

# The Land Economist

Spring 2000, Vol. 30, No.1

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This Professional Journal  
is published by the



**Association of  
Ontario Land  
Economists**

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*This rampway to the lower concourse of Union Station is part of the beautiful architecture created when the station was opened in 1927. Toronto is negotiating to purchase the station.*

photo by Tim Hudson, courtesy of Go Transit

# GO eyes Union Station negotiations

by Herb Ware

GO Transit is closely watching negotiations for the purchase of Union Station, the vital link in its operations.

Although arrangements for the block-long, 73-year old train station were originally expected to be complete in mid-March, negotiations between the City of Toronto and station owner Toronto Terminal Railways Company are still going on. An agreement for purchase is now expected by mid-April.

“Our concern with negotiations is related to terms of use for the station,” says GO Transit Information Officer Karen Majerly. “It’s the hub of our network. We need to know that any agreement meets the needs of GO as well as the City; that everything works.”

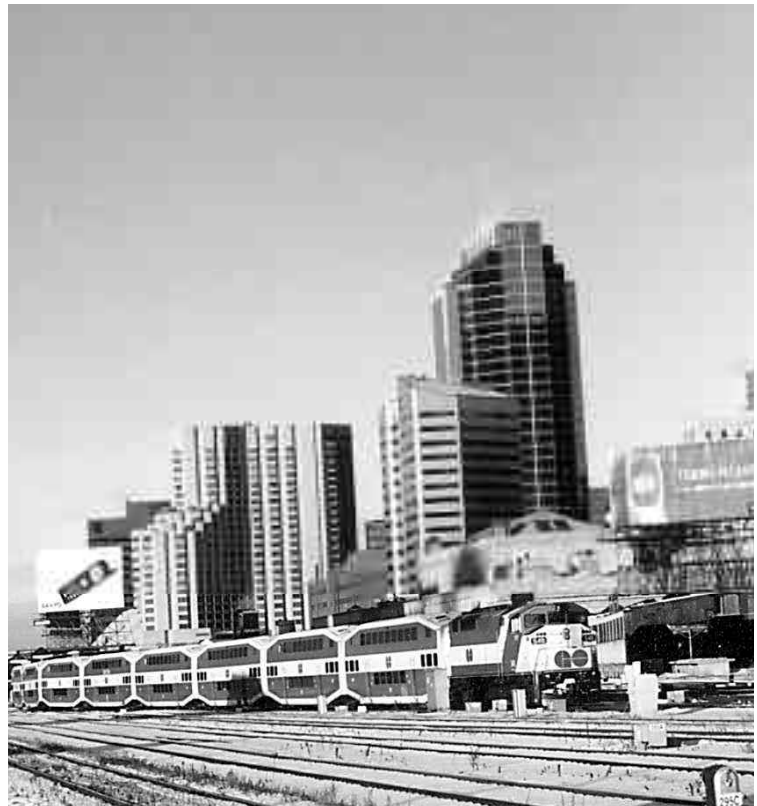
Virtually all (96 per cent) of GO’s rail riders pass through the Union Station terminal. Seventy percent of the passengers from its bus operations also travel to and from the City of Toronto.

GO’s rail and bus routes cover 8,000 square kilometres, from Burlington to Oshawa and north to Bradford, to serve the transportation needs of just under 5 million people.

“We had 38.4 million passenger trips in 1999,” says Majerly. “That was a seven percent increase over ‘98, and the third year in a row we set passenger records.” She attributes the increase to a combination of population expansion in the outer regions and changes to people’s travel patterns. “They look at the road congestion and make different choices. It seems, if we add service the people will come — particularly with the rail service.”

To accommodate the continuing growth, GO recently added off-peak hours operations to its Lakeshore line, with mid-morning, evening and late-evening rail operations expanded to Burlington and Oshawa. This year, the inter-city service will expand parking facilities in five locations: Oakville, Bronte, and Appleby in the west; Pickering and Oshawa in the east. As well, GO will be adding new pedestrian tunnels at Rouge Hill and Danforth stations, and a new station on the Bradford line.

