APPENDIX "A"

Deloitte.

Deloitte & Touche LLP
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada

Tel: (204) 942-0051
Fax: (204) 943-5179
www.deloitte.ca

March 22, 2006

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

Dear Mayor Katz and Members of City Council:

Re: **Report 'A' of the Executive Policy Committee – March 15, 2006**
Item No. 3 – City of Winnipeg Board of Revision
File AA
Council Regular Meeting – March 22, 2006

I have asked to appear before Council this morning to speak to the two recommendations for changes in practice and procedure at the Board of Revision.

Executive Policy Committee has recommended:

1. That the Board of Revision be required to provide written reasons on request for its decisions, prior to the end of the Board of Revision appeal period

2. That the assessor and taxpayer be required to submit and exchange written submissions for appeals by commercial properties, at least 14 days prior to a scheduled commercial hearing.

I am attaching a copy of my written presentation to EPC.

My first concern is that the City is not following proper procedure in this matter. Section 36(2) of *The Municipal Act* provides that a board of revision may determine the rules of practice and procedure to govern the conduct of the business before the board or a panel of the board, but the rules do not come into force until approved by the council.

In this case, the City of Winnipeg Board of Revision has not determined rules of practice and procedure and submitted them to City Council for approval. I would have expected Council to at least consult with the Board of Revision and request the Board's written recommendations before attempting to approve "changes in practice and procedure at the Board of Revision."

Secondly, these two specific recommendations do not constitute a complete set of rules of practice and procedure, and they certainly do not incorporate any Council approval today for some of the suggestions contained in the text of the City Clerks' report.

For example, the report states that:

> "The Manager of Appeals and the Chairperson of the Board of Revision would have to review all decisions to provide consistency."
>
> I should think that all parties, including the City Assessor, would be concerned about final decisions being made by persons who have not heard the evidence and argument at the hearing, in violation of the principles of natural justice.

During the brief debate on these matters at EPC, Councillor O'Shaughnessy stated that "the whole idea is to save time."

In that respect, I was surprised by his answer when he was asked what the consequence or penalty would be if a party failed to provide their written submission at least 14 days prior to the hearing (notwithstanding the fact that the Board is required to give only 10 days' notice of a scheduled hearing).

Councillor O'Shaugnessy said, and I am quoting for the record from my notes, **"The date of the appeal will be delayed. It will be put off until the next appeal date. There will be no penalty, it will just delay the hearing."**

If so, it is highly unlikely that this provision is going to save time, or speed up the process – a process which is already entirely successful in completing the hearing of all realty assessment appeals before Council strikes its mill rate, as it did yesterday.

The City Clerks' report also states that:

> "If approved by Council, The Board of Revision **Administration** would develop standard guidelines for applicants in regard to what is required for written submissions."

The recommendations before you make no reference to such "standard guidelines."

If Council approves these recommendations today, and if it is intended that the development of such guidelines (rules?) be implied by the "authorization to do all things necessary to implement the intent of the foregoing," then I would certainly request that Council now direct that any proposed "standard guidelines for applicants" be referred to Council for approval, as required by Section 36(2) of The Municipal Assessment Act.

Rather than approve these two recommendations today, when the Board of Revision has largely completed the 2006 "appeal period," I would strongly recommend that these matters be referred to the Board of Revision with the request that it develop, determine, and recommend to Council for approval "the rules of practice and procedure to govern the conduct of the business before the board or a panel of the board," including any "standard guidelines for applicants" considered appropriate. This could be done, with reasonable opportunity for consultation with the Property Assessment Department and other interested parties, for consideration and approval by Council before the 2007 realty appeal schedule begins in earnest at the end of the summer.

You will note that I had attached a copy of the recommendations of the Mayor's Red Tape Commission with respect to assessment issues, which did include a recommendation to require written decisions from the Board of Revision.

I would like to take this opportunity to ask when anyone is going to address the matters described on page 43 of the Commission's Final Report, under the heading of "Pyrrhic victories." You should know that this is getting worse, not better.

I have a case now before the Municipal Board, where a commercial property owner and their office building tenants suffered a penalty of one year's assessment and tax reduction for failure to provide financial information to the Assessor by May of 2001, before the production of the 2002 assessment roll. All of the information was supplied to the City in January of 2002. When the matter was appealed further to the Municipal Board, the City asked that the penalty be extended for a second year. When the Municipal Board issued an Interim Order in 2003 agreeing to do just that if it decided to make any further reduction, the taxpayer withdrew its appeal. Without any proper legal authority, the City then extended the penalty for a second year, demanding a windfall payment of over $5,000 from the owner for 2002. Now that the owner has appealed the 2005 assessment to the Municipal Board, 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."

Can anyone here explain why the owners and especially the entirely innocent tenants of this downtown office building should be treated this way?

There is another more case I would like to mention this morning, involving some 18 shopping centre retail tenants. It is a very long story, involving the City Assessor's ill-fated attempt to increase business assessments to include extra occupancy costs (CAM Charges) for only certain categories of tenants. This was rejected by the Municipal Board during the 1998-2001 cycle, for all but the regular retail tenants of the six major shopping centres in Winnipeg. For 2002-2005 the City Assessor continued to discriminate against these business taxpayers, and when the Municipal Board finally heard appeals from some of them, it issued a decision in 2005 rejecting the inclusion of the CAM charge amounts in their assessments too.

For the new 2006-2009 assessment cycle, the City Assessor no longer includes any additional CAM charge amount in the business assessments of the shopping centre retail tenants.

But now the City Assessor wishes to appeal the 2005 Municipal Board decision to the Court of Appeal.

Why?

When is this kind of "attitude" question going to be addressed?

Thank you.

Yours truly,

DELOITTE & TOUCHE LLP



David M. Sanders MA LLB
Senior Manager
Property Tax Services

DMS/bm

Deloitte.

Deloitte & Touche LLP
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada

Tel: (204) 942-0051
Fax: (204) 943-5179
www.deloitte.ca

March 21, 2006

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

Dear Mayor Katz and Members of City Council:

Re: **Report of Executive Policy Committee – March 15, 2006**
No. 1 – Final Recommendations – 2006 Operating Budget – File FE(2006)
Clause 5.B.

and

Proposed By-law No. 108/2006
The 2006 Business Tax Phase-In By-law
Special Meeting to Consider the 2006 Operating Budget - March 21, 2006

I am **not** opposed to limiting business tax increases, but I am appearing to express my concerns about the present wording and potential interpretation of the proposed **2006 Business Tax Phase-In By-law**, to seek clarification of Council's intentions, and to suggest possible improvements.

