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A REMINDER:
NRU City of Toronto
Edition will not be published
the week of December 27

Novæ Res Urbis

CITY OF TORONTO EDITION

FRIDAY, DECEMBER 20, 2002 • VOL 6 • No 50

MFP INQUIRY: WEEK 3

Amalgamation was a ripe time to do business with city

By Karen Wirsig

Around the time of amalgamation in Toronto, January 1, 1998, the stars were beginning to align themselves in such a way to promise opportunities for some people to make serious cash from the new city's treasury, particularly in the area of consulting and technology.

Amalgamation alone was a cash cow for management consultants, a fact that helped the new city draw up a belt-tightening approach to engaging consultants in mid-2001, more than three years after the dam opened up. But with the explosion of automation in offices across all sectors throughout the 1990s, together with the need to harmonize the new city's functions, and topped off with the spectre of the Y2K bug, the prospects at the city were almost too good to be true for companies that finance and sell computer equipment and software – and their lobbyists.

It was also a time when city hall policies and procedures had not yet jelled and when the new administration was still trying to figure out the number of staff it employed, the number of vehicles it owned, what its real estate holdings were, and how many desks it had and where they were located.

In 1998, city council agreed to set aside more than \$150 million to get ready for Y2K. That was equal to the amount to be spent on the transition costs associated with creating the new city (severance, renovations, etc.) and more than was set aside for capital spending in most of the program areas of the city.

continued page 6

COMPUTER LEASING

The anatomy of the MFP deal

MFP Financial Services president Peter Wolfrain testified this week at the public inquiry into computer leases between his company and the City of Toronto that MFP did nothing either unethical or illegal in its dealings with the city. The inquiry is likely to hear expert testimony in the new year about whether leasing is cheaper than buying IT equipment outright, but the analysis is not simple.

For example, if the city had, in fact, entered into a 36-month lease for \$43 million worth of equipment with MFP between June 11 and September 11, 1999, at the promised 90-day effective interest rate of 4.6 per cent, and returned all of the leased equipment to MFP at the end of the 36 months, it would have been ahead of the game. This was the deal that council agreed to. It is unlikely the city could have borrowed money so cheaply to buy equipment that would, in any case, be primarily obsolete by the end of three years.

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MARK THESE DATES

TUESDAY JANUARY 7, 2003

Economic Development and Parks Committee, deputations on the 2003 budget, Toronto City Hall, 9:30 a.m.

WEDNESDAY JANUARY 8, 2003

Works Committee, deputations on the 2003 budget, Toronto City Hall, 9:30 a.m.

THURSDAY JANUARY 9, 2003

Community Services Committee, deputations on the 2003 budget, Toronto City Hall, 9:30 a.m.

FRIDAY JANUARY 10, 2003

Federal-Provincial Housing Program Seminar, sponsored by the **Greater Toronto Home Builders' Association**, Toronto Marriott, 90 Bloor St. East, 7:45 a.m. to 11 a.m. Call 416-391-3445.

Administration Committee, deputations on the 2003 budget, Toronto City Hall, 9:30 a.m.

WEDNESDAY JANUARY 15, 2003

Battling Smog Through Regional Action, sponsored by the **GTA Forum**, City of Toronto Archives, 255 Spadina Rd., 4 p.m. to 6:30 p.m. Call 416-480-2313.

SATURDAY JANUARY 18, 2003

Union Station Public Information Forum, sponsored by the City of Toronto, Great Hall, St. Lawrence Hall, 157 King Street East (wheelchair accessible), 1 p.m. to 3 p.m. A display highlighting preferred proponent Union Pearson Group's proposed concept for Union Station is on display in the Great Hall of Union Station.

MONDAY JANUARY 20, 2003

Frank Stronach at Toronto Board of Trade Annual Dinner, Westin Harbour Castle Hotel, 6 p.m. Call 416-862-4507.

THURSDAY JANUARY 23, 2003

The Quality of New Architecture in Toronto, panel sponsored by the **Canadian Urban Institute**, Metro Hall, 55 John St., Toronto, 7:45 a.m. to 9:45 a.m. Call 416-365-0816, ext. 234.

CITYWIDE ZONING BY-LAW

New approach to crafting by-law

With the city's stamp of approval on the new official plan, which is now under review by the Minister of Municipal Affairs and Housing, a work plan has been put forward for the development of the new citywide zoning by-law.

Development of the new by-law would occur through the creation of a by-law "shell" that would be implemented incrementally over time.

A budget-related report to last week's meeting of Planning and Transportation Committee outlined the staff's suggested approach for the development of the new citywide by-law.

The report says that "adopting a new zoning by-law for the entire city at one time may not be practical or prudent." Instead, the proposal is to create a zoning by-law shell that would contain the basic structure and elements of a zoning by-law, such as definitions and general provisions, "but will not apply to any area of the city." When existing zoning provisions are reviewed and possible changes approved, they would then be added to the shell and over time would bring the new zoning by-law into force in the city. Additionally, as new zoning standards are developed through studies of the Avenues, which are to begin in 2003, these

would be added to the new zoning by-law.

Part one of the project involves the review of existing by-laws, comparing and contrasting the various provisions to determine similarities and differences. Development of the by-law template is part two of the project, with a review of parking and loading standards occurring in part three. The final part of the project, part

four, involves the design and creation of an electronically-based system containing maps that could be linked to the text of the new zoning by-law.