“Right now, the first stop on the Bradford line is Maple Station,” Majerly says. “It is heavily used and there is no land there to expand parking.” The new Rutherford station is expected to divert some of that pressure, and attract new



photos by Tim Hudson, courtesy of Go Transit

*GO’s growing train network centres on Union Station and land owned by Toronto Terminal Railways*

riders from among the residents moving into the rapidly-developing area just south of Maple. The project is in the design stages and is expected to be completed by year-end.

GO Transit, originally a provincially funded operation, started as a three-year experiment in 1967. It became a municipal agency, the Greater Toronto Transit Agency, in August 1999.

*Herb Ware is a Mississauga-based freelance writer and business communications consultant.*

# Three Ontario Cities are growth hot spots

A February report by TD Bank places Ottawa, Toronto and Kitchener-Waterloo right after Calgary as Canada's fastest-growing cities in terms of job creation. Following are some excerpts from "Economic Prospects for Canada's Larger Cities".

As the pace of Canada's economic expansion begins to moderate, in line with a cooling off in the red-hot U.S. economy, employment growth in the major cities is likely to slow down a notch over the 2000-01 period.

Nonetheless, as the pace of job creation in the export-oriented and interest-rate sensitive sectors loses steam, this will be countered by an acceleration in employment growth in the service sector.

Job creation will be particularly strong in the knowledge-based industries as well as in health care and education this year and next. In addition, with after-tax personal incomes on the rise in most cities, consumers will continue

to spend at a healthy clip, fuelling strong job gains in the wholesale and retail trade sectors as well as the personal services industries.

**Ottawa**, now commonly referred to as Silicon Valley North, has become a major centre for high-technology industries such as computer software, fibre optics and other telecommunications equipment manufacturing, with several prominent companies recently announcing plans for large-scale expansions over the next few years. Although spending cutbacks by the federal government took a toll on the Ottawa economy throughout much of



photos: Bruce Hawkins, Waterloo

*High tech companies such as MKS and Open Text are on the rise in the Kitchener-Waterloo area.*

the 1990's, the federal government's improved fiscal position bodes well for this city's economy over the next several years.

**Toronto** — the corporate and financial centre of the Ontario economy — is well-positioned to become a leader in the new knowledge-based economy, given its concentration of Canada's top companies across many industries, a steadily rising population, and a low - and falling - personal income-tax burden. In the near term, however, the heavy reliance of the city and its surrounding areas on the automotive sector places its economy at risk if the U.S. economy suffers a substantial downturn.

**Kitchener-Waterloo**, which is part of Ontario's Technology Triangle, boasts a large number of high-tech manufacturing industries, as well as an important automotive sector. The region will continue to benefit in the coming years from its close proximity to Toronto and its relatively inexpensive cost of living. Nonetheless, like Toronto, Kitchener-Waterloo's economy is quite vulnerable to a downturn in the U.S. economy.

*The TD Bank report is available on the web at <http://www.tdbank.ca>. Once in the site, go to market analysis in the economics section.*

## Welcome New Members!

AOLE extends a warm welcome to the following people:

**Paul Yeoman**  
MIMA, PLE  
Vice President, Senior Consultant  
Derbyshire Consultants Limited  
Brampton, Ontario  
905-455-5500

**Brian Flood**  
AACI, PLE  
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Colliers International Realty Advisors Inc.  
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**Steve Derune Hector**  
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**Robert A. Bianchin**  
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Appraiser & Consultant  
Kellough, Pestl, Singh Associates Inc.  
Scarborough, Ontario  
416-752-1650

# Builder/activist offers insightful concepts

One of the fastest ways to improve the bottom line in an apartment building that's more than 20 years old is to replace the refrigerators, says Ruth Bassel, head of property and asset management specialists Arcadia Group.

"If you replace all those old refrigerators with brand new energy efficient appliances, you recover the cost in just a few months," Bassel told land economists at the association's March dinner meeting. "Nearly half of the hydro used in an older apartment is used by the refrigerator."

