TURNER DRAKE & PARTNERS

Newsletter

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UPDATE

Another new year, what a gift! Let's enjoy it. The economy is on the move, Hibernia gushes oil, Voisey's Bay beckons, Sable gas is no longer a pipe dream, real estate is on the rise, Municipal spending has careered out of control ... Well OK, there **is** a sting in the tail so seize the moment and stop the waste. Our article on Property Tax tells it all ... well not all, just some of it, you have to pay for the rest.

This year thousands of property owners will lose part or all of their property to projects such as the Maritimes and Northeast Pipeline and the Trans Canada Highway twinning. We have some advice for them.

Forget about the stock market, you'll catch the Asian flu. Real men invest in hard assets, women too. Our Valuation Division tracks the myriad markets of the region for you with our new computer system.

Lasercad™: co-operating with a competitor now?! We do it all for you: we explain how you benefit.

Our Home, and Native Land looks at the recent Supreme Court of Canada decision on B.C. land claims and its implications for this region.

Join us in welcoming Bill Frank as V.P. Brokerage Division. The markets are on the move. Whether you're buying, selling, leasing or renting, opportunity knocks. We explain why.

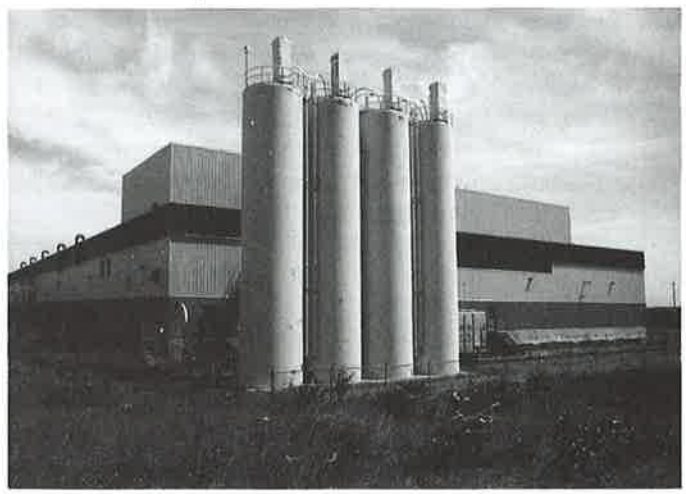
PROPERTY TAX DIVISION

Telling Tales out of School

Each year Tom Mill$ our V.P. Property Tax and his team liberate millions of dollars for productive use: money that is used by the private sector to expand, invest in new technology, create jobs and improve profits (ours too). Capital that would otherwise be squandered by the public sector on misallocated resources. The examples of successful tax appeals shown in this and previous Newsletters understate the case. It is not unusual for our team to achieve annual tax savings of $50,000 to $250,000 on a single large property. However 90% of our tax appeals are settled by negotiation and it is unfair and counterproductive to embarrass an assessor honest enough to adjust an incorrect assessment, so we pursue a policy of publishing only the less spectacular tax savings ... unless the case has proceeded to court. (The $159,000 *Newsletter Spring 1997* and $266,000 *Newsletter Winter 1996-97* were two cases that fell into the latter category).

IN THIS ISSUE

Nova Scotia



North Sydney, Cape Breton County, N.S.
($25,600/annum - 47% in tax savings)

The Nova Scotia assessment notices were mailed on January 12th. You have 21 days in which to appeal. The basis of your 1998 realty assessment is the market value of your property on the 1st January 1996 (the base date). Property prices crashed in 1990 with the onset of the recession, often by 50% or more. However, they are now on their way up again. Good news and bad news! Good news because your asset is gaining value, bad news because you may never again have the opportunity of reducing your tax load if you miss this chance. Carpe diem! Get your 1998 assessment reduced and expect tax savings for future years too. The Provincial Assessment department slumbered through the recession ... by the time they realise prices have risen again and raise

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assessments we'll all be pushing up the daisies.

