TO: CHAIR AND MEMBERS
BOARD OF CONTROL
MEETING ON FEBRUARY 11, 2009

FROM: VIC COTÉ
GENERAL MANAGER, FINANCE & CORPORATE SERVICES
AND ACTING CITY TREASURER

SUBJECT: CORRESPONDENCE FROM MUNICIPAL PROPERTY ASSESSMENT CORPORATION DATED DECEMBER 12, 2008 REGARDING CURRENT VALUE INTERPRETATION

RECOMMENDATION

That, on the recommendation of the Acting City Treasurer, City Council SUPPORT Provincial government intervention in the form of a legislative amendment to the definition of "current value" in the Assessment Act, to avoid lengthy and unpredictable appeal litigation and financial uncertainty for municipalities and boards of education resulting from the 2008 decision by the Assessment Review Board that commercial properties should be valued as if vacant and that City Council ADVISE the Minister of Finance of the Province and local Members of Provincial Parliament of its support for a legislative amendment.

BACKGROUND

At its meeting held on January 14, 2009 the Board of Control received a copy of a communication dated December 12, 2008 from the Chair and Board of Directors of Municipal Property Assessment Corporation (MPAC) requesting that the City of London raise the issue of the interpretation of "current value" in the Assessment Act with the local Members of Provincial Parliament. The Board requested that Civic Administration review the communication and report back thereon at a future meeting of the Board of Control. A copy of the correspondence is attached.

The valuation issue at stake is whether or not leasehold improvements and actual current rents are to be included in the valuation of commercial properties in accordance with the definition of the term "current value" as defined in Section 1 of the Assessment Act. The Assessment Review Board, in a decision released in 2008 involving office towers in the City of Toronto, made the determination that "current value" for assessment purposes should be based on the interest of the owner exclusive of any tenant interest and that buildings should be valued as if vacant. MPAC and the City of Toronto were granted leave to appeal the decision to the Divisional Court on November 14, 2008.

As indicated in the attached letter, MPAC has estimated that potentially 25% of municipal tax revenue from the commercial property classes could be at risk if the issue were resolved in a manner unfavourable to municipalities and school boards. In the City of London in 2008, total municipal tax revenues from the commercial class amounted to approximately $88 million and 25% of this amount would be approximately $22 million. Education taxes on the commercial class in London in 2008 amounted to approximately $82 million and 25% of this amount would be approximately $20.5 million. These calculations are only for the year 2008. A negative decision by the courts and the Assessment Review Board would affect 2008, all future years and all valuation appeals currently in progress for past years.
Due to the enormous financial consequences for both municipalities and school boards if there were a negative conclusion to litigation, it is recommended that council support the position of MPAC as presented in the attached correspondence and that Council advise the Minister of Finance and local Members of the Provincial Parliament of its support.

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| Division Manager, Revenue & Tax Collector | Manager, Financial Services
|                        | Acting Deputy City Treasurer |

RECOMMENDED BY:

Vic Cote
General Manager, Finance and Corporate Services and Acting City Treasurer

Attach.
December 12, 2008

Mayor Anne Marie DeCicco-Best
City of London
c/o City Hall, 214-300 Dufferin Avenue
London, ON N6A 1Z2

Dear Mayor Anne Marie DeCicco-Best:

Re: Current Value Interpretation

I am writing to urge your continued support in asking the province to address an issue fundamental to the property assessment system in Ontario.

As you may know, the Assessment Review Board (ARB), in a decision released earlier this year, interpreted the term "current value" in the Assessment Act in a way that would significantly change how the Municipal Property Assessment Corporation (MPAC) assesses properties across the province. In a decision related to the "Bank Towers" in the City of Toronto, they ruled that "current value" for assessment purposes should be based only on the interest of the owner, exclusive of any tenant interest, and that the buildings must be valued as if vacant.

This decision, if it stands, changes the way MPAC would value tenanted commercial properties, such as office buildings and shopping centres, in the future. Conservatively, MPAC estimates that the assessments of affected properties would be reduced by 23% to account for the fact that the tenants' interests are no longer to be assessed and the property has to be valued as if vacant. There are approximately 17,000 such properties in Ontario with a current value assessment of almost $100 billion, putting $23 billion in assessment at risk across the province.

MPAC and the City of Toronto were granted leave to appeal the ARB's decision to the Divisional Court on November 14, 2008. As a result, the parties will now embark on a litigation process that is expected to be lengthy, costly, and which puts the assessment base for all municipalities, as well as business education tax revenue to the provincial government at risk of substantial reductions.

Office of the Chair of the Municipal Property Assessment Corporation
1305 Polson Parkway, Pickering, Ontario L1V 8P9
T: 905.692.0850 ext 294 F: 905.821.0040
www.mpac.ca

Form No L3091A
Since leave to appeal the decision has been granted, MPAC has returned the 2008 values for taxation in the current four-year assessment cycle based on the existing valuation methodology. It is anticipated that it could take several years before the appeal is finally resolved through the higher courts, with no guarantee that MPAC’s interpretation of the Assessment Act will be upheld. As a result, a significant amount of municipal revenue and provincial education tax is in jeopardy for future years.

There is also considerable assessment at risk because of the number of ARB appeals outstanding for prior taxation years. Approximately 14,000 assessment appeals for shopping centres and office buildings were put on hold pending the outcome of the back-taxon decision. The majority of these appeals apply to the 2005 through 2008 taxation years, with some dating back to 2003.

Provincial government intervention, in the form of a legislative amendment to the definition of "current value", is necessary to avoid lengthy and unpredictable appeal litigation, and financial uncertainty for municipalities. Because of the implications for Ontario municipalities, we urge you to continue to raise this concern to your local members of provincial parliament.

If you have any questions, please do not hesitate to contact me at (905) 888-0990 extension 225 or Carl Isenburg, President and Chief Administrative Officer of MPAC at (905) 837-6150.

Yours truly,

Debbie Zimmerman
Chair, MPAC Board of Directors

Copy: MPAC Board of Directors
Carl Isenburg