

# The Land Economist

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Professional Journal of the



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## Ontario's Best Architecture 2003

The Ontario Association of Architects presented the six projects above with Awards of Excellence this spring. 1. Canadian Medical Association Headquarters, Ottawa, *Brisbin Brook Beynon, Architects* 2. Metro Toronto Community Services' Robertson House Crisis Care Centre, Toronto, *Hariri Pontarini Architects* 3. Gerald Sheff/Shanitha Kachan's House on a Ravine, *Kuwabara Payne McKenna Blumberg Architects* 4. MacLaren Art Centre, Barrie, *Hariri Pontarini Architects*. 5. University of Toronto's Bahen Centre for Information Technology, *Diamond and Schmitt Architects Incorporated* 6. Fresh Restaurant, Toronto, *Giannone Associates Architects Inc.* For more information see [www.oaa.on.ca](http://www.oaa.on.ca)

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# Brownfields draft raises concerns

by Adam Chamberlain BES, LLB

Draft regulations under Ontario's new Brownfield Amendment Act are receiving mixed reviews.

Stakeholders have been agitating for more certainty in site remediation for years. The "Guidelines for the Decommissioning and Clean-up of Sites in Ontario" were first published in 1989.

In 1996, that document was superseded by the then highly anticipated "Guideline for Use at Contaminated Sites" – which was revised in 1997 and has remained in that form to date. The current Guideline provides for three different approaches to site restoration:

- remediation to background levels
- remediation to generic criteria as set out in the Guideline, or
- remediation to levels established through a site-specific risk assessment

## A need for certainty

However, no matter how much the Ministry of the Environment or any other party would like to rely on the Guideline, it provides "guidance" only. This is not the level of protection or certainty that most private (and public) parties require for risk minimization.

It has been particularly frustrating for those attempting to redevelop significantly contaminated land for use in residential developments.

It is in this context that the Ministry of the Environment has developed the new regulations, and circulated them for comment. While industry has generally greeted the initiative positively, certain provisions have created concern with stakeholders.

## Differing liability

One example is differential treatment of owners' liability, depending whether property is transferred before or after the regulations come into effect. Under the proposed regulation, there would be an obligation when the land use changes from commercial or industrial to

residential or parkland, to file a Record of Site Condition (RSC) with a newly created Environmental Site Registry. Compliance with the obligation would result in a limiting of liability to which the former owner (the vendor) is exposed.

The system, however, would not apply to property that has been transferred in the past, no matter how significant the "post-closing" obligations or the nature of any contaminants.

Only the most recent owner would be able to limit its liability with an RSC. Former owners may still be on the hook. Moreover, if the owner(s) of a property remediated under the old system were to sell without doing any more work, they would not be able to complete and file an RSC to avoid liability.

## 10-year quarantine

Another issue is the "quarantine period" for changing land use from certain commercial or industrial uses to residential or parkland. The draft regulations prohibit such changes where the subject land was used as garage, gas station or dry cleaners during the previous ten years. Some stakeholders have stated that contamination often lays dormant for decades before being discovered. They are pushing for the 10-year period to be extended, perhaps significantly.

## Who is an expert?

The draft regulation would also provide guidance on who can provide expert technical opinions regarding contaminated land.

The concept of a "qualified person" is developed in quite a detailed manner. However, it seems that several groups of consultants who routinely give such advice at this time would no longer be authorized so to do. Those consultants have voiced significant concern in this



regard. It remains to be seen how the ministry will respond.

## Off-site contaminants

In addition, it is not entirely clear how the regulation will impact liabilities with respect to off-site contamination. The primary focus of the draft regulation is the impact of on-site contaminants on the site itself and on off-site conditions. Several people have raised concerns that the wording may mean off-site contaminants also become subject to attention.

It will likely be some time before the comments on the draft regulation are considered and acted upon. With an election coming sometime within the next year, we may be waiting for quite some time to see how these and other issues are resolved.