The aim of the project is not to create new zoning permissions

but to develop a common language for expressing the existing zoning permissions. Completion of the project is expected to take five years, at a cost of over \$7 million.

Currently, the new city functions under a patchwork of 41 independent or area-specific zoning by-laws that need to be amended. There are currently five zoning by-laws covering the former cities of East York, North York, York, Etobicoke and Toronto. Scarborough has a comprehensive zoning by-law for its industrial zones and 30 community or neighbourhood zoning by-laws covering the remainder of the former city. •

"adopting a new zoning by-law for the entire city at one time may not be practical or prudent."

NOVÆ RES URBIS

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Chronology of the MFP deal

NOVEMBER 12, 1997 – MFP salesman Rob Ashbourne has first meeting with then-IT chief for Metro Toronto, Jim Andrew.

DECEMBER 1997 – Andrew asks Ashbourne for quotes to lease computer equipment for incoming councillors. There is no formal tender process and the deal is put through Metro and the former City of Toronto.

JANUARY 1, 1998 – MFP lands deal to lease new city \$991,000 worth of computer equipment for councillors.

JANUARY 27, 1998 – Ashbourne meets with Andrew to discuss further leasing opportunities with city.

FEBRUARY 1998 – Ashbourne expenses \$400 worth of hockey tickets for Jim Andrew.

MARCH 21, 1998 – Andrew goes to hockey game, Leafs playing Vancouver, on MFP's tab.

JUNE 1, 1998 – The city adds \$17,942 worth of equipment to existing lease arrangement with MFP. The issue is never discussed at council.

JULY 1, 1998 – The city enters into a program agreement with MFP to make it easier to add equipment onto the existing lease arrangement. There is no discussion of the issue at council.

NOVEMBER 1998 – MFP hires former hairdresser and entrepreneur Dash Domi, brother of Maple Leafs enforcer Tie Domi, as a salesman.

OCTOBER 1, 1998 – The city adds \$37,684 worth of equipment to existing lease arrangement with MFP. Again, the issue is never discussed at council.

OCTOBER 23, 1998 – Ashbourne meets with Andrew to discuss the city's further Y2K needs. Finds out the city's looking for \$80 million worth of software and equipment.

JANUARY 1, 1999 – The city adds \$44,000 worth of equipment to the existing lease arrangement with MFP.

MARCH 16, 1999 – MFP hires lobbyist Jeff Lyons to help increase its business at the city and the Toronto school board, agreeing to pay him a monthly retainer of \$7,500 for three months.

MARCH 30, 1999 – Ashbourne meets with city's finance staff to discuss advantages of leasing.

APRIL 1999 – MFP replaces Ashbourne on the City of Toronto sales account with the "relationship guy," Dash Domi.

APRIL 17, 1999 – Domi flies a crew of city insiders to a hockey game in Montreal. The group includes Rob Godfrey, who works for TD Securities and is the son of Paul Godfrey, and Vince Nigro, who worked briefly in Mayor Mel Lastman's office and is, at this time, at the Toronto Economic Development Corporation.

MAY 2, 1999 – Domi flies a group of city insiders to Philadelphia, including Nigro.

MAY 26, 1999 – MFP sends an angry letter to Lyons about the fact that he is also working for the company's competitor, Dell Financial Services.

MAY 27, 1999 – Lyons suggests terminating his relationship with MFP in a letter to the company's senior sales VP. He is apparently not paid for his services to date.

MAY 31, 1999 – City officially issues request for quotation for a 36-month lease on \$43 million worth of equipment and software. Three years later, an earlier draft of the RFQ is found in Domi's files. Similarly, a 1999 draft RFQ for fleet leasing is found in Domi's files.

JUNE 11, 1999 – The city's RFQ closes.

JULY 20, 1999 – The city's policy and finance committee receives a last-minute report recommending MFP's bid, which offers an effective rate of 4.6 per cent, good to September 11. Budget chief Tom Jakobek adds an amendment to the recommendation to "ensure flexibility" that inquiry testimony has revealed was both unclear and unnecessary but probably provided the means for staff to increase the lease terms from 36 to 60+ months. Council approves the deal, with amendment but without debate, at the subsequent council meeting.

OCTOBER 1, 1999 – The city enters into a 60-month lease agreement with MFP for \$20 million worth of equipment, of which \$14 million is already owned by the city and will be sold to MFP and leased back. The effective 4.6 per cent interest rate is no longer guaranteed.

JANUARY 2, 2000 – The city puts \$11.6 million worth of Oracle software licenses on an MFP lease.

APRIL 24, 2000 – Domi flies Wanda Liczyk, Vince Nigro and Rob and Paul Godfrey to Ottawa for a hockey game. Liczyk later reimburses Domi for the trip.

JULY 2000 – The city and MFP rewrite three lease schedules worth \$32.5 million, establishing five new schedules with terms of 57 months.

SEPTEMBER 2000 – MFP rehires lobbyist Jeff Lyons, in part to assist in getting the city leasing contract for photocopiers, which is not issued until the following year. The company also hires Vince Nigro in its sales department.

FEBRUARY 2001 – Jim Andrew leaves the city's employ to join the Ontario Property Assessment Corporation.

MAY 2001 – Councillor Bas Balkissoon begins to question the city's relationship with MFP at council, over an assertion in a staff report that claims the company is the

continued page 4

Chronology continued from page 3

city's technology financing supplier. Wanda Liczyk leaves the city's employ to join Toronto Hydro as CFO and treasurer.

