

## **Edmonton Composite Assessment Review Board**

**Citation: MNP LLP v The City of Edmonton, 2013 ECARB 00894**

**Assessment Roll Number:** 4313557  
**Municipal Address:** 10004 104 Avenue NW  
**Assessment Year:** 2013  
**Assessment Type:** Annual New

Between:

**MNP LLP**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Petra Hagemann, Presiding Officer**  
**Brian Carbol, Board Member**  
**Brian Frost, Board Member**

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### **Procedural Matters**

[1] Upon questioning by the Presiding Officer, the parties before the Board indicated no objection to the Board's composition. In addition, the Board Members indicated no bias with respect to this file.

### **Background**

[2] The subject property, CN Tower, is a 27 storey office building located on a 33,570 square foot (sq ft) lot at 10004 - 104 Avenue in the Financial District of downtown Edmonton. The building was constructed in 1967 and is in fair condition. The subject has a total assessable area of 285,624 sq ft comprising of the following spaces: 278,405 sq ft Office, 740 sq ft CRU, 1,692 sq ft CRU Restaurant, and 4,787 sq ft Storage. There are also 196 underground and 24 surface parking stalls. It has been assessed on the income approach to value at \$58,425,000.

### **Issue**

[3] Should the exempted portion of the subject be increased from 69.641% to 76.786%?

## Legislation

### [4] The *Municipal Government Act* (MGA), RSA 2000, c M-26, reads:

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

362(1) The following are exempt from taxation under this Division:

(n) property that is

(i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

(A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization,

(iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*, or

(v) held by and used in connection with a society as defined in the *Agricultural Societies Act* or with a community association as defined in the regulations, and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations.

s 367 A property may contain one or more parts that are exempt from taxation under this Division, but the taxes that are imposed against the taxable part of the property under this Division are recoverable against the entire property.

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

The *Community Organization Property Tax Exemption Regulation* (COPTER), AR 281/98, reads:

s 3 An exemption under section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation applies only to the part of a property that qualifies for the exemption.

4(1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the Act or Part 3 of this Regulation unless the property is primarily used for the purpose or use described in those provisions.

(2) For the purposes of this Regulation, a property is primarily used for a purpose or use if the property is used for the specified purpose or use at least 60% of the time that the property is in use.

### **Position of the Complainant**

[5] The Complainant submitted a brief (C-1) to support a reduction to the subject's assessment. Prior to the Table of Contents, numerous issues under complaint were listed in great detail.

[6] However, at the time of the hearing, the Complainant advised that the only outstanding issue was the rate applied for the exempted leases occupied by the City of Edmonton and Capital Health. The request is to increase the exemption from 69.641% to 76.786%. The Complainant argued that the calculation of the exempted portion should be based on the specific delineated space as the exempt tenants occupy a higher valued portion of the property. It should also apply to the actual parking spaces used by the exempted tenants. The City of Edmonton and Capital Health occupy 174 of the 220 available parking spaces.

[7] A rebuttal document (C-2, page 3) was submitted, outlining section 367 of the MGA, which refers to parts of a property which are exempt from taxation, as well as section 3 of COPTER, which refers to "the part of a property that qualifies for the exemption". The Complainant suggested that their interpretation of "part" applies to the parking spaces occupied by the exempted tenants as well as other common areas, and therefore, should be calculated separately to arrive at the correct exemption percentage (C-2, page 14).

[8] The Complainant requested that the Board change the percentage of exempted space to 76.786% (C-1, page 57). This would result in reducing the assessment of the subject to \$53,486,500.

### **Position of the Respondent**

[9] The Respondent submitted a brief (R-1) which included photos of the subject's leased area, shell and storage space, law and legislation, several board orders, relevant sections of the MGA and COPTER, excerpts from the Property Appraisal and Assessment Administration manual, Assessors' Valuation Guide, and the 2012 rent roll of the subject.

[10] The 2013 assessment summary on page 35 of R-1 outlines the specifics of the original assessment. Page 36 shows the adjustments agreed upon by both parties, arriving at the recommended reduction to the assessment at \$56,604,500.

[11] The Respondent advised the Board that the City of Edmonton leased 94,432 sq ft in the subject building, while Capital Health leased 105,185 sq ft. Both tenants occupied 199,617 sq ft or a total of 69.888% of the 285,624 sq ft net rentable area.

[12] The Respondent explained that “When an organization applies and qualifies for an exemption, the area that the organization actually occupies (called usable area) is then divided into the area of the building used to calculate the assessment to derive an exemption percentage. This ensures that common areas are factored into the exemption” (R-1, page 144).

[13] The City of Edmonton adopted the above policy as a result of a November 25, 2011 Composite Assessment Review Board decision, which suggested that the “City include an appropriate amount of common area in the calculation”. The Respondent noted that calculating exemption percentage in this manner is fair, equitable and consistent for all building types, and would alleviate the perception of favoritism for any particular category of buildings.

[14] The Respondent requested that the Board accept the recommendation to adjust the exempted space to 69.888%, and reduce the 2013 assessment from \$58,425,000 to \$56,604,500.

### **Decision**

[15] The Board reduces the 2013 assessment of the subject property from \$58,425,000 to \$56,604,500.

### **Reasons for the Decision**

[16] The Board does not agree with the Complainant’s interpretation of “part” as outlined in paragraph 7 above. There is no mention in the MGA or COPTER that specifies how the “part” which is exempt is to be calculated. Section 4 of COPTER refers merely to an apportionment of an exemption for specified uses, so long as the property is used *primarily* for the exempted purpose.

[17] The Board agrees with the Respondent that using the leasable area occupied by the exempted tenants, and applying this to the total leasable area to determine the percentage of space exempted from taxation effectively incorporates all the common areas as well as the parking. In the opinion of the Board, this methodology, if applied consistently, is fair and equitable.

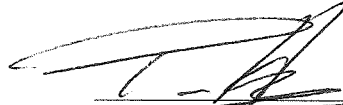
[18] The Board accepts the Respondent’s recommendation to increase the tax exempted portion of the subject building to 69.888%, and to reduce the assessment to \$56,604,500.

### **Dissenting Opinion**

[19] There was no dissenting opinion.

Heard commencing July 15<sup>th</sup>, 2013.

Dated this 14<sup>th</sup> day of August, 2013, at the City of Edmonton, Alberta.



Petra Hagemann, Presiding Officer

**Appearances:**

Walid Melhem  
for the Complainant

Moreen Skorsen  
Tania Smith  
Vasily Kim  
for the Respondent

*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.*