TURNER DRAKE & PARTNERS

Newsletter

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UPDATE

We started Newsletter in March 1978 with the modest goal of producing a witty yet erudite publication aimed at a target audience of sophisticated (and charming) group of connoisseurs with the sublime good taste to own property in Atlantic Canada. It is gratifying to record that we have met our objective . . . thank you for the kind letter . . .

There is a considerable amount of angst abroad in the land. The Quebec referendum shook confidence somewhat: the country chopped in two; without Quebec to boot; it doesn't bear thinking about. Get a grip . . . anybody who opines that they don't care whether Quebec stays or leaves has obviously never visited La Belle Province. We challenge anybody who holds that opinion to sample Quebec City in the spring. Anyone who can view untouched, the majestic panorama of the St. Lawrence from the heights of Dufferin Terrace as evening mellows into night, and hawthorne blossom perfumes the air with heady aroma, is tired of life itself. If your spirits don't soar as the lights of the lower town begin to twinkle through the dusk below, and the upper town starts to throb with Quebecois joie de vivre . . . well you deserve to live in Toronto.

And whilst we are on the subject of joie de vivre and the lack thereof, our own region is a little down in the mouth these days: particularly Newfoundland and Nova Scotia. Their economies continue to splutter and there is too much real estate, and in the wrong locations. It is easy to forget that we live in a spectacularly beautiful corner of the globe when there is so much uncertainty, so much change. The old order is being swept away at a mind numbing rate by structural changes in the economy, technology and demographics. Property, because it is fixed in location, size and often use, is particularly vulnerable. This and future issues of Newsletter will help you ride this tidal wave by showing how to develop cost effective acquisition, holding and exit strategies for your real estate. A holding strategy must include cost containment: use our property tax feature to control this major expense. We lift a corner of the curtain to peak at the activities of our valuation personnel. We also take a look at a major change in the region's transportation system, the Fixed Link, which will finally end Canada's isolation from Prince Edward Island. The effects on the country are unknown but we use our crystal ball to forecast its impact on the hotel/motel market in the province. We also continue our series on expropriation.

The appraisal industry in Nova Scotia is on the point of collapse. The appraisers have a solution . . . force consumers to use their services . . . all they need are some gullible politicians. We appraise that situation for you.

IN THIS ISSUE

PROPERTY TAX DIVISION

New Brunswick - Taxing Times Again!

King St., Saint John, N.B.
($12,000 per annum - 22% in tax savings)

The 1996 assessment notices were mailed to property owners on the 1st March 1996. There is a 60 day appeal period: if you miss it you cannot appeal your assessment again this year. The basis for your assessment is its market value as at the 1st January 1996, the base date. We have published a set of decision rules to use as a preliminary screening tool to determine whether it is likely that your property is overassessed. If you have not received your copy please call Tom Mills or Jon Robbins (1-800-567-3033); they will be glad

(Continued on page 2)

(Continued from page 1)
to assist you.

Property taxes are now an unsecured claim in a bankruptcy. The N.B. Court of Appeal *(Re Hanwell Developments Ltd.)* accepted the argument by Michael Wennberg, Stewart McKelvey Stirling Scales that both the "municipal" and the "provincial" portion of the real estate taxes should take a back seat to the first mortgage, after the Carriage Place Mall, Fredericton, was petitioned into bankruptcy. New Brunswick is the only province in Atlantic Canada to collect property taxes at the provincial level. Effectively the bankruptcy destroys the Province's first lien position which it holds outside of bankruptcy.

Prince Edward Island

Queen & Grafton Streets, Charlottetown, P.E.I.
($10,000/ annum - 22% in tax savings)

Your 1996 assessment notices will be mailed at the end of April. You have 45 days in which to appeal. The basis for your assessment is the market value of your property as at the 1st January 1996 base date. We will be mailing a set of decision rules to help clients determine whether they should appeal. If you do not receive them within 7 days of your assessment notice, please call Tom Mills or Jon Robbins (1-800-567-3033).

We have a high regard for the P.E.I. Assessment Department: they are knowledgeable and open minded and it has been our experience that settlements can usually be negotiated without the necessity for court action, so long as we can demonstrate that the property is overassessed.

Nova Scotia

Most of the assessment appeals quoted in our Newsletter are negotiated settlements; some however do proceed to court and it occurs to us that we are somewhat remiss in claiming all of the credit for their success. Two recent cases involved the Halifax office of Stewart McKelvey Stirling Scales and whilst neither of the gentlemen concerned have expressed any desire that their efforts be acknowledged we wish to point out that David Miller, QC represented Associated Freezers (Newsletter Vol. 2 No. 53 - $400,000 in tax savings) and John McFarlane, QC acted for the taxpayer in the Tantramar Crescent appeal (see above.).

