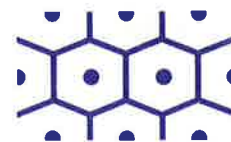


# Newsletter



Spring 1997

Vol. 2 No. 57 (ISSN. 1203-1410)

## UPDATE

It's Spring again in Atlantic Canada and that means ... you've guessed it ... tax time! We take a look at the situation in each province. In our last issue we mentioned our initiative to reduce the cost of appeals in New Brunswick by using the telephone to replace pre-trial meetings. Hardly, one would think, a radical suggestion ... We have the official response, read our article entitled "Teleconferencing Terrifies Taxer". The Supreme Court of Canada has come down squarely on the side of any property owner facing Expropriation. We have the details. Should you order an Appraisal or a Valuation? Our article "Quo Vadis" attempts to shed some light on the subject. The property market recovery is gathering momentum. If you are in business, now is the time to reassess your space requirements.

## PROPERTY TAX DIVISION

### New Brunswick



Wentworth St., Saint John, N.B.  
(\$13,000/annum - 25% in tax savings)

The 1997 assessment notices were mailed on the 3rd March. You should have received a set of decision rules from us

#### IN THIS ISSUE

Update .....	1
Property Taxes .....	1
Quo Vadis: Appraisal or Valuation? .....	3
Equipment Valuation .....	4
Expropriation - A Hitch Hiker's Guide (Cont'd) ....	5
Brokerage.....	6

shortly thereafter to assist you determine whether to appeal. If you placed them in the round filing cabinet and are truly filled with remorse, we'll fax you another copy (but don't discard them again, it's bad for your fiscal health). Give Tom Mills or Jon Robbins a call at 1-800-567-3033. If you suspect you may be overassessed be not faint of heart, appeal ... if you wish we can do it for you. If on the other hand you relish paying taxes ...

### Prince Edward Island



West Royalty, P.E.I.  
(\$7,500/annum - 34% in tax savings)

Exciting times ahead P.E.I. Your 1997 assessment notices will be in the mail on April 30th and so too will our handyman/woman's guide ... all you wanted to know about property taxes, but were too polite to ask. If you do not received our decision rules within 7 days of your assessment notice give Mike Turner (1-800-567-3033) a call. Your 1997 assessment should be based on your property's market value as at 1st January 1997. You have 45 days in which to file your appeal.

### Nova Scotia

Your 1997 appeal period ended on February 4th. We are currently dealing with several hundred appeals throughout the province. If you appealed your assessment but have not yet retained our services, address the problem immediately ... this is how we make a living ... how do you expect us to pay our

(Continued on page 2)

(Continued from page 1)



Portland Street, Dartmouth, N.S.  
(\$159,021.19 in tax savings)

real estate taxes if you do our work? Call Tom Mills or Jon Robbins (1-800-567-3033) now. If you didn't appeal, shame on you. Give us a call anyway, you'll be getting your 1998 assessment notice in June; every year is now a re-assessment year in Canada's Ocean Playground. The 1997 assessment is based on your property's market value as at 1st January 1995; the 1998 assessment will use a 1st January 1996 base date. Each year the Assessment Department will now send you an information request. Please don't complete it yourself, you endanger your fiscal well being. Let our Property Tax Division do it for you; it's money well spent. The forms are open to misinterpretation and are the cause of many over-assessments.

Last year the Assessment Department co-operated in negotiating reductions for this year's assessments before the Roll closed in December. We anticipate that they will repeat the process again this year after the preliminary Roll is published in June. It is a mutually beneficial process since it enables the taxpayer to plan ahead. We will be in touch with you after you receive your 1998 assessment notice in June.

## Newfoundland



St. John's, Newfoundland  
(\$11,000/annum - 16% in tax savings)

The Province has restructured its Assessment Department and turned it into a Crown Corporation. They are seeking proposals for a computer based assessment system. And they are in the process of reassessing all municipalities for 1998, using a common 1st January 1996 base date. The 1998 re-assessment notices are scheduled to be mailed during September/October 1997. Busy times.

