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April 19, 2006

His Worship Mayor Sam Katz
and Members of Executive Policy Committee
The City of Winnipeg
510 Main Street
Winnipeg, MB

Dear Mayor Katz and Members of EPC:

Re: **Report No. 6 – Assessment Task Force Final Report**
– Administrative Response, June 30, 2004
File AA
Regular Executive Policy Committee Meeting – April 19, 2006

I understand that this report of the "Administrative Response" to the Assessment Task Force Final Report is to be "received as information."

I presume therefore that at this meeting EPC will not be approving any of the recommendations, nor recommending that City Council approve any of the recommendations.

Nevertheless, I wish to provide some comments to follow-up and add to my earlier presentations on the associated reports, submitted at the following meetings:

March 23, 2005	City Council	Proposed Two-Year Assessment Cycle
April 13, 2005	EPC	Board of Revision – Operating Procedures
July 20, 2005	EPC	Final Report of the Mayor's Red Tape Commission Recommendation 8 – Property Assessment Issues
March 15, 2006	EPC	City of Winnipeg Board of Revision
March 21, 2006	City Council	2006 Business Tax Phase-In By-law
March 22, 2006	City Council	City of Winnipeg Board of Revision

For reference, copies of the above are attached as Appendix "A" to this submission.

My comments on the administrative responses are as follows:

(A) Assessment

A. 1 Legislative Framework

1) Definition of value.

Contrary to the Report, Alberta, like Manitoba, considers the specific characteristics of individual residential and commercial properties on appeal, in order to find their market value. Alberta farm land and linear properties are not valued on their individual market value. Neither are Manitoba linear properties.

The former City Assessor appears to be favouring what he suggests would be a more efficient appeal process in which the courts and boards would be required to accept the City Assessor's mass appraisal values and assessments – meaning the City Assessor's assessments would be unassailable. The clear intent of this recommendation is to eliminate successful appeals of the City Assessor's assessments entirely.

The Administrative response should be rejected.

3) Power to change assessments by agreement.

As noted, the current legislation already includes powers to make any types of changes agreed to by the City Assessor and taxpayers expeditiously, except the effect of the legislation is generally to prohibit changes to current or previous assessments which are requested and/or agreed to by the taxpayers, after the regular appeal deadlines. An expansion of the power to adjust current or recent previous assessments with the agreement of the taxpayer would be welcome and more fair.

4) Award of costs by the Municipal Board.

Understanding that the appeal process should not be designed to discourage taxpayers (or the City Assessor) from seeking a fair hearing, the Municipal Board rarely awards costs, and then only in generally nominal amounts.

No change in this practice is required or desirable..

5) Amendment of roll with agreement of the Assessor and Taxpayer.

This suggestion is entirely unnecessary and nonsensical. If the Assessor and Taxpayer agree, the change is now implemented by Certificate of Agreement or recommendation, without any adversarial process (by definition).

6) "A reasonable legislative date for the submission of income and expense information to the Assessor in a legislated format be established."

In principle, this is highly desirable. The present law, practices and procedures, formats, and consequences of non-compliance are completely unreasonable, arbitrary, inconsistent, and unfair. Certainly not "FOUD."

A. 2 Transparency Issue

1) Shortening the assessment cycle to one or two years.

Shortening the assessment cycle to one or two years is highly desirable, for all concerned. Note, however, my previous criticisms of the former City Assessor's recommendations for a Proposed Two-Year Assessment Cycle (March 23, 2005).

2) 2007 General Assessment

I would have expected the Administration to note that the General Assessment was in 2006 and that a two-year cycle would result in a new General Assessment in **2008** (not 2005 and 2007, respectively.

3) Reference Date January 1, 2006 for 2007 General Assessment

The separate report on the Two-Year Cycle from the Administration stated that the two year cycle could be reduced to two years for the **2008** general assessment **roll "assuming that a decision to proceed is made by December 31, 2004."**

The City Assessor has not yet requested that property owners supply income and expense information for 2005 (which is reasonable, since most property owners are receiving or preparing 1995 year-end financial statements only now, in April).

Even if the Province were to pass the necessary legislation this spring, would the City of Winnipeg Property Assessment Department be able to produce a quality general assessment roll for **2008**, based on 2005 reference year values, in time for a full preview process less than a year from now?

Clearly, a new general assessment for 2007 cannot be produced as we speak today.

4) Change business assessment to a percentage of the value occupied as assessed for realty purposes.

The Province presently determines business assessment at the rate of 12% of realty value. Such a change in methodology could be introduced with legislative changes, particularly if "the value occupied as assessed for realty purposes" is taken to mean the realty value of the specific business premises (area) assessed.

However, if the report means that business assessment would equal simply a proportionate share by leasable area for a percentage of the total realty assessment of multi-tenant properties, there would be many large, unfair and unwanted shifts in the business assessment burden.

5) Lack of compliance as a determining factor in awarding costs at the Municipal Board.

As the Administration suggests, there is no need to add more costs or penalties for lack of compliance in providing required information. Section 64 penalties are always threatened but have never been authorized or used by the City. On the other hand, the monstrous deferral of assessment reduction penalties can result in outrageously high dollar value penalties.

6) Property taxes be calculated on assessed values and percentages, based on categories, eliminating class portioning and mill rates.