The specific proposals submitted to you for approval this morning are as follows:

Report of Executive Policy Committee – March 15, 2006
No. 1 – Final Recommendations – 2006 Operating Budget – File FE(2006)

Clause 5.B. **That Council make a determination in accordance with section 68 of *The Municipal Assessment Act* that any increase in business tax resulting from the 2006 general assessment in excess of 15% is unreasonable in the circumstances, and limit all such increases to 15%. (Note: This will result in 2006 business tax revenues remaining at 2005 levels).**

Proposed By-law No. 108/2006
The 2006 Business Tax Phase-In By-law

Provides that, pursuant to **Section 68 of** ***The Municipal Assessment Act***:

> **2. In the year 2006, all increases in business taxes resulting from the 2006 general assessment shall be limited to 15%.**
>
> **3. In this by-law, "business taxes" means business taxes imposed under subsection 332(2) of The City of Winnipeg Charter and does not include:**
>
> **……..**
>
> **(g) business improvement zone taxes;**
>
> **……..**
>
> **(j) any other taxes, levies and charges imposed under The City of Winnipeg Charter which may be added to or collected in the same manner as real or personal property or business taxes;**

Before Council adopts these proposals, I ask that you consider the following:

(A) <u>Increases in 2006 Business Improvement Zone Taxes are NOT Capped</u>

As you can see, for the purpose of this particular by-law, business improvement zone taxes are specifically excluded from the definition of the business taxes whose increase is to be capped at 15%.

So, as proposed, the new 2006 BIZ levies will be applied in full to the new 2006 business assessments (Annual Rental Values - ARV) of businesses located within each of the zones.

This is consistent with the particular Business Improvement Zone Levy (Tax) Rates which Executive Policy Committee is recommending that City Council approve at its regular council meeting tomorrow morning (Report "A" – Executive Policy Committee – March 15, 2006, Item No. 5, pp. 1085-1093, and proposed 2006 Business Improvement Zone By-law No. 112/2006).

If you will refer to Appendices A and B to EPC's report for tomorrow's Council meeting, plus the proposed by-law and the BIZ budget attachments, you will see that the Zones generally tried to hold the line on their budget levy requirements (increasing by a weighted average of only 3.3% overall), and they estimated their individual BIZ tax rates based on earlier projections of the new total 2006 business assessment in each zone.

However, the actual 2006 ARV's for businesses located in Zones, issued to taxpayers in November, 2005, totaled $184 million, up more than 14% from the 2005 total of $161 million. The Downtown BIZ ARV went up by 17%, while West Broadway went down by 22%. In each case, the City's Corporate Finance Department has divided the requested budget levy by the actual 2006 zone ARV, with the result that the 2006 BIZ levy rates will decline by as much as 20.8% (in the French Quarter), and increase by as much as 52% (in West Broadway/South Sherbrook).

Since the 2006 BIZ levy rates have been calculated without any adjustment or cap on individual business assessment increases, Council should anticipate that many of those businesses facing what EPC describes as "unreasonable" increases in business assessment (more than 15%) will be receiving 2006 business tax bills reflecting increases of more than 15% above their 2005 business tax bills.

To illustrate, here are the actual numbers for a retail tenant of Portage Place Shopping Centre, located in the Downtown BIZ. The new 2006 ARV issued on November 28 was for $47,220, representing an increase of **89%** over the 2005 ARV of $25,020. Ten days ago, the tenant received a "corrected" 2006 ARV of $83,100, now representing an increase of **232%** over the 2005 ARV. The Property Assessment Department says the original computer-generated ARV's were based on the wrong rental rates, and that therefore they have now issued similar "corrected" 2006 ARV's to many of the tenants of the shopping centre.

		2005 Tax	2005 BIZ	Total Rate	Total Tax
2005 ARV	$25,020	7.75%	1.469%	9.219%	$ 2,306.59
		$1,939.05	$ 367.54		**$ 2,306.59**
		2006 Tax	2006 Capped Tax		
2006 ARV	$83,100	7.75%	$25,020 x 7.75% x 115%		
("Corrected")		$6,440.25	= $2,229.91		
		2006 BIZ			
		1.256%			
		X $83,100	= $1,043.74		

Total 2006 Business Tax Bill **$3,273.65**

This represents a 42% increase over the 2005 Business Tax Bill of $2,309.59, after the 2006 cap is applied.

Note that if Council takes no further action with regard to establishing a cap for 2007, the 2007 tax bill at present tax rates will be about $7,500, representing an increase of **225%** over the 2005 business tax bill.

So that Council may better understand the impact of these tax measures, let me give you another example of a Portage Place retail tenant.

In this case, the new 2006 ARV issued on November 28 was for $36,060, representing an increase of **17%** over the 2005 ARV of $30,840. Ten days ago, the tenant received a "corrected" 2006 ARV of $63,660, now representing an increase of **106%** over the 2005 ARV. Again, the Property Assessment Department says the original computer-generated ARV's were based on the wrong rental rates, and that therefore they have now issued similar "corrected" 2006 ARV's to many of the tenants of the shopping centre.

		2005 Tax	2005 BIZ	Total Rate	Total Tax
2005 ARV	$30,840	7.75%	1.469%	9.219%	$ 2,843.14
		$2,390.10	$ 453.04		**$ 2,843.14**
		2006 Tax	2006 Capped Tax		
2006 ARV ("Corrected")	$63,660	7.75%	$30,840 x 7.75% x 115%		
		$4,933.65	= $2,748.62		
		2006 BIZ			
		1.256%			
		X $63,660	= $ 799.57		

Total 2006 Business Tax Bill **$3,548.19**

This represents a 25% increase over the 2005 Business Tax Bill of $2,843.14, after the 2006 cap is applied.

Again, if Council takes no further action with regard to establishing a cap for 2007, the 2007 tax bill at present tax rates will be about $5,700, representing an increase of **100%** over the 2005 business tax bill.

More importantly, and in case these dollar values seem small, it may interest councilors to know that in the 2003 reference year this particular tenant paid total gross rent of only $15,000, a great deal less than the "corrected" 2006 ARV of $63,660 produced by the Property Assessment Department's mass appraisal computer program, and a very great deal less than the actual gross rent which would be paid by a Portage Place tenant who would be fairly assessed with an ARV of $63,660, using the current methodology.

The above two examples are for tenants of retail premises in the 2,500-4,000 sf. range.

(B) These proposals affect only 2006 business taxes, and are silent with regard to 2007, 2008 and 2009, the remaining three years of the new assessment cycle.

If Section 68 of *The Municipal Assessment Act* is used as the authority for the phase-in of business taxes, then it **cannot** be used to limit the taxes to be paid in the last year of the assessment cycle, which would be 2009 at present, or possibly 2007 if Council's recent request to introduce a two-year cycle were implemented with a new general assessment for 2008.

In other words, per section 68 of the MAA, business taxes must be phased in to the full tax rates based on the new ARV's before the end of the current assessment cycle.

Should businesses such as the above be budgeting to pay business taxes without any further limitations **as early as next year**, or what?

On the other hand, if the intention of City Council is to limit the increase in business taxes throughout the current assessment cycle, however long it turns out to be, **perhaps Council should consider using the different authority for "Adjustments in Business Tax" which now appears in Section 322 of *The City of Winnipeg Charter***. This relatively new legislation permits Council to limit an increase in the business tax for "one or more of the years of a general assessment and the years before the next general assessment." Per Section 322 of the Charter, a limitation can be extended for all of the years of a cycle if Council so wishes.

(C) Exactly which increases in business taxes will be limited to 15%?

The proposed By-law 108/2006 defines "business taxes" in this by-law as "business taxes imposed under subsection 332(2) of *The City of Winnipeg Charter*," and excludes all other taxes.

Actually, Section 322 deals with "liability for taxes," while Sections 334 and 334.1 authorize the imposition of business taxes.