If you have appealed your 1997 assessment and need professional advice give Rick Escott or Mike Turner a call (1-800-567-3033).

## New Brunswick - Tele-conferencing Terrifies Taxer

Tax appeals are potentially a three stage process.

Stage 1 involves our inspecting the property and then an audit of the tax assessor's records to determine if they contain errors of fact, methodology or opinion that conspire to produce an overassessment. If they do not we so advise our client and withdraw the appeal. If the property is overassessed we prepare a position paper, negotiate with the assessor and in over 90% of the cases reach a settlement. If the assessor is obdurate (they exist!) or if a genuine difference of opinion prevails, our client has to decide whether to proceed to Stage 2, the Assessment Appeal Board. It is our experience that clients employ one of two (sometimes both) decision rules to determine whether to proceed with Stage 2. Expressed mathematically they are as follows:

Appeal if:

- (1)  $0.5(T)P \geq C$  where:  
or  
(2)  $B(A) \geq C$
- T = Annual Tax Savings  
P = Probability of Success  
C = Cost of Appeal  
B = Pain in the Butt Factor  
A = Assessor

Being of scientific bent we endorse Decision Rule #1 though concede a certain sympathy to clients favouring Decision Rule #2.

Stage 2, the Assessment Appeal Board hearing is informal and hence relatively

inexpensive. Rarely is it necessary for the taxpayer to engage a lawyer, we handle the case ourselves giving evidence and examining the assessor. Some of the more progressive Board Chairmen are happy to conduct the proceedings using teleconferencing, especially in Newfoundland since travel costs are a real factor and could otherwise inhibit a taxpayer from proceeding with an appeal, however warranted it may be.

Although not without its problems, especially when inexperienced chairpersons are initially appointed, the informal Assessment Appeal Board process generally works well and is in widespread use throughout those parts of the world that employ our system of property taxation. Not so in New Brunswick however; there the Assessor undertakes the review process, in effect ruling on his own case ... sometimes without bothering to consider the evidence advanced by the taxpayer. To be fair most Assessors are prepared to review the case with us before reaching a decision but a few, less competent and confident individuals, not wishing to be confused by the facts simply proceed to issue a referral decision unsullied by such considerations. The only recourse then open to the taxpayer, is Stage 3, appeal to a superior Board/Court, in this case the N.B. Assessment Review Board.

In order to reduce the cost of the appeal to the N.B. Assessment Review Board and thus encourage all disadvantaged property owners (not just the wealthy) exercise their democratic rights we suggested to the Provincial Director of Assessment that he join with us in utilizing Graham Bell's brainchild to dispense with the pre-trial hearing. The latter is a social event at which small talk is exchanged and agreements reached between the opposing parties on items such as the dates for exchange of reports, the hearing date itself and the state of the weather. Matters of great import of course, but which to taxpayers such as ourselves and our clients, items that could well be transacted by phone rather than meeting face to face. (We rather thought that the Appeal Board might find the prospect of their reducing costs

(Continued on page 3)

(Continued from page 2)

attractive too ... and well they might, they still have to rule on the matter). Sadly however, our idea was not embraced with enthusiasm by the Geographic Information Corporation a.k.a. the Provincial Assessment Department. So here's the conundrum; is the taxpayer terrified of the telephone ... or the taxpayer?

## VALUATION DIVISION

### Quo Vadis: Appraisal ... or Valuation?

"75% of all appraisers will be extinct by the next millennium" forecasts Jay Fitts, MAI, a keynote speaker at the Appraisal Institute's 1996 symposium *Transition 2000*. Mr. Fitts is the chief credit officer for LaSalle Bank in Chicago: obviously an optimist, his 1995 prediction was 67%. His timing accords with our own. In January 1990 we reviewed the decade ahead and concluded that consumer knowledge fueled by better education would increasingly discard appraisals as a useful business tool. We too estimated that this process would be substantially complete by the year 2000. We still hold to this view: the effort to raise appraisal standards in North America through the adoption of USPAP (Uniform Standards of Professional Appraisal Practice) has failed dismally. USPAP is honoured more in breach than observance. We review countless appraisal reports for clients: rarely do any meet USPAP ... though most claim to do so.