Unless the Task Force and Administration actually want to change the levels of taxation borne by different types of property, the present tax rates can be converted to straight percentages of assessed value right now, and presented on the tax statements, simply by multiplying the assessed value of each property by the applicable portioning factor by the total of the mill rates of the municipality, school division and Provincial levy which are applicable.

For example, the present realty tax rate for a fully taxable commercial property located in Winnipeg School Division No. 1 is its assessed value x (0.65 x 0.068899) = **4.47843 %.**

The owner of such property now pays realty taxes equal to almost 5% of the property's 2003 market value, every year.

7) Time frame for finalizing the Property Assessment Roll.

The Task Force recommendations indicate confusion about the process, suggesting appeals be heard and determined by the Board of Revision before the assessment roll is "closed."

The suggestion for a longer preview process, including all commercial properties, is highly desirable and would be consistent with Provincial practice. It is still necessary to "close the roll" in mid-year, but **the appeal deadline should be put back closer to August 31** of the year prior to the year of the general assessment.

The proposed limitation on the "Board of Revision hearing" to three months is unreasonable and unnecessary. The Board's present practice of hearing virtually all realty appeals by February (6 months), ensures that the roll as revised by the Board of Revision is known in time for the various taxing authorities to set tax rates accordingly.

Since the Assessors have generally been unable to produce more than only very limited valuation evidence for the Board of Revision with the present volume of 2006 appeals and hearing schedule, shortening the hearing period would require at least double the present Board and Assessment Department resources to be employed during an intense three month hearing period.

A. 3 Administration – Cost/Quality/Service

Cost

1) Province-wide assessment authority

It would be desirable to establish a single assessment authority for Manitoba. A merger of the Provincial and City assessment organizations would likely cost substantially more in the short run.

Service

"Common threads included the confrontational attitude and lack of informational response from assessors."

The good work done by the majority of the remaining experienced front line assessors who actually deal with taxpayers and conduct appeals has been continually hampered by the behaviour of the leadership of the Property Assessment Department and has been overshadowed by the leadership's "confrontational attitude and lack of informational response."

In this case, the solution should begin at the top.

I wish to refer to **a glaring example of this behaviour** at the conclusion of this presentation.

A. 4 Equity in Assessment and Taxation

The Administration response recommends only that City Council should address such matters of public policy.

(B) Appeals

See my earlier comments in the presentations on March 22 and March 15, 2006, and April 12 and March 23, 2005.

(C) Taxation

Whether or not changes are made in the responsibility for taxing property, and/or the financial responsibility for the consequences of assessment and tax adjustments, it will still be in the interest of The City of Winnipeg to ensure that fair and reasonable assessments are determined as quickly as possible, preferably before tax rates are set.

In any event, the primary objective should be to improve the quality of the original assessment rolls, not to discourage and punish taxpayer appellants.

Concluding Example:

In closing, I said I wish to refer to a current glaring example of the Assessment Department's **leadership's "confrontational attitude and lack of informational response."**

In my last presentation to City Council on March 22, 2006, I referred to the present case of an appeal of the 2005 realty assessment of a downtown office building, where the stated position of the City Assessor is to seek "a deferral of any reduction in assessment to the year 2006 (which in effect means that there will be no payout of the refund for any of the years in the cycle)."

Attached at Appendix "B" are copies of my most recent correspondence and communications on the subject.

As of this morning, I have been advised of no change in the City Assessor's position communicated to me on February 17, 2006.

If the City Assessor's request is granted, the taxpayer will be penalized a second time for the exact same offence, of failing to ensure that his property manager responded to the Assessor's request for 1999 property information, back in the year 2000.

Actually it is the tenants, primarily the Province of Manitoba in the case of this building, which are penalized by having to pay unfairly high assessments and taxes.

I submit that the Legislative Assembly never intended to give the appeal Boards the jurisdiction to order such an additional penalty or punishment for the same offence, which in my opinion would be contrary to Section 11(h) of *The Canadian Charter of Rights and Freedoms* (Right not to be Tried Again).

Clearly, the 2005 deferral is not necessary "to protect the City from financial uncertainty," because the City has had all of the relevant information about this property since January 22, 2002, and the Assessor could have easily appealed and reduced the 2003, 2004 and 2005 assessments to avoid the necessity of making any tax refunds for this property.

This is a prime example of "**confrontational attitude**" on the part of the City Assessor, demonstrating a complete lack of interest in achieving a fair and just assessed value for this property. Unfortunately, this does not surprise me.

What does surprise me is the astounding **"lack of informational response"** in this case.

The Municipal Board hearing is scheduled for **April 25**, just six days from now.

As of this morning, I have received no documentation whatsoever from the City Assessor with regard to this matter, notwithstanding the regular deadline for exchanging briefs on March 31 (15 working days), the revised deadline insisted upon by the City Assessor for April 7 (10 working days), and the regular rebuttal evidence deadline yesterday, on April 18, (5 working days before the hearing).

In my view, City Council and senior civic administration officials ought not to play a role in the direct valuation of properties. However, perhaps someone in this room can explain to the City Assessor why the above "position" and "response" do not reach an acceptable standard of customer service in this City, even for the Property Assessment Department.

Before next Tuesday.

Thank you.

Yours truly,

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DMS/bm