

Manitoba Update

2022 National Workshop

Edmonton, AB

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2023 REASSESSMENT

Impacts of COVID-19?

Manitoba Municipal Assessment Act

- Two (2) year general assessment cycle
- Last reassessment in 2020: Reference date of April 1, 2018
- Reassessment initially scheduled for 2022 (new reference date of April 1, 2020)



Extension of the Cycle by One Year

- An amendment to Manitoba Regulation 78/2009 extends the present assessment cycle from two to three years.
- New assessments in 2023 (previously (2022))
- Reference date is April 1, **2021**
- Expected to be a temporary measure
- How will COVID-19 impact the reassessment?



Impact of COVID-19 Delayed

- extension of assessment cycle means that 2022 taxes will be based on pre-pandemic assessment valuation date of April 1, 2018.
- City of Winnipeg Board of Revision hearings now underway



City of Winnipeg Charter – business taxes

Cancellation or reduction of taxes

340(1)

The tax collector must correct the tax rolls for the year and cancel or reduce taxes before or after the tax rolls have been prepared, if the city assessor reports one of the following changes has occurred:

(f) a business has ceased to be operated and is no longer subject to business assessment.



What is an Assessable “Structure”?

***Federated Co-operatives Ltd v
Manitoba (Provincial Municipal
Assessor) et al, 2021 MBCA 106***

Federated Co-operatives Ltd v Manitoba

- Board found that a large horizontal propane storage tank located on Federated's property in the Rural Municipality of Rosser was assessable under ***The Municipal Assessment Act***, CCSM c M226 (the *Act*).
-
- The sole issue before the Board was whether or not the tank was assessable under the *Act*.



The Act:

“**improvement**” means

(a) a building, fixture or **structure** that is erected or placed in, on, over or under land, whether or not the building, fixture or structure is affixed to the land and is capable of being transferred without special mention by a transfer of the land,



Facts

- Federated operates a propane distribution centre from the location where the tank is situated.
- The exact role the tank plays in the operation of the centre was a matter of dispute.



Owner's Position

- it was essentially a storage tank used infrequently when the distribution vehicles could not obtain the propane directly from the pipeline terminal located elsewhere in the City of Winnipeg.
- the tank was not permanently affixed to the property and could be moved when required.



“Merely a Storage Facility”

- Federated argued it was merely a storage facility and not an essential part of the operation of the centre.
- did not meet the *common law* definitions of what is a structure in accordance with the line of cases which has been accepted by the Supreme Court of Canada.



Assessor's Position

- the size of the tank, the difficulty of moving it and its role in the operation of the centre satisfied the requirements of the *Act* to make it a structure and, therefore, an improvement for the purposes of assessment.



Board's Decision

*“the Board is persuaded that the definition of “improvement” directs the Board to **disregard** the question of whether a building, fixture or structure is affixed to the land.”*

“Therefore, the Tank can be a structure, and therefore an improvement, without technically being affixed.”



Board's decision ...

“there is an integral connection between the Tank and building and a high degree of permanence in its location.”

“The Tank is not designed to be moved in the normal course of use and is not intended to be moved as long as the distribution center is operational.”



Board's decision ...

“.. the Tank on the land can be regarded as one unit of occupation. ...

“the Tank is a structure that falls within the meaning of “improvement” under the Act and, therefore, is assessable and its value should be included in the real property assessment of the Property.”



Test for Leave to Appeal

- (a) only pure questions of jurisdiction or of law; not one with conflicting factual issues.
- (b) sufficient importance to resolve similar disputes which may arise in the future).
- (c) There must be an arguable case of substance—one with a reasonable prospect of success



What constitutes an “Arguable Case”?

- If the issues raised by the appellants cannot be dismissed through a preliminary examination and a more thorough examination is necessary, then the appeal will have arguable merit.

Sattva Capital Corp v Creston Moly Corp, 2014 SCC 53



Court of Appeal Decision...

Clarification of the law required.

Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Co Ltd, [1949] 1 All ER 27 (CA (Eng)),

- Provides a legal test as to how a structure is to be determined at common law for assessment purposes.



Court of Appeal Decision cont...

Cardiff has been followed in other appellate jurisdictions in Canada:

- *a "structure" refers to things of substantial size, built or constructed with some permanence such that to remove them from where they are placed is likely to involve taking them apart.*



“ a degree of permanence...”

- something that has been installed with the intention of remaining permanently on a permanent foundation.



The Board may have Ignored Relevant Considerations

- “the degree to which (the tank) is affixed to the land has been found in Canadian common law to be a factor in determining whether it is an improvement to the land and, therefore, capable of assessment.
- “If the Board feels itself directed not to consider the level of affixation to the land as a factor in its assessment of what is a structure, then the potential legal error is also of consequence to further cases.



Leave Granted

- “Did the Board err in law in determining that ***whether or not the tank was affixed to the land and to what degree were irrelevant considerations to its conclusion that it was an improvement***, as contemplated by *The Municipal Assessment Act*, CCSM c M226?



