LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS

Tuesday, December 19, 1989.

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Helwer, Edward (Gimli)

ATTENDANCE - 12 — QUORUM - 6

Members of the Committee present:

Cummings, Glen (Ste. Rose du Lac, PC)
Findlay, Glen (Virden, PC)
Penner, Jack (Rhineland, PC)
Charles, Gwen (Selkirk, L)
Evans, Laurie (Fort Garry, L)
Helwer, Edward (Gimli, PC)
Pankratz, Helmut (La Verendrye, PC)
Patterson, Allan (Radisson, L)
Plohman, John (Dauphin, NDP)
Roch, Gilles (Springfield, L)
Taylor, Harold (Wolseley, L)
Uruski, Bill (Interlake, NDP)

APPEARING:

Mercury, Michael - Private Citizen
Cook, John - Springfield Agricultural Ratepayers Association
Kuzminski, John - Private Citizen
Fotheringham, Jack - Manitoba Seed Growers
Geddes, Earl - Keystone Agricultural Producers Inc.
Ransom, Allan - Keystone Agricultural Producers Inc.
Moir, Manson - President, Union of Manitoba Municipalities
Balneaves, G. Les - Private Citizen

MATTERS UNDER DISCUSSION:

Bill No. 79, The Municipal Assessment and Consequential Amendments Act

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Mr. Chairman: We will bring the committee to order. Before we hear our first presenter, we have 10 presenters this evening. Is it the will of the committee that we hear all presenters tonight and adjourn at a given time, such as midnight, or what is the wish of the committee? Mr. Plohman.

Mr. John Plohman (Dauphin): I think it is a very cold night and there may be some people who have travelled from out of town and have to travel back tonight and I think we should hear them first, if possible. Then we should play it by ear insofar as the remainder of presenters, if it is coming close to 11 or 11:30, and we have a number to go. We realize we will have to come back. If it is just getting down to one or two, then we could be flexible. That is what I would propose.

Mr. Chairman: Thank you. Mr. Roch, did you have something to add?

Mr. Gilles Roch (Springfield): Well, actually it was something similar that I was going to say. Given the fact that we are not sure how much each petition is going to take, then possibly the out-of-town people should have priority and, depending on the hour, we can then decide on how long we will be going.

Mr. Chairman: Mr. Pankratz, did you want to say something?

Mr. Helmut Pankratz (La Verendrye): No, I would concur with those comments.

Mr. Chairman: We said this afternoon we would start with Mr. Mercury tonight. So I think we will start with him and after that perhaps we will see if someone has to leave early, they can bring it to our attention and we can deal with them perhaps. Mr. Findlay.

* (2005)

Hon. Glen Findlay (Minister of Agriculture): I would suggest maybe you identify who is from out of town that needs to get out early, identify that right now, and get them on right at the beginning.

Mr. Chairman: For the people who are from out of town, for the ones who would like to get away early, if there are any there, would you please rise. Can I have your names? Mr. John Kuzminski, Mr. John Cook, Mr. Jack Fotheringham. Thank you. Then we will take the order that we are in at the present time and we will start with Mr. Michael Mercury.

Mr. Plohman: We agreed that we would hear the people from out of town first and there are two of them who indicated they would like to—

Mr. Chairman: Yes, but we agreed this afternoon to start with Mr. Mercury. We told him we would start with him this evening.

Mr. Plohman: I see. Then, Mr. Chairman, am I to understand that we would then go to John Cook and John Kuzminski?

Mr. Chairman: That is correct.

Mr. Plohman: Thank you.

Mr. Michael Mercury (Private Citizen): Thank you, Mr. Chairman. Mr. Chairman and Members of the committee, I am a lawyer who has practised law in Manitoba for 30 years and I am a partner in the law firm of Aikins, Macaulay & Thorvaldson of Winnipeg.

I am appearing before you today in a private capacity as one who has had considerable experience representing taxpayers with respect to appeals before the Board of Revision of the City of Winnipeg, the Manitoba Municipal Board, the Court of Queen's Bench, and the Court of Appeal for Manitoba, and also as counsel for taxpayers in the Supreme Court of Canada.

