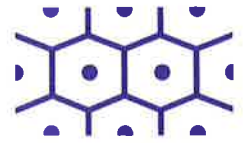


Newsletter



SPRING 1998

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UPDATE

Ah, Spring! Oh, tax time! This year Ontario too is under siege. As always, every cloud has a silver lining. We've opened a Toronto site office to assist property owners there, find it (the silver lining, not Toronto). The property tax reassessment has an upside ... read this issue and discover it. It's property tax appeal time too in New Brunswick: Prince Edward Island will shortly be so blessed. Nova Scotia and Newfoundland, we have some advice for you as well. We save property owners millions of dollars each year but you have to take the first step so start reading ...

Sable Island gas promises to keep the eastern United States and the Maritimes supplied for 25 years ... but to get there the pipeline slices through hundreds of properties. We have some advice for property owners.

The Fire Insurance article in our Summer 1997 Newsletter generated a heated response. We add some fuel to the flames.

PROPERTY TAX DIVISION

A Philosophical Discourse on Property Tax (Really!)

The payment of taxes in a democracy is primarily a voluntary undertaking. If a significant proportion of taxpayers refuse to co-operate, the entire apparatus of tax collection will break down. The reason it has not yet happened is that most businessmen (and women) are prepared to pay their fair share provided it is ... well their fair share. It is a source of some amazement to us (we are easily amazed) that many bureaucrats employed in tax assessment fail to understand their responsibility implicit in the transaction. As soon as taxpayers realize they are being treated unfairly they seek to redress the

situation. They do so by filing an appeal. This is the action of a civilized person ... in other parts of the world the aggrieved taxpayer fits the tax assessor with concrete overshoes and dumps him (or her) in the nearest canal. Astonishing though it may seem, some of our tax assessors are affronted by the appeal process: they fail to greet it with enthusiasm ... no doubt they have never considered the alternative. They respond by abusing their authority; using it to frustrate the appeal process. Instead of reviewing the property assessment in the light of evidence placed before them by the property owner, or his advisor they refuse to negotiate and insist the matter be dealt with instead by the appeal court, anticipating that the cost will discourage the taxpayer from continuing. Usually this is the action of an individual assessor; occasionally it is so widespread within a particular province that it may emanate from some higher authority. Such is the case at the present time in Nova Scotia ... though not in New Brunswick, Newfoundland or Prince Edward Island ... Ontario has still to be tested. It is symptomatic of a weak court system. Nova Scotia, unlike New Brunswick or Ontario, employs a two level appeal court process. Young(ish) lawyers preside over the first court level: they sit with the same assessors day after day, some are easily intimidated, they have yet to master their first calculator ... Fortunately there is a second level of appeal; justice does prevail.

New Brunswick



Henri Dunant Street, Moncton, N.B.
(\$39,000/annum - 35% in tax savings)

We've omitted the full address of the above property to preserve client confidentiality ... *(Continued on page 2)*

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Just kidding! The case went to the Appeal Board so is public knowledge. When they discovered our client was intent on proceeding (they were overassessed for goodness sake!) the provincial Assessment Department a.k.a. Geographic Information Corporation, tried to increase the assessment from \$2,407,000 to \$2,846,000. Presumably they wanted to teach the taxpayer a lesson. Naughty, naughty ... the appeal process is there to rectify wrong, not to coerce appellants. The case turned on two points: (1) the warehouse space on the site was now too small to accommodate the processing facility and (2) the cramped site impeded maneuverability of tractor trailers. The Board reduced the assessment to our suggested figure of \$1,555,000.

The Board specifically addressed the admissibility of the "without prejudice" offers to settle that we had put to the Assessment Department prior to the hearing. These offers had been advanced as a compromise to avoid the costs inherent in the formal Board hearing. Despite this, and the fact that they were clearly "without prejudice" the Assessment Department attempted to use them as evidence that our \$1,555,000 figure was "wrong". The Board decisively rejected their argument. Giselle Kakamousias was our expert witness, Rick Escott conducted our case.