More important than that technical error is the possibility that the wording of the proposed by-law may be interpreted to exclude increases in business taxes in the form of supplementary business taxes "imposed" by the tax collector under **Section 341 of The City of Winnipeg Charter.**

If the language of the proposed by-law were interpreted literally by the Property Assessment Department, then any business which receives a supplementary business assessment and a bill for supplementary business taxes under Section 341 of the CWC will be ineligible for the 15% limitation (if it is a new business taxpayer), or lose the benefit of the cap (if it is an existing business taxpayer which is changing its location or the amount or type of space occupied).

These are policy questions.

Will it bother City Council if an existing business tenant pays 2006 business taxes limited to a 15% increase (as in the case of the first Portage Place tenant above), while a new business tenant moving in to that same space, or an identical space next door, would pay 2006 business taxes imposed under Section 341 at more than double the business taxes being paid by the existing tenant?

Similarly, if a business tenant relocates to another space during 2006, or just expands the area occupied, such changes trigger new business assessments imposed under Section 341 (or Section 340 if the area and/or rental value is reduced). In such cases, would Council intend that the tenant immediately lose the benefit of the 15% cap, and pay full taxes on the supplementary ARV?

If Council intends otherwise, then I would suggest that **the definition of "business taxes" for the purpose of this by-law should be expanded to include "business taxes imposed or revised under Part 8 of The City of Winnipeg Charter."** Such broader wording should ensure that supplementary assessments are taken into account for the purpose of determining the maximum 2006 business tax payable by a business.

In addition, Council should clarify what is meant by an increase in business taxes "resulting from the 2006 general assessment."

Does Council mean any increase between the 2005 and 2006 business taxes for a given business assessment roll number, regardless of the reasons for the increase? If the increase in assessment and taxation resulted from an increase in the area occupied, or a significant improvement in the quality of the premises, should the taxpayer still benefit from the 15% cap?

Or is it really the intent of Council that the 15% cap apply only to increases resulting from the change in reference year market net rents and economic rents, from 1999 (supposedly) for 2002-2005, to 2003 for 2006-2009? If so, can the City's computer programs do the necessary calculations in time? If so, then will the benefit of the limitation on large increases in market net rents be provided to new and expanding businesses in an equitable manner accordingly?

Further, and in any event, does Council wish to reconsider the possibility of applying the cap to the total business tax bills, including BIZ levies?

(D) Will a business taxpayer have any right to appeal the Tax Collector's decision to apply or not apply the cap on his or her 2006 business taxes?

As the assessors, the Board of Revision, and the Municipal Board regularly point out at assessment appeal hearings, their jurisdiction extends only to assessments, and **not to taxes.**

A business taxpayer, who believes that the City Tax Collector has failed to properly apply the 2006 limitation on his business tax increase, cannot appeal to the Board of Revision or the Municipal Board to have his tax bill changed.

Presumably the business taxpayer could proceed to the Court of Queen's Bench for judicial review of the Tax Collector's administrative decision, at considerable cost. This is neither reasonable nor desirable, from any perspective.

Given the lack of a ready appeal process, I submit that it is all the more important and in the public interest that City Council makes its intentions as clear as possible, in the wording of the by-law, and in the explanations which may be provided in supporting documentation and in the record of the debate here in Council.

In addition, I would suggest that Council might consider providing for an appeal of the application of the proposed by-law to the business taxes levied on a particular business tax roll number, using the provisions of Section 334.1 of The City of Winnipeg Charter. In accordance with Section 189, the appeal is to a hearing body designated by council, which has the power to direct the City Tax Collector to amend the business **tax** roll. This procedure is already available to business taxpayers who may wish to appeal their exclusion from the class of business premises eligible for the reduced Downtown business tax rate of 7.75%.

(E) Some further advice……

If anything I have said so far gives Council some pause, **I would respectfully suggest that the proposed business tax phase-in policy decision and By-law 108/2006 be tabled, at least until tomorrow morning, to allow time for further consultation with your assessment, finance and legal staff advisors.**

You should appreciate that the new 2006 business assessment roll which the City is about to tax is creating a "great deal of havoc" for at least **three different reasons**:

1) For most of the 2006 business assessments, **the reference year for value is being updated for the eight-year period from 1995 to 2003.**

   The 2002-2005 business assessment roll was supposed to be based on 1999 reference year market net rents. However, the Property Assessment Department failed to produce a new roll reflecting the 1999 market net rents which were used to determine the 2002-2005 realty assessments. Instead, the Property Assessment Department just factored up the existing 1998-2001 business assessments, based on 1995 market net rents, using a factor of only 4%. Subsequently, new business assessments were issued using 1999 market net rents, and the relatively few business assessment appeals were defended using 1999 market net rent evidence. But the vast majority of the 12,000 business assessments remained low, keyed to 1995 market net rents. Accordingly, when the new 2006 business assessment roll was generated using 2003 market net rents, the assessments were generally expected to reflect the substantial change in market net rents since 1995, eight years earlier.

2) Secondly, **the new 2006 business assessments are based on the computer-generated 2003 market net rents used by the Property Assessment Department to create the new 2006 realty assessment roll, and they do not necessarily reflect the actual rents obtainable for those premises.**

   The previous business assessments were generally based on the evidence of actual rents obtainable for the particular premises assessed, in the economic conditions of the 1995 and/or 1999 reference years for value. However, for the new 2006 realty and business assessments, the Property Assessment Department generally used market net rents generated by its new mass appraisal computer model, without any adjustment based on site specific information.

The result has been the generation of some extraordinarily high new assessments, as well as some extraordinarily low new assessments. The latter will become apparent only as appellants with high assessments start to make unhappy comparisons with their underassessed neighbours.

3) Thirdly, **because the new 2006 business assessments have been created using the 2006 realty assessment computer files, which did not necessarily match the current tenancy configurations required for current 2006 business tax purposes, there have been significant errors in leasable areas, involving excessively high figures as well as omissions.**

The unfortunate result of this "perfect storm" is a 2006 business assessment roll which is very difficult to "tweak" in any fair or effective manner.

Council might have expected to be able to off-set the overall increase in the 2006 business assessment by reducing the business tax rates across the board, as is being done for realty assessment today. However, because the new 2006 business assessments vary so wildly, a straight rate reduction would have been insufficient to mollify the overassessed, and would have been unnecessary for those already substantially underassessed.

A cap on the tax increases, for one or more years, and especially if applied as broadly and as fairly as possible, will no doubt be appreciated by the business taxpayers affected.

However, the necessary consequence of such a policy will be the maintenance of rather significant inequities in taxation, at least in the short run. In these circumstances, I would suggest that it would be highly desirable for City Council to make clear its present intentions to adopt and implement a plan to reduce the current inequities in the short term, and to achieve Council's business tax policy objectives in the longer term.

Thank you.

Yours truly,

DELOITTE & TOUCHE LLP

David M. Sanders MA LLB
Senior Manager
Property Tax Services

DMS/bm

Deloitte.