Approximately three weeks ago, I received from the department a copy of Bill No. 79, and I must confess that until recent times I did not have much time to study it. I thought wrongly, given the years that it has taken for Government to introduce a Bill dealing with such an important subject matter, that the Bill would be the answer to many of the difficulties which have confronted taxpayers in the past. I must confess, however, that I was greatly disappointed after a meeting I had as part of the municipal subsection of the Canadian Bar Association of Manitoba on December 6 whereat the provincial assessor spoke to us present concerning the effects of the Bill. I indicated to the provincial assessor at that time and also in a subsequent call to the Deputy Minister that I had a completely different philosophy concerning the subject matter which they themselves shared, and I told him so.

I regret that such an important matter as the taxing of real estate in Manitoba to pay for Government services was not thoroughly canvassed with those persons in the Bar of Manitoba who deal with this subject on a day-to-day basis and I get the distinct impression, Mr. Chairman, that this is a rush job.

I prepared a submission which I delivered to the Clerk this morning which fundamentally deals with the technical aspects of the Bill. When I heard Mr. Nugent speak before me, Mr. Nugent, a lawyer of considerable experience and ability, who drew this committee's attention to the fact that assessments are in effect frozen at the amount fixed in the reference year, I became concerned. I became concerned because I did not fully appreciate that the Bill as presently worded, takes away a right of taxpayers which they presently enjoy, a right which is enjoyed not only by Manitobans at present, but by all taxpayers in Canada, and that is the right to appeal an assessment and to seek equity at any time, not as of 1985.

This Bill, Mr. Chairman and Members, contrary to any law that I am aware of in Canada, freezes assessments at the reference year. The taxpayer, if he wishes to appeal, can only obtain relief if he can demonstrate that the assessor erred in fixing the assessment at value, which he does not define at the reference year. Thus, if the assessor fixes value which he does not define, which is not defined in the Act, at the 1985 value being the first reference year, then if by 1990 or 1991 a taxpayer's property has decreased in value, he cannot be heard to complain. He must be content with a hope that during the next reassessment, the inequity will be cured. This legislation, I regret to say, is not honest in this respect. It is deceptive.

Let me illustrate. Section 42(1) reads as follows:

"A person, including an assessor, may make application for the revision of an assessment roll with respect to:

(b) amount of an assessed value."

Then in the definitions section you define assessed value as follows: "assessed value" means the value that is determined by an assessment under Subsection 17(1) and does not include a portioned value based on a percentage of value under Subsection 17(7).

* (2010)

Now if we look at Section 17(1), it states: "Subject to the provisions of this Part, an assessor shall, for the purposes of this Act, assess property at value . . . ". It does not say it is value, market value, or anything of the sort, but it says, assess property at value in relation to the reference year. Reference year is defined as: "reference year" means, other than in Subsection 17(2), the second year preceding the year for which an assessment is made.

Now you have to be a pretty sharp lawyer, and I must admit it escaped me at first when I looked at it, that if one cuts away all the legal jargon and puts these sections together they can be rephrased in layman's terms as follows: a person may appeal the amount of the assessed value which is the value, not defined, determined by the assessor in the reference year, the first one being 1985.

Now that is wrong, fundamentally wrong. I would not be so bold as to make the statement that the right of taxpayers to appeal inequities occurring during years in between reassessments has been taken away had it not been for the fact that the provincial assessor himself said this to us at the municipal law subsection, and I was amazed at that statement.

Do the Members sitting around this table, who represent taxpayers know, do you know, that if their properties declined in value for any one of a number of reasons that they cannot appeal the inequity? You do not know that, and it escaped me. Do the Members of this committee recognize the fact that no legislation in Canada or in the United States, that I am aware of, freezes out the right of the taxpayer to appeal? Do you as lay persons feel comfortable in the knowledge that this Act has been written to make it easier for the administration to administer it at the taxpayers' cost? What do you say to a taxpayer whose property value dramatically drops in 1990 because an abattoir, for example, locates next door. Must he wait for the assessor to produce the triennial assessment?

Our experience in Winnipeg shows us that irrespective of the fact that the law provided that assessments had to be made triennially in the past, they were not. In 1968, in a case in which I was the taxpayer and Mr. Nugent my counsel, the municipal board was told by the assessor that he would the following year correct the inequities by performing his duty under the Act, and complete the triennial reassessment. That was in 1968 and it did not happen, Mr. Chairman.

