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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 <u>before</u> 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 <u>own</u> 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,

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DMS/bm