Deloitte & Touche LLP
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada

Tel: (204) 942-0051
Fax: (204) 943-5179
www.deloitte.ca

March 15, 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 Executive Policy Committee:

Re: **Item No. 4 – City of Winnipeg Board of Revision**
File AA
Executive Policy Committee Regular Meeting – March 15, 2006

I am writing again **in opposition** to the two Administrative Recommendations contained in the Report submitted by the City Clerk dated February 20, 2006:

1. That City Council approve a change in practice and procedure that requires the Board of Revision to provide written reasons on request for its decisions, prior to the end of the Board of Revision appeal period.

2. That City Council approve a change in practice and procedure that requires written submissions for appeals by commercial properties by all parties, at least 14 days prior to a scheduled commercial hearing, and that this information be exchanged between parties.

These recommendations are identical to those contained in the City Clerks' previous report dated April 30, 2004, which was submitted to EPC on April 13, 2005 and then referred back to the City Clerk. The 2004 report also contained a recommendation that the Board of Revision be allowed to charge taxpayers a fee for filing an assessment appeal, but fortunately that recommendation has not been resurrected here. The deletion of the filing fee proposal is the only change from the previous report from the City Clerk.

The 2004 report, dealing only with the Board of Revision, was prepared in response to the decision of Executive Policy Committee on September 24, 2002, receiving as information the Assessment Task Force Final Report (September 16, 2002) and referring same to the Administration "for review and comment back."

As before, I respectfully request that EPC reject these two recommendations.

The **Assessment Task Force Final Report (2002)** contained the following recommendations at page 7:

B.2 Transparency

The *Task Force* has observed that, unlike other similar appeal panels, the Board of Revision does not provide reasons for its decisions. This has resulted in many appeals being carried forward, at considerable cost, to the Municipal Board level.

The *Task Force* recommends that:

1) The Board of Revision provide reasons for its decisions either verbally at the hearing or in writing prior to the end of the Board of Revision appeal period.

2) Provincial legislation be amended to require written submissions by all parties, at least 14 days prior to a scheduled commercial appeal hearing, and that this information be exchanged between the parties.

The Task Force said at p. 32:

> Transparency
>
> The Board of Revision process should be **more transparent**. To accomplish this objective, **the *Task Force* recommends full disclosure of all information by both parties at least 14 days prior to the commercial appeal**.....
>
> The Board of Revision should also be required to justify all decisions. The Board of Revision does not presently give reasons for its decisions. The current notification simply indicates what assessed value that has been arrived at without any explanation. This lack of reasons leads to appeals to the Municipal Boards since neither party understands how the value was arrived at by the Board. **The *Task Force* recommends that it become mandatory for the Board of Revision to provide reasons for its decisions either verbally at the hearing or failing that, in writing prior to the end of the legislative appeal timeframe being recommended by this *Task Force*.**

The City of Winnipeg Audit Department also suggested at p. 118 of its November 2001 Audit of the Property Assessment Function that the Board of Revision should give reasons, orally and in writing on request:

> "While the issuance of reason would add time to the process, we believe that it would also add value.....We also believe that written decisions may lead to a reduction in appeals to the Municipal Board."

On pages 4-5 of the present Report of the City Clerk, it is suggested that:

> "....providing reasons will likely result in improved customer satisfaction. Currently, appellants may appeal the same property repeatedly for several years in a row. The lack of a reason for why a previous appeal was rejected may factor into this repetitive action. Providing a reason for a decision will help the customer understand the decision, and help them determine if it is worthwhile to pursue further appeals. This process does have some advantages, which include uniformity and control. Different panels will hear properties with similar characteristics and the decisions must be of the same nature. The Manager of Appeals and the Chairperson of the Board of Revision would have to review all decisions to provide consistency....."

My comments regarding written decisions:

a) In the first place, if the members of the senior management of the Assessment Department want to understand how the Board of Revision is arriving at assessed values, they should simply come to some hearings for a change, read the written briefs, and listen to the presentations, cross-examinations, and especially the questions posed by members of the Board panels. The hearing process is completely public and quite "transparent" if you bother to come and see and hear it. On the other hand, if there is now a desire to make the decision process "transparent," then there is no reason why the City of Winnipeg Board of Revision panels cannot discuss and determine their decisions in public too, as most municipal councils outside of Winnipeg and Brandon do when they sit as Boards of Revision.

   But I would not recommend that.

b) Secondly, there is no reason to believe that the provision of written reasons, "prior to the end of the Board of Revision appeal period," will have any effect on the number of appeals to the Municipal Board. If either the taxpayer, or the Assessor, or both, feel strongly that the Board's decision is in error, they will appeal anyway, as they do now. In any case, since appeals must be filed with the Municipal Board within 21 days of the Board of Revision decision, written reasons issued later as suggested will certainly have no effect on the decision to appeal to the Municipal Board, which has to be made relatively quickly.

c) More importantly, those recommending that the Board of Revision be required to give written reasons seem to have no appreciation of how much that would extend the time and increase the Board resources required to hear and adjudicate on all initial appeals.

In order to provide written reasons, which would generally be requested, each Board panel would have to engage in a long, drawn-out process of writing and revising the panel's decisions, which now take Municipal Board panels an average of about five months, and sometimes more than a full year. If Board of Revision panels have to spend at least as much time writing decisions as they do hearing appeals, then the annual appeal process will simply take longer and/or require many more Board members and clerks.

The City Clerk's suggestion that the Manager of Appeals and the Chairperson of the Board of Revision "would have to review all decisions to provide consistency," was NOT recommended by any of the other Reports. Is the City Clerk suggesting that panel decisions be changed or determined later by persons (the Manager of Appeals and the Chairperson) who were not at the hearing and who did not hear the evidence or argument? Such a decision-making procedure would certainly not be "transparent."

d) The present policy and practice of the Board of Revision, which is to ensure that all annual realty assessment appeals are heard and decided before City Council and the school divisions determine their annual tax rates, does achieve the two key objectives:

   1. The risk of taxing assessments which are later found to be too high is reduced significantly. (Remember that the Audit Department found that only about 8% of the property assessments appealed to the Board of Revision during 1998-2001 were changed later by the Municipal Board – page 94.)

   2. Taxpayers all have the opportunity to obtain initial explanations and adjudications of their assessments before they are taxed.

e) It would not be in the interest of either the City or the taxpayers to stretch out the appeal process and risk failing to obtain at least initial adjudication of all appeals before the tax rates are set in the spring.

f) Nevertheless, it would be helpful in some cases if the Board of Revision were allowed (but not required) to give written reasons, particularly where an allocation of assessment and taxes between parties will be needed.

g) Executive Policy Committee should reject the proposal to require that the Board of Revision provide written reasons for its decisions.

My comments regarding the exchange of written submissions 14 days before commercial property appeal hearings:

a) The Audit Department DID NOT make such a recommendation.

b) On page 5 of the present Report of the City Clerk, it is stated that:

"The Board of Revision does not currently require a full exchange of information from both parties involved in an appeal prior to the hearing. Frequently, an assessor is presented with a large brief of information at the hearing and has no opportunity for review and analysis. It is recommended that the Board of Revision require written submissions by all parties, at least 14 days prior to a scheduled hearing, and that this information be provided to both parties. Written submissions would assist board panels in terms of making decisions, and would eliminate appeals by encouraging communication and resolution."

c) It would certainly be helpful for both the assessor and the taxpayer to know the position and evidence of the other party in advance of the hearing, for any kind of property. It is true that taxpayers often present large amounts of documentary evidence at hearings for commercial property assessments. It is also true that frequently the Assessor can't or won't provide an explanation of how an assessment was prepared prior to the hearing. In the case of residential assessments, the Assessor **never** provides an explanation of how the particular assessment was actually prepared. (The Assessor just provides some comparison sales.)