### What is An Appraisal?

The function of an appraisal is to establish the value of the property at a particular point in time based on certain known facts (usually supplied by the property owner) specified in the appraisal report.

In practice most appraisals are documents which regurgitate information supplied by the party for whom they are prepared. The opinion of value contained therein is based on information contained in the appraisal report and may be accurate if that information is correct and is not in the process of change.

Given that change is the one constant in the world, the latter condition rarely holds true.

Appraisals therefore have limited utility and little residual value. They are in demand by the banks and other financial institutions, who loan vast sums of money based on them. Trust companies also had an appetite for them but ... well we'll pass no comment on that subject.

### What is a Valuation?

We define valuation as "a process undertaken to safeguard the interests of the party who will rely on the report". This is usually the client who commissions the assignment. In practice a full valuation involves a fiscal, physical and legal audit of the property together with rigorous research of external factors which will change, now or in the future, the use and value of the real estate.

In our experience the differentiating factor between a "valuation" and an "appraisal" is that establishing value is the *raison d'être* of the latter ... and is almost the incidental by-product of a valuation. Appraisal is a narrowly focused mechanical process ... valuation looks instead at the larger picture, alerts the client to factors detrimental or beneficial, and establishes value within this broader context. Valuation requires personnel with a much greater skill set ... and consumes about three times the labour.

### A Distinction Without A Difference?

You judge: the following cases have been pulled from our valuation files, they are located in different areas of Atlantic Canada.

(1) A purchaser was acquiring a portfolio of apartments in Nova Scotia. We verified that the building permits issued were for the correct number of apartments ... but for the wrong mix! The developer had substituted more profitable two bedroom units for the single bedroom apartments, thus violating the open space provisions of the

zoning by-law.

In our experience it is not uncommon for developers to change their apartment mix, to convert "storage space" to apartments and apartments to commercial space. Once the zoning violation is discovered the municipality will order the offending units closed.

- (2) We valued an office building for a securities offering. The New Brunswick Securities Commission required that the offering prospectus contain a current market valuation. We re-measured all of the tenant spaces using the B.O.M.A. Standard Method of Measurement and discovered that all of the areas shown in the leases were incorrect. The worst discrepancy concerned a tenant shown as occupying almost 50% more space than was actually the case (the tenant has since gone bankrupt!). This situation is common: we had a similar case in Nova Scotia where a major tenant (since bankrupt) was paying rent and operating costs on 50% more space than they occupied.
- (3) We valued a large office building in Halifax, Nova Scotia for foreclosure purposes and discovered that there was no access to it. The mortgage and appraisal were based on a legal description which included the building but not the road frontage. The land between the road and the building was located on a separate lot not included in the mortgage (the mortgage company has since gone bankrupt!).
- (4) Whilst valuing a warehouse and office complex for financing purposes we found that some of the building areas had been included twice in the real estate broker's sales prospectus: the purchaser's appraiser had adopted the broker's figures, the broker had adopted the areas shown in the leases. (The owner subsequently successfully sued the real estate broker!).

(Continued on page 4)



(Continued from page 3)