That was just one insight from a speech packed with information and experiences. A creative builder and committed activist, Bassel is a member of the Greater Toronto Home



Builders' Association board of directors, the Metro Toronto Apartment Builders' Association, Habitat for Humanity, the Canadian Standards Association Committee on Aging, and a wide-based alliance encouraging new rental housing.

Here are a few more insights:

## On the value of creativity:

"You may be able to take a piece of land and make it worth twice as much if you've got a creative, original idea. We built 12-foot wide townhouses on Dupont St. in Toronto that filled a new niche in the market, and it was financially very successful."

## On Toronto as a world class centre of seniors' projects:

"Toronto is doing a terrible job of seniors' development. We're selling to 60 year old buyers and not thinking about what they're going to need 10 years from now. We need to look at creative ideas from other areas."

## On (not) seeing things from another's perspective:

"At one of the CSA meetings, we were given sensitivity training on aging. They gave us special glasses, put heavy weights on our ankles and a puffy thing on our wrists, made us wear two pairs of surgical gloves and gave us a cane — and then sent us through a shopping mall with a list of things to buy.

"I crashed straight into a standing "Sale" sign, because I came at it sideways, and I couldn't see that edge at all."

## On sustainable markets:

"Integrated design teams with consulting engineers, designers, planners and condominium managers are looking at everything from garbage disposal to ventilation before the architect puts a pen to paper.



*Bassel was intrigued by Chinese construction: bamboo scaffolding (above), and labour-intensive excavation (top of next page) produce the impressive buildings like those in the centre photo on the next page.*



*Ruth Bassel drops a lucky coin into the foundations for one of the Dupont Street townhouses. This narrow-lot development (bottom left) filled a new market niche.*

But — while everybody thinks the environment is important — the only things you can talk customers into paying for are things with a quick payback. We need to improve our marketing of environmental and energy conservation issues."

## On the outlook for new rental housing:

"There are a lot of people in industry and in government aggressively seeking ways to encourage new rental apartment construction. If you're sitting on land right now with a potential for rental, don't sell it too cheaply."

**Please see On Leaving, page 5**



#### On leaving work at the office:

"Whenever I travel, I'm always looking at the construction. I was in China last year, and I kept saying to the driver: 'Stop! I have to get out and take a picture of this!'"

## Indicators look good for 2000

Interest rates should not affect new residential construction projects too badly this year, says Peter Andersen, president of Andersen Economic Research. But next year could pose problems.

The good news is that economic growth is up. "The consumer had a great year in 1999," Andersen says. "We're seeing a real improvement in the standard of living for the first time in a long time."

### 20-year unemployment low

Both the resource sector and the government sector are going through a recovery. Non-resource exports have been doing "amazingly well", and there is still capacity for further growth in the auto sector.

The recovery in other countries is also affecting Canada. "The U.S. is focussing more and more on outsourcing (beyond its borders) as the unemployment rate heads below four per cent." Also, regional economies in both Asia and South America are going through recoveries, which have ripple effects for Canadian industry, investment and immigration.

### 4.5% growth likely

Overall, "I think the Canadian economy could generate 4.5 per cent growth this year," Andersen says.

The bad news is that inflationary pressures have risen substantially.

"Bond yields went from less than five per cent to more than six per cent last year. Oil prices are up. Diesel fuel prices are up by 150 per cent — and fuel represents one third of transport prices for the trucking industry. Wage settlements have come in between 2.5 and three per cent recently."

All of this means ongoing pressure on interest rates. "I expect at least three more increases in the (U.S.) federal reserve rate," Andersen says. Canadian rates "will follow the next

day. The spring selling season is protected, because people can lock in rates. But next year, builders will have to refocus."

Andersen spoke at the Canadian Home Builders' Association conference earlier this year. At that conference, Lucia Su, director of the market analysis centre for Canada Mortgage and Housing Corporation, downplayed the impact of mortgage rates. She told builders she expected interest rates to rise another 50 to 75 basis points this year, but come down again in 2001. "Those rates are still low."

