March 11, 2011

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: **Recommendation #12 – Proposed Filing Fees for Realty and Business Assessment Appeals**
Page 3 - Preliminary 2011 Operating Budget and Financial Plans for 2012 and 2013
Executive Policy Committee Special Meeting – March 14, 2011

I am writing **in opposition** to Recommendation #12, an entirely **unexpected** and so far **unnoticed** recommendation that the City of Winnipeg Board of Revision start charging filing fees for realty and business assessment appeals:

#12. That the following fees be adopted for appeals submitted to the Board of Revision in regards to Business and Realty Assessment:

Assessed Value of Property Subject to Appeal		***Appeal Fee***
Single Family Residential Properties/Residential Condos		*$50*
All Other Properties -	*Less than $500,000*	*$50*
	Between $500,000 and $5,000,000	*$10 per $100,000 of Assessed Value*
	Over $5,000,000	*$500*

with all fees refundable upon an appeal deemed successful.

Historically, The City of Winnipeg Board of Revision has not imposed such filing fees. When a similar proposal was advanced in April, 2005, the City Clerk's Department 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."**

I appeared in opposition to the proposed filing fees in 2005, and I was pleased when EPC simply referred the matter back to the Administration six years ago.

Subsequently, the Chair of the Board of Revision stated in his 2006 Annual Report:

> *"The Board of Revision, as the first level of appeal, gives all taxpayers a relatively informal, non-intimidating environment for questioning the validity of their individual assessment without a fee charged."*

As far as I know, the matter of filing fees was not raised again until last Monday, when the proposal to charge filing fees was apparently slipped into the 2011 budget document recommendations without any other notice or reference in the budget highlights, revenue variance summaries, or city news releases. The 2011 budget document did not contain any justification for the proposed imposition of the appeal filing fees.

Since the present proposal involves the refund of fees for appeals deemed successful, **we have assumed that the objective is to deter taxpayers from appealing their assessments,** not to produce revenue and not to recover the costs of the appeal process.

On Wednesday I asked City officials the following questions:

- Is there any supporting documentation for this recommendation?
- What is the projected net revenue to be produced in 2011 from the imposition of these fees, after the Board issues refunds for appeals deemed successful?
- What is the estimated additional cost of administration to collect and then refund the proposed filing fees?
- What other objectives are to be served by the imposition of these filing fees?

On Thursday afternoon, I received the following response from the City's Manager Financial Planning and Review, Corporate Finance Department:

> *"Please see the information below provided by our City Clerk's department.*
>
> *1) Fees are being put in place to eliminate nuisance complaints. In 2009, 1,598 appeals filed out of 9,848 appeals were dismissed as the applicant did not show up. The fee is expected to reduce nuisance appeals and reduce costs to taxpayers. For each of these 1,598 nuisance appeals, costs incurred included:*
>
> *a. City Clerk's to capture the appeal / establish a hearing / notify applicants*
> *b. Assessment / Taxation to prepare and file materials for the appeal*
> *c. Board panel to be established / attend the hearing.*

2) *Almost all other major municipalities in Canada charge a fee for partial cost recovery of service and to reduce nuisance complaints.*

3) *In Manitoba, both the Municipal Board and City of Brandon charge fees for appeals. Winnipeg's fees are less than either of these with a $50 flat fee for all residential properties, while at the Municipal Board and City of Brandon, fees for residential properties go from $50 to $500.*

4) *Winnipeg has spent a great deal of effort improving its assessment process, including moving to a two year reassessment cycle from a four year cycle.*

5) *No new budget dollars are required to collect or refund the fees.*

6) *Revenue / Amount of fees collected and refunded is dependent upon the number of appeals received and the success rate of the appeals.*

7) *Total appeals filed in 2011 for the 2012 reassessment are expected to drop from 2009 as fees will likely reduce nuisance complaints and this is the first year of the two year reassessment cycle, with the last reassessment year being 2010."*

Altus Group realty tax consultants represent the majority of commercial and institutional assessment appellants in Winnipeg. For the 2010 reassessment, Altus Group reviewed properties with assessed values totaling in excess of $6.6 billion in Winnipeg alone. We reviewed our clients' assessments before filing appeals, time permitting. We filed appeals for 80% of the assessments reviewed, and we obtained reductions for about 65% of the properties appealed.

