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Executive Policy Committee
510 Main Street
Winnipeg, MB R3B 1B9

Re: Board of Revision – Practices and Procedures Manual

I take this opportunity of providing this submission to you to address matters of concern relating to the proposed Practices and Procedures Manual (the "Manual") of the Board of Revision (the "Board").

My Background

I have been a participant in matters relating to realty assessment in Manitoba, and in particular in the City of Winnipeg, for approximately 27 years having first addressed assessment related issues in 1989.

Over the years I have participated at all levels of the assessment system. This participation has included the following:

- I have acted as a representative of property owners in reviewing their assessments both inside the City of Winnipeg, and in areas outside the City as well.
- I have provided advice not only to property owners, but as well from time to time, to various municipalities and levels of government.
- Historically the City of Winnipeg formed consultative bodies to assist in the City with respect to assessment related matters. In this regard I have been appointed by the City as a member of the Hotel Advisory Group for the 1998, and 2002 general reassessments, and served as Chairman of the 1998 Commercial Property Advisory Group.
- I have been appointed by the Government of Canada to the Payment in Lieu of Taxes Panels which provided recommendations to the Minister of Public Works in relation to federally owned properties located in Manitoba, and the amount of the payments in lieu of taxes to be paid in respect of those properties by Canada.

- I have been a frequent presenter at conferences of the Canadian Property Tax Association, a national organization whose membership includes assessors, appraisers, and others active in matters relating to property tax assessment.

- I have frequently appeared before the courts of Manitoba including the Court of Queen's Bench and the Court of Appeal on assessment related issues.

In these roles, I have appeared before boards of revision across Manitoba on hundreds of occasions. Through these activities I have had the opportunity to become thoroughly familiar with the workings of the assessment system in all respects.

The Board of Revision

The governing legislation in Manitoba in relation to assessment related issues is The Municipal Assessment Act (the "Act").

The Act creates the municipal tax assessment system which includes in relation to value of properties a two level appeal system with the first level of appeal to the local board of revision, and the second level of appeal to the Municipal Board of Manitoba. The Act requires the Council of each municipality to appoint a board of revision, to appoint a person as secretary of the board, and mandates the board to hear applications for revision by way of appeal in relation to property tax assessments.

Section 36 (2) grants to the board the power to determine the rules of practice and procedure to be followed specifically stating as follows:

> **Rules of practice**
>
> 36(2) A board may determine the rules of practice and procedure to govern the conduct of business before the board or a panel of the board, but the rules do not come into force until approved by the council of the municipality.

To be clear the Board of Revision for the City of Winnipeg is created pursuant to the Act, and it is an independent tribunal, and not a committee of Council of the City of Winnipeg. It is not a legislative body as is Council for the City, or the legislature, or parliament, but rather it is a quasi-judicial tribunal with all that that means in terms of its procedures, and the expectations which the public is entitled to have in respect of its proceedings.

Indeed the rules published by the Board specifically state "The Board of Revision is a citizen board appointed by Council to hear applications for revision of assessments in a **fair, open, efficient and quasi-judicious manner** with consideration given to the City of Winnipeg's fiscal timeframe".

At the outset of hearings the chairman of each panel advises the public that the panel of the Board is "independent" of the City of Winnipeg.

Public Expectations

It is trite to say that not only must justice be done, but justice must appear to be done.

It is fundamental to the workings of our system of democracy that the public at all times have confidence that independent tribunals are truly able to act in a fair, judicious, and independent manner, free of influence of those who appoint the members, and from those who are affected by the decisions of these tribunals.

In the case of the Board of Revision of the City of Winnipeg, those affected by the decisions of the Board are the citizens of the City of Winnipeg, both those who directly appeal their valuations to the Board, but as well all other citizens who are reliant upon the Board to ensure that the distribution of taxes is equitable, and as well the City of Winnipeg which, through the Assessment and Taxation Department, is reliant ultimately upon the assessments for a significant portion of the revenues of the City.

Historical Procedures of the Board

In the approximately 27 years that I have been a participant in the system the procedures adopted by the Board in a general sense have throughout this period included the following:

- The assessor presents first all evidence to establish the value of the property.
- Once the Board has heard all evidence the board then deliberates in private and issues its decision, and its reasons for decision.
- The onus is recognized as being upon the assessor.

Burden of Proof

Under the Act the burden of proof lies upon the assessor with respect to value and section 53(1) provides as follows:

> **Burden of proof on assessor**
>
> 53(1) Subject to subsections (2) and (3), a board shall, at a hearing of an application that pertains to the amount of an assessed value, place the burden of proof on the assessor on matters at issue with respect to the amount of the assessed value.

Section 4.9 of the Manual indicates as follows:

> 4.9 Tie Vote
>
> A vote in which there is an equal number of votes is deemed to be lost, and if no other recommendation is brought forward by the Panel, the assessment is deemed to be confirmed.

This provision of the Manual is contrary to the legislation.

The legal burden of proof is upon the assessor and Council through the approval of a manual cannot change that. As stated by the Privy Council in *Robins v. National Trust Co.*

> But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can come to no sure conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the onus has nothing to do with it, and need not be further considered.

Training

The Manual contemplates that training will be conducted by the Chairman, Vice-Chairman, and Secretary of the Panel.

The training to be received by the Panel members cannot be influenced by the City of Winnipeg Assessment Department and the City of Winnipeg Assessment Department can have no role whatsoever in the training process.

It is to be remembered that the Board has conducted itself without apparent difficulty for years. It is unclear why the Manual in its form has now been brought forward.

Council Directives

Section 1.1 of the Manual references the requirement that members uphold "Council Directives". Council does not have the authority to direct how the Board conducts itself.

The earlier comments with respect to the independence of the Board must be kept in mind.

Changes Imposed by City of Winnipeg

It is believed that the changes described above are being imposed by the City of Winnipeg, and do not have their origin in any request or desire for change initiated by the Board. The Board as an independent tribunal is given the power under section 36 (2) of the Act to create its rules of practice and procedure.

The City of Winnipeg does not have the power to impose rules upon the Board especially if these rules are contrary to law.

Consultation

While the report references consultation with the industry, it is to be noted that this consultation arose only after communication was directed to the CAO, COO, and City Assessor, expressing concerns about revisions to the Board procedures.

While a consultation session occurred in October, 2016, nothing more was heard from the Board in terms of the processes and final version of the rules to be put forth until the agenda was posted for this Executive Policy Committee meeting.

Integrity of the System

Fundamental to the workings of the assessment system is a need for the public, and participants in the system, to have confidence that the system operates fairly, without interference, and in a manner intended to ensure that the rights of citizens are protected and preserved.

Conclusions

This Committee should do the following:

1. Refer the matter back for further consultation between the industry, the Board, the Assessment Department, and the public.

2. Revise the rules with respect to tie votes and training to ensure that the concerns expressed herein are addressed.

Thank you for the opportunity of making this submission and I would be pleased to discuss this matter further with you.

Yours truly,

FILLMORE RILEY LLP

Per:

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*Services provided by Mark Newman Law Corporation