Much of industrial Cape Breton is grossly overassessed. We have found it necessary to take some property appeals before the Regional Assessment Court to gain satisfaction. The property shown in the photograph was one such case. Happily some of the assessors have a more professional outlook and are sufficiently confident of their own ability to reduce the assessment if we can demonstrate that the property is over-assessed. However, if you do own an industrial property in industrial Cape Breton, we strongly advise you to file a protective appeal this year to safeguard your tax position. This is probably a sound policy too for all owners of industrial property located outside the Halifax-Dartmouth Metropolitan Area. If you own an industrial property situated in the Halifax-Dartmouth Metropolitan Area you should file a protective appeal if your 1998 assessment is greater than 50% of its pre-recession (1990) value. Alternatively use a rule of thumb figure of \$17/ft.² (14 ft. ceiling height) to \$25/ft.² (≥ 20 ft. ceiling height) of gross floor area. These figure are not sacrosanct, we know of one 50,000 ft.² industrial building that sold for \$8/ft.².

The market value of Class B, C and D office buildings located in the Halifax and Dartmouth CBDs hit rock bottom in the last quarter of 1997. Their 1998 assessments should be lower than the 1997 assessment (base date 1st January 1995) as should those for Class A buildings. Any well maintained, air-conditioned building offering modern office space whose assessment is greater than \$10/ft.² (± 30 years old) or \$25/ft.² (± 20 years old) is probably overassessed. If it is located outside the Halifax-Dartmouth Metropolitan Area and has an assessment of more than \$17/ft.² (± 30 years old) it is probably overassessed.

Many community, strip and neighbourhood shopping centres are overassessed. Because the 1998 assessment utilizes a 1st January 1996 base date, use your calendar year 1995 net operating income. Capitalize it at 15% (neighborhood shopping centre and strip mall) or 14% to 15% (community shopping centre).

We mailed Nova Scotia property owners a set of decision rules on 13th January. They provide criteria to help determine whether you should appeal. If we missed you or if you wish to discuss a possible appeal, please call Tom or Giselle toll free at 1-800-567-3033 (or 429-1811 in Greater Halifax)

New Brunswick

Crown Drive, Saint John, N.B.
(\$27,000/annum - 22% in tax savings)

Our last Newsletter reported the Geographic Information Corporation (a.k.a. Provincial Assessment Department) response to our proposal that tele-conferencing be utilized for pre-court hearings to reduce the cost of appeals. They were not interested. We were disappointed and disturbed at their cavalier dismissal of the suggestion. However, we are confident that Mr. Lawrence Garvie, the Chairman of the N.B. Assessment Review Boards will resolutely exercise his authority when the opportunity next presents itself, given his often expressed concern that it behoves all parties to reduce costs in these times of fiscal restraint.

The 1998 assessment notices should be mailed on the 1st March 1998. There is a 60 day appeal period. The basis for your assessment is the market value of your property as at 1st January 1998. We will publish a set of decision rules which you will be able to use to determine whether your property is overassessed. If you haven't received them by the 8th March please call Mike (1-800-567-3033).

Prince Edward Island

Your 1998 assessment notices should be in the mail on April 30th ... together with our decision rules to assist you determine whether to file an appeal. You have 45 days in which to appeal.

University Avenue, Charlottetown, P.E.I.
(\$2,000/annum - 15% in tax savings)

Your 1998 assessment should be based on your property's market value as at 1st January 1998 ... it is not! The Island's Assessment Department, formerly the most efficient in the region, no longer executes its mandate effectively ... and most (but not all) properties are under-assessed. Since the under-assessments are not uniform many property owners bear an unfair portion of the tax load. Short of moving to New Brunswick, what can you do to protect your business? At first blush, the situation may appear hopeless. Routinely under-assessing property is the oldest trick in the book. By so doing the assessment authority attempts to undermine your grounds for appeal. However, there is a chink in their armour; assessments must also be uniform. So if commercial properties are under-assessed by an average of 40%, you should be able to successfully appeal any commercial assessment that exceeds 60% of market value.