JUNE 2001 – CAO Mike Garrett's employment contract is terminated and Shirley Hoy becomes acting CAO.

JULY 2001 – Hoy decides to investigate the city's relationship with MFP after allegations of improprieties emerge about the company's dealings with Waterloo Region. Around this time, the city stops paying MFP bills.

AUGUST/SEPTEMBER 2001 – MFP asks Paul Godfrey to help facilitate meetings with the city to try to solve the growing dispute.

NOVEMBER 2001 – A confidential report to the city's audit committee documents concerns about the city's dealings with MFP. Among other things, it reveals the city actually has \$80 million worth of equipment on lease from MFP and not the \$43 million originally approved. The report also provides details of the lavish entertainment enjoyed by city staff on MFP's tab.

DECEMBER 3, 2001 – City council debates whether to proceed with a settlement with MFP over the leasing dispute. A number of councillors call for a public inquiry instead.

DECEMBER 20, 2001 – City council holds a special meeting to review the proposed settlement with MFP. The confidential reports on the investigation are made public and the settlement is not approved.

FEBRUARY 2002 – City council agrees unanimously to a public inquiry into its computer leasing deals with MFP.

JUNE 2002 – The city gets standing at the inquiry.

SEPTEMBER 30, 2002 – The inquiry is adjourned on the first day of hearings to allow the OPP to investigate allegations of a criminal act. Newspaper reports later reveal that the investigation is centred on allegations that a lobbyist asked an MFP competitor for a bribe to secure the leasing contract. The investigation is closed without charges being laid.

DECEMBER 2, 2002 – The inquiry resumes...

OPP investigates city hall powerful

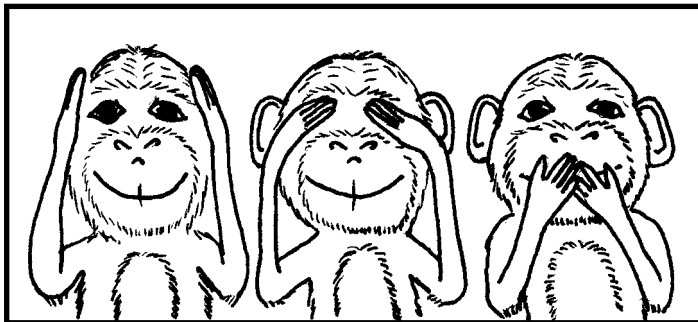


Illustration: J. Payette

CITY IN BRIEF

OEB warns consumers to beware of electricity retailers selling contracts

The **Ontario Energy Board** is warning consumers that signing an electricity contract after December 9 will make them ineligible to participate in the commodity rate freeze of 4.3 cents per kilowatt hour. The recently passed legislation (*Bill 210*), however continues to allow licensed electricity retailers to continue to sell contracts for the supply of electricity Ontario.

Property owners may want more info from MPAC: ARB warns

Owners receiving their property assessment notices from the **Municipal Property Assessment Corporation** this month for the 2003 taxation year may want more information regarding the assessed value of their property, according to a media release by the **Ontario Assessment Review Board**. The ARB, an independent tribunal that hears complaints related to property assessments from across the province noted that the deadline for filing assessment complaints for the 2003-taxation year is March 31, 2003.

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Court quashes Hodgson deferral

A decision out last week by **Ontario's Divisional Court** found that a Notice of Deferral issued by **Minister of Municipal Affairs and Housing Chris Hodgson** was done without jurisdiction. The Notice, signed by the Minister, was brought forward in relation to an **Ontario Municipal Board** hearing considering ward boundary changes for the newly amalgamated City of Ottawa.

The decision by **Justice Ellen MacDonald** found that the passage of the ward boundaries by-law by the city in July was to allow time for any appeal of the by-law to the OMB before the earliest date for filing municipal election nominations - January 2, 2003. The by-law was appealed to the board in August by three residents associations from the rural areas of the city. An initial pre-hearing conference had been scheduled for October 17. The day before the hearing, the Minister signed a Notice of Deferral under section 25 of the *Municipal Act*, which stays the appeals before the OMB. "If the Notice of Deferral stands, it stops the entire process of city council, in its efforts to establish revised ward boundaries in advance of the time for commencement of nominations." The Notice contained no reasons for the deferral and no evidence was presented to the board as to why the deferral was issued.

"undermines the entire scheme of the *Municipal Act* particularly when one looks at what the legislature set out to achieve when it embarked on the implementation of consolidation of regional municipalities."

- Justice MacDonald

At the time of the hearing, the city assumed the deferral was valid, but soon after concluded that the Minister had acted without jurisdiction and went to the board requesting a resumption of the hearing. The board dismissed the motion, finding the issue of the validity of the deferral to be a question of law.

The court found with the city that section 25 of the *Municipal Act* does not authorize the Minister to stay an appeal to the board from a by-law enacted by

the city, but rather empowers the Minister to stay an application to the board. In addition, the decision determined that section 13(4) of the *Act*, confers the jurisdiction upon city council to establish its own ward boundaries through a by-law that can be appealed by any interested party, including the Minister.

The decision quashed the Notice of Deferral and found that the defending argument put forward by the Minister "undermines the entire scheme of the *Municipal Act*

particularly when one looks at what the legislature set out to achieve when it embarked on the implementation of consolidation of regional municipalities."