Note that pursuant to section 16 of *The Municipal Assessment Act*, the Assessor should have obtained whatever information he required to prepare the assessment of the property, before the closing of the assessment roll, and long before the appeal hearing. On the other hand, the taxpayer cannot necessarily count on finding out what the Assessor's information and position is until the hearing. Under present legislation, the Assessor must at least provide 10 days notice if he or she intends to seek an increase in the assessment appealed by the taxpayer.

d) The Board of Revision could adopt a formal procedure for exchanging briefs in advance of a hearing, for compelling the production of documents, and for permitting the filing of rebuttal evidence, in the same manner as the Municipal Board now does during a three-week period. This would be a fairer procedure than the present "discovery" process which often occurs at the initial Board of Revision hearing.

e) However, adopting such a formal procedure would undoubtedly lead to a much longer appeal hearing period, which would be completely at cross-purposes with the critical objective of having all initial appeals heard before the new assessments are taxed.

f) It should be noted that both parties typically present written submissions at the hearings of commercial appeals now. The panels already have such submissions to assist them in making their decisions, following the hearing. Furthermore, all documents submitted at hearings become part of the files and the public record, and are available for review by anyone who really cares to know what happened.

g) Note that while the Mayor's Red Tape Commission did recommend that the Board of Revision be required to provide written decisions on request, the Commission DID NOT recommend requiring that parties exchange written submissions in advance of the hearing.

h) Executive Policy Committee should support the present practice of the Board of Revision, ensuring that all initial appeals are heard before tax rates are set, and reject the proposal to require that written submissions be exchanged at least 14 days before the hearing of an appeal of a commercial property assessment.

Does the Board of Revision wish to establish new rules of practice and procedure?

Having already recommended that City Council "approve a change in practice and procedure" requiring the Board of Revision to provide written reasons, and requiring the exchange of wri ten submissions in advance of hearings of commercial appeals, the Report of the City Clerk's Department then notes on page 5 that:

> "Section 36(2) of the Municipal Assessment Act clearly states that **the Board of Revision may determine its own rules of practice and procedure to govern the conduct of the business of the Board.** If the Board of Revision wishes to establish rules of practice and procedure for appeals, these rules pursuant to Section 36(2) of the Municipal Assessment Act would have to be approved by City Council in order for those rules to come into force...."

Has the Board of Revision now determined "the rules of practice and procedure to govern the conduct of business before the board?"

If not, why is the City Clerk repeatedly asking that City Council "approve a change in practice and procedure" which has never been requested by the Board of Revision?

Would it not be much more appropriate, and consistent with the statute, for City Council to ask the Board of Revision to determine its own rules of practice and procedure now, and submit them for approval by City Council?

Better still, why not admit that the practice and procedure of the Board of Revision is not "the problem" anyway?

I note, with some astonishment, that when the Mayor and Chief Administrative Officer wrote to departments a year ago, to ask them to offer suggestions to the Red Tape Commission, the Assessment Department's reply was to note that "these reviews had already heard their ideas on red tape reduction." (p. 41)

Appeals are filed whenever assessment valuations are perceived to be unfair, or unexplained, or incomprehensible, or indefensible. That is the real problem which has been identified by every report on the subject, and that is the real problem which still needs to be addressed.

Thank you.

Yours truly,

DELOITTE & TOUCHE LLP



David M. Sanders MA LLB
Senior Manager
Property Tax Services

DMS/bm

Deloitte & Touche LLP
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada
Tel: (204) 942-0051
Fax: (204) 943-5179
www.deloitte.ca

July 20, 2005

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

Dear Mayor Katz:

Re: **Executive Policy Committee – Report #1**
Final Report of the Mayor's Red Tape Commission
Recommendation 8 – Property Assessment Issues

I regret I am unable to attend the EPC meeting this morning, due to a prior commitment to appear at an assessment appeal hearing at the Municipal Board.

Further to my other recent submissions on assessment issues, to EPC and Council (March 23 and April 12, 2005), I just wish to comment very briefly on Recommendation 8 of the Final Report of the Mayor's Red Tape Commission, which contains suggestions for the improvement of customer service and the reduction of red tape in tax assessment.

As an overall comment, I would suggest that many of the problems identified are really symptoms of the general lack of understanding and agreement on the theory and principles underlying the system and practice of determining fair and equitable realty and business assessment in Manitoba – on the part of everyone involved.

Recommendation 8.1 - Negotiated resolution of valuation disputes.

From my experience, I see no particular need for public guidelines, provided that any negotiated resolutions continue to require the approval of both the City Assessor and the taxpayer, plus either the Board of Revision or the Municipal Board. Based on recent experience, particularly with the Municipal Board "case management" process, what is really required is the assignment of additional qualified assessment staff resources to conduct such informal negotiations.

Recommendation 8.2 - Provincial Municipal Assessor's practices

This recommendation arises from differences in opinion regarding the theory and principles of valuation – specifically, the Provincial Assessor's practice of accepting that the value of real property determined on the Cost Approach sets an upper limit for the market value of assessable real property, and the Provincial Assessor's practice of valuing income-producing properties in a "site specific" manner, reflecting the evidence of stabilized income and expenses for each specific site.

It should be noted that while the Provincial Municipal Assessor's income and expense questionnaires are briefer than the City's, the forms used by both organizations could be made much clearer in order to minimize both the effort required to respond to them, as well as misunderstandings which can lead to errors in valuation.

Recommendation 8.3 – Changing the roll.

I submit there is no need to change the present practice of making mutually agreeable changes by Certificate of Agreement, approved by either the Board of Revision or the Municipal Board. In such cases the taxpayer usually does not have to attend the "hearing" at which the Certificate is approved.

I would not prohibit the City from appealing Board decisions on its own assessments, where the City Assessor believes the decision is incorrect and significant, and could and should be rebutted.

Recommendation 8.4 – Prohibition of new evidence after the Board of Revision

I object very strenuously to this particular suggestion. At the present time there is no requirement for disclosure of evidence and argument prior to the hearing at the Board of Revision. If this suggestion were implemented, neither the Assessor nor the taxpayer would ever have an opportunity to rebut initial evidence, or take into account the new evidence often obtained subsequently, or even new precedents arising from other cases. I suggest that implementing such a prohibition would be practically difficult, and would increase instead of reduce unfairness in assessment valuation.

Yours truly,

DELOITTE & TOUCHE LLP

David M. Sanders MA LLB
Senior Manager
Property Tax Services

DMS/bm

Deloitte & Touche LLP
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada
Tel: (204) 942-0051
Fax: (204) 943-5179
www.deloitte.ca

April 12, 2005

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 Executive Policy Committee:

Re: **Item No. 6 – Board of Revision – Operating Procedures**
File GK-11
Executive Policy Committee Regular Meeting – April 13, 2005

I am writing **in opposition** to the Administrative Recommendations contained in the Report submitted by the City Clerk dated April 30, 2004:

1. That Provincial legislation be amended to allow the Board of Revision to charge a fee for filing an appeal on a graduated scale.
2. That City Council approve a change in practice and procedure that requires the Board of Revision to provide written reasons on request for its decisions, prior to the end of the Board of Revision appeal period.
3. That City Council approve a change in practice and procedure that requires written submissions for appeals by commercial properties by all parties, at least 14 days prior to a scheduled commercial hearing, and that this information be exchanged between parties.