Newfoundland

St. John's, Newfoundland
(\$18,000/annum - 22% in tax savings)

This was a re-assessment year for the entire province. All municipalities moved over to a common base date. Your 1998 assessment is meant to

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represent the market value of your property on the 1st January 1996. The assessment notices for all areas outside St. John's were mailed on the 19th November, the day before the mail strike. Thanks to some nice investigative journalism by The Evening Telegram, the Minister had a last minute change of heart and recommended extending the 21 day appeal deadline by the length of the mail strike. Bless the Press: without their intervention most property owners would have lost their right of appeal. The appeal period was extended to 24th December.

The City of St. John's mailed their assessment notices on 5th December so that the end of the appeal period would fall over the Christmas vacation. (The bureaucrats pull this little trick every year: they hope that you will be so full of turkey and Christmas spirit that you will forget to appeal). Thanks to media attention the City of St. John's appeal period was extended to 12th January. Alas, the City fathers (mothers too) both giveth, and taketh away. They decided to double the business occupancy tax rate for financial institutions to 7% of assessed value, apparently because they were making a profit. Most businesses pay 1.8% of assessed value for occupancy tax purposes. It pays not, to make money in St. John's.

52% of all properties outside St. John's saw their assessments increase. Since St. John's re-assessed its properties last year using a 1st January 1995 base date, few assessments were increased for 1998.

We are working on appeals in the province. If you have filed an appeal and are seeking professional advice, please call Rick or Mike toll free at 1-800-567-3033.

EXPROPRIATION - A HITCH HIKER'S GUIDE

In 1998 many in Atlantic Canada will lose their property: most to the twinning of the Trans Canada Highway through New Brunswick, and to the Maritimes and Northeast Pipeline project. Some will part with their property happily, others reluctantly. They will do so for the greater good of the community. These property owners have two things in common: (1) they have no choice in the matter, (2) they have a fundamental right to treatment which is not only fair, but is seen to be fair. The latter is affirmed by law. The State recognizes that the forcible taking of property is an action repugnant to virtually all Canadians **and decrees that they have to be satisfied they have been fairly compensated.** This principle is the golden thread guiding all judicial decisions on cases pertaining to the taking of property. It matters not that the acquisition is by agreement rather than expropriation. So long as the acquiring authority has the power to compel the property owner to sell, they must conduct themselves as though expropriation had taken place. "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 - Newsletter Vol. 2 No. 57).*

The principle that the acquiring authority must prove their offer is fair is usually forgotten, particularly when they attempt to purchase the property by negotiation without the expense of formal expropriation.

What Constitutes Sufficient Proof?

We are frequently approached by bewildered property owners who, having received an offer for their property or part of it, for road widening, a transmission line, pipeline or similar purpose, seek reassurance that they are being fairly compensated.

What action is required of the acquiring authority in order to fulfil its obligation to prove that their offer is reasonable? That's an easy question to answer: they have to conduct themselves as though the property has been expropriated ... even though they are involved in "friendly negotiations" and the word "expropriation" has never passed their lips ... There is a huge body of case law which clearly defines the behavior expected of the acquiring authority. There is also a commonality amongst the various Acts which mandate expropriation, so case law interpretation can usefully be generalised across them. This is important because the Maritimes and Northeast Pipeline trunk line crosses provincial boundaries and hence it and the Halifax and Saint John laterals fall under the Federal National Energy Board Act, whilst the other laterals are covered instead by the New Brunswick and Nova Scotia Expropriation Acts. Let's cut to the quick: this is what they have to do:

(1) Any offer must be based on an independent appraisal report which considers **all** of the losses suffered by the property owner:

1. **Market value of the interest acquired.**
2. **Injurious affection**, i.e. diminution in the value of the remaining property.
3. **Disturbance**, i.e. crop loss, business loss or any other costs incurred as a result of the project.
4. **Special Economic Advantage**, i.e. losses which are not quantifiable under the other heads of claim. For example a woodlot located in close proximity to the owner's saw mill would have greater value to him than anybody else *(Gagetown Lumber Co. v. R. [1957] S.C.R. 44; 6 D.L.R. (2d) 657).*
5. **Home for a Home**, i.e. this head of claim ensures that a residential home owner-occupier will receive sufficient compensation to remain in the same neighborhood even if the home being acquired is a much humbler abode, i.e. of lower value, than its neighbours.