*Adam Chamberlain practices environmental and energy law at the Toronto law firm of Power Budd LLP, in association with the international law and consulting firm CMS Cameron McKenna. He is Certified by the Law Society of Upper Canada as a Specialist in Environmental Law.*



The perfect office or industrial building is an “invisible” one, says Joe Nestic, senior vice president of Menkes Developments Ltd. “When the doors, columns, elevators, washrooms, HVAC, electrical, and communications are right in location and capacity, nobody notices the building,” Nestic told OLE members at their February dinner meeting.

All the firm’s current suburban buildings are big boxes that are flexible and efficient. Although they look quite different, they are built to similar specifications. Here they are with Nestic’s comments.

### Office Buildings

- 25,000 sq.ft. minimum floor plate “this gives you great flexibility as to how many people you can put on a floor”
- low rise “driven by coverage limits, this also keeps construction costs and subsequent rents down”
- 30 x 30 ft. bays “all of today’s modular furniture and office sizes work on that grid”
- VAV or VVT roof top mechanical\* “inexpensive and runs well, therefore rents are lower and people are happier”
- plug in electrical, with surplus capacity “we always oversize, as compared to downtown”
- 9 ft. ceilings “common, generic and works well for human scale”
- constant surplus fresh air with steam generated humidity control “you can avoid sick building syndrome with a system that boils water”
- 4 cars/1,000 sq.ft. “standard for all our free-standing buildings in the suburbs”
- fibre communication “most buildings in the ‘burbs have multiple fibre access if service providers permit”
- single digit gross-up (minimum common area) “downtown you have 15 – 20 per cent of the space for gross-up – in the ‘burbs it’s 10 per cent or less”

- large washrooms “sized 50 per cent above code with lots of light”
- high speed elevators “if you put in more than people need, they become ‘invisible’, and people forget about them”

This all adds up to cost advantages: where downtown rents are \$50 - 60 gross, suburban offices are \$20 – 30.

### Industrial Buildings

- 28 ft. clear height “you can get five pallets in 28 feet, compared to four in 24 feet – a 25 per cent increase in capacity, with taxes, operating costs and lifting costs that are identical – which is huge”
- 36 ft. bay width (column to column) “Because of standard rack sizes and minimum aisle requirements, 36-foot bays give you 10 per cent more storage volume than either 30 or 40-foot bays, therefore the rent is 10 per cent cheaper”
- early suppression fast response (ESFR) sprinklers “generally no in-rack heads are needed with these, so you don’t have to change your sprinklers if you change your racking”
- seven inch floor slabs, sealed and reinforced “they’ll handle virtually anything, so you can accommodate most tenancies”
- minimum 120 ft. dock “anyone who can drive a truck can drive up to that dock”
- one dock door per 10,000 sq. ft. “more doors equal faster loading and unloading”
- aisle lighting “match the racking — saves money”

Menkes must be doing something right. The family-owned portfolio consists of 6 million sq. ft. of industrial, 1.25 million sq. ft. of office, and 15,000 condominium apartments under management, plus a further 3 million sq. ft. of office and industrial under joint venture arrangements. — RM

\* Variable Air Volume or Variable Volume and Temperature

# Solid growth for Kin

by Stephen Rayner AACI, P App

The City of Kingston, also known as the Limestone City, is strategically situated on the north shore of Lake Ontario, at its junction with the head of the St. Lawrence River. The two largest cities in Canada are virtually equidistant: Toronto (160 miles to the west) and Montreal (180 miles to the east).

Kingston is the commercial centre of Frontenac County and the seat of its government.

It was founded in 1673 when Count Frontenac erected a stockaded log fort. It was incorporated as Kingston in 1841, and served for a very brief period as the capital of Upper Canada.

By 2001, the CMA had a population of 146,838 (114,195 in the City itself). Between the 1996 and 2001 census, it grew by 1.6 per cent.

Effective Jan. 1, 1998, the City of Kingston, Kingston Township and Pittsburgh Township amalgamated as the new City of Kingston. The process of developing a consolidated Official Plan and Zoning By-law is well under way and should be completed in about four years. The City is

developing an Urban Growth Strategy and Transportation Master Plan, which should be formally adopted by the end of the summer.

## Economy and employment

Kingston's economic base is a mixture of public and private sector employers. Services account for 81 per cent of the workforce with manufacturing accounting for only 12 per cent. Unemployment in April 2003 was 6.5 per cent.