CMHC is forecasting national starts of 155,700 in 2000 and 161,200 in 2001. For Ontario, it expects 71,500 and 74,500 respectively, with continued growth in demand driven by a strong labour market, in-migration and a tight rental market. Both new housing starts and resales in the province are expected to continue to rise in 2000 and 2001.

Clayton Research Associates Ltd. recently increased its forecast of national housing starts for the year 2000 to 158,000. Frank Clayton, president, said there is "a real switch away from the first time buyer to the move up market, with larger lots, larger houses and more amenities."

He added that 50 per cent of the builders responding to CHBA's Pulse survey in December reported that they offer a mortgage interest rate package. One third offered a reduction of 50 basis points below market; one third offered 75 basis points; and one third offered 100 basis points.

Clayton also warned that Statistics Canada has recently re-adjusted its population figures for the period 2001 - 2021. If the new figures are right, he said, there could be 32,000 fewer new households formed on average each year than was previously expected. The last projections were done in 1994.

# Court decisions affect buildings

## **Ingles v. Tutkaluk Construction Ltd.**

This March 2000 Supreme Court of Canada decision confirms that municipalities will be held to a high standard of care in building inspections — even where the owners allowed a project to go ahead before their required building permit had been issued.

The case involved a Toronto couple who had hired a contractor (Tutkaluk) to renovate their basement — a project which required underpinning under the existing foundation.

Although the contract specified that the contractor would obtain a building permit on the owners' behalf, he convinced the owners to allow him to go ahead before it was issued.

When the inspector did come, the underpinnings had been covered over. The inspector checked what was visible and relied on the contractor's assurance that the underpinnings had been built correctly. When problems arose, the owners sued the contractor and the City of Toronto.

At trial, the renovating homeowners were held to have contributed to their own problems. However, their portion of the damages was limited to six per cent.

The City's building inspector, who was not notified at the proper time and could no longer see the underpinnings at the time of his inspection, was deemed negligent in accepting the word of the contractor that they were correctly constructed. Therefore, the City was held partially liable — for 14 per cent of the damages. The contractor was apportioned 80 per cent of the damages.

### **Lost right to claim back**

The Ontario Court of Appeal had said that by going ahead with construction before they received the required building permit, the owners had lost

their right to claim back against the City at all. This was seen as an important decision by many commentators.

The Supreme Court did not agree with the Appeal Court's reasoning. "The negligent conduct of an owner-builder does not absolve a municipality of its duty to take reasonable care in exercising its power of inspection," the decision states. Only a serious "flouting" of the system could do that.

The apportionment of responsibility in this case seems reasonable, except that it is an apportionment on paper, rather than in fact. In Canada, the principle known as "joint and several liability" works so that (rather than having to prove a case against each wrongdoer individually) a plaintiff can claim the entire amount of the damages against any one of the people at fault.

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**"The negligent conduct of an owner-builder does not absolve a municipality of its duty to take reasonable care in exercising its power of inspection."**

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What in fact happens in the Ingles case is that the City has to pay its own 14 per cent of the damages plus the 80 per cent apportioned to the contractor, plus interest. Since the contractor has long since gone out of business, there is little if any chance of Toronto taxpayers recouping any of that money.

In order to limit their potential liabilities, some municipalities have toyed with the idea of ending or severely limiting their role in building inspection, by a policy decision of Council.

The Supreme Court appears to have warned against this. "Municipalities are created by statute and have clear

responsibility for health and safety. Any policy decision as to whether or not to inspect must accord with this statutory purpose," it says.

This decision does little to help convince consumers that they have to choose contractors carefully, conform to legal requirements and take steps to protect themselves.

## **Silk v. Ontario Property Assessment Corp, Region No. 5**

This 1999 Ontario Assessment Review Board decision confirms that the obligation to assess at current market value (Subsection 19(1) of the Assessment Act) is paramount; the obligation to have reference to the value at which similar lands in the vicinity are assessed (Subsection 44(2)) is subordinate.