- (5) We valued an office and retail building in Prince Edward Island and found that the rentable space used to calculate the tax and operating expense recoveries totalled 130% of the actual building area. (The building owner has since retired!).
- (6) We were engaged to provide advice on the economic feasibility of adding a second storey of offices to a retail building. Unfortunately the property had been "downzoned" within the past twelve months preventing the expansion. Although the property had been appraised whilst the downzoning was in progress it was not within the appraiser's mandate to interview the planning officer so the opportunity to file an appeal was missed.
- (7) During our inspection of a high rise apartment building we alerted the purchaser to a number of items of deferred maintenance prompting him to engage an engineering firm to quantify the cost of repairs. This cost to cure was then deducted from the purchase price.
- (8) When we verified the legal description against the physical attributes on-site we discovered that our client owned 47 acres of backland accessible via a right-of-way rather than the 100 acres with extensive road frontage in a rapidly expanding urban area, the assumption on which his appraisal was based.
- (9) It is essential to read every lease. Each lease in a large commercial/office building in Halifax, Nova Scotia contained an option clause with a **step-down** of \$16/ft.<sup>2</sup> for the renewal period.
- (10) A new pre-engineered industrial building in an established and growing industrial park in Bedford, Nova Scotia was typical in external appearance to its contemporaries. However it had been finished entirely as offices ... the I-1 (Industrial) zoning only allowed offices as an ancillary use. Some of the office space had to be ripped out.
- (11) A large neighbourhood strip plaza had a restaurant anchor with a 20 year lease term. After the first 10 years the contractual rent **stepped down** from \$15/ft.<sup>2</sup> to \$8/ft.<sup>2</sup> for the remaining term. The present cash flow therefore was not a valid indicator of future returns.
- (12) An office building occupied a beautiful position bordering a lake. Since it was in a suburban location its competitive position was dependant on ample on-site parking: fortunately it was so

blessed. We valued it for foreclosure purposes, the property being a victim of the recent recession. When we compared the legal description with our site measurements we found that most of the parking lot was owned instead by the Crown ... it was lake bed which had been "filled".

- (13) An industrial property in Cape Breton was held on a ground lease which provided that it could be terminated at anytime by the freeholder if the tenant was in arrears with its taxes. Our research with the municipal tax office uncovered long standing tax arrears well in excess of the property's value.
- (14) There was no survey plan for an industrial building located near a major highway interchange in Halifax, Nova Scotia. The owner's appraiser using the only plan readily available, the Land Registration and Information Service (LRIS), based his value on 6.5 acres. When we attempted to verify the LRIS map on-site we realized that it included land previously acquired for road widening. After reviewing other available maps and surveys we established the correct land size as 5.5 acres.
- (15) In order to provide access and parking to a restaurant the owner was adding to his service station, he had to acquire two additional parcels of land. The bank placed its mortgage for the restaurant on the original parcel of land and did not secure a charge against the two additional parcels. Presumably their appraiser was unaware that part of the site was omitted from the mortgage.

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**STRATEGIC ALLIANCE SPECIALIST -  
EQUIPMENT VALUATION**  
**James McClare Consulting**

"More with less", the clarion call of the '90s born of the recession. We can assist time stressed managers meet the challenge of their rapidly changing competitive environment with "one stop" shopping for real estate services.

Building on our core Divisions: Property Tax, Valuation, Counselling, Brokerage (sales and leasing) we have forged strategic alliances with specialists who offer complementary services; experts such as Jim McClare, P.Eng.

Jim obtained his B.Eng. (Chem.) in 1964 and his M.Eng. a year later, both from the Technical University of Nova Scotia (TUNS). He is an expert in food processing and process industries and has worked with

(Continued on page 5)

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our Valuation Division on a number of joint assignments. We value the real estate, Jim the equipment.

Jim's areas of expertise encompass the following:

<b>AGRI-INDUSTRIES</b> <ul style="list-style-type: none"> <li>• Feed Mills</li> <li>• Fertilizer Plants</li> <li>• Flour Mills</li> <li>• Fruit, Vegetable, Egg Packing</li> <li>• Grain Handling</li> <li>• Oilseed Processors</li> </ul> <b>BREWERIES &amp; DISTILLERIES</b> <b>BULK HANDLING</b>	<b>BY-PRODUCT OPERATIONS</b> <ul style="list-style-type: none"> <li>• Fishmeal &amp; Oil Plants</li> <li>• Glue &amp; Gelatin</li> <li>• Rendering Plants</li> <li>• "Natural" Products</li> </ul> <b>CEMENT, ORE PROCESSING</b> <b>CHEMICALS</b> <b>MIXING PACKAGING</b> <b>PLASTIC PRODUCTS</b> <b>WASTE TREATMENT</b>	<b>FOOD INDUSTRIES</b> <ul style="list-style-type: none"> <li>• Bakeries</li> <li>• Canneries</li> <li>• Dairies</li> <li>• Edible Oil Products</li> <li>• Fish &amp; Meat Processing</li> <li>• Flour Mills</li> <li>• Frozen Foods</li> <li>• Manufactured Foods</li> </ul> <b>WOOD TREATMENT</b>
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If you require an asset valuation which includes both real estate and equipment for fire insurance, sale, purchase, tax, etc. we can handle the entire assignment. Call Rick Escott our V.P. Valuation (1-800-567-3033) for further information.