The province announced Wednesday, that it would be filing a motion for leave to appeal the decision. Solicitors **George Rust-D'Eye** and **Barnet Kussner (WeirFoulds)** represent the City of Ottawa. **Leslie McIntosh** is the solicitor for MMAH. •

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CITY IN BRIEF

Co-chairs proposed to lead TDSB

Toronto District School Board trustees have proposed to the provincial supervisor **Paul Christie** the election of co-chairs while the board remains under supervision and that the affirmation of these two positions be finalized at the trustees meeting January 8, 2003. Proposed co-chairs are incumbent chair Ward 2 Etobicoke Centre trustee **Donna Cansfield** and Ward 17 Don Valley East trustee **Shelley Carroll**.

MFP Inquiry continued from page 1

At some point that year, word got out that the city planned to spend around \$80 million on equipment and software by 2000. Supply and finance companies, including **MFP Financial Services**, the Mississauga company at the core of the computer leasing inquiry hearings that got underway on December 2, began clamouring at the gate. Testimony and evidence before the inquiry so far indicates that MFP was visiting and entertaining top staff in the city's finance and IT departments to convince them of the virtues of leasing equipment instead of issuing debentures to buy it from late 1997 (just prior to amalgamation) onwards.

A big question for the inquiry – and for all sensible organizations – is when and if leasing computer equipment actually makes financial sense. (*See The anatomy of the MFP deal in this issue.*)

One of the company's key city contacts was **Jim Andrew**, who was responsible for IT at the former Metro, headed up the staff committee on IT that reported to the transition team, and later became the executive director of IT at the new city. A sales director at MFP knew Andrew from his days at the provincial government, an MFP client from the early 1990s.

Andrew has become the third former staff member to seek standing at the inquiry. A letter from his lawyer arrived before **Commissioner Denise Bellamy** yesterday. Former Y2K director **Lana Viinamäe** and former city CFO **Wanda Liczyk** have had standing since the beginning of the inquiry.

According to a strategy document presented by MFP salesperson **Rob Ashbourne** to the company's investment committee in late 1997 when MFP was preparing to provide untendered quotes to Andrew for 300 computers for the incoming mega-city councillors, Andrew had become a fan of leasing.

"Jim (Andrew) is a strong supporter of leasing and with our effort over the past six weeks he has

convinced (the city's) finance director (Liczyk) to support leasing," the strategy document says.

The recommendation from Ashbourne was for MFP to "get in early while transition is still taking place" and set up a model lease that could be used for future leasing opportunities, such as additional computer equipment, vehicles and whatever else the city might be convinced to finance. It was also a way into the city's agencies, boards and commissions, which do their own procurement.

At that point, the new city council had never even discussed leasing versus debenturing for big purchases and there had never been a formal tendering process for the \$991,000 worth of computers for the councillors. Nonetheless, MFP secured its first leasing deal on January 1, 1998, which ended up growing in small chunks over the next two years, still

Like sharks circling their prey



Source: Peter Rehak-TCLJ

Reporters strike gold at MFP Inquiry when they discover documents revealing lavish entertainment bestowed on city councillors and staff by MFP Financial Services salesman Dash Domi.

without any approval from council.

As most people know by now, MFP landed a prize computer leasing contract during the summer of 1999, ostensibly for \$43 million worth of equipment and software, a deal that ended up ballooning to the anticipated \$80 million mark by the time the city decided to investigate the matter in mid-2002.

And, as the commission lawyer, **Ron Manes**, pointed out during his questioning of MFP president **Peter Wolfrain**, "if there's anyone more expert in making money in lease transactions than you, I would be surprised."

The inquiry is now in hiatus until January 7, when cross-examination of Wolfrain by all of the parties with standing resumes. •

On paper, then, leasing looks great. Not only can you get a manageable payment schedule that fits your operating budget without having to put the equipment on your capital budget books, but you can dump the equipment back on the lessor when it is no longer useful to you and, in the meantime, have the lessor help you identify your inventory and its lifespan.

Of course, that's not how leasing companies make money. Wolfraim testified on December 18 that MFP makes its money at the end of the initial lease period in one of four ways. First, it resells returned equipment to a third party, hopefully for more than it gambled when it first set the lease rate for the original customer. Second, it re-negotiates (or modifies) the lease during the term with the original customer.

Third, the original customer sets up a new lease on the same equipment and, since the equipment is already essentially paid for, the new lease is gravy. The final option is for the original customer to buy the equipment from the company for a percentage of its original cost, or for "fair market value" as determined by the company. Either way, the price for the original customer will be higher than for a third party, according to testimony.

Wolfraim said that each of the scenarios occurs about 25 per cent of the time, meaning that a full 75 per cent of the time it is the original customer who provides the company's return on the deal. This is especially true because the customer may not be able to locate all of the equipment immediately at the scheduled end of the lease (particularly small bits of hardware strewn around large organizations) and, even if they could, it is difficult to return thousands of pieces of equipment on the same day. Even without a lease rewrite, if the equipment stays with the customer, a monthly rental charge applies.

As well, bidding companies only guarantee their original lease rate for 90 days. After that, they send new lease schedules every 90 days, in case the customer wants to add equipment to the deal. In the case of the City of Toronto, no equipment was purchased in the first 90 days and the city was never able to take advantage of that low rate quoted. It is expected to come out in future testimony that the city did not take an aggressive position with MFP's subsequent rate quotes, signing off on them even when they were, in some cases, nearly three times higher than the original quote.