The courts have ruled that the two page reports commonly tendered by acquiring authorities during negotiations do not constitute an "appraisal" *(Bambrough v. Ministry of Housing for Ontario [1974] 7 L.C.R. 103 - Newsletter Vol. 2 No. 52).* The North American appraisal industry has adopted the Uniform Standards of

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Professional Appraisal Practice (USPAP) which clearly defines appraisal reports and their use. USPAP is designed to eliminate the misleading use of appraisal reports.

(2) Pay for the property owner's professional fees (appraisal, legal, etc.) reasonably entailed in formulating a claim. The various Acts deliberately avoid placing the onus on the property owner to ensure that the costs themselves be reasonable, only that they be reasonably incurred. Their intention is to ensure the owner obtains the best professional advice. This sticks in the craw of most acquiring authorities; they prefer a "friendly appraiser" and almost always attempt to circumvent the intention of the Act by insisting that the property owner's appraiser contact them first so that they can agree a "reasonable fee" for the work ... he who pays the piper, plays the tune ...

Keeping Score

We have developed a rating guide to determine the likelihood of a property owner receiving the type of treatment mandated by our judicial system ... and the defence he/she should mount to respond to the acquiring authority.

Rating	Recommended Response by Property Owner when Approached by Acquiring Authority
1	(1) Refuse to negotiate. (2) Refuse to allow the Acquiring Authority on your property without a Court Order. (3) Do not give the Acquiring Authority or their appraiser any information. (4) Seek immediate Professional advice.
2	(1) Refer all negotiations to your Professional advisor. (2) Refuse to allow the Acquiring Authority on your property without a Court Order. (3) Give the Acquiring Authority or their appraiser information through your Professional advisor. (4) Seek immediate Professional advice.
3	(1) Insist that the Acquiring Authority supply you with a copy of the appraisal report on which their offer is based. (2) Refuse to allow the Acquiring Authority on your property without a Court Order. (3) Give the Acquiring Authority or their appraiser information through your Professional advisor. (4) Seek immediate Professional advice.
4	(1) Insist that the Acquiring Authority supply you with a copy of the appraisal report. (2) Ask the Acquiring Authority to pay the cost entailed in your Professional/appraiser /valuer reviewing the Acquiring Authority's appraisal report. (3) Give the Acquiring Authority or their appraiser the information they require. (4) Seek professional advice **after** you have received the Acquiring Authority's appraisal report.
5	As above.

Based on our guide we have rated the various authorities on a five point scale (1 = Poor; 2 = Fair; 3 = Average; 4 = Good; 5 = Excellent). The table tells all:

Acquiring Authority	Rating	Change over Past Twelve Months
Town of Bedford	3	Not applicable
City of Dartmouth	3	Not applicable
City of Halifax	1	Not applicable
County of Halifax	3	Not applicable
Halifax Regional Municipality	2	⇨
Province of Nova Scotia - Department of Transportation	2	⇧
Province of New Brunswick - Department of Transportation	3	⇩
Federal Government - Realty Services	4	⇨
Province of Prince Edward Island	3	⇧
Nova Scotia Power Corporation	3.5	⇨
Maritimes & North East Pipeline	3	Not applicable

VALUATION

We recently had cause to review a "state of the market" report we prepared last September: four months and an aeon ago so fast have the markets changed.

This is an exciting time again to be involved in real estate. The market meltdown of 1990 was brutal. It

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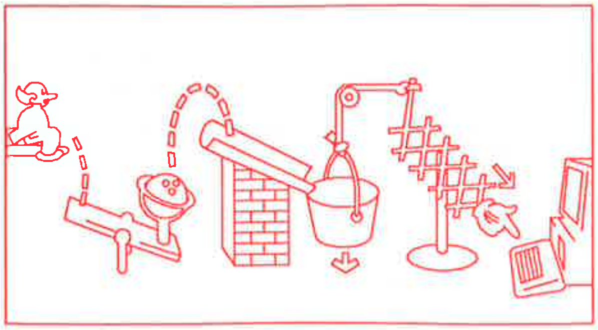
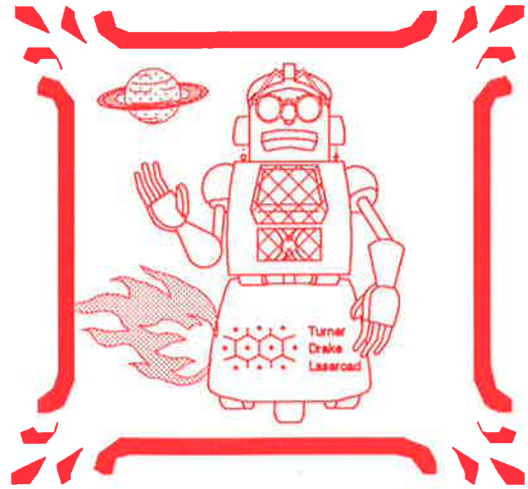