Tantramar Crescent, Amherst, N.S.
($28,000 - 19% in tax savings)

Jolly Poor Show!

The assessment appeal period of 21 days is the shortest of the three Maritime Provinces by a wide margin: Prince Edward Island allows 45 days, New Brunswick 60 days; yet this year many taxpayers only had 10 days in which to appeal! The appeal period commences on a specific date, no matter when the assessment notice is mailed. Unfortunately due to a mailing delay many Nova Scotia taxpayers received their assessment notices 11 days late. In past years the Assessment Department has not been sympathetic to taxpayers who missed the appeal deadline. We trust that Minister Sandy Jolly will review that policy this year . . .

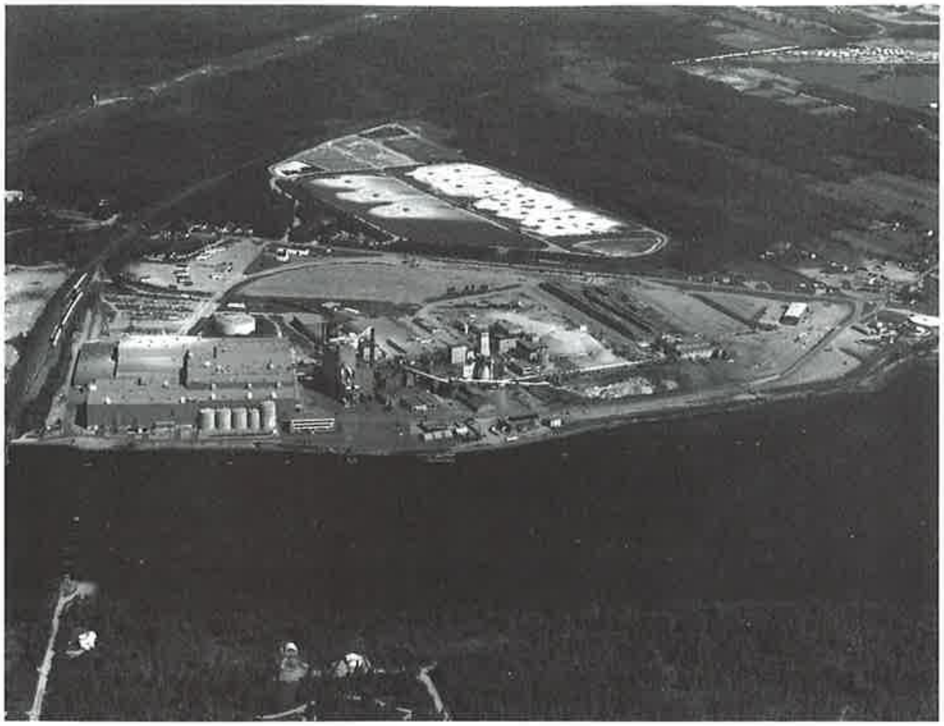
Newfoundland - Taking a Bite out of Taxes

We are currently undertaking assessment appeals throughout the island. Appeal periods in all municipalities have now expired for 1996. However, if you have appealed and have not yet retained our services but wish to do so, please let Tom Mills or Jon Robbins (1-800-567-3033) know as soon as possible. The appeal courts are already sitting and although we can represent you in court, if necessary utilizing tele-conferencing (chairman permitting), we obviously need to inspect your property first and prepare a position.

Big Macs, St. John's, Newfoundland
($3,000 per annum - 4% in tax savings)

1996 was the quinquennial re-assessment year for St. John's: the new base date for assessment purposes is the 1st January 1995. Any tax savings we achieve for you this year will be repeated during the next four years (provided that you do not physically alter your property during that period). If you own office, industrial or investment property and have filed an appeal we should be able to assist you reduce your tax load. We are particularly interested in property owners/occupiers of space at St. John's airport.