The case relates to a residential property, which was given an assessed value of \$143,000 for the base year 1996.

Where sales prices and assessments were available for comparable properties, all properties were assessed for amounts higher than their respective selling prices.

Although the wording of Section 44(2) now says the Board "shall" have reference to the value of similar lands, rather than "may" have reference, that does not legitimize assessments which do not reflect current market value. In this case, the assessment was reduced to \$129,000.

*Rowena Moyes is a Toronto consultant, author of the Canadian Home Builders' Association's 1999 report "Liabilities in the Residential Construction Sector", and editor of this Journal.*

# Liability for Indoor Air Quality

By Anne McNeely

For some years now, there have been reports that pollutants, molds and poor ventilation in some buildings can cause occupants to suffer headaches, nausea, sinus problems, aches, pains, fatigue, and other complaints commonly termed "Sick Building Syndrome".

To date, there are few cases in Canada which have dealt with sick building syndrome in a construction context. However, the general principles which apply to negligent design or construction claims are elastic enough to validate a claim for the cost to repair a dangerous defect in the indoor air quality of a building.

In 1992, a New Brunswick homeowner claimed repair costs from the vendor of a residential property, the real estate agent who sold him the property, and the contractors who built the house. After taking possession, the plaintiff discovered that the ventilation, drainage and sewage systems in the house were grossly defective and the humidity level 80 per cent.

The New Brunswick Court of Queen's Bench found that these various systems were substantially below reasonable building standards and that the combination of water, soil, sewage and moist air entering the house created a "breeding ground for illnesses". It found the real estate agent liable for misrepresenting the soundness of the house. The case against the builders was more complex. The court had no hesitancy in finding that the builders had been grossly negligent, but it did not award the plaintiff his cost of repairing the construction deficiencies. At the time, pure "economic losses" were not awarded for negligence claims — they were recoverable only where the claimant had suffered some physical damage or personal injury.

With the 1995 Supreme Court of Canada decision in *Winnipeg Condominium Corporation No. 36 v.*

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## Could the courts uphold a claim for the cost to repair a dangerous defect in the indoor air quality of a building?

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*Bird Construction*, it is likely that a claim against a contractor on the same facts would be decided differently today. In *Bird*, the court held that negligent contractors could be held liable for the economic loss associated with the cost of repairing building defects in certain circumstances, provided the repairs are directed to remedying a dangerous defect or health and safety hazard.

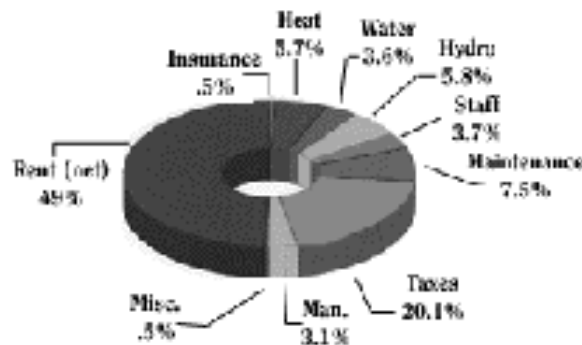
However, proving that illnesses are caused by a building's design or construction can present its own challenges.

Some insight may be drawn from workers compensation claims. For example, an April 1999 decision of the Ontario Workplace Safety and Insurance Appeals Tribunal (648/96) ruled in favour of a claimant seeking benefits for a permanent disability alleged to have been caused by poor ventilation in his employer's printing press operation. The tribunal made its decision notwithstanding that Ministry of Labour tests carried out in the workplace didn't reveal any above normal readings for chemicals and the claimant appeared to be uniquely sensitive to the substances involved.

On the other hand, two other decisions (214/88 and 700.87) rejected claims where there was no clear evidence that the buildings themselves were to blame for the claimant's condition.