This Report, dealing only with the Board of Revision, was prepared in response to the decision of Executive Policy Committee on September 24, 2002, receiving as information the Assessment Task Force Final Report (September 16, 2002) and referring same to the Administration "for review and comment back."

I respectfully request that EPC reject these three recommendations.

I would have liked to have presented these remarks in person, and to answer the Committee's questions, but I am already committed to participate in a Municipal Board assessment appeal hearing on April 13. I would be pleased to attend Committee at another time if possible.

1. **Board of Revision Filing Fees**

- The Assessment Task Force DID NOT recommend the imposition of filing fees for applications for revision at the Board of Revision.

  See pages 7, 32-34, and 42 of the Assessment Task Force Report at http://www.winnipeg.ca/clerks/pdfs/reports/assessment_task_force.pdf The Task Force did not even discuss filing fees at the Board of Revision, let alone recommend them.

- The Audit Department did recommend that consideration be given to introducing filing fees at the Board of Revision. See pages 112-113 of the Audit of the Property Assessment Function, November 2001, at http://www.winnipeg.ca/audit/pdfs/reports/Property_Assessment.pdf

  "We believe that a modest fee may discourage frivolous appeals or appeals of little merit and, if refundable, would not provide a barrier to citizens exercising their rights. At the same time, it would help to defer the costs of providing this service."

Comments:

a) The Audit Department's suggestion that there is a problem with "frivolous appeals or appeals of little merit" is not supported by the concrete evidence reported by the Audit Department itself.

   The Audit Department reported on p. 93 that the Board of Revision changed the 2002 assessment in 67 .8% of the appeals heard by October 31 of 2001, and in 60.5% of all appeals heard for the previous 1998 general assessment.

   The Audit Department also reported on p. 94 that only 10% of the decisions of the Board of Revision for 1998-2001 were subsequently appealed to the Municipal Board, but that the Municipal Board then made changes in 77% of those assessments appealed.

   There is no evidence that there is a problem with "frivolous appeals or appeals of little merit."

b) At the same time, there is no evidence that introducing a system for charging a "modest fee," and then refunding between 60-70% of such fees because the appeals are successful, would result in a net contribution to the "costs of providing this service."

Since the City of Winnipeg, the school divisions, and the Province of Manitoba now levy a total of about $880 million annually in realty and business taxes, surely the taxing authorities can spend about two-thousandths of that sum to provide for a fair and taxpayer-friendly appeal process at the Board of Revision.

The Audit Department's unsupported suggestion for imposing filing fees is simply incomprehensible, given its evaluation of the Board of Revision's performance at p. 6:

"The Board of Revision has successfully delivered an efficient process to the citizens of Winnipeg that has given all individual and business taxpayers an opportunity to challenge their assessments in an economical and risk-free environment. It is evident that there is a strong commitment to serving taxpayers and meeting their needs. We also heard compliments on the overall capability of the current board members and the desire of participants to retain a process that is less onerous than that of the Municipal Board for the majority of appeals. In addition, the appeals process provides an excellent quality control on the valuations process and provides assurance [to] the public that they are paying their fair share of tax."

If it ain't broke, don't fix it.

c) The only conceivable reason for imposing filing fees at the Board of Revision is to discourage members of the general public from even attempting to "have their day in court."

I think of the owners of the 282 homes in the North End and Point Douglas whose 2001 assessments I appealed on behalf of the North End Community Renewal Corporation *pro bono*. I am quite sure most of them would have been dissuaded from appealing their assessments by a "modest fee." And yet more than half of their assessments were found to be unfairly high, and were reduced on appeal by a total of about $1 million.

On p. 5 of the present Report of the City Clerk, it is noted that:

"An application fee may be an impediment to accessing the process by serious or low-income property owners. This may be viewed as unfavorable in the community and/or political environment as an unfair attempt to restrict access to the process. Fundamental to a fair assessment/taxation process that relies on subjective opinions is the unfettered free access to challenge those opinions."

Exactly.

And it has been my experience that low-income property owners are also extremely serious about property taxation.

Executive Policy Committee should reject this recommendation to impose appeal filing fees, categorically.

2. Written reasons for decision

- The Assessment Task Force did recommend that the Board of Revision provide reasons for its decisions either verbally at the hearing or in writing prior to the end of the Board of Revision appeal period.

  Why?

  The Task Force said at p. 32:

  "The Board of Revision should also be required to justify all decisions. The Board of Revision does not presently give reasons for its decisions. The current notification simply indicates what assessed value that has been arrived at without any explanation. This lack of reasons leads to appeals to the Municipal Boards since neither party understands how the value was arrived at by the Board." (sic)

- The Audit Department also suggested at p. 118 that the Board of Revision should give reasons, orally and in writing on request:

  "While the issuance of reason would add time to the process, we believe that it would also add value……We also believe that written decisions may lead to a reduction in appeals to the Municipal Board."

- On page 6 of the present Report of the City Clerk, it is suggested that:

  "....providing reasons will likely result in improved customer satisfaction. Currently, appellants may appeal the same property repeatedly for several years in a row. The lack of a reason for why a previous appeal was rejected may factor into this repetitive action. Providing a reason for a decision will help the customer understand the decision, and help them determine if it is worthwhile to pursue further appeals. This process does have some advantages, which include uniformity and control. Different panels will hear properties with similar characteristics and the decisions must be of the same nature. The Manager of Appeals and the Chairperson of the Board of Revision would have to review all decisions to provide consistency....."

Comments:

a) In the first place, if the members of the senior management of the Assessment Department want to understand how the Board of Revision is arriving at assessed values, they should simply come to some hearings, read the written briefs, and listen to the presentations, cross-examinations, and especially the questions posed by members of the Board panels. The hearing process is quite "transparent" if you bother to come and see and hear it.

b) Secondly, there is no reason to believe that provision of written reasons, "prior to the end of the Board of Revision appeal period," will have any effect on the number of appeals to the Municipal Board. If either the taxpayer, or the Assessor, or both, feel strongly that the Board's decision is in error, they will appeal anyway, as they do now. In any case, since appeals must be filed with the Municipal Board within 21 days of the Board of Revision decision, written reasons issued later as suggested will certainly have no effect on the decision to appeal to the Municipal Board which would have to be made earlier.

c) More importantly, those recommending that the Board of Revision be required to give oral and written reasons seem to have no appreciation of how much that would extend the time and increase the Board resources required to hear and adjudicate on all initial appeals.