In all cases, we settled the appeal in advance, withdrew the appeal in advance, or showed up at the hearing to present evidence and argument. We were never "no-shows."

If filing fees have to be paid when submitting appeals of the new 2012 assessments, starting in June of 2011, we will expect to proceed as usual, undeterred, and to have the majority of the fees refunded to our clients in due course. However, our clients, Altus, and the Board of Revision will all have to deal with the added expense and administration involved in processing the payment and subsequent refund of the filing fees.

On the other hand, the new filing fees may indeed deter other taxpayers from appealing their assessments, and having their "day in court."

- The reference to **"nuisance complaints"** is unfortunate, but revealing. It sounds completely disrespectful of the right of every taxpayer to appeal his or her assessment, obtain a full explanation of how that assessment has been determined, and to present a case for revision by an independent and objective administrative tribunal.

- "Nuisance complaints" are in fact defined above as appeals which were filed and then dismissed when the applicant failed to show up for the scheduled hearing. So the real problem identified is not the filing of frivolous appeals, but rather the failure to show up for a hearing, or withdraw the appeal beforehand. It appears that the City Clerk's Department is really concerned about **"no-shows."**

- The proposed filing fees will not address the "no-show" problem, except by deterring some taxpayers from filing appeals in the first place.

- Once an appeal is filed, the City must record the appeal, establish a hearing, and notify the applicants. The Assessment Department must prepare and file materials for the appeal, and try to contact the applicants in advance. A Board panel must attend the hearing.

- Sometime during this process, an applicant may decide that his or her appeal is not warranted, or not worth pursuing. This usually occurs after the Assessment Department provides the applicant with a detailed explanation of the assessment and supporting evidence. Note, however, that **the proposed filing fees will provide absolutely no incentive or additional penalty for "no-shows."** If an applicant is deemed unsuccessful, he or she will forfeit the filing fee whether or not the appeal is withdrawn in advance of the hearing, and whether or not he or she attends the hearing.

- On the other hand, the proposed filing fees will constitute a penalty for any taxpayers whose appeals are "deemed unsuccessful." These will include:

    - Taxpayers who file "protective appeals" when they are unable to obtain a satisfactory explanation of the assessments in advance of the appeal deadline, and/or there remains uncertainty about market evidence and valuation precedents. This is a common situation, despite the efforts of the Assessment Department to provide previews, because appeal deadlines are only 20 days after official assessment notices are issued.

    - Taxpayers who withdraw their appeals in a responsible fashion, once they are satisfied that the appeals will not be successful.

    - Taxpayers who fully exercise their right to appear and argue their cases, but fail to persuade the Board of Revision to change their assessments at this first level hearing.

    - The Assessment Department when it files its own appeals, but fails to persuade the Board of Revision to increase the assessments at this first level hearing.

- So far, the City Clerk's Department has been unable to identify the magnitude of any potential net revenue from the proposed appeal filing fees. Logically, the more the filing fees discourage "frivolous" appeals, the less net revenue would be left after refunds for the successful appeals. If there were any net revenue to be gained, we suggest it would be minimal. Presumably this is why no net revenue from filing fees has been projected in the 2011 operating budget.

- The idea that no new budget dollars would be required to collect and then refund thousands of filing fees is simply not believable. However, it appears that the 2011 budget contains no provision for additional staff and facilities to handle the various forms of payments receivable, and to process the subsequent refunds.

If "property taxes are the most regressive form of taxation," as Councillor Fielding suggested last Monday, then perhaps EPC should continue to facilitate and accommodate the efforts of taxpayers to seek fairness and justice in property and business assessment, and reject the disrespectful characterization of unsuccessful appeals as "nuisance complaints."

1. We therefore request that EPC delete Recommendation #12 before forwarding the 2011 Operating Budget to City Council for approval. It appears that the rejection of the filing fee proposal will have no discernible impact on either the revenues or expenses projected in the 2011 operating budget.

2. In the alternative, we request that Recommendation #12 be referred back to the Administration to develop a proposal which addresses the identified problem -- the "no-shows," the taxpayers who either fail to withdraw their appeals in advance, or to attend the hearings. Any revised proposal should deal with the numerous practical issues which may be involved, and its adoption should be subject to **prior notice and public consultation**.

Thank you.

Yours truly,

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