wiped 50% or more off the value of most types of commercial real estate. Canny clients turned the calamity into an opportunity by engaging our Property Tax Division to seek re-adjustment of their real estate assessments (there is still time to shed part of your tax load if you have not yet done so). It was obvious that values would recover eventually and the hotel-motel sub-market led the pack in 1995. Shopping centres and strip retail, with the exception of regional malls, are still in the doldrums. However, the remaining sub-markets embarked on a sustained recovery last Spring. Demand steadily increased through mid '97 and finally started to surge ahead in the last quarter of the year. We anticipate that the buffeting experienced by stock market investors recently may escalate this process, as money again seeks a home in hard assets. Now that liquidity has returned to the real estate markets, property is again an attractive investment, made more so by low mortgage rates. REITs have now replaced institutional investors, an event which promises long term stability for large investment property in major urban areas. Small and medium size investors are also returning to the property market in increasing numbers.

On the 28th December 1994, realising that the commercial property markets would rebound, we commenced a two year project (it took three!) to provide clients with instant access to the most comprehensive real estate data base in Atlantic Canada. We completed installation of the last piece of computer hardware this January and whilst it is necessary for all of us to face the LAN Server each morning, bow respectfully and pray that a piece of recalcitrant software will work, it allows us to keep our finger firmly on the pulse of the property market. Our Brokerage Division is an invaluable means of keeping us close to the market too. Rather than having to rake through the ashes of sales data, much of which is no longer relevant, we can provide clients with current valuation advice.

LASERCAD™

The new BOMA standard allows landlords to capture up to 8% more rentable space within the same building envelope. However, like the old "standard", parts are



open to interpretation. To avoid costly disputes and arbitration hearings Lasercad™ and Graphics Unlimited, the region's two premier measurement services are co-operating on an ongoing basis to develop a consistent interpretation of the BOMA standard.

We are co-operating with our competitor as well to provide clients with compatible computer files. The recent closure of their regional operations here by a national measuring franchise has highlighted the benefit of industry standard computer file formats ... and the ownership of those files by the property owner. Lasercad™ and Graphics Unlimited file formats are interchangeable and can be utilized by most CAD programs including the popular Turbocad and Autocad. Lasercad™ and Graphics Unlimited provide "as built" **scale drawings** in hard copy and on computer disk **for retention by the client.** Property owners are not therefore "tied" to either service when they require future updates to their building plans.

Lasercad™ is one of a broad array of professional services we offer clients. It can be utilized on a "stand alone" basis, or as part of a broader assignment, e.g. lease disputes, arbitration hearings, due diligence on purchase, lease negotiations, etc.

We also offer Lasercad™ as an asset management tool and will supply, install and train clients to use the software. Have no fear, complicated it is not ... a ten year old can pick it up in 5 minutes, a baby boomer in 50.

COUNSELLING DIVISION

Our Home, and Native Land

The December 11th 1997 Supreme Court of Canada decision on the rights of the Gitxsan and Wet'suwet'en First Nations land claims has implications for Atlantic

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Canada. In a unanimous decision the six member Supreme Court overturned a B.C. court ruling dismissing the Indian bands claims of ownership to a tract of land about the same size as Nova Scotia.

The Supreme Court ruled that native people have a constitutional right to own their ancestral lands and can use them as they wish. The Court held that oral history had to be taken into account as evidence of native occupation and use. The decision applies to natives who have not signed away their land in treaties: the situation in Nova Scotia and New Brunswick. Good; it's encouraging that rights to property are so well protected.