It was not until 1978 that I retained Mr. Nugent to bring an action and to have the whole assessment roll

of the City of Winnipeg declared invalid because the assessor failed to perform his statutory duty, and that made a big headline in the Free Press, June 9, 1978: Couldn't Collect Any Taxes At All, Council Fears Land Test Case, 1978. What did the province do as a result of this action that was brought, because up until that time we had the statements of the assessors, yes, they are going to do their duty; they are going to do their duty; they are going to do their duty? It passed retroactive legislation making that which was illegal legal, and it set up the Weir Commission.

That legislation read, now listen to this: at least once—and I am quoting from The City of Winnipeg Act, Section 158(1)—in each three consecutive years the assessor shall after inquiry and aided by such information as may be furnished to him, make evaluation of every parcel of rateable property in the city according to his best judgment, and to enter such valuations in an assessment roll to be prepared by him annually in an appropriate form approved by council. But listen to these words: but any failure by the assessor in making the valuations and entries at least once in each three consecutive years does not invalidate and shall be deemed never to have invalidated the assessment rolls of the city or any tax rolls based thereon.

* (2015)

So although they had to do their duty by law they did not, and when they were caught short this Government passed retroactive legislation making that which was illegal legal. Now what flowed from that? In July 1980 the Province of Manitoba enacted legislation which in my submission was very cleverly worded but which in fact attempted to freeze out the right of a taxpayer to appeal his assessment. It was called Bill No. 100, and that Bill in effect stated that the assessor in making assessments for the years 1981 and 1982 was obliged to use the same level of value as he used in making assessments in 1980, very innocuous legislation. It did not say it took away the taxpayers' right of appeal. That was the intention. That Bill effectively stopped Portage Avenue taxpayers from appealing their assessments for three years because our courts, that is the Court of Queen's Bench and the Court of Appeal of Manitoba, had interpreted the Bill as taking away the right of a taxpayer to appeal his assessments in 1981 and 1982. I have a copy of that Bill appended to this submission.

Then to make matters worse the Legislature enacted Bill No. 33 taking away the taxpayers' right to appeal indefinitely by extending Bill No. 100. Members of the Legislature were not aware of this fact and I am sure if you had been told in 1980 that what the administration was trying to do was to take away your right of appeal, they would have acted differently. The Members of the Legislature were not aware of this fact and it was not until Mr. Nugent and I appeared in the Supreme Court of Canada in October 1988 that the Supreme Court of this country held that the right of the taxpayer was not taken away and that boards of revision could proceed to do equity on a year to year basis. That equity was finally achieved, we went back to the board of revision and the City of Winnipeg had to cough up approximately $10 million to refund to those taxpayers who had been unjustly treated at that period of time. Had that decision not gone to the Supreme Court of Canada, today taxpayers perhaps would still not have a right to appeal and that is not acceptable in a democratic society.

The administration drafted legislation nine years ago whereby it was intended to freeze out the taxpayers' right to appeal. It was supposed to be a temporary measure, then it was extended indefinitely. The legislation was cleverly worded and it passed the scrutiny of the Members of this House. Do not, Mr. Chairman and Members, make the mistake of the past and do not take away the right of the taxpayer to seek equity on a yearly basis. This Bill unless amended will do just that and you ought to be fully aware of it.

I have here the brochure that was published by the department and it says: assessment reform, a commitment to fairness. What you are doing with this Bill is taking away a fundamental right of a taxpayer to appeal an inequity in a given year and that does not hold water in any jurisdiction, but it will in this jurisdiction unless an amendment is enacted which gives the taxpayer to seek equity at a current year. That was my supplemental submission which I delivered first. Now why should I deliver it first tonight? I had another submission which was delivered this morning. Perhaps I can deal with that now.

I state that Bill No. 79 is the long awaited response to the recommendations that we report. It represents the effort of Government to adopt many of the recommendations of this report. It deals with a subject matter which is the very basis upon which municipalities raise monies to pay for municipal services. I commend those who have made a heroic effort to produce legislation which strives to produce equity in the assessment system.

There are sections of the proposed legislation which cause me serious concern and which I would like to share with you tonight. These are as follows. First, the lack of definition of value; second, the question as to whether machinery and equipment are assessed as real property; third, the reference year concept; fourth, the power of the Board of Revision; and fifth, the question of exemptions.

* (2020)

First, let me deal with the question of lack of definition of the word "value." The brochure which the department has published states in effect that assessments are to be at market value. It states, and this is what the public is being led to believe, quote, one of the key initiatives of assessment reform is to update all property assessments and bring them closer to the actual value or current market value of property. What is current market value? Current market value is the price a property might sell for under normal market conditions. Bringing all assessed values closer to current market values makes it easier for property owners to understand and evaluate their assessments. It also means that comparable properties are assessed at comparable values, which will help ensure taxes are divided fairly, end of quote.