*Anne McNeely is a partner in Blake, Cassels & Graydon's Toronto Litigation Group. This report is an abridged version of an article that appeared in the Nov.1999 issue of Construction Canada magazine.*

## Apartment Operating Costs City of Toronto 1998-1999



This chart showing apartment operating costs is based on an analysis of recent financial information for 20 apartment buildings in Toronto.

Copyright Bosley Farr, 2000

# The Legislative Beat

## Building Regulatory Reform

The Minister of Municipal Affairs and Housing made a formal announcement in late March, establishing a Building Regulatory Reform Advisory Group. BRRAG is comprised of about 20 representatives, who will review such measures as:

- standardized application forms, fees and processes;
- service delivery benchmarks;
- alternatives to municipal licensing of contractors;
- possible private sector service delivery;
- certification of construction regulatory officials;
- liability reform, and
- measures implemented in other jurisdictions such as Australia.

MMAH has conducted a survey of building department turnaround times, responses to innovative products and service quality criteria. It also will conduct a pilot project on e-commerce options such as internet-based submission of forms and plans, and computerized permit tracking.

BRRAG stems from principles enunciated by the Red Tape Commission. Last fall, we thought the government was going to move on the One Window Approach to Building Regulation, but this initiative was sidelined by the kerfuffle between the former Municipal Affairs Minister and developers over the Oak Ridges Moraine.

## New Environment Minister

Dan Newman, MPP for Scarborough Southwest, was named the province's new Minister of the Environment on March 3. Tony Clement, MPP for Brampton West - Mississauga, who had dual responsibility for this ministry and MMAH, continues to head up MMAH.

## New Environment Commissioner

Gord Miller has been named Ontario's second Environmental Commissioner, replacing Eva Ligeti. A former Environment Ministry district manager, Miller has strong Tory ties. During a recent speech he lamented the minimal public input through the Environmental Bill of Rights.



by Andy Manahan PLE

## More on the Oak Ridges Moraine

The move to involve the province in Oak Ridges Moraine policy has widened. The City of Toronto and a coalition of environment groups are using a section of the Environmental Bill of Rights to ask the Environment Commissioner to review provincial policy. Various groups are also making presentations to the Ontario Municipal Board on individual development proposals.

## Ontario Land Deals

Land sales by the Ontario Realty Corp. have become headline news, as reports spotlight issues of valuation and quick profits. We will all be watching with interest as this story unfolds.

## 'Champion' for Construction

For years, the construction industry has questioned why there is no voice around the Cabinet table for the non-residential and heavy construction sectors. The Council of Ontario Construction Associations is coordinating an effort to have a current minister's portfolio expanded to include the industry.

## Limitations Act

COCA is also spearheading a campaign to introduce legislation capping the liability of builders and design professionals. In Alberta, a new Limitations Act imposes a 10-year cap on liability from the date of substantial completion. Some recent court cases have targeted designers and contractors for building

failures, only because no one else is left to sue. Attorney General Jim Flaherty appears to recognize that this is unfair, particularly when a contractor has built according to specifications and may not even be made aware of potential problems until years after the fact.

## Residential Property Tax Myths

Municipal Affairs and Housing Minister Tony Clement announced in February that of the 492 municipalities in

Ontario, half held the line or reduced local property taxes for homeowners in 1999. The Minister chided those that increased taxes, saying "That is not acceptable. Those municipal councils can rightly expect to face some tough questions from their ratepayers." Undoubtedly, he was thinking about municipal election time in November.

## Air Traffic Noise and Assessment Value

Mississauga East MPP Carl DeFaria introduced a private members bill last November to amend the Assessment Act to include consideration of air traffic noise in the determination of current land values. So far, the bill has not progressed.

## ARIDO

Ontario has passed special legislation to give members of the Association of Registered Interior Designers of Ontario the exclusive right to use the designations "Interior Designer" and "ARIDO." Some grandfathering and out-of-province provisions apply.

## Land Transfer Tax

The province has again extended the land transfer tax rebate for first time purchasers of new homes. Offers must be signed by March 31, 2001, with occupancy by year end.

*Andy Manahan is Executive Vice-President of the Council of Ontario Construction Associations.*