Winnipeg reaches agreement to provide services to Naawi-Oodena, the largest urban reserve in Canada

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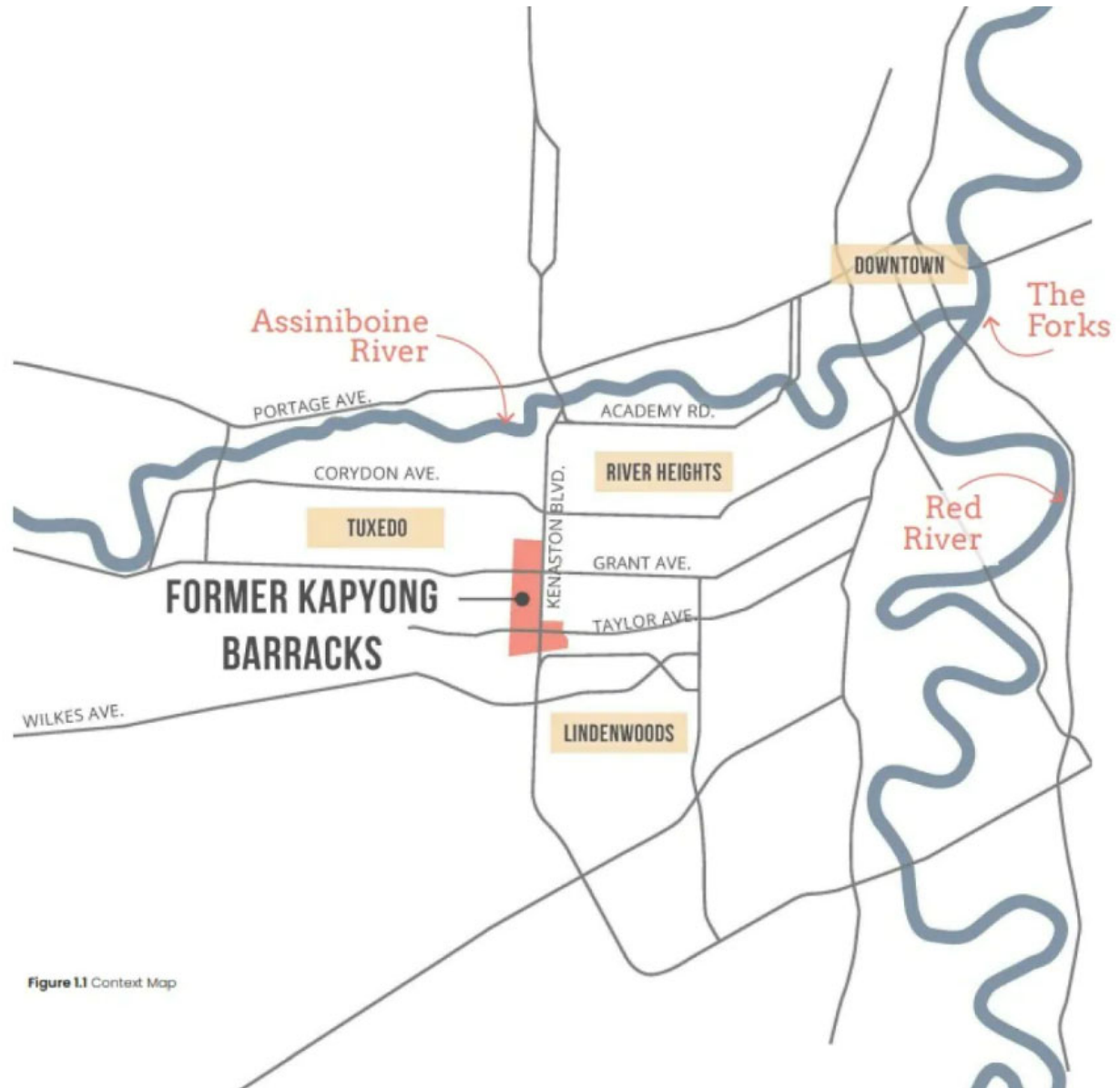


Figure 1.1 Context Map

Building a New Community

- The 160 acre site was abandoned in 2004 when the 2nd Battalion, Princess Patricia's Canadian Light Infantry, was moved to Canadian Forces Base Shilo, near Brandon.
- Plans are for the development to include a mix of residential, commercial, recreational and cultural space, with room for up to 3,000 families.
- Project involves building an entire community in a space that had sat empty for decades.



First Nations to collect and remit

- Treaty 1 nations — Brokenhead, Long Plain, Peguis, Roseau River, Sagkeeng, Sandy Bay and Swan Lake are to levy and collect the same business and property taxes at Naawi-Oodena as the city does in the rest of Winnipeg.



Services and Tax Agreement

- First Nations remit 65 per cent of the proceeds to the city for policing, firefighting, ambulances, water distribution, sewage collection, land drainage, flood control and other services.
- 35 per cent of the tax revenue is to remain with Treaty 1, allowing it to build its own capacity to deliver services, operate as a distinct level of government and support the First Nations, according to a report submitted to the City's executive Policy committee.



Plan to develop own taxing authority

"Once developed, Treaty 1 Nation intends to utilize its taxing authority to create a property and business tax regime that mirrors that existing beyond the boundaries of Naawi-Oodena, to present a seamless transition," (Winnipeg chief administrative officer Michael Jack)



Legislative Amendments

***The Municipal Assessment Act
Service of documents and “Deemed Receipt”***

Date mail sent and received

64.1(1)

When, under this Act, a notice or other document is mailed to a person

(a) it is presumed to be mailed on the date of the notice or document; and

(b) it is **deemed to be received** on the fifth day after the day the notice or document is mailed.



Date electronic communication sent and received

64.1(2)

When, under this Act, a notice or other document is sent by electronic communication,

(a) it is presumed to be sent on the date that the electronic communication is sent; and

(b) it is **deemed to be received** on the date that the electronic communication is sent.



The Real Property Valuation Board and Related Amendments Act (Bill 24)

- Establishes a new Board with jurisdiction to hear assessment appeals and other real property valuation disputes.
- New Board will assume carriage of any assessment appeals unless Briefs have already been filed (in which case the Municipal Board will retain jurisdiction).
- In all other cases, assessment appeals will be determined by the newly created Real Property Valuation Board.



THANK YOU

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