This brochure makes numerous references to market value, and yet it is not defined. I am going to illustrate the problems with that, how unfair it is. This statement in your brochure adopts one of the key recommendations of the Weir Report, namely that assessments should be at market value. Market value has been defined in the Weir Report as follows: valuation means the amount of money that is believed to be the price at which the property would most likely have sold in an open market transaction involving a buyer and a seller, both of whom desire to come to terms, but were under no undue constraints to do so.

That is what Weir said. Yet the definition of "value," the most important word in the Act, is missing. The word "value" has appeared in prior legislation, and the fact that it has not been defined in the legislation has been the source of confusion and trouble, not only for taxpayers, but also for assessors and for members of panels sitting on boards of revision and the Municipal Board, who I might say are not anywhere near as sophisticated as assessors, and yet they sit in judgment on assessors.

Section 17(1) of the Bill states: "Subject to the provisions of this Part, an assessor shall, for the purposes of this Act, assess property at value in relation to the reference year." I submit, and I urge you most strongly, Mr. Chairman, that a value means market value as your brochure represents, then the Bill should clearly state that it does mean market value. If value is not market value, then the brochure contains a serious misrepresentation to the public of Manitoba.

The only definition of value in the Bill is assessed value, which means, and I quote, "the value that is determined by an assessment under subsection 17(1) and does not include a portioned value based on a percentage of value under subsection 17(7)." In short, if the value is the assessed value or the market value of the property in the reference year, then the legislation should be amended to say it.

I have heard it said, and I have heard the provincial assessor say, that value has been defined by the courts as being market value or value in exchange. That is true. That is so true. Years ago the Supreme Court defined value as being market value, but I hasten to add and I echo the comments made by my learned friend, Mr. Nugent, this morning that the assessors and members of the Board of Revision and taxpayers themselves are not aware that courts have defined value. This lack of definition, as I have indicated, has caused a great deal of uncertainty and confusion.

I am going to offer two examples in cases that I have been involved in. The first is a portion of a transcript of a cross-examination of Mr. J. A. MacDonald, Chief Assessor for Metropolitan Winnipeg, by Ross Nugent in the case of Mercury Holdings Limited versus the City of Winnipeg heard by the Municipal Board on August 8, 1968, and also a portion of the transcript of the evidence of Wayne Finlay, a senior assessor of the City of Winnipeg with respect to an appeal by the owners of the Delta Hotel which was held before the Municipal Board on September 17, 1985.

Portions of the transcript have been photocopied and appended to this submission. Perhaps we can just go to Appendix No. 1. This was page 116 of the transcript. Listen to the type of answer you get from the assessor, the chief assessor. Mr. Nugent asked this question: This property is assessed under the provisions of the Winnipeg Charter?. Answer, yes. And it has been for 60 years. Question: Section 282 of the Charter says, "Land, as distinguished from the buildings thereon, shall be assessed at its value at the time of assessment. Two, in assessing land having buildings thereon, the value of the land shall be set down in one column, and in another column shall be set down the sum which shall represent two-thirds of the value of the buildings thereon. The value of the land and the said proportion of the value of the buildings shall together form the assessment in respect of the property."

* (2025)

Mr. Nugent asks the senior assessor of the City of Winnipeg—keep in mind that the court had defined value as being market value. Mr. Nugent asked, what do you understand the word "value" in that section to mean? Answer: Well, the courts have technically upheld, technically, that value is value in exchange, but they have also found that where the assessment bears a fair relationship with assessments of similar properties in the vicinity, I believe there is another section in the charter which covers this.

On the next page, Mr. Nugent asks again, question: What do you understand the word "value" to mean? Answer: Well, our assessed values are established with a positive relationship. Anybody know what that means? That was his answer.

Mr. Nugent then asked, question: But you are now using the expression "assessed value." The section says that the land must be assessed at its value. Answer: If we have to make our own definition, we say assessed value.

Question: What do you understand value to be? Answer: Value to bear a fair relationship with current evidence of typical value. Question: What is a typical value? Answer: It is where you have sufficient sales of properties for continuing the use for which they are developed, so that you would have a pattern of sales. This is true of apartment blocks and single family dwellings and certain building classes of property. Where you get a special class of properties or where you have sales for changing use, the sale price is not good evidence, but it is the best we can get. There is an answer for you.