Evidence has revealed how MFP structures its deals. The company figures out how much money it wants to borrow compared with how much of its own money it will put in at the beginning to pay for the commodity.

The more money MFP puts in, the lower the lease rate quoted to the customer. That cash investment is generally around 9 or 10 per cent, according to Wolfraim, based on a conservative estimate of what the company can get for the equipment at the end of the lease. In order to get new business, the company will base the deal on putting more of its own money in to bring the quoted lease rate down.

In the two lease deals reviewed so far at the inquiry, the company had booked a loss at the beginning because it was putting in as much as 17 per cent equity. Nonetheless, Wolfraim testified, it expected to end up earning as much as 120 per cent on its equity stake, based on past experience.

In the case of a January 1, 1998 lease for 300 computers for councillors, Wolfraim said the company probably broke even, although the city returned about 90 per cent of the equipment at the end of the 36-month lease. That deal was used to get a foot in the door at the city, as a lost leader.

As it turns out, in the case of the equipment that has been leased since the 1999 request for proposals, the jury is still out on how much the company will make on the deal. Most of that equipment and software is on 5-year leases that aren't up until 2005, even though the city had planned to refresh its equipment after three years.

According to the leases, to refresh the equipment would require a buy-out of the existing leases, including the residual equipment cost, and the setting up of a new lease with prevailing rates. Interestingly, most of the equipment purchased under the deal is now around 36 months old, ripe for refreshing. A source told *Novae Res Urbis* that the city is not messing with its MFP deal at the moment and is simply buying new equipment as needed.

What is known, however, is that **Dash Domi**, the salesman for MFP on the deal, earned about \$1.2 million in commission for his efforts on the deal between 1999 and 2001. On top of that, he spent \$100,000 over two years wining, dining and flying decision-makers around, before and after the lease agreement was originally approved by council in the summer of 1999.

Wolfraim's testimony implied that city council was naïve to think the deal it approved would not be altered over the course of its relationship with MFP. And a strategy document submitted by the sales team to MFP's investment committee when the quote was submitted to the city in 1999 is very clear: "once the deal has been awarded we are confident in the opportunities to enhance our deal." •

Fifth annual ranking of the City's most prolific performers

As part of our annual end of year ritual and a tribute to all those lawyers who have worked hard in the planning and development field, particularly in front of the Ontario Municipal Board, we have compiled our fifth annual ranking of the most prolific of these law firms in the City of Toronto. The review comprises planning and development legal activities, mostly board decisions with some court appeals rounding out the analysis, in Toronto from **August 2001 to July 2002**, as reported by *Novae Res Urbis – Toronto Edition*. For those tracking GTA activity outside of Toronto, be sure to see a copy of this past Wednesday's edition of *Novae Res Urbis – GTA Edition*.

1. McCarthy Tétrault

[RANK LAST YEAR: 1]

(Mary Bull, John Dawson, Stephen Diamond, Tara Doyle, Calvin Lantz, Cynthia MacDougall, Sharmini Mahadevan, Phil Sanford, Brad Teichman, Gordon Willcocks, Dennis Wood)

Reasons for Ranking: McCarthy Tétrault has held strong to its position as the most prolific planning and development law firm in Toronto. The volume, broad number of cases and clients, and nature of the cases helped McCarthy retain their ranking. Particularly their involvement with a number of contentious point tower developments is part of what keeps McCarthy at the head of the pack.

OMB/Court Matters or Hearings: representing The York Club regarding hearing for U of T Bloor West residence (Diamond); representing Toronto District School Board regarding permitted GTAA operating area (Diamond, MacDougall); representing 1160963 Ontario Inc. for point tower development permitted at 330 Spadina Road (Diamond, MacDougall) (✓); regarding H & R Developments Ltd. regarding tower development near Fort York (Diamond, Lantz, MacDougall); representing McCowan Centre Inc. regarding apartments on McCowan Road (MacDougall); representing Thornwood Inc. regarding Scrivner Square variance (Diamond, Doyle) (✗); representing Wellington Residences Corp. regarding condo at 800 Wellington St. appeal that was dismissed (Inglis) (✓); representing Evangel Hall regarding variances for institution at 552-556 Adelaide St. W. (Dawson); representing First Ontario Realty for OPA approved for Rosewell and Cheritan development (Inglis, MacDougall) (✓); representing

1160963 Ontario Inc. regarding Cheritan property (Diamond, MacDougall); representing Bellanada Properties Ltd. regarding residential development over commercial proposed for Victoria Park Ave. (Lantz, MacDougall).

2. Aird & Berlis

[RANK LAST YEAR: 2]

(Eileen Costello, Robert Doumani, Patricia Foran, Tom Halinski, Kim Kovar, Leo Longo, Josephine Matera, Jane Pepino, Christopher Williams, Steven Zakem)

Reasons for Ranking: Consistently, across the map when dealing with planning and development applications in Toronto and throughout the GTA, Aird & Berlis is one of the dominant legal forces in the city. Volume and number of successful cases have helped the firm maintain its stronghold.