If you own property in New Brunswick you should have received your 1998 assessment notice by now; it was mailed on February 28th. Canada Post prevailing, you will also have received a set of our decision rules to assist you determine if you are overassessed. By uncanny coincidence they were mailed on March 1st. Study them, a test will follow. If you were crass enough to recycle, do penance then call us toll free at 1-800-567-3033. Giselle, our New Brunswick Team Leader, or Tom (Vice President Property Tax) will fax you a second copy. If you suspect your property is overassessed stand tall, appeal. If you prefer a lower profile, we can file the appeal for you. Well get on with it ... your appeal period ends on April 30th!

Ontario - Don't Shoot the Messenger

In days of yore, the brave bearer of bad news was accorded little respect. His extremities were stuffed in his mouth (history fails to record whether they were first detached), he was disemboweled, quartered, and his remains placed in a sack attached to his horse, thence to be returned whence he came. Animal lovers will note with relief that the animal was unharmed ... but the practice must have played havoc with recruitment for this necessarily male vocation. As civilization struggled wearily over the horizon the more humane practice of shooting the messenger gained favour. The present furore over the Ontario property reassessment has resulted in much panic and anger, most of which is directed at the unfortunate messengers, the provincial property tax assessors. It has also produced a great deal of uninformed media comment; Terrace Corcoran's column in the March 14th issue of the Globe and Mail decrying the inequity of "market value assessment" is a typical example.

Fools rush in where angels fear to tread; we are well qualified. It is counter productive to rage at the provincial assessors, they deserve our abuse when they fail to do their job ... not when they do it. The reassessment removes most of the inequities inherent in the previous system and gives us the tools (finally!) to rip away the bureaucratic blanket that has made appeals so difficult in the past. The basis for your 1998 (and 1999, 2000) **property assessment** is your property's market value on the 30th June 1996, the "valuation date". Your 1997 assessment was supposedly based on a valuation date ranging from 1949 to 1992, depending on the municipality in which your property was located ... making it difficult and costly to mount a successful appeal.

The actual taxes you will pay are a function of your **property assessment** and the **tax rate**. The tax rate is going to be set by the politicians and will vary by property type: residential; multiple residential; commercial; industrial; pipe

line; farmland and managed forest. At the time of writing the proposed rates are residential (1.24%); multiple residential (4.4%); commercial (7.5%); industrial (11.1%). So if you own an industrial property assessed at \$1.0 million, your proposed 1998 taxes will be \$111,000. This figure includes your business tax because the Province has abandoned business assessments (which were levied only on the occupier) **and have instead rolled this tax into the property tax rate**. This is a crushing tax load. By way of comparison a building with the same assessment will pay yearly taxes of \$46,000 in Moncton, N.B. or \$60,000 in Halifax, N.S.

We can assist you reduce your assessment ... so forget about rioting, stoning tax assessors or lynching politicians, there's no time for such frivolity, your appeal period ends on June 30th. Take three deep breaths, switch off the phone, close your door and ...

Meet the Man ...



Rick Escott, B.E.S., MAI, AACI
Toronto Team Leader

... that heads the team that fights the assessments in Ontario.

Property Tax Consulting is a specialist field and we've been at it for twenty-one years. Our Property Tax Specialists conduct about 1,000 appeals each year for companies such as Air Canada, Noranda Mines, Canada Trust, Canadian Tire ... and the guy who owns the little property on the corner of the block. Our repertoire ranges from

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properties assessed at \$100,000 to \$130 million. We save clients millions of dollars each year but if you only own Ontario property you may not yet be familiar with us. Although we've undertaken valuation assignments coast to coast, our Property Tax Division has until now focussed on the four Atlantic Provinces. Make no mistake about it, this is a mean area in which to cut your teeth. We pioneered the negotiation of property tax appeals despite the initial hostility or indifference of assessors unused to having their assessments challenged ... and usually in the face of opposition from municipalities fighting to maintain their tax base. Often, as in the case of Atomic Energy of Canada's heavy water plant in Glace Bay, N.S., our client represented the major portion of the municipality's tax base. We are fighters. We take pride in assisting Canadian business liberate millions of dollars for productive use ... money that would otherwise be squandered by politicians and government bureaucrats ... capital that can be utilized instead to increase profits, gross earnings and jobs. Property tax savings fall right down to your bottom line ...