Canadian Forces Base Kingston, with 5,200 employees, is the largest employer. Queen's University, with 4,200 employees, is the second largest. Kingston General Hospital, the Limestone School Board, and Correctional Services Canada round out the top five.

In the private sector, Dupont of Canada is the largest employer with 1,400 employees. Startek, a Denver Colorado based call centre operation, is the second largest private sector employer at 1,018 employees. Empire Financial Group and Bombardier are third and fourth, employing 465 and 300 respectively.

Call Centres have become fairly significant. Startek, which has only been in Kingston for two years, now has two locations. Bell Canada has opened a new call centre with 500 jobs, and the Assurant Group's new facility in Kingston West will employ 400 people once completed this summer.

A number of smaller new firms have opened here

in recent years, many related to the communications technology and biotechnology industries. Some of these are partnerships with Queen's University, Alcan or other larger firms.

The Kingston Economic Development Corporation (KEDCO) has been active in promoting the Kingston area as a place for knowledge based industries, with generally good success to date.

## Major tourism, sports and cultural attractions ensure year-round activities.

Tourism is a major part of the Kingston economy, with more than 3.1 million visitors per year. Major attractions such as Fort Henry, the historical downtown, proximity to the 1000 Islands, Rideau Waterway, etc. have been joined by events such as the Buskers Festival, Blues Festival, K-Town Triathlon, active theatre groups, symphony, and OHL Hockey Franchise, ensuring year-round activities.

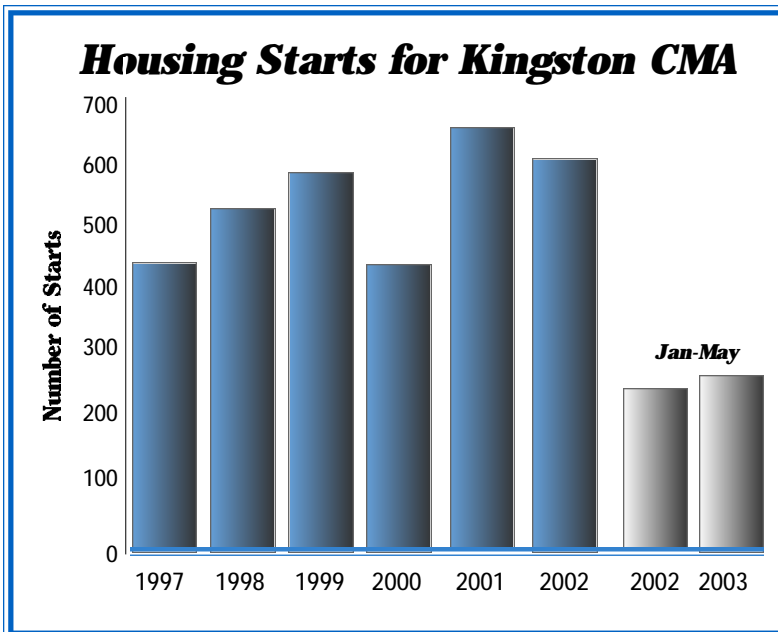
There are approximately 1,750 hotel and motel rooms in Kingston with up to 300 more planned. Occupancies range up to 75 per cent for the better quality facilities.

## Strong development trends

After sluggish development in the early to mid 1990s, there has been a resurgence in development for most sectors.

Housing starts hit a low of 444 in 1997 and again in 2000, but bounced back to 607 in 2002. Year-to-date figures for 2003 (January through May inclusive) show starts of 256, virtually identical to the 2002 level. Prices over the past 18 to 24 months have increased 15 per cent to 30 per cent, with waterfront properties and housing geared to student rental showing the strongest gains.

Industrial growth is more moderate, but over the past two years approximately 300,000 sq.ft. have been added to the inventory. Rents have regained their pre-recession levels of \$5.00 to \$7.00 per sq.ft. completely net.