OMB/Court Matters or Hearings: representing Brimley Progress Development Inc. regarding high-density development on Brimley Rd. (Williams) (✓); representing Bata Shoe Museum regarding U of T Bloor West residence (Pepino); representing Loblaw Properties Ltd. regarding supermarket permitted at Leslie and Lakeshore (Zakem) (✓); representing 1148578 regarding variances for 294-298 Sherbourne St. (Kovar) (✓); representing Kenneth-Sheppard for unit retention for residential redevelopment on Greenfield Ave., Maplehurst Ave. and Sheppard Ave. (Doumani) (✓); representing Torchin Group regarding settlement for credit claim (Williams); representing Grand Mansion Inc. regarding addition permitted at 40 Maple Ave. (Foran) (✓); representing Transmetro Properties Ltd. for mixed use development at 350 Progress Ave. (Kovar); representing Concord Adex Developments Corp for variance granted for parking reduction permitted at 361 Front St. W. (Kovar) (✓).

3. Goodman and Carr

[RANK LAST YEAR: 4]

(Patrick Devine, Mary Flynn-Guglietti [now at McMillan Binch], Yvonne Hamlin [now at Borden, Ladner, Gervais], Michael Kovacevic, Stephen Longo [now at Borden, Ladner, Gervais], Douglas Quick)

Reasons for Ranking: Up slightly from last year, Goodman and Carr holds strong due to the volume and

continued page 9

continued from page 8

success rate of their cases. Results for next year could be interesting, as all of the lawyers listed below have recently made moves to other firms.

OMB/Court Matters or Hearings: representing 1299089 Ontario Ltd. for townhouse project permitted at 2 and 4 Dale Ave. (Flynn-Guglietti); representing Royal Canadian Legion regarding a high-density development permitted for North York Centre (Flynn-Guglietti); representing Deep Pocket Investments regarding a proposal for residential to be constructed over an existing commercial store at 1533 Victoria Park Ave. (Flynn-Guglietti, Longo); representing Syd Valo regarding an addition proposal dismissed at 211 Forest Hill Rd. (Longo) (✓); representing Palmerston Gates Inc. regarding a mixed-use development at College and Palmerston (Longo) (✓); representing Douglas Bradshaw and Lisette Bourdages regarding an addition permitted at 9 Bannon Ave. (Flynn-Guglietti) (✓); representing Kreadar Enterprises Ltd. regarding a big box store permitted on Midland Ave. at McNicoll Ave. (Longo); representing City Front Development regarding credit claims (Hamlin).

4. Davis Howe Partners

[RANK LAST YEAR: 3]

(John Alati, Kim Beckman, Jeffrey Davies, Mark Flowers, Michael Melling, Susan Rosenthal)

Reasons for Ranking: Our neighbours on Mercer have basically maintained their position from last year, slipping one spot. Volume and success rate have kept this firm in the top five.

OMB/Court Matters or Hearings: representing Rosedale Development Inc. for high-density development permitted for North York Centre (Davies, Inglis); representing Michael Vaughan and Guy Saunders for consent and addition permitted for historic house at 33 Woodlawn Ave. W. (Davies); representing Performing Arts Lodges of Canada regarding a mixed-use development permitted for St. Lawrence Market (Alati); representing Morningside Heights Landowners Group and the Conservatory Group of Companies regarding an appeal against school board development charges (Alati); representing Morningside Heights Landowners regarding subdivisions approved in Scarborough (Alati); representing Oakwood Retirement Communities regarding long-term care facility that was approved in principle (Alati, Davies) (✓); representing Jasamax Holdings Ltd. regarding payment-in-lieu of parkland (Davies).

5. Cassels, Brock & Blackwell

[RANK LAST YEAR: 14]

(Marc Kemerer, Signe Leisk, Stanley Makuch)

Reasons for Ranking: This firm has definitely made its mark this past year, rocketing up in both the GTA and Toronto rankings. Volume and a number of noteworthy cases have helped Cassels, Brock & Blackwell round out the top five.

OMB/Court Matters or Hearings: representing University of Toronto regarding residence permitted at 321 Bloor Street W. (Kemerer, Makuch) (✓); representing Pierre Gravelle, Rebecca Gunn, Walker Avenue Residents Association and the Summerhill Residents Association (Makuch); representing Etobicoke Federation of Ratepayers and Residents for permitted GTAA operating area (MacLean); representing Judith Stamm regarding garage height increase on Edgar Ave. (Makuch) (✓); representing Seaton Ontario Berkeley Residents regarding rooming house on Dundas St. E. (Kemerer) (X); representing Dravidian Management Ltd. regarding redevelopment of former Metro Credit Union (Kemerer); representing University of Toronto regarding dismissed Scarborough campus rezoning (Makuch) (X); representing Friends of Fort York regarding Fleet St. development near Fort York (Kemerer).

6. Brown, Dryer, Karol

[RANK LAST YEAR: 5]

(Adam Brown)

Reasons for Ranking: If volume was the only measure used to determine the top planning and development law firm, or in this case lawyer – Adam Brown would be it. His volume is astounding, but the former North York “variance king” now deserves that title for projects citywide. An extremely high success rate is sure to keep Brown up there as possibly the busiest planning and development lawyer in the city.

