Agenda - Executive Policy Committee - April 13, 2005

REPORTS

Item No. 6 Board of Revision – Operating Procedures
File GK-11

ADMINISTRATIVE RECOMMENDATION:

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.

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DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 24, 2002, the Executive Policy Committee received as information the Assessment Task Force Final Report (September 2002) and referred same to the Administration for review and comment back.

Report

Re: City of Winnipeg Board Of Revision

For Submission To: Executive Policy Committee

Original Report Signed By: R. Kachur, City Clerk

Report date: April 30, 2004

Recommendation(s):

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.

Report Summary

Key Issues:

The Assessment Task Force, established by the Executive Policy Committee on December 05, 2001, prepared a report recommending a number of changes for the Board of Revision.

Implications of the Recommendation(s):

General Implications

- ☐ None
- ☐ For the organization overall and/or for other departments
- **X** For the community and/or organizations external to the City of Winnipeg
- ☐ Involves a multi-year contract

Comment:

Policy Implications

☐ No

X Yes

Comment: While the recommendation of this report does not, by itself, have policy implications, should there be direction provided to move ahead and implement some or all of the specific recommendations responded to within this report, the implementation of these recommendations will have policy implications.

Environmental Implications

X No

☐ Yes

Comment:

Human Resource Implications

X No

☐ Yes

Comment:

Financial Implications

X Within approved current and/or capital budget

☐ Current and/or capital budget adjustment required

Report

Reason for the report:

At its meeting of December 05, 2001, the Executive Policy Committee convened an Assessment Task Force comprised of Councillor O'Shaughnessy, Martin Hak, Sandy Shindleman and Lorne Weiss which prepared a report dated September 16, 2002 recommending a number of changes for the Board of Revision.

History & Discussion:

The Board of Revision is an independent tribunal established to hear applications for revision (commonly referred to as "appeals") respecting assessment issues on liability and quantum in a fair, efficient and judicious manner with consideration given to the City of Winnipeg's fiscal time frame. Members of the Board of Revision for the City of Winnipeg are appointed by City Council. The Board of Revision reports to the City Clerk's Department.

Property owners who disagree with the assessed value attributed to their property by the Property Assessment Department are entitled to apply for revision of the assessment roll with respect to the amount of an assessed value. The Board of Revision is also empowered to hear applications for revision with respect to liability to taxation, classification of property or the refusal by an assessor to amend the assessment roll in such particular circumstances as are described in the Act. Historically the Board will hear an average of 11,000 appeals during a reassessment period, which results in over 500 sittings.

Where an applicant fails to attend a scheduled sitting of the Board of Revision, the Board may dismiss the application without a hearing in the absence of the applicant. There is no fee associated with filing an application for revision and the Board does not have jurisdiction to award costs.

The Assessment Task Force, comprised of Councillor O'Shaughnessy, Martin Hak, Sandy Shindleman and Lorne Weiss, prepared a report dated September 16, 2002 recommending a number of changes for the Board of Revision. The City Clerk's Department has reviewed the report and responds with the following:

1 <u>Filing Fees</u>

Fees for submitting appeals should be imposed on a graduated scale, based upon the assessed value of the property. Fees would be refundable if the appeal were successful. In jurisdictions where a fee is charged, first level appeal fees range from $20 to $50 for residential appeals, and from $50 to $600 for non-residential appeals. Fees for filing an appeal would discourage frivolous appeals.

Actual dollars can be saved, as there is wasted time and dollars in relation to appeals that are withdrawn shortly before a hearing. The administrative costs surrounding preparation for appeals is significant, work by both assessors and clerks is wasted if an appeal does not proceed.
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.

This process would create potential cost recovery. Filing fees would be refundable if the appeal is successful or withdrawn on a timely basis. Residential appeals could generate cost recoveries of up to $350,000 in a reassessment year, but refunds would reduce this amount and the recovery would be lower. In fact, the benefit would be in reduced frivolous appeals, due to a fee, which further results in fewer appeals making their way to the Municipal Board. The Municipal Board currently charges a $50 - $500 fee on a graduated scale.

The Municipal Assessment Act specifically does not include a provision requiring that an appellant pay a filing fee to the Board of Revision when filing an Application for Revision. An amendment to *The Municipal Assessment Act* would be required. This would require the Province of Manitoba to pass legislation to amend Section 43(1) of *The Municipal Assessment Act* to state that an appellant must pay the applicable filing fee to the Board of Revision when filing an Application for Revision. The amended legislation should also include a provision stating that the filing fee shall be refunded to successful appellants. A mechanism in the legislation would also be needed to determine the amount of the filing fee and who must approve the filing fee that is to be paid to a Board of Revision (see Schedule 1)

2 Written Reasons for Decision on Request

The Board of Revision issues written decisions but does not provide reasons for these decisions. Written reasons should be provided on request prior to the end of the Board of Revision appeal period. The current notification simply indicates what assessed value has been arrived at without any explanation. Providing written reasons along with decisions will likely have an impact on the quality and consistency of decisions.

As well, 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. The Manager and panels would require further education and training to ensure this process could be done in a professional, consistent basis.

Currently the cities of Calgary, Edmonton and Saskatoon all provide an explanation through written decisions in their appeal process (see Schedule 2).

3 Written Submissions for Commercial Properties

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.