Toronto Site Office

We are no strangers to Toronto; several of our senior staff started their careers in the city. Rick Escott, our Vice President Valuation was born and bred here. Our Valuation Division has undertaken assignments in the area ... thanks to charter air fares it's cheaper to work here than in most cities in the Atlantic region. We've established a Toronto site office and contracted with a local firm to access sales data.

During the past two months we have contracted to undertake property tax appeals on more than fifty Ontario properties, most located in the Greater Toronto Area. We appreciate that many clients have property portfolios extending beyond the G.T.A. and we are prepared to service them too if you prefer to contract with a single property tax consultancy firm. Although our initial focus is on industrial properties, because they bear the heaviest tax burden, we are

not restricting our activities solely to them. We have extensive experience of all types and sizes of property.

Are You Overassessed?

In order to assist you determine whether your property is overassessed we have prepared a set of decision rules for industrial properties in the G.T.A. They are easily understood ... if you have a Ph.D. in Math they may present a little difficulty, but most businessmen (and women) should find them a breeze. Call Rick toll free at 1-800-567-3033, they are yours for the asking. Well get on with it, they're free! If you do have a Ph.D. in Math, or would like to test Rick's knowledge of G.T.A. assessments, don't hesitate to call him.

Appeal Period ... The Clock is Ticking

Your 1998 appeal period ends on June 30th. Unless you file an appeal you lose the opportunity to do anything about this year's property taxes. The filing fee is only \$50 but it is wise to first verify that your property may be overassessed. Our decision rules will assist you do so and Rick will be able to help you by phone or interview. However there is not enough time available to undertake a formal Assessment Audit before the assessment period expires. The provincial property tax assessors are up to their ears in alligators attempting to deal with angry home owners so it is essential to protect your right of appeal if you have any doubt at all about your assessment. We suggest that you utilize the following wording as the grounds for your appeal:

The assessment is excessive, unfair, not uniform with other assessments, and any other grounds that may appear.

If you wish to appoint us as your agent, please so state on your Notice of Appeal then fax us (1-902-429-1891) a copy. Before doing so please call Rick (1-800-567-3033) for an estimate of the cost of proceeding with the Assessment Audit.

Nova Scotia

Well, O.K. so it was foggy when we



Greenwich, Kings County, N.S.
(\$53,000 - 34% in tax savings)

inspected the above property: This is Nova Scotia. The assessment appeal court decision was pretty clear however ...

The appeal period in Nova Scotia ended on February 4th. Tom Mill\$, our Vice President Property Tax is heading up the assessment appeal process and is conducting appeals in all parts of the province. In some municipalities the Assessment Department appears to have changed its policy over recent months, and now often grimly attempts to defend assessments which are blatantly wrong. It refuses to negotiate and refers them to the appeal court. We are not sure if this is due to a lack of able personnel, some of the more experienced have retired or are on sick leave ... or arises from a misunderstanding of their proper role. No doubt they'll come to their senses again. Appeal away, we're still here.