OMB/Court Matters or Hearings: representing Atara Tamam regarding variance permitted on Vernham Ave. (✓); representing Empress Developments Ltd. regarding infill not permitted on Empress Ave. (X); representing Old Fish Market Development regarding mixed-use development permitted for St. Lawrence Market (✓); representing Rowntree Gardens regarding appeals dismissed against residential subdivision (✓); representing Leslie Sandler-Griff regarding house construction on

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Forest Ridge Drive (✓); representing Karl and Mark Matar regarding infill housing on North Drive (✓); representing Falsetti Construction Ltd. regarding infill development permitted on York Downs Dr. (✓); representing Jill Adolphe regarding variances for construction of a house at 404 Russell Hill Rd.; representing R & G Management regarding rental apartment at 1465 Lawrence Ave. W. (✓); representing Taylorwood Park Homes Inc. regarding intensification permitted on Westworth Ave. (✓); representing Robert Chabot Enterprises regarding outdoor storage on Toryork Dr. (✓); representing Jack Shram regarding severance dismissed on St. Germain Ave. (X); representing Avraham Zion Cohen regarding variances for 535 Fairlawn Ave. (✓); representing Gail Murray regarding additional units on Spruce Street (✓); representing Walter Harhay regarding variance for nine-storey residential building on Stewart St. (✓); representing Zanini Developments Inc. regarding townhouses permitted on Berry Rd. (✓).

7. Goodmans

[RANK LAST YEAR: 6]

(Roslyn Houser, Robert Howe, Allan Leibel, Catherine Lyons, Mark Noskiewicz, Julia Ryan, Michael Stewart, Richard Storrey, Christine Viinberg)

Reasons for Ranking: This year's top ranking planning and development law firm in the GTA, lost slight ground within the city this year, but still is involved with some key hearings within the city.

OMB/Court Matters or Hearings: representing Toronto General Hospital regarding appeal against redevelopment (Leibel, Stewart) (✓); representing Laurie and Dianne Woodruff regarding infill house permitted on North Drive (Noskiewicz); representing Wittington Properties Ltd. regarding Fleet Street development near Fort York (Noskiewicz); representing Price Leaseholds regarding Scrivner Square variance (Lyons); representing Avro Quay Ltd., Wyndham Court Canada Inc., Cadillac Fairview Corp., Brookfield Properties Ltd. and Canapen Ltd. regarding credit claims (Lyons, Noskiewicz).

8. WeirFoulds

[RANK LAST YEAR: 8]

(Kerri Boniface, John Buhlman, Jeff Cowan, Chris Diana, Bruce Engell, Sean Foran, Tali Golombek, Chris Johnston, Barnet Kussner, Ian Lord, Mike

McQuaid, Sue Metcalfe, Kim Mullin, Ken Prehogan, Greg Richards, George Rust-D'Eye, Bay Ryley, Lynda Tanaka, Chris Tzekas)

Reasons for Ranking: Good volume, involvement in a few key projects but a lack of winning cases has resulted in WeirFoulds maintaining its position from last year.

OMB/Court Matters or Hearings: representing Premium Properties Limited regarding residential development over commercial proposed for Victoria Park Ave. (Engell); representing Debbie Amber regarding addition dismissed at 211 Forest Hill Rd. (Kussner) (X); representing Spadina St. Clair Neighbourhood Committee regarding point tower permitted for 330 Spadina Rd. (Kussner) (X); representing St. Mary's Cement regarding development near Fort York (McQuaid); representing B & S Kavanaugh regarding severance dismissed for Parkhurst Blvd. (Tzekas) (X); representing Lick's Ice Cream and Burger Shop Inc. regarding settlement claims for Dundas Square former properties (Tanaka); representing Developing Areas Responsibly in Toronto regarding Cheritan property hearing (Kussner, Mullin).

9. Bratty & Partners

[RANK LAST YEAR: 13]

(Barry Horosko)

Reasons for Ranking: In the race for hardest working one-man shows, Barry Horosko is giving Adam Brown a run for his money. Volume and a number of successes have introduced Bratty & Partners into the top ten in Toronto, but Horosko could well be one of the hardest working lawyers around with a number of hearings in the GTA and beyond.

OMB/Court Matters or Hearings: representing Mary Danlak-Arhanic regarding additions permitted on Dawlish Ave. (✓); representing Reno-Depot regarding big box development permitted at 1608 The Queensway E.; representing Edilcan Construction Co. and Byng-Young Holdings Inc. regarding appeals against school board development charges; representing Reno-Depot Inc., Building Box and Canadian Tire Real Estate regarding big box development permitted on Midland Ave. at McNicoll Ave. (✓); representing Elk Island Developments Inc. regarding density settlement for Sheppard property at Bayview (✓).

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10. Osler, Hoskin & Harcourt

[RANK LAST YEAR: 16]

(Michael Bowman, Brian Bucknall, Jeremy Dacks, Daniel Kirby, Michael Millar, Stanley Stein)

Reasons for Ranking: Volume, key cases and a win helped Osler, Hoskin & Harcourt move up considerably from last year to round out the top ten.

OMB/Court Matters or Hearings: representing the Greater Toronto Airports Authority regarding permitted GTAA operating area (Stein) (✓); representing Loblaw Properties Ltd. regarding residential development over existing commercial on Victoria Park Ave. (Stein, Davis-Sydor); representing Lehman Bros. Inc. regarding development near Fort York (Bucknall); representing Summerhill and ABC ratepayers regarding Scrivner Square variance (Bowman, Millar).

THE NEXT TEN

Based on mentions in *NRU – Toronto Edition* the following make up the next ten in Toronto-based development activity: (11) Michael Vaughan, QC; (12) Dennis Trinaistich; (13) Borden, Ladner, Gervais; (14) Miller Thomson; (15) Stikeman Elliott; (16) Loopstra Nixon; (17) Kagan Shastri (formerly Kagan, Zucker, Feldbloom, Shastri); (18) Reble, Ritchie, Green & Ketcheson; (19) Elstons; (20) Russell Cheeseman.