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. Currently the cities of Calgary, Edmonton and Saskatoon all require exchange of information prior to a hearing (see Schedule 3). If approved by Council, The Board of Revision Administration would develop standard guidelines for applicants in regard to what is required for written submissions.

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH, AND CONCURRENCE BY:

- Corporate Finance
- Corporate Services – Legal Services
- Property Assessment
- Audit

THIS REPORT SUBMITTED BY:
The City Clerk's Department

Financial Impact Statement:

Project Name: Board of Revision

Date: April 30, 2004 First Year of Program: 2005

	0	1	2	3	4
Capital					
Capital Expenditures Required					
Less: Existing Budgeted Costs					
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal					
Debt - External					
Grants (Enter Description Here)					
Reserves, Equity, Surplus					
Other - Enter Description Here					
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -				$ -
Less: Incremental Revenue/Recovery					
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts					
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -
Additional Comments:					

Marc Lemoine

Department Controller

Schedule 1

Filing Fee for Appeals – Explanations and Relevant Legislation

1. Section 43 (1) of *The Municipal Assessment Act* specifically does not state that an appellant shall pay a filing fee to a Board of Revision when filing an Application for Revision.

Application requirements

43(1) *An application for revision must*

(a) be made in writing;

(b) set out the roll number and legal description of the assessable property for which a revision is sought;

(c) set out which of the matters referred to in subsection 42(1) are at issue, and the grounds for each of those matters; and

(d) be filed by

(i) delivering it or causing it to be delivered to the office indicated in the public notice given under subsection 41(2), or

(ii) serving it upon the secretary,

at least 15 days before the scheduled sitting date of the board as indicated in the public notice.

2. Section 57 (3) of *The Municipal Assessment Act* does specifically state that an appellant shall pay the applicable filing fee prescribed under The Municipal Board Act when filing an appeal to the Municipal Board from a decision of the Board of Revision.

Filing fee on appeal

57(3) *When filing a notice of appeal under subsection (2), the appellant shall pay the applicable filing fee prescribed under The Municipal Board Act.*

Schedule 1 (con't)

Filing Fee for Appeals – Explanations and Relevant Legislation

3. Section 57 (4) of *The Municipal Assessment Act* states that where an appellant is successful on an appeal, the filing fee paid by the appellant under Section 57 (3) shall be refunded to the appellant.

Appeal fee refund
57(4) *Where an appellant is successful on an appeal, the filing fee paid under subsection (3) shall be refunded to the appellant.*

4. Section 59 (1) of *The Municipal Board Act* states that subject to the approval by the Lieutenant Governor in Council that the Municipal Board may prescribe a tariff of fees and those filing fees are set out in Regulation 189/89 of *The Municipal Board Act*;

Tariff of fees
59(1) *Subject to the approval of the Lieutenant Governor in Council, the board may prescribe a tariff of the fees which shall be paid to the board by local authorities, and persons who are parties to, or interested in, matters coming before the board in respect of which no fee is otherwise prescribed.*

5. Section 1 (b) of Regulation 189/89 of *The Municipal Board Act* states that the filing fee payable by an appellant filing an appeal to The Municipal Board is $10 for each $100,000 of the assessed value that is the subject of the appeal, as determined by the Board of Revision, subject to a minimum fee of $50 and a maximum fee of $500.

Schedule 2

Written Reason for Decisions – Survey of other Canadian Municipalities

	Vancouver	Calgary	Edmonton	Saskatoon	Regina	Winnipeg	Toronto
Organization	Property Assessment Review Board	Assessment Review Board	Assessment Review Board	Board of Revision	Regional Assessment Appeal Board	Board of Revision	Assessment Review Board
# of board members	12	28	15	11	12	33	Fluctuates
Members per sitting	3	3	1 or 3	3	3	3	1 or 2
Rate of pay	Members - $ 62.50 per half day Panel Chair - $80 per half day	Members - $225 per day Panel Chair - $260 per day	Members - $100 per half day Panel Chair - $124 per half day	All Members - $125 per day Panel Chair - $1500 annual honorarium Board Chair - $3000 annual honorarium	Members - $100 per half day Panel Chair - $125 per half day	All members - $50 per 2 hrs Chair - $75 per 2 hr Board Chair - $1250.00 bi-weekly	All members - $34 per hour Chair and (4) vice chairs on salary
Avg appeals filed following reassessment	1,500	9,000	8,000	1,000	1,000	11,000	24,000
Decisions	Written decision with explanation	Written decision with explanation	Written decision with explanation	Written decision with explanation	Written decision with explanation	Written decision with no explanation	Written decision upon request
Filing Fee	None	$20 - residential $50 - commercial	$30 - residential $47 - commercial	$30 – residential $500 - commercial	$50 – residential graduated - commercial	none	$50 – residential $125 - commercial
Training	Training provided on CD	2 days - administrative justice 1 day – Municipal affairs training	6 days – professional development	In-house	In-house	In-house	Training manuals
Require written submissions	No rationale required	Exchange of written material 21 days prior	An issue statement from the complainant is due 21 days before the hearing	All parties who intend to make use of any written materials must file copies with the secretary of the board at least 10 days prior	Written information supporting the basis of the decision	No rationale required	Oral decisions and in some cases written decisions

Schedule 3
Written reasons for Decisions

Section 36(2) of *The Municipal Assessment Act* states as follows:

Rules of practice
36(2) *A board 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 or the municipality.*