## EXPROPRIATION - A HITCH HIKER'S GUIDE Chasing Shadows

*"The expropriation of property is one of the ultimate exercises of government authority. To take all or part of a person's property constitutes a severe loss and a very significant interference with a citizen's private property rights. It follows that the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected ... Further, since the Expropriations Act is a remedial statute, it must be given a broad and liberal interpretation consistent with its purpose. Substance, not form, is the governing factor"* (Supreme Court of Canada: Dell Holdings Limited v. Toronto Area Transit Operating Authority [1997] S.C.J. No. 6).

Bob Barnes, Burchell MacAdam & Hayman, Halifax, sent us a copy of this decision. We have had the good fortune of working with Bob on a number of Nova Scotian expropriation cases. The decision is interesting on two counts; the sentiment expressed above, and the Court's treatment of losses which occurred prior to expropriation, i.e. "shadow costs".

During the twenty years our firm has represented owners whose property is affected by a road widening or similar public project we are frequently appalled at the treatment metered out by the municipal or provincial acquiring authority. (The Federal government is usually the exception that proves the rule: in our experience it rises to the spirit as well as the letter of the law). It will be interesting to see how the private sector rises to the challenge with the Sable Island gas pipeline ... We have had calls from effected property owners in Nova Scotia and New Brunswick and are very happy to review the circumstance of each

case but advise waiting until the offer is received from Maritimes and Northeast Pipeline Project before determining whether it is necessary to formally seek professional assistance.

Whenever a pipeline, road scheme, landfill, composting facility or other public facility is promulgated, the private property effected falls in value ... and may be unmarketable. No purchaser wants to assume the risk and hassle of

dealing with a public body even when only part of the property is required. The prospective purchaser will therefore discount their price ... or decline to purchase the property at all. The reasons are self evident:

- (1) All Expropriation Acts embody the principle of restitution; the property owner is to be placed in the same financial position after the acquisition as they were before it. Expropriation for the property owner is a zero sum game ... even if they are treated fairly they will not benefit.
- (2) The municipal and provincial employees charged with negotiating the compensation often lack the training, knowledge and motivation to undertake their responsibilities in the manner contemplated by the Expropriation Act. Worse, many attempt to negotiate the compensation without expropriating the property apparently on the (albeit erroneous) assumption that by so doing, they are relieved of the constraint of restitution imposed by the Act. It has been our experience that where the owner wishes to sell an entire developed property the acquiring authority's offer will be fair (and often excessive). However, where the offer involves part only of a commercial, industrial or undeveloped property, it will be far too low (on average 32% of the loss actually suffered - Newsletter Vol. 2 No. 50). The property owner will be faced with a time consuming and expensive battle to secure adequate compensation ... against bureaucrats for whom cost is not a consideration).

Neither the Federal Expropriation Act, nor any of the Provincial Expropriation Acts, offers relief to an owner of property blighted by a prospective public scheme such as road widening. As a result many owners are in the invidious position of having property they cannot develop fully or sell without suffering a loss. Since the road widening may not come to pass for another ten to twenty years ... if at all ... the owner is in a pickle. The municipality may refuse to acquire the property since to do so implies approval for a scheme which has not yet

(Continued on page 6)

(Continued from page 5)

proceeded through the public hearing process ... or may acquire the property but refuse to pay fair compensation since they view their action as a "favour to the property owned". The Dell decision provides relief so long as the owner does not sell but continues to hold the property until it is eventually expropriated. It also strengthens the negotiating position of an owner whose property is blighted by a proposed scheme and who wants the public body to purchase the property immediately.