Prince Edward Island



Grafton Street, Charlottetown, P.E.I.
(\$13,600/annum - 9% in tax savings)

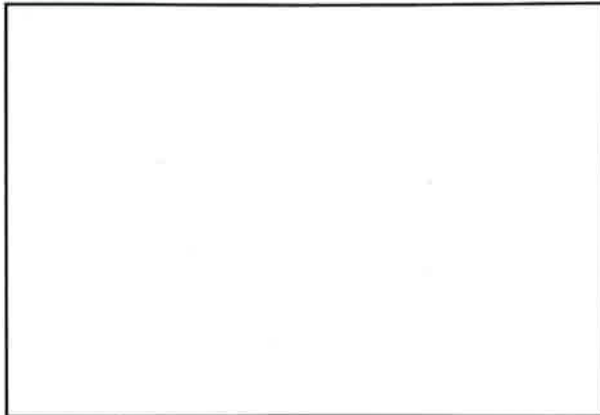
Look out P.E.I.! Your 1998 assessment notices will be in the mail on April 30th. The basis for your assessment is the market value of your property on the 1st January 1998. However the provincial Assessment Department is under staffed

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these days and many properties are under-assessed. Since the under-assessments are not uniform, the tax load is spread inequitably. In order to successfully appeal your assessment you must benchmark your property against other property assessments. If other commercial properties are under-assessed by 40% you will be over-assessed if your commercial assessment exceeds 60% of the property's market value. Tricky eh?! We're working on it and intend to have some decision rules in place by the time your assessment notices appear.

Newfoundland



Witless Bay Line, Holyrood, Newfoundland
(\$4,000/annum - 81% in tax savings)

Well what do you expect, a real photograph? It was foggy here too. This is Newfoundland, they make the stuff: export it worldwide.

This was a re-assessment year for the entire province ... the first time in its history. All municipalities now have a common base date: your 1998 assessment is meant to represent the market value of your property as at 1st January 1996.

All of the appeal periods should have closed now. If you have filed an appeal and require professional advice, please call Tom toll free at 1-800-567-3033.

EXPROPRIATION - A HITCH HIKER'S GUIDE

The Fish are Bigger Now



Siapen 7000 - Halifax Harbour (March 7th 1998)

Siapen 7000, the world's largest floating crane entered Halifax harbour on March 7th to load wellhead jackets. For most Atlantic Canadians, this was the most tangible evidence so far of the Sable Offshore Energy Project. The Project will develop six fields: Thebaud, Venture, North Triumph, South Venture, Glenelg and Alma containing three trillion cubic feet of gas; enough to supply the eastern United States and the Maritime provinces for about 25 years. Gas is scheduled to flow on November 1st 1999. It is expected that all six fields will be linked together by an undersea network to a central platform at the Thebaud field. The raw gas will be pumped from Thebaud to a landfall site at Country Harbour, Guysborough Country, Nova Scotia. The gas will be processed there and then be transmitted via Maritimes & Northeast Pipeline to the United States through Nova Scotia and New Brunswick, Laterals will carry the gas to Halifax, N.S. and Saint John, N.B. There will also be a natural gas liquids pipeline from Country Harbour to Point Tupper, N.S. on the Strait of Canso.

The Canadian portion of the trunk line right of way is 558 kilometres long and 25 metres (82 ft.) wide. In addition there is a 30 metre (98 ft.) control zone on either side of the right of way. It will slice through about 700 properties.

Pipeline Right of Way

The Maritimes & Northeast Pipeline are now approaching property owners to acquire the pipeline right of way. All of the offers that we have reviewed are predicated on a "baseline appraisal" undertaken for the company by an independent appraisal firm. A "baseline appraisal" determines average prices of land and timber. It is also restricted to the market value of the land (and timber) consumed by the right of way per se. So, whilst it is a useful tool for negotiation purposes it may not address the total loss suffered by a particular property owner. Unfortunately it is not possible for a property owner to assess whether an offer from the Maritimes & Northeast Pipeline fairly compensates them for their loss without commissioning a property specific appraisal. It is our understanding Maritimes & Northeast Pipeline take the view that they have no obligation to underwrite the cost of the landowner's appraisal until the matter proceeds to the formal Arbitration Hearing. They are technically correct, though it is trite law to suggest that the property owners must fully evoke their statutory rights in order to secure the protection they afford. In other words it should not be necessary for a property owner to go into court in order to secure his/her statutory rights: the latter should be available during the negotiation process too.