VALUATION DIVISION



Miramichi Pulp and Paper, Newcastle, N.B.
(Photograph courtesy of SunDancer Photo Communications)

Hard hats, coveralls and lots of Tim Horton's coffee: the staple diet of those sturdy souls who staff our Valuation Division. Strong of limb, steady of wind and (almost) sound of mind, they fearlessly face pulpmills and pipelines, heavy water plants and harbour projects with a ferocity that confounds the faculties. So . . . when Repap Enterprises Inc. of Montreal asked us to value the Miramichi Pulp and Paper complex consisting of 600,000 ft.^{2} spread across four mills they volunteered to a man (or was it a woman?). Armed with a spare tape for good measure, we dispatched him (or her) in a northeasterly direction and rented out his (or her) desk. Twenty five tape measures later (the pay cheques are piling up nicely) we are glad to report that things are going well. He (or she) has been sighted on several occasions; white coveralls somewhat soiled but still with visible crease, hard hat battling the bitter wind of a New Brunswick winter, buoyed by gallons of Tim Hortons, still measuring away. By God it makes one proud to be a Canuck . . .

Of course, an hotel in Hawaii would be nice too . . . a brothel in the Bahamas . . . *anything* so long as it's somewhere *warm* . . .

LET'S PLAY MONOPOLY

What would you do if customers refused to purchase your goods or services at any price? Improve the quality, right? Wrong! Create a monopoly! See if you can locate some gullible politicians and get them to pass an Act forcing consumers to buy from you. That's exactly what many appraisers in Nova Scotia who belong to a trade association, the Appraisal Institute of Canada, hope to do. Buoyed by the success of their New Brunswick counterparts who managed to persuade politicians in that province to introduce licensing there last year they are desperately attempting to slide a Bill through the Nova Scotia legislature this spring . . . quickly . . . before anybody notices.

There is something morally repugnant in a private group, a trade association that has singularly failed to raise standards, now attempting to gain legitimacy through legislation, and force Nova Scotian consumers to utilize the services of its members. We trust that the politicians of this province will not fall for the ploy.

EXPROPRIATION - A HITCH HIKER'S GUIDE

Nova Scotia - Hiatus in the Harem

We appeared before the Law Amendments Committee to ask that they reject the proposed amendments to the Nova Scotia Expropriation Act (Newsletter Vol. 2, No. 53), but to little avail. Our objections and those of the other professionals such as lawyers and appraisers, and large property owners, were largely ignored; the sole concession was to reinstate the provision requiring that the expropriating authority provide the property owner with a copy of the appraisal report on which the offer was based. In our view Bill 40 is a major derogation of property rights and we question why any politician, irrespective of their political stripe, would vote for it if they fully understood its true implication. Unfortunately there is a sinister strain of secrecy permeating the civil service in Nova Scotia. It was evident in the desire to withhold the appraisal report . . . the very basis for the compensation . . . from the property owner. In our experience it finds expression in an arrogant contempt for the taxpayers and their rights: Bill 40 neuters property owners by effectively denying them the protection of the judicial system. It places them at the mercy of the acquiring authority: like eunuchs in a harem they will experience some difficulty participating in the process. It's a chilling thought!

And Now For Something Completely Different . . .

In our experience the initial offer from an acquiring authority is often accorded too much weight by the property owner. Sometimes this arises from the feeling that one cannot fight City Hall . . . or it may reflect an inherent respect for authority, if it is official it must be fair. Neither opinion has validity. All offers should cover the following heads of claim

(Continued on page 4)

(Continued from page 3)
and all claims **must** be included in the correct category *(H.M.Q. Province of Nova Scotia & L.E. Powell Property Limited and L.E. Powell & Company Limited)*, Nova Scotia Court of Appeal C.A. No. 111210.

This article covers expropriation under the Federal, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island Acts. If a head of claim is not specifically legislated **and** if there is no case law which supports its applicability we have noted the jurisdictional exclusion. In other words the head of claim is valid throughout the Atlantic Region unless otherwise noted.

(1) **Value of Land Taken** -this is often the **smallest** component of the total loss yet it receives the greatest attention, particularly by the acquiring authority. Indeed they may focus on it to the total exclusion of the other heads of claim: not through malpractice but because it is the item most cheaply quantifiable and they have probably selected their appraiser on the basis of cost.

(2) **Injurious Affection** - this is the reduction in value of the property remaining after the acquisition. It is often the **largest** component of the total loss but its quantification can require considerable expertise (and expense), as a consequence it is often excluded from the initial offer. Sometimes the appraisal report will frankly admit the omission . . . in which event you should file it in the appropriate receptacle.

(3) **Disturbance** - when the real estate houses an active business, or is a special purpose property such as a motel or gas station, this head of claim can be considerable. Unless the entire property is acquired this item is usually included as part of the injurious affection claim. Disturbance is also payable for residential properties, e.g. removal costs.