In order to give oral decisions at the conclusion of each appeal, the Board panel members would have to adjourn, discuss and decide the matter *in camera*, and then return to the hearing and pronounce their decision orally. In order to provide written reasons, which would generally be requested, the Board panel would have to engage in a long, drawn-out process of writing and revising the panel's decisions, which now take Municipal Board panels an average of about five months to do. If Board panels have to spend at least as much time writing decisions as they do hearing appeals, then the annual appeal process will simply take longer and/or require many more Board members and clerks.

d) The City Clerk's suggestion that the Manager of Appeals and the Chairperson of the Board of Revision "would have to review all decisions to provide consistency," was NOT recommended by any of the other Reports. Are those two people to make themselves available at all times to review each panel's proposed decision before it is pronounced orally? As many as 15-20 times for a single appeal docket? And when as many as six panels may be conducting hearings at the same time in different locations around the City? Impossible.

Furthermore, is the City Clerk suggesting that panel decisions be changed or determined later by persons (the Manager of Appeals and the Chairperson) who are not at the hearing and who do not hear the evidence or argument?

e) The present policy and practice of the Board of Revision, which is to ensure that all annual assessment appeals are heard and decided before City Council and the school divisions determine their annual tax rates, achieves the two key objectives:

1. The risk of taxing assessments which are later found to be too high is reduced significantly. (Remember that the Audit Department found that only about 8% of the property assessments appealed to the Board of Revision during 1998-2001 were changed later by the Municipal Board.)

2. Taxpayers all have the opportunity to obtain initial explanations and adjudications of their assessments before they are taxed.

f) While it would be helpful to obtain the reasons of the Board of Revision panels, it would not be in the interest of either the City or the taxpayers to stretch out the appeal process and risk failing to obtain adjudication of all appeals before the tax rates are set in the spring.

g) Nevertheless, it would be helpful in some cases if the Board of Revision were allowed (not required) to give reasons, particularly where an allocation of assessment and taxes between parties will be needed.

h) Finally, note that the June 30, 2004 Report recommending a two year assessment cycle, submitted to City Council three weeks ago, on March 23, 2005, DID NOT make a similar recommendation to require that the Board of Revision issue oral and written reasons. Instead, that Report proposed compressing the present Board of Revision hearing schedule from 8 months to just 1.5-2.5 months.

These Reports are clearly contradictory on this matter. Will the real City Assessor, City Clerk, Corporate Finance, and Legal Services officials please stand up?

Executive Policy Committee should reject the proposal to require that the Board of Revision give reasons orally, or in writing.

3. **Require exchange of written submissions 14 days before commercial property appeal hearings.**

- The Assessment Task Force did recommend at p. 7 that "Provincial legislation be amended to require written submissions by all parties, at least 14 days prior to a scheduled commercial appeal hearing, and that this information be exchanged between parties."

- The Audit Department DID NOT make such a recommendation.

- On page 7 of the present Report of the City Clerk, it is stated that:

  "The Board of Revision does not currently require a full exchange of information from both parties involved in an appeal prior to the hearing. Frequently, an assessor is presented with a large brief of information at the hearing and has no opportunity for review and analysis. It is recommended that the Board of Revision require written submissions by all parties, at least 14 days prior to a scheduled hearing, and that this information be provided to both parties. Written submissions would assist board panels in terms of making decisions, and would eliminate appeals by encouraging communication and resolution."

- Again, note that the June 30, 2004 Report recommending a two year assessment cycle, submitted to City Council three weeks ago, on March 23, 2005, DID NOT make a similar recommendation to require the exchange of written submissions 14 days before commercial property appeal hearings. Again, that Report proposed compressing the present Board of Revision hearing schedule from 8 months to just 1.5-2.5 months.

Comment:

a) It would certainly be helpful to know the position and evidence of the other party in advance of the hearing, for any kind of property. It is true that taxpayers often present large amounts of documentary evidence at hearings for commercial property assessments. It is also true that frequently the Assessor can't or won't provide an explanation of how an assessment was prepared prior to the hearing. In the case of residential assessments, the Assessor **never** provides an explanation of how the particular assessment was actually prepared. (The Assessor just provides some comparison sales.)

   Note that pursuant to section 16 of *The Municipal Assessment Act*, the Assessor should have obtained whatever information he required to prepare the assessment of the property, before the closing of the assessment roll, and long before the appeal hearing. On the other hand, the taxpayer cannot count on finding out what the Assessor's information and position is until the hearing. Under the new applicable legislation, the Assessor must at least provide 10 days notice if he or she intends to seek an increase in the assessment appealed by the taxpayer.

b) The Board of Revision could adopt a formal procedure for exchanging briefs in advance of a hearing, for compelling the production of documents, and for permitting the filing of rebuttal evidence, in the same manner as the Municipal Board now does.

c) However, adopting such a formal procedure would undoubtedly lead to a much longer appeal hearing period, which would be completely at cross-purposes with the critical objective of having all initial appeals heard before the new assessments are taxed.

d) Again, the above Reports are clearly contradictory on this matter. Will the real City Assessor, City Clerk, Corporate Finance, and Legal Services officials please stand up?

Executive Policy Committee should support the present practice of the Board of Revision, ensuring that all initial appeals are heard before tax rates are set, and reject the proposal to require that written submissions be exchanged at least 14 days before the hearing of an appeal of a commercial property assessment.

4. Conclusions:

Having recommended that City Council "approve a change in practice and procedure" for the provision of written reasons, and the exchange of written submissions in advance, the Report of the City Clerk's Department then notes on page 7 that:

> "Section 36(2) of the Municipal Assessment Act clearly states that **the Board of Revision may determine its own rules of practice and procedure to govern the conduct of the business of the Board.** If the Board of Revision wishes to establish rules of practice and procedure for appeals, these rules pursuant to Section 36(2) of the Municipal Assessment Act would have to be approved by City Council in order for those rules to come into force...."

Has the Board of Revision now "determined the rules of practice and procedure to govern the conduct of business before the board?"

If not, why is the City Clerk recommending that City Council "approve a change in practice and procedure" now?

Would it not be much more appropriate, and consistent with the statute, for City Council to ask the Board of Revision to determine its own rules of practice and procedure now, and submit them for approval by City Council?

If and when the Board of Revision submits "its own rules of practice and procedure" for approval, will City Council refer them to the Red Tape Commission for comment?

4. A Different Question

Instead of continuing to focus on efforts to discourage, prevent and suppress taxpayer appeals, why doesn't City Council investigate why the new 2006 assessments produced by the Property Assessment Department are so wildly out of whack?

I understand that the Department has been asked to report on how many commercial assessments have increased by 40% or more, and why.