# ngston

Retail sector growth has been substantial, with more than 1,000,000 sq.ft. added since 1998. The majority of this new space is situated in the RioCan Power Centre C, a box store agglomeration of more than 500,000 sq. ft., anchored by Home Depot, Odeon Cineplex, Future Shop, Staples, Sears Home Furnishings, Homesense and others. Rona is now constructing a 120,000 sq. ft. Home Improvement Centre on outer Princess Street. Loblaws has built two new "markets" of over 80,000 sq. ft. each. Market Square is about to undergo a \$4 million renovation to include a skating rink and upgraded retail.

The Box Store concept has resulted in a shifting of retailing trends. The downtown is geared heavily to specialty retailing and services for university students and other downtown residents, while larger item and comparison shopping is more of a suburban occurrence now.

Downtown continues to experience a renovation trend with upgrading of ground floor retail and creation of upper floor apartments.

The university presence from fall to spring and the tourism industry during the summer months help keep the downtown remarkably vibrant, with few vacancies. Both Queen's University and St Lawrence College continue to expand. For example, Queen's has a full-time student population of 12,200 now; that is anticipated to reach 16,000 this fall.

## Offices still weak

The only sector that has not strengthened in any significant way is the office sector. Office vacancy rates overall are estimated in the 15 per cent to 18 per cent range.

While there is some growth in demand, new buildings have created vacancies in existing buildings.

Further exacerbating this situation, many office users have been moving into strip shopping centres, which were suffering from vacancies brought about by the box store trend.



As with any municipality, there are challenges to be dealt with in the future to ensure that these growth trends, or at least stability, continue.

Infrastructure is a major issue in Kingston. Plans are already under way to replace a main sewer line crossing the Cataraqui River to Kingston East. Some older areas also will need extensive upgrades to sewer and water lines.

In order to alleviate traffic congestion, there are definite plans to bridge the CNR line on Centennial Drive. This will complete a new north-south link between Bath Road and Princess Street in Kingston West, and relieve some of the congestion on Gardiners Road. Eventually, a further extension to Gardiners Road itself will complete a new link to Highway 401. Longer term discussions are continuing for a bridge over the

Cataraqui River between County Road #2 and Highway 401. These links and others will be needed to support any substantial additional growth in the Kingston area.

## Contamination

Discovery of coal tar contamination from past industrial uses has posed a challenge for some major sites in the downtown core. Once the problems can be resolved, these sites have the potential to become major projects, bringing more commercial and residential uses to the downtown.

"Block D" is a seven acre waterfront site in downtown with a history of controversy and aborted development plans. Most recently, a local apartment developer has formed an informal partnership with the owner to split the site, creating a mixed use development with apartments on one half and a commercial complex with retail, hotel and offices on the other half. Public walkways would open up the waterfront.

## Conclusion

Overall, population figures, the number of households and the labour force are all growing steadily, if not dramatically. With a solid and diversified economic base, Kingston is expected to continue to grow in an orderly fashion, while maintaining its heritage character and quality of life.



*Stephen Rayner is General Manager of S. Rayner & Associates Ltd. in Kingston, Ontario – a full service appraisal firm offering Commercial and Residential Appraisals for all purposes.*



## ***Meeting on the road (show)***

OLE Vice President John Morrison (left), and President Konrad Koenig (right), met with Steve Williams, President of the Royal Institution for Chartered Surveyors (RICS) Americas at the June 17 RICS

Road Show. Held at the Hockey Hall of Fame, the show promoted the work of the Americas Division of the Royal Institution of Chartered Surveyors and its future growth opportunities.

The OLE was founded to support professional planners, appraisers, surveyors and consultants and has a long history of joint memberships and professional events with organizations such as RICS.

## **Welcome New Members!**

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# Province takes control in North Pickering

by Andy Manahan PLE

On April 17, Hon. David Young issued two zoning orders on about 3,240 hectares of land that comprise the proposed community of Seaton and the adjacent 1,980 hectares Duffins-Rouge agricultural preserve. These ministerial orders effectively place “complete planning control” in the hands of the Province according to Pickering Mayor Wayne Arthurs.

In 2001, the Province offered a land swap to Richmond Hill developers with lands on the Oak Ridges Moraine. They would get provincially-owned land in the Seaton community of North Pickering in exchange for the moraine lands.