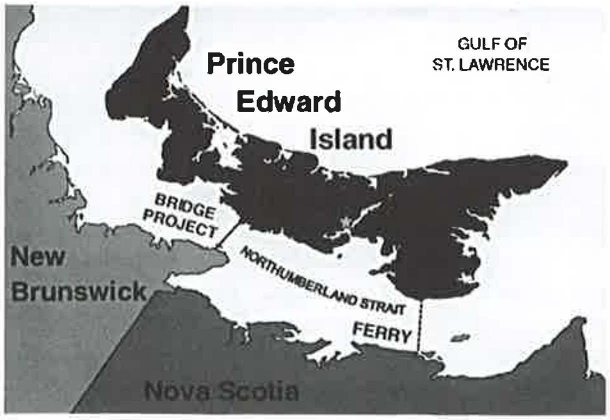
(4) **Special Economic Advantage** -losses which are not quantifiable under the other heads of claim can be captured under this category. For example, paraplegic ramps in a single family home are compensable, even though they are not measurable by a market value computation. However, this head of claim has been extended well beyond this interpretation. In *Gagetown Lumber Co. v. R.*[1957] S.C.R. 44; 6 D.L.R. (2d) 657 the court awarded additional value to standing timber on the expropriated land because the owner had a mill in close proximity to the property and hence the timber was more valuable to him, than anybody else.

(5) **Home for a Home** -this head of claim ensures that a residential owner-occupier will receive sufficient compensation to remain in the same neighbourhood even if the home being acquired is a much humbler abode, i.e. of lower value, than its neighbours. This provision is particularly important for senior citizens. It is quite usual for acquiring authorities, eg. the City of Halifax, to ignore this provision during any negotiations prior to expropriation. The P.E.I. Act does not specify this head of claim: however, the definition of damages may be broad enough to include it. The Newfoundland Expropriation Act is also silent but there is a provision in the Family Homes Expropriation Act.

(6) **Costs** -reimbursement of professional fees incurred by the expropriated party in formulating a claim are legislated in the Federal Act, but varies by province. It is a basic tenet of expropriation compensation that the expropriated party should be no worse off financially as a result of the expropriation, so the courts are likely to be sympathetic when there is no express provision in the Act legislating reimbursement.

(Expropriation - A Hitch Hiker's Guide will be continued in the next issue of Newsletter . . .)

NORTHUMBERLAND STRAIT CROSSING



On the 31st May 1997 Strait Crossing Development Inc., a consortium of Canadian, American, French and Dutch companies will complete the road bridge between Prince Edward Island and New Brunswick.
(Continued on page 5)

(Continued from page 4)

This, the realization of a 100 year dream, will be one of the world's longest bridges and with the access ramps will span 12.9 kilometers of the Northumberland Strait in the Gulf of St. Lawrence. Initial toll charges will be structured to be the same as the ferry service the bridge replaces, and thereafter will rise at no more than 75% x the Consumer Price Index. The bridge will be 11 metres (36 ft.) wide, accommodate one lane plus an emergency shoulder in each direction and soar 40 m (131 ft.) above the water. The navigational spans will be 60 m (197 ft.) high. It will provide a 24 hour, year round road link to Prince Edward Island. The main advantage initially will be a dependable transportation route: no longer will travellers have to allow for the uncertainty inherent in a ferry service.

In 1994 tourism edged past agriculture to become the province's major industry with earnings of $147 million. 1995 saw a further increase, 9%, in tourism as the low dollar kept Canadians vacationing at home and attracted Americans, mainly from the New England states. This article assesses the potential impact of the fixed link on the hotel/motel industry on the Island.