Here are some examples, taken from the Property Assessment website today:

Street Name	2005-2006 % Increase
Portage	52%
Grant	77%
Sargent	58%
Pembina	62%
St. Anne's	133%
Portage	66%
Grant	51%
Mandalay	64%
Ellice	42%
Des Meurons	50%
Panet	118%
Berry	56%
Carlton	57%
Ebby	246%
Wellington	52%
Albert	132%
Belmont	51%
Dorchester	56%
Edison	69%
Edison	50%
Kimberly	42%
Main	49%
Morrow	56%
Morrow	50%
Osborne	56%
St. Anne's	53%
Watt	74%
Watt	70%
Dale	59%
Pembina	60%
Taylor	113%

Street Name	2005-2006 % Increase
Kenaston	41%
Portage	40%
Erin	40%
Erin	102%
Marion	41%
Osborne	166%
Osborne	145%
Roblin	75%
Chevrier	49%
Manahan	43%
Taylor	59%
Osborne	56%
Portage	56%
Scurfield	51%
Kenaston	45%
Fort	162%
Donald	187%
Henry	497%
King Edward	79%
Regent	51%
Pioneer	82%
Garry	125%
Hargrave	84%
Portage	47%
Garry	45%
Wolseley	72%
King	99%
King	54%
Ferrier	121%
Dufferin	118%
Adsum	40%
Lumsden	42%
Goulet	98%
St. Mary's	81%
King	212%
Portage	423%
Louelda	40%
Tyndall	40%
Rorie	67%
Hargrave	52%
Hargrave	73%
Dublin	95%
Hespeler	89%
Hoka	79%

Street Name	2005-2006 % Increase
Ellice	43%
Market	159%
Market	64%
Dublin	98%
Scurfield	48%
Portage	82%
King Edward	46%
Taylor	78%
St. Anne's	112%
Donald	51%
Wardlaw	45%
St. Mary's	142%
St. Anne's	243%

As far as I can tell, the City Assessor's new computer models are not working to produce commercial assessments which reflect either the Property Assessment Department's previous knowledge and experience with each individual property, nor the current income and expense information provided to the Department in response to its Section 16 MAA questionnaires. GIGO.

If the assessors who are now working very long overtime hours cannot correct most of these high assessments manually by the present deadline at the end of April, they will be appealed, and there will be nothing frivolous about those appeals.

If there are so many properties assessed with such large increases, Council may well wonder how many are assessed with unduly large decreases.

Thank you.

Yours truly,

DELOITTE & TOUCHE LLP

David M. Sanders MA LLB
Senior Manager
Property Tax Services

DMS/bm

Deloitte & Touche LLP
360 Main Street
Suite 2300
Winnipeg MB R3C 3Z3
Canada
Tel: (204) 942-0051
Fax: (204) 943-5179
www.deloitte.ca

March 23, 2005

His Worship Mayor Katz
and Members of City Council
The City of Winnipeg
510 Main Street
Winnipeg, MB

Dear Mayor Katz and Members of City Council:

Re: **Proposed Two-Year Assessment Cycle**
Item No. 2 – Report of the Executive Policy Committee – March 9, 2005

I am appearing this morning in opposition to Item No. 2 of the Report of Executive Policy Committee for March 9, 2005, specifically the recommendation that the City of Winnipeg request the Province of Manitoba to implement a two-year assessment cycle.

I should clarify my position. I am actually in favour of a two-year assessment cycle. In fact I would strongly support going to an annual cycle as most other Canadian jurisdictions have done.

What I am concerned about is the content of the Report prepared and submitted by the Property Assessment Department in support of the recommendation.

Most of the recommendations within the Report are simply intended to make it more difficult for a taxpayer to appeal or contest his or her assessment. As usual, the prime motivation of the City Assessment Department is to protect itself from challenge, instead of concentrating on its real responsibility, to prepare fair and accurate assessments in the first place.

Let me just list some of the Department's taxpayer-unfriendly suggestions:

p. 1040 Fees for appeal filing = **discourage appeals**

Use mass valuation as the test of assessed values at the appeal tribunals instead of the current site-specific test = **don't assess properties based on their market value any more, and just use whatever otherwise indefensible number the Department's computer generates.**

Common form for evidence presented at appeal hearings = **force taxpayers to limit their evidence to the format preferred by the Assessment Department, and only those issues which the Department thinks are relevant.**

Direct appeal tribunals to limit irrelevant evidence = **direct the tribunals to refuse to hear evidence the Department doesn't want to hear.**

p. 1041 Case manage appeal files = **blame the Municipal Board and the taxpayers for the fact that the Department has declared itself unable to staff the backlog of appeal hearings for almost two years now.**

Allow the Property Assessment Department to make assessment roll corrections and changes = **give the Assessment Department complete arbitrary power, and an untrammeled ability to intimidate taxpayers by threatening to increase their assessments.** (The Department already has plenty of authority to make corrections and changes in an orderly manner, and subject to review by an impartial tribunal.)

Have non-residential property appeals heard by the Municipal Board only = **postpone the hearing of most appeals of high value properties until after they have been taxed, thereby increasing the City's financial exposure**.

p. 1042 Have residential appeals determined finally by the Board of Revision = **deny residential taxpayers any opportunity for a second opinion, except at the cost of going to Court.**

Limit new evidence at the Municipal Board = **restrict the ability of the Board to make a fair and accurate determination.**

Limit the Board of Revision to hearing all appeals within 6-10 weeks = **sacrifice all pretense about pursuing fairness, openness, understandability or defensibility in the name of speed**. (This would most likely increase the number of appeals going to the Municipal Board, if they are still allowed. Anyway, the fact is that the Board of Revision already hears every appeal before the City sets its mill rate.)

Set date and format for collection of non-residential market information = **create red tape like you have never seen.** (Right now commercial property owners try very hard to fill out the Department's incomprehensible forms, and in the end they just submit their own financial statements and rent rolls. When I asked the City Assessor for clarification of the new 2001-2003 forms, repeatedly over a five-month period, all I got in the end was an invitation to settle matters in court.)

p. 1043 Council ought to know that **the penalty currently being enforced against unfortunate City of Winnipeg commercial taxpayers, and their innocent tenants, is unlimited and absolutely outrageous**. There is one case finally going to the Court of Appeal next month where the penalty for failing to submit an Assessor's questionnaire is presently in excess of $300,000.

Link business assessment to realty assessment = **actually means to <u>unlink</u> the relationship between the business and realty assessment of particular premises. It may also mean the need to introduce a whole new process for reporting vacancies, as Ontario ended up doing.**

p. 1044 Enhance the open house/preview program for the 2008 roll = **means do away with the preview program on the assumption that the Assessor is given the power to just change assessments anytime "without the need for the formal and time consuming appeal process."**

Continued focus on Data Elements (focus on resources and systems to ensure the quality, currency, and accuracy of the data elements in order to properly supply the valuation models) = **figure out how to produce a much more accurate assessment roll than the present computer model has created.**

Increase efficiency in data gathering = **require taxpayers to "self-report," whatever that may mean, and then penalize them further for any possible shortcomings in their self-assessment.**

p. 1045 Staffing and quality management = **an admission that the City has still not yet arranged to develop and maintain sufficient competent assessment staff – to give the staff the support and tools they need to do an excellent job.**

Frankly, the real problem has always been, and still remains, the very last item on the list.

Instead of continually trying to prevent appeals, and suppress fair hearings, I wish the City Assessor would focus instead on building an organization which is able to handle the admittedly huge task of valuing all realty and business property in a fair and accurate manner in the first place.

In conclusion, I would respectfully suggest that Council approve the recommendation, to request implementation of a two-year assessment cycle, but that Council also direct EPC to reconsider the contents of this Report very carefully. I and others would welcome an opportunity to appear before Committee and make recommendations and answer questions, with a view to making a real improvement in the fairness and accuracy of assessment in the City of Winnipeg.

Thank you.

Yours truly,

DELOITTE & TOUCHE LLP

David M. Sanders MA LLB
Senior Manager
Property Tax Services

DMS/bm