Finance Minister Janet Ecker (Pickering-Ajax-Uxbridge) notes in her campaign brochure that “in 1999 the

City of Pickering, Durham Region and the Province signed an agreement to protect the Duffins-Rouge Agricultural Preserve lands forever.” The campaign literature then notes: “Regretfully, the Mayor of Pickering, Wayne Arthurs, is renegeing on this commitment and his Council has hired consultants, paid for by developers, who will make recommendations about developing these lands.”

Pickering council had initiated a Growth Management Study for North Pickering at a cost of \$500,000.

The North Pickering Land Exchange Review Panel was chaired by former Toronto Mayor David Crombie, who helped to broker the deal with the developers. Principle 6 in its November 2002 report states that “The Pickering lands referred to in the Durham Official

Plan as the Permanent Agricultural Reserve ... should remain in agricultural and conservation use, in perpetuity ...”. Panel recommendation 6B goes on to say that: “if for any reason the principles of the Agreement are compromised, then the Minister, as a last resort, should intervene to maintain the integrity of the Agreement.”

The matter has become a *cause celebre* for the Mayor. Arthurs has not only taken action to appeal the ministerial zoning order but he has also decided to run as a Liberal in the upcoming provincial election against Tory Janet Ecker. Last fall, the Mayor said that if the Province really wanted to dictate the use of the lands, it never should have sold them to farmers, for prices ranging from \$1,500 to \$4,000 per acre.

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## *The Legislative Beat* continued from page 8

At the media launch, one questioner said the current predicament (gridlock, lack of funding for transit) appeared to be the responsibility of the Tory government. Panel Chair Hazel McCallion responded that: “we are all in this together.”

### **Opportunity Bonds**

From late April until May 13, the Province offered Opportunity Bonds to Ontario residents. Interest earned on the bonds is exempt from Ontario income tax. The Ontario Municipal Economic Infrastructure Financing Authority will use the money raised from the bonds to make loans to municipalities for infrastructure investments such as roads, transit and water and sewer treatment.

### **Northern Tax Incentive Zone**

On May 12, Premier Eves announced that a tax incentive zone would be created in northern Ontario, effective

Jan. 1, 2004. Eligible businesses locating in this “zone” would not be required to pay provincial business education tax, capital tax or employer health tax. Municipalities will be asked to provide full municipal property tax relief for these businesses as well.

### **Bill 25**

A small section within the proposed Act to Enhance Public Transit and Provide for a Smart Transportation System in Ontario proposes a dramatic change in the planning process as new highways, railway corridors and the like would be exempted from the Environmental Assessment Act.

There would be no requirement for environmental or economic impact assessments of various alternatives if Bill 25 were to be passed. Also, establishment of corridors would not be considered an “expropriation”, thereby

further removing any right to compensation under the Expropriations Act. In other words, property rights would be severely diminished under this scenario.

While one of the objectives of the bill might have been to help expedite public transit projects, there is growing concern among various groups that if this bill proceeds unaltered, it would be a major setback to rigorous planning in Ontario.

*Andy Manahan is Development Promotion Representative, Universal Workers Union, Local 183, and Legislative Chair for the Association of Ontario Land Economists.*



## Budget

Controversy surrounded the March 27 Provincial Budget because of the unorthodox location at which it was delivered by the Finance Minister. Even certain Tory MPPs were critical of the decision to “take the Budget to the public” at an automotive parts plant training facility. Allegations circulated that the government had intended to hold a spring election following the Budget, without reconvening the Legislature, as an order-in-council had been signed on March 26 authorizing an unprecedented \$36 billion in spending (about half of the provincial budget).