Origin of the Species

	May 14th to October 31st														
Origin	**1981**	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**
Nova Scotia	177,159	41.5%	156,869	141,553	163,487	N/A	160,953	159,505	193,119	177,571	116,179	94,419	104,340	126,927	136,650
New Brunswick	127,986	22.1%	134,870	136,608	123,476	N/A	138,979	101,952	138,946	136,678	110,748	28,325	71,733	93,525	95,655
Newfoundland	15,805	1.7%	17,222	12,570	12,476	N/A	15,770	14,718	16,215	13,789	23,032		13,042	26,722	20,498
Ontario	84,339	15.2%	89,978	86,474	97,805	N/A	93,283	88,183	112,117	103,748	106,254	99,140	123,903	133,608	136,650
Quebec	54,830	3.7%	47,251	50,020	60,324	N/A	60,477	39,750	60,665	39,969	13,092	28,325	52,170	40,082	47,827
Other Canada	14,165	3.1%	27,717	23,212	21,367	N/A	23,618	26,326	13,067	30,379	38,155	56,651	39,127	46,763	47,827
New England	26,056	4.8%	28,711	31,059	27,198	N/A	37,702	35,612	48,833	37,104	57,031	37,767	52,170	60,123	47,827
Other USA	35,130	7.9%	36,642	38,198	38,259	N/A	45,384	43,308	39,566	52,016	87,916	108,581	169,552	120,247	129,818
Other World	928	0%	5,093	10,611	3,639	N/A	4,468	7,143	8,822	15,728	7,641	14,163	26,085	20,041	20,500
Total	536,398	100%	544,353	530,305	548,031	N/A	580,634	516,497	631,350	606,982	560,048	467,371	652,122	668,038	683,252

Source: P.I.E. Department of Tourism & Enterprise P.E.I. Entry/Exit Survey.

The table shows the origin of visitors to the Island during the period May 14th to October 31st, as measured by an entry/exit survey conducted by the Province. There are a number of problems with the data which limit its usefulness in a longitudinal study. The data for 1986 is unavailable and, as far as we could determine, was never published. The data for 1982 is only available as a percentage: the raw figures were never published. In 1992, visitors from Newfoundland were lumped in with "other Canada". The visitor volumes prior to 1992 were estimated based on averages per vehicle: from 1992 onwards actual head counts were conducted. This results in an **over-estimate** in the table for 1991 of 80,519 (16.8%) . . . presumably a similar percentage over-estimate also applies to prior years too. However, in the final analysis the missing data is not fatal and the table is valuable in that it reveals the origin of visitors: which origin is important because the fixed link will have a different impact on each group. The 1992 Tourist Entry/Exit Survey attempted to measure this impact and found that Nova Scotia and New Brunswick visitors anticipated that their visits would increase whilst the remaining tourists were largely unaffected.

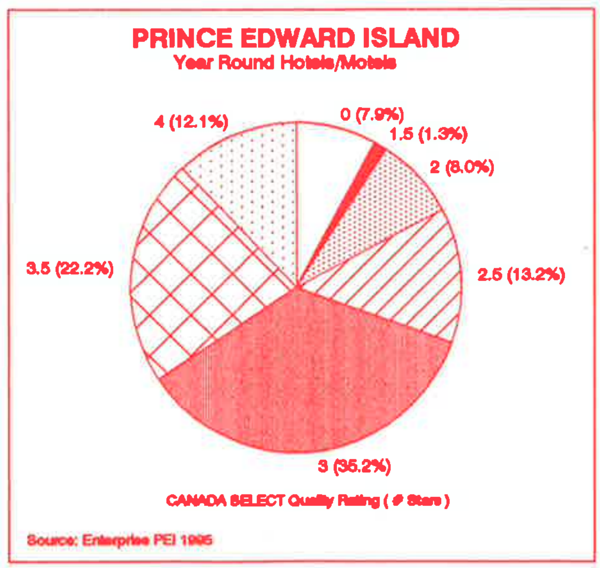
Fixed Roof Accommodation

		# Rooms		
Type	**# Establ-ishments**	**Total**	$\bar{X}$	σ
Hotel/Motel - Year Round	36	1,742	48	44
Hotel/Motel - Seasonal	59	990	17	18
Inns & Tourist Homes	535	2,386	4	N/A
Total	630	5,118		

Source: Tourism P.E.I. 1996 Visitors Guide.

Our count of the 1996 fixed roof inventory (supply) indicates 5,118 overnight and housekeeping units in 630 establishments (hotels, motels, inns and tourist homes).

The tourist season is very short: seasonal motels open for an average of 4.5 months (June 1st to September 15th) and most have a season of 5.5 months or less.



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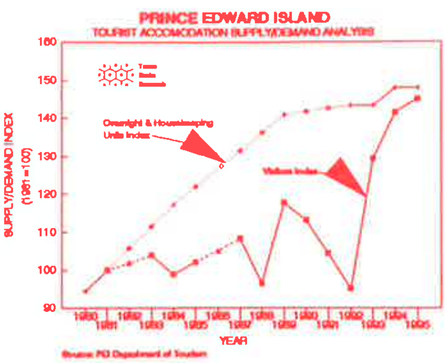
The quality and size of the year round hotels/motels has increased substantially over the past fifteen years. The pie chart indicates the quality as measured by Canada Select in 1996 (* = Clean, comfortable; ** = Clean, comfortable with some amenities; *** = Very comfortable with greater range of facilities, guest amenities and services; **** = The highest standard with and extensive range of facilities, guest amenities and services; ***** = Exceptional, among the best in the country).