We have prepared the following summary to assist property owners determine whether they have

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compensable losses in addition to those included by Maritimes & Northeast Pipeline in their "baseline" offer.

Compensation

The trunk line together with the Halifax, Saint John and (presumably) the Point Tupper laterals fall under the National Energy Board Act. Other inter-provincial lines are governed by the pertinent (New Brunswick or Nova Scotia) Expropriation Acts. Since the pipeline right of way acquisitions currently in progress fall under the National Energy Board Act we have confined our observations to that Act.

The Act provides that property owners must be compensated for losses arising from the following:

- (1) **The market value of the lands taken**, i.e. the 25 metre wide right of way. This can be taken as a lump sum payment or as an annual rent. If you opt to rent the right of way to the pipeline company you can increase the amount as the land increases in value over time. The Act does not specify how the rent is to be computed other than implying it is calculated as a function of market value. Depending on the interest rate used, it will usually be advantageous to take the money as rent rather than as a lump sum.
- (2) **The loss of use to the owner of the lands taken by the company**. This appears to be the "value to the owner" concept which has been dropped from the provincial Expropriation Acts.

Maritimes & Northeast Pipeline is basing its current offers for timber on "stumpage value". However woodlot owners who are in the business of selling timber can claim for its value at roadside or the mill instead, less their costs of cutting and transportation. These costs may be nominal if the land owner has sizable holdings.

Property owners are also entitled to compensation for income and/or capital gains tax that may arise as a result of the forced sale to Maritimes & Northeast Pipeline. If you run a farm or a woodlot as part of your business, the compensation you receive may be taxed as income. If it is not, it will be taxed as a capital gain. Either way your tax liability will increase. Insofar as you are receiving income and hence paying tax now, rather than in the future, you are entitled to compensation equal to the difference between the tax paid and the tax deferred. You may suffer other losses too for which you are entitled to be compensated. For

example a retired landowner on a pension could lose his/her Guaranteed Income Supplement if his/her income was increased as a result of the pipeline payment.

- (3) **The adverse effect of the taking of the lands by the company on the remaining lands of the owner**. This is termed "injurious affection" and is the loss in value of your remaining property which results from the pipeline right of way. Typically this arises because the pipeline right of way severs your property in two and restricts accessibility. You may no longer be able to cross the right of way with machinery so your ability to work the land is restricted and the cost of running your farm, woodlot or other business increases as a result.

Your property may also suffer visually; a 82 ft. swath of clearcut is less than attractive particularly if you have plans to subdivide the land for residential development. There is also the question of intrusion. Rights of way offer opportunities for recreational vehicles now or in the future. Physical barriers erected to discourage them offer instead an irresistible challenge to dirt bikes, all terrain vehicles or snowmobiles.

If the pipeline right of way traverses woodland, you will experience blowdowns and additional timber loss on your contiguous land.

- (4) **The nuisance, inconvenience and noise that may reasonably be expected to be caused by or arise from or in connection with the operations of the company**. Technically this is termed "disturbance" and is often most felt during the construction phase. Depending on the time of year and the type of property it can be substantial. For example, a pipeline cutting across a motel property during the height of the tourist season will have a devastating effect on the business. Similarly the interruption engendered by pipeline construction on crop planting or harvesting, particularly if other farmland has to be crossed to get to the construction site, can be costly to the farmer.
- (5) **The damage to lands in the area of the pipeline right of way that might reasonably be expected to be caused by the operations of the pipeline company**. There is a 30 metre (98 ft.) wide control zone on both sides of the pipeline right of way over which the land owner loses partial control. The property owner cannot excavate using power operated

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equipment or explosives without permission of the National Energy Board. If you have potential building lots for example, which now fall within the control zone, you are entitled to be compensated for any loss in value.