In the mid '70s Dell acquired 40 acres of land in Mississauga with the objective of eventually developing it as a residential sub-division. In May 1977 the Toronto Area Transit Operating Authority determined that it needed a 9 acre site for a new GO Transit station and identified two possible locations, both on Dell's property. The City of Mississauga, the planning authority, refused to grant zoning approval for any part of the property to Dell until Toronto Transit decided which part of the site it required. The Transit authority finally made that decision in March 1980: up to that point no land had been expropriated. Dell meanwhile had suffered a loss of \$0.5 million due to the delay in developing the entire 40 acres. The Supreme Court of Canada awarded Dell compensation for the entire loss suffered deciding that the formal filing of the expropriation was relevant only in as much as it triggered the right to compensation. The date of the expropriation was not relevant in determining the period over which the losses suffered by Dell should be measured ... the Court ruled that "*damages which occurred before expropriation can in fact be caused by that very expropriation*" and hence are compensable. Nor should the compensable loss be restricted to the land that was eventually expropriated, i.e. the 9 acres. In reaching its conclusion the Supreme Court of Canada drew on a Privy Council decision (*Director of Buildings and Lands v. Shun Fung Ironworks Ltd.*, [1995] 2 A.C. 111). This latter case is particularly germane to many businesses. Shun Fung operated a mill business in Hong Kong. In November 1981 the government authority advised them that a project was

planned which necessitated expropriation of Shun Fung's property. The information was generally known by the middle of 1982 and Shun Fung was unable to secure long term contracts because its customers, hearing of the possible expropriation, were concerned that the business would close. The government authority delayed expropriation until July 1986. Shun Fung was awarded compensation for loss of profit which occurred in the "shadow period", i.e. between the announcement of the intended expropriation and the date the land was actually taken.

*(Expropriation - A Hitch Hiker's Guide will be continued in future issues of Newsletter ...).*

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## BROKERAGE DIVISION

Although the focus of our sales and leasing activity is Greater Halifax we have sold properties recently in the Wolfville - New Minas - Kentville corridor and Truro.

### Leasing

We are firmly convinced that the real estate recovery which started in February 1996, is no flash in the pan. Despite some spluttering since then, there is a pronounced increase in momentum and we are at last returning to a competitive market. We have had a number of situations where tenants have missed leasing opportunities because the space was snapped up whilst they were reaching a decision.

Although there is still a lack of business confidence, that situation too is changing and the more prescient tenants are seeking longer terms, recognising that rents are going to increase. Indeed some office leases now include "step-up" rental clauses which anticipate a 10% increase over the next twelve months. Given that it is not possible to create new space at the present rental rates, future rental increases are inevitable ... many landlords would say well overdue. If you are reviewing your space requirements we strongly advise that you call us now rather than defer the process until the

Fall. Most tenants underestimate the time required to locate new premises. You should commence the process at least six months prior to your present lease expiry. We have information on virtually all of the available space (office, industrial, retail) in Greater Halifax and Russ (429-1811) will be very glad to meet with you to discuss your space requirements.

### Sales

In October 1996, our brokerage publication, I.C.I. Report contained information on sixteen properties. Eight have now been sold, leased or are under agreement.

Many properties lost up to 50% of their value with the onset of the recession in 1990. In effect that market correction wiped out all the gains since 1980. In other words prices regressed to their level of a decade earlier. Although a market recovery is underway there is no evidence that it will immediately reverse the 1990 market correction. A typical property cycle profile shows a steady price increase, a sharp steep drop (over a two year period), followed by a steady price increase. It will probably take between 5 and 10 years to recover the value lost in the 1990 market correction.

The most sought after properties are apartment buildings, particularly on Halifax Peninsula but also in areas such as Clayton Park. This type of property was least affected by the 1990 market correction (in some areas not at all). We have nineteen different investors actively seeking apartment buildings. If you own an apartment building and wish to sell, please call Verna (429-1811).

There is also an active market in small owner-occupier type buildings (offices, retail, industrial). However, purchasers are still seeking "bargains".

We are actively seeking listings for all types of property. Please call Verna (429-1811) if you would like to sell.

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