To ensure that *Novae Res Urbis – Toronto Edition* covers your interesting cases, be they board decisions, development applications or court decisions, please send them to us by email or fax. The countdown for the sixth annual top ten firms has already begun. •

How the information was collected

Using manual research, we tracked each of the law firms mentioned in *Novae Res Urbis – Toronto Edition* (OMB News predominately) over this one-year period. From there we determined the firms that were the most frequently mentioned and sorted through the projects and hearings with which they were involved. It became apparent that some firms (given their size) were involved in a variety of developments across the city, while others had particular associations to major clients. The original data was collected from OMB files plus our research for news stories.

Determining the top 10

The most difficult task was in balancing the number of clients, the range of projects, the difficulty of cases, as well as some unique features about the projects/cases. Remember, this list was based only on items covered in *Novae Res Urbis – Toronto*

Edition and does not account for the vast number of cases and firms involved with such matters as minor variance applications, assessment appeals or for those that participated as part of a development team without our knowledge. Hence, there is a certain degree of subjectivity in our ranking.

The listings

Each grouping in the list notes the firm and the lawyers that are part of the planning and development law team for each of the top ten ranked firms. Items grouped as OMB matter/court hearing are those involved with hearings, pre-hearings, and mediation sessions. In cases which involved a board decision and a clear winner/loser or settlement was determined, we note the appropriate symbol (ü) or (ò) following the case description. If there was no clear win/lose or the matter involved a pre-hearing, or is still pending before the OMB no symbol is applied. A brief reason is given at the beginning of each listed firm explaining why we ranked them as we did.

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CITY IN BRIEF

ResREIT acquires apartments on subway line

Residential Equities Real Estate Investment Trust this week acquired of a 156-suite apartment complex at a price of \$12.5 million. The art deco, three-building complex located at 2928 and 2932 Yonge Street and 1 Cheritan Avenue, is situated one block south of the Lawrence Avenue/Yonge Street subway intersection. The leasehold price of approximately \$81,000 per apartment unit is projected to achieve a going-in leveraged return of approximately 12 per cent. The purchase price represents less than 50 per cent of reproduction costs. •

ONTARIO MUNICIPAL BOARD NEWS

Hearing set for live/work developments on Symington and Wiltshire

In a pre-hearing decision issued December 11, board member **Donald Granger** set the hearing date for the appeals by **Irving** and **Melvyn Himel** for OPA, rezoning and site plan for **361 Symington Avenue** and **1 Wiltshire Avenue**. The consolidated proposal is to permit the development of 76 residential live/work units and four studios within an existing one and two-storey building at 361 Symington Avenue and for the development of 69 residential live/work units and two commercial units, with a second storey addition, in an existing industrial building at 1 Wiltshire abutting the Symington property. The city had refused the Symington proposal. The applicants amended the Wiltshire Ave. proposal to remove any residential use within a 30-metre

setback from the closest railway track.

A fundamental issue is the proximity of railway lines operated by **Canadian National Railways** to the proposed residential portion of the development. The dispute revolves around “whether or not sufficient protection from train related accidents exists between the rail line and proposed residential uses.” The issue is also fundamental to the city in determining its position regarding the development.

The hearing is set to begin June 16, 2003 with ten hearing days scheduled. The next pre-hearing conference is set for April 4, 2003.

Solicitor **Andrew Paton** represents Irving and Melvyn Himel. **Stephen Bradley** is the solicitor for the **City of Toronto**. Solicitor **A. Milliken Heisey (Kerzner, Papazian, MacDermid)** represents Canadian National Railways. (*See OMB Case No. PL020118.*) •

CITY PEOPLE

Emma Aragon, has joined **Bousfield, Dale-Harris, Cutler & Smith Inc** as an urban designer and planner. Formerly, Aragon was a planner/urban designer with Page & Steele.

New members appointed to **Parc Downsview Park Inc.** include: **York University Centre for Applied Sustainability** director **David Bell** (chair); **Bregman & Hamann Architects** senior associate **Douglas Birkenshaw**; **Mastro's Restaurant** management and restaurant consultant **Rina Camarra**; former public servant and UofT visiting professor **Elizabeth Dowdeswell**; **Defence Construction Limited** chair and former TEDCO chair **Reginald W. Lewis**; **Titanus Inc.** Realtor and **Telast Enterprises Inc. Land Holdings** president, chairman and CEO **Gino Matrundola**; **Rostland Corporation** past president and CEO **BMO Realty** former president **John McCool**.

Major-General Richard Rohmer has been appointed honorary chief of **City of Toronto** emergency medical services.

Oakville resident **Michelle DiEmanuele** has been appointed to the board of directors of the **Toronto Port Authority**. DiEmanuele is vice-president of human resources and organization development with **Brookfield Properties Limited**.

Paul Zarnke has been appointed executive director of the **Peel Region Children's Aid Society**. Formerly, Zarnke was executive director of the Family Services Association of Toronto.

Keith Wong has resigned as executive director of the **Toronto Social Planning Council**.

Senator Vivienne Poy has been elected chancellor of the **University of Toronto**, succeeding Hal Jackman.

John Tory has been appointed chairman and CEO of **Rogers Cable Inc.** effective January 1, 2003. Currently Tory is president and CEO. •

The holidays are here!
NRU - City of Toronto Edition
is going on vacation!

NRU City of Toronto will not be published next week.
You will receive your next NRU City on Friday, January 3, 2003.

Enjoy your holiday!