Supply/Demand Analysis



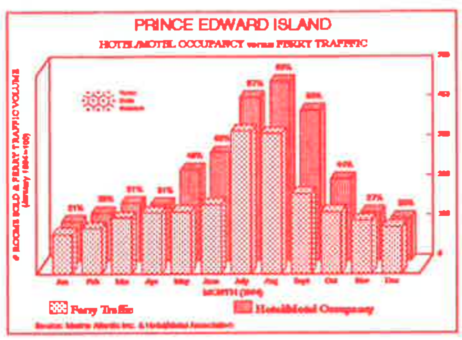
We have plotted the increase of supply in fixed roof accommodation (hotels, motels, inns, tourist homes) against the increase in demand (number of visitors). There is a dearth of hard data on accommodation inventory and we have therefore interpolated between the years for which data was available (shown by "+"). The rapid expansion of supply, far outstripping the growth in demand, was due to government grants through ACOA. For example, Summerside saw the opening of the new ACOA funded, 50 room Loyalist Inn in 1991. As a result occupancy rates of other hotels in the area plummeted by an average of 60%. One, the Best Western Linkletter went bankrupt. [A similar situation occurred in Sydney, Nova Scotia where Government funding encouraged a growth in supply from 537 rooms in 1986 to 851 rooms in 1990, an increase of 58% over this four year period. A spate of bankruptcies resulted including the brand new (ACOA funded) 152 room Sheraton (neé Ramada) Mariner Hotel, Keddy's Sydney Hotel, et al].

The adverse impact of the recession on demand is very evident from the graph, particularly when one bears in mind that it **overstates** visitor volume prior to 1992, because of the methodological problems in the Department of Tourism survey alluded to earlier in this article. Indeed the hotel/motel industry has still not fully recovered as shown by the overall occupancy rate:

Year	Occupancy Rate (%)
1992	46.5%
1993	45.1%
1994	48.5%
1995	51.4%

This is based on a sample size of 1,019 rooms located in hotels/motels, primarily year round accommodation.

Seasonal Supply & Demand



The bar graph shows the monthly hotel/motel occupancy for 1994. The impact of the five month (May 1st to September 30th) tourist season is very evident, particularly the two peak months. Indeed the hotel/motel industry is now running at virtually full occupancy during August and has no available capacity to accommodate additional tourists attracted by the fixed link.

The graph also shows the monthly distribution of visitors and Islanders who utilize the Marine Atlantic Inc. Borden to Cape Tormentine ferry crossing. This is the ferry that will be replaced by the fixed link, next year. The number of hotel/motel room nights sold each month is highly correlated with the ferry traffic volume. The correlation coefficient is 0.91 where +1 or -1 denotes perfect correlation. 83% of the fluctuation in demand for hotel/motel rooms during the year can be explained by the variation in the ferry traffic volume.

Impact of the Fixed Link

A number of cost benefit analyses were undertaken to determine the financial feasibility of the fixed link. One study (The DPA Group Inc. August 1987) estimated that 125,000 additional tourists, representing 120,000 additional bed nights, would visit the Island. Gardner Pinfold Consulting Economists Limited (September 1993) relying on Geoplan Consultants Inc. 1988 report, assumed that induced car traffic volumes at Borden - Cape Tormentine would be 25%, and induced truck traffic would be 5%. Since 75% of the cars were on pleasure trips this would imply 211,631 additional tourists (2.27 per car). 90% of the increased tourist volume is expected to come from Nova Scotia and New Brunswick (The DPA Group Inc. August 1987 study).

We do not believe that tourism increases of the magnitude forecast by the studies are sustainable given the very limited (4 to 5 month) season, our aging Maritime population (Newsletter Vol. 2 No. 53) and the financial feasibility of providing good quality hotel/motel accommodation for such a short season. We have therefore carried out sensitivity analysis utilizing one time induced increases in Borden - Cape Tormentine passenger traffic of 10% and 25% for the tourist period only, extending from May 1st to October 30th. We have utilized an algorithm to forecast occupancy rates and have "capped out" maximum monthly occupancy at 98%. The results are shown in the graph below. The annual occupancy rate under the 10% growth scenario is 52.06%, and under the 25% growth projection, 55.68%.