenge

Our client, a locally-owned licensee of an international workwear clothing manufacturer, had built a successful business over many years in its 115,000 square foot facility, nestled in a quiet corner of a large industrial park. Suitable for our client's purposes, it was notwithstanding undeniable that the building had limited market appeal: it had been converted from use in its former life as a Federal Archives, had a low ceiling height and extremely poor yard circulation, and was over twenty years old.

With dual goals of raising capital to expand its operations into another Province and retiring some debt, it struck a sale-leaseback with a national Real Estate Investment Trust. Both the sale price and the lease were struck without reference to market: the vendor was motivated by its expansion plans; the purchaser by the attractive return to its shareholders and the strong covenant. The property hadn't received market exposure, and the approach by the purchaser was unsolicited.

Prior to the sale, the property had been assessed at approximately \$3,000,000 which, based on past third-party appraisals, was considered to represent fair market value. Less than a year after the ink was dry on the deed transfer affidavit, the assessment doubled...to within a few percentage points of the \$6,000,000 purchase price. Faced with a crippling, and unanticipated, tax increase that threatened to erode the investment for the purchaser and cut into the margins of the vendor (now the tenant), the parties - clients both - turned to Turner Drake for help.

Turner Drake's Approach

Our Property Tax Division set to work. We began by examining the circumstances surrounding the sale, specifically within the context of the applicable legislation - the provincial *Assessment Act* - and professional standards. The *Act* requires property to be assessed at its market value, and implicit in that definition is an open market transfer. The sale-leaseback clearly failed that test. Best practices require property to be valued as though unencumbered by leases. The International Association of Assessing Officers - the assessment profession's governing body - also cautions against use of sale-leasebacks, stating in its *Standard on Verification and Adjustment of Sales* that "...sales involving leasebacks are generally invalid because the sale price is unlikely to represent the market value of the property".

The assessing authority, on the other hand, relied on the sale price in support of its assessments, and set the values at increasing levels in subsequent years - \$6.4 and \$6.8 million respectively - while the matter marched its way through the Court system.

Winning Results

It was a marathon, but we didn't run it alone. Ably assisted by our clients, and (in the fullness of time) by the assessment authority, we persevered for four years. Eventually, cooler heads prevailed, and the matter was settled with a senior staffer with the assessment authority who, when presented with full evidence, recognised that the circumstances surrounding the sale made it invalid for assessment purposes. Turner Drake was successful in reaching an agreement that saw the assessment reduced to its previous, pre-sale level, saving its client close to \$150,000/annum in taxes.