## The Road Ahead

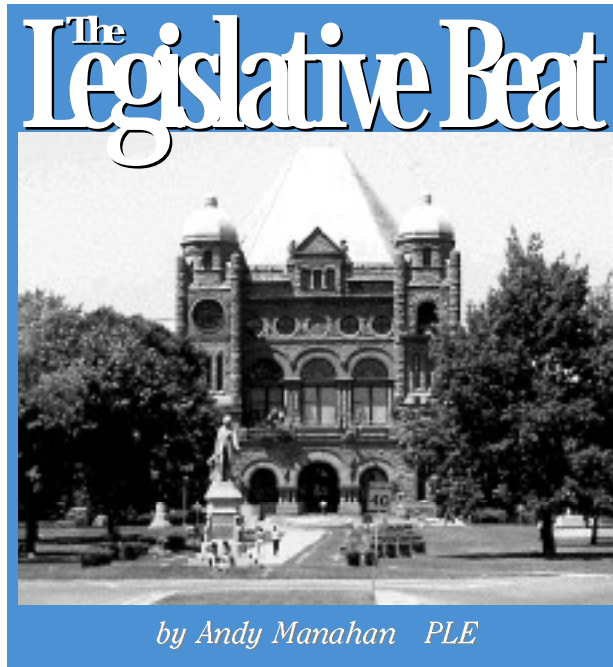
‘The Road Ahead’ is the Tories’ third election platform document. Main themes include: mortgage interest tax deductibility; local voter approval through a referendum for new municipal taxes or for tax increases; a ‘made for Ontario’ immigration policy; stronger consumer protection laws, and a ban on teacher strikes during the school year.

Ken Boshcoff, president of the Association of Municipalities of Ontario, said his members are opposed to the idea of a referendum. Municipalities have been seeking assistance from the province for revenue sharing and “now we’re being made to look like the scapegoat,” according to Boshcoff.

## Throne Speech

Ontario’s Lieutenant Governor James Bartleman delivered the Speech from the Throne on April 30.

Opening the Fourth Session of the 37th Parliament, Premier Eves set out the government’s direction of enhancing the economy through 17 additional tax cuts, with an emphasis on seniors. Legislation has been introduced to provide a tax credit to seniors on the provincial portion of their property tax for their principal residence. Steps will also be taken to remove the mandatory retirement age of 65 to allow seniors to remain in the workforce.



## Severe Acute Respiratory Syndrome

The ripple effects of the outbreak of Severe Acute Respiratory Syndrome in Toronto are still being counted. Reports estimate that it has cost the Province \$1.12 billion to date to save lives, to support municipalities, and to offer compensation to individuals who were quarantined.

The new Minister of Municipal Affairs and Housing, the Hon. David Young (Willowdale), had hoped for a cash injection of \$900 million under the federal disaster relief program, but in mid June Defence Minister John McCallum said it wouldn’t qualify. Instead, McCallum offered an immediate payment of \$150 million, with a further \$100 million later – something Young immediately rejected. Negotiations were expected to continue.

Ontario’s SARS Assistance and Recovery Strategy Act was introduced and passed in the Legislature on April 30, after the Throne Speech made special recognition of health care workers. In addition to support for front-line health care workers, the legislation recognizes the economic impact that SARS has had on the tourism sector. Hotel rooms and entertainment admissions are exempted from provincial retail sales

taxes between May 1 and Sept. 30, 2003, and the Province put \$10 million into the pot for a tourism marketing plan.

Later in the spring, the Province announced a \$720 million assistance package for health care workers impacted by SARS and for health care system improvements. A SARS Assistance Program was also established on June 13 to provide financial help to those who had lost employment or self-employment income because they were sick or isolated for at least five consecutive days (or because care was provided to someone with SARS).

## Smart Growth

Hon. David Young received the report of the Central Ontario Smart Growth Panel on April 17. ‘Shape the Future’ calls for the establishment of:

- q an accountable stakeholder body, advisory to the province, to oversee implementation of a Smart Growth strategy across the central Ontario zone;
- q legislation that supports Smart Growth goals;
- q a provincial facilitator to mediate among levels of government and the private sector in support of Smart Growth; and
- q heightened inter-ministerial coordination.

None of these recommendations is revolutionary. Ontario had a Provincial Facilitator in the 1990s who proved to be a useful advocate for responsible planning and development. The Greater Toronto Services Board was in existence in the late 1990s until the Harris government pulled the plug (the Smart Growth board would be responsible for a much larger area than just the GTA, however).

Finally, who can forget Gardner Church, during the days of the Office of the Greater Toronto Area, calling for an elimination of the silos in the Ontario Government?

**See Legislative Beat page 7**