The Supreme Court also went on to urge negotiated settlements based on good faith. To date our Counselling Division has been involved in preparing and advising on several land claims in New Brunswick and Nova Scotia.

BROKERAGE DIVISION

William E. Frank

We are pleased to welcome Bill Frank to our management team as Vice President, Brokerage.

Bill has a wealth of marketing experience, management and leadership skills. As the General Manager and then Vice President he formerly had responsibility for a quality oriented quick service restaurant chain employing over 600 associates. He successfully operated, managed and oversaw fourteen Kentucky Fried Chicken restaurants in Nova Scotia. He was also responsible for developing six seafood restaurants in Nova Scotia and Ontario. In addition, he directed and oversaw real estate acquisitions, construction and renovation of restaurant, commercial and residential property. He has been a licensed real estate broker since 1981.

A recognized leadership and motivational speaker, Bill has conducted seminars for many of Atlantic Canada's premier corporations, as well as St. Mary's University at the World Trade Centre in Halifax. As President of the Canadian Restaurant and Foodservices Association, he was their national spokesperson with the media, other trade associations and government agencies.

With our usual uncanny knack for timing we dove into real estate brokerage in 1988, just as the country was girding itself for a market meltdown after the excesses of the 1970s and 1980s. It has been a challenging ten years that have added new meaning to that witch's curse "may you live in interesting times". However, during the past twelve months virtually all property markets have turned positive. This is a sustained recovery; no flash in the pan! Our brokerage team, having cut their teeth during the lean times are well equipped to utilize the opportunities afforded by a rising market. We needed somebody with leadership ability to focus their efforts and enthusiasm: Bill is already doing so . . . we wish him, you and us well. This is a great time (again) to be involved in real estate.

Sales

During the past 30 days we have consummated negotiations for the sale of five properties with a total value of almost $9 million. Some of the properties had been on the market for three years; others less than three months. There can be no better illustration of the escalating interest in real estate as an investment. True the market is still patchy. Demand is strong for good quality product such as modern apartment buildings, especially on Halifax Peninsula and prices are increasing even though rents are not ... investors, primarily Real Estate Investment Trusts (REITs) are willing to accept lower yields. However, office buildings are increasingly in demand too. The net absolute rents for a Class A building in the former City of Halifax CBD are still about a third of the rate required to trigger new construction. Purchasers are acquiring on the expectation that rents will triple. They are quite correct. However, there are two flies in the ointment; the Lacewood Business Campus being developed near Bayers Lake Business Park, by Clayton Developments ... and road communications onto Halifax Peninsula. Clayton Developments propose to bring 450,000 ft.^{2} on stream, concomitant with demand. The site is accessible and close to the Bayers Lake retail node. The Halifax Dartmouth Bridge Commission is going ahead with a third lane on the MacDonald Bridge but the Halifax Regional Municipality is running into strong opposition to its proposed widening of Bayers Road (between Connaught Avenue and Windsor Street) from the home owners affected. In our opinion the latter are correct to be concerned: the former City of Halifax's treatment of property owners affected by road widening left much to be desired, there is little reason to hope yet that HRM will be much better *(see Expropriation - A Hitch Hiker's Guide in this issue).*

We have buyers wishing to buy, so if you're a seller wanting to sell give Verna or Bill a call (429-1811) A.S.A.P.

Leasing

There is increasing demand for retail, office and industrial space. Vacancy rates of office space in Class A buildings in the (former) City of Halifax CBD are widely quoted to be in the 6% to 8% range. However, these figures are somewhat open to interpretation because there is no standard definition of a Class A ... or B, C, D building and vacancy increases with building age (and lack of modernity). However, let's not be Banquo's ghost at the feast, there **is** a positive absorption of office space and rents are increasing. In the mid 1980s we experienced a rental increase of 40% in one year so there is ample precedent for large rent increases as the vacancy rate falls below the 8% threshold. Tenants wishing to take advantage of the present (temporary) situation are advised to call Russ (429-1811) without delay!