Question: Mr. Hagland, who was a former assessor, said that your department uses the selling price of the property. Canada Permanent, next to the subject, and he used that selling price, the selling price of the Toronto Dominion Bank, and the selling price of two properties on Portage Avenue as support for the department's conclusions. Do you agree with that statement that that had been done? Answer: I believe Mr. Hagland qualified it to say that these sales were used as a check. They certainly were not based on sales. Where are we? That is the end of the quote.

Now are you any wiser after listening to the wisdom of the Chief Assessor of the City of Winnipeg as to the

definition of value? Let us not stop there. That was 1968. Let us go to Appendix 2. This is the case that I was not the taxpayer, but I was counsel for the owners of the Delta Hotel. The city, at this point in time, was represented by Mr. Bodnarchuk, and Mr. Wayne Finlay was representing the department as senior assessor—halfway down page 58 on Appendix 2.

> Mr. Bodnarchuk: Has the Assessment Department ever used market value in determining assessments?
>
> Mr. Finlay: No.

They have never done it. You, Mr. Chairman, the Legislature of Manitoba, you tell them they have to use market value and define it. I am going to go over to the next page—page 59. Here is the city lawyer asking a senior assessor of the City of Winnipeg—halfway down the page.

> Mr. Bodnarchuk: Does the Assessment Department use assessment-to- sales ratio in determining assessment?
>
> Mr. Finlay: No, that's getting back to the same market. We don't. The assessment-sales ratio is the reflection on market value on a particular property; we don't assess on the markets.

End of quote. Next page, page 72. I am cross-examining the assessor.

> Mr. Mercury: But how can we tell whether an assessment of $2,578,000 so forth is equitable to the Holiday Inn at $3,700,000, and the Holiday Inn South, $1.4 million, Birchwood $1.8 million. How do I know that these assessments are equitable?
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> Mr. Finlay: If we're looking at the total assessment, it would be somewhat difficult.
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> Mr. Mercury: That's right. And therefore what you, this Exhibit 2, all it does is tells us the total assessment and it is difficult to admit that, I agree to that. But would you not agree that one of the ways you could look at these properties to compare them would be to look at the assessment of each one in relationship to its value, market value?
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> Mr. Finlay: That isn't the method that we typically use.

* (2030)

Now he has repeated that over and over again. Do not take my word for it, how assessors assess. If you do not define it, and you do not pin him down, you have unsatisfactory answers, and taxpayers will still believe that this question of assessments is some mystical, eastern, oriental religion. Unless you have smelled the incense coming from the right burner, you will not achieve wisdom.

I am going to tell you that Mr. Leon Mitchell, who was chairman of the Municipal Board for a number of years, a very learned man who died a year ago, made this statement at the time of his retirement dealing with the assessment process, a very credible man. He said, and I quote:

> The assessor relies on processes of reasoning that are incomprehensible to the average appellant. He throws around data with reckless abandon, and makes them appear as the conclusive test of the accuracy of his judgment and his conclusion. I am inclined to the view that the most persuasive evidence ought to be the relative market value of one asset to another. It is a simpler test. When shorn of the refinements in which it is cloaked by the methodology, it is a test which would enable both the ratepayer and a tribunal to find the evidence acceptable. I mention some of the data used, which I choose to call pretenses.
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> 1. That the relative value of one acre of land is $42.81, while the value of another acre in an adjoining section has a value of $42.38 per acre. To the mind of a layman, this is arriving at a value on a very refined basis. It pretends to reflect some known scientific basis evaluation.
> 2. That adverse factors affecting relative value may be measured by discounting 86 cents per acre. This approach presupposes that the assessor counted the number and relative size of the stones on each adjacent quarter section and arrived at a factual result.
> 3. That the value of hot-water heating, compared to forced-air heating has a relative differential value of 48 cents per square foot of building.

This is what the retired chairman of the Municipal Board said:

> There is no evidence that I have heard to date that the market reflects such fine differentials in the value of each of these items. It gives one the impression, I am sure unjustifiably, that the assessor is applying a formula in some mechanical way as instructed.
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> The instructions appear to be: throw all objective and subjective factors into a bowl, mix with great abandon, shut your eyes, and concentrate on the mental compartment trained to