- (6) **Loss of or damage to livestock or other personal property affected by the operations of the pipeline company.** This is another "disturbance" item and would include, for example, cattle loss arising from fences being breached, gates left open, etc.
- (7) **Any special difficulties in the relocation of an owner or his property.** The provincial Expropriation Acts include a "home for a home" provision whereby a home owner is entitled to sufficient compensation to relocate within the same neighbourhood ... if his home is of much lower value his compensation will be based not on the value of his home, but on the cost of buying the most comparable property currently offered for sale in the area. This section of the NEB Act appears to expand the "home for a home" provision to include businesses.
- (8) **Such other factors as the (Arbitration) Committee considers proper in the circumstances.** This is a "catch all" clause which covers just about everything!
- (9) **Interest from the date the pipeline company entered on your property, or you suffered damage, at bank prime rate.**
- (10) **Legal, appraisal and other costs reasonably incurred in asserting your claim for compensation.** These are paid "as of right" when the Arbitration Committee award exceeds 85% of the pipeline company offer. It is important therefore to keep a copy of their original offer to you ... and to make sure that it is in writing. If

the Arbitration Committee does not award you more than 85% of the pipeline company's offer the payment of your legal, appraisal and other costs will be at their discretion.

A Fair Offer?

If the pipeline company refuses to underwrite the cost of your legal and appraisal fees, how can you determine whether the pipeline company's offer properly compensates you for your loss? As a minimum we suggest you get legal advice before signing anything ... and that you retain a real estate expert to review the pipeline company's offer and the property ownership to ensure that all heads of claim have been addressed. The latter consultation should cost between \$300 and \$500. Whilst it falls far short of a full appraisal it does afford you some comfort that you are not being shortchanged.

FIRE INSURANCE

The article in our Summer 1997 issue of Newsletter (Vol. 2 No. 58) made mention of the fact that confusion reigns rampant when it comes to fire insurance. We were taken to task by an Ottawa reader (we have one) who thinks we added to it. Oh dear! Let's try again. Our article was meant to give an overview ... a more complete explanation is contained in our pyrotechnic pamphlet "Fire Insurance Valuations" ... what a snappy title, be sure to ask for it by name, it's free for the asking. The following is extracted from it ...

First: co-insurance. Since 98% of fires result only in partial losses, it would be possible to underinsure a property knowing full well that there was little chance of a loss in excess of the insured value. Co-insurance is a device to discourage this practice and is used by insurance companies to limit their own liability. Thus the insurance company will not compensate the owner of a property, who suffers a partial fire loss, the full amount of that loss, even if the loss is less than the insured value, unless he (it could be a she) carries insurance at

least equal to the co-insurance requirement. If, for example, a property having a replacement cost of \$1 million, insured for \$0.7 million, under a contract containing an 80% co-insurance clause, suffered a \$0.5 million partial fire loss, the total insurance actually paid to the property owner would then be:

$$\frac{\$700,000}{80\% \times \$1,000,000} \times \$500,000 = \$437,500$$

Second: ridding yourself of the co-insurance clause. If the prospect of bearing part of the loss fails to fill you with enthusiasm you should file a statement of value with your insurer. The statement should be backed up by an appraisal.

Third: calculating actual cash value. The Ottawa reader also took issue with our method of arriving at actual cash value (*market value of the property less land value*), insisting that it had nothing to do with market value but was instead the *replacement cost new less depreciation*. Well yes, and no! All of the court cases and insurance texts we reviewed indicate a good degree of equivocation. True, *replacement cost new less depreciation* is the formula applied but since it is virtually impossible to measure depreciation other than by reference to market value ... confusion jostles clarity in the judicial decisions. The meaning of *actual cash value* is not provided in property insurance policies. Its meaning has come to be defined through usage and decisions rendered by the courts. It is our experience too that interpretation of *actual cash value* is inconsistently applied by insurance companies. Most attempt to compute their claims on the *replacement cost new less physical depreciation* basis and whilst the process is similar to threading a camel through the eye of a needle it usually produces a result which is beneficial to the insured. Others however use the *replacement cost new less total depreciation, a.k.a. market value* approach.

It is conceivable that you too are a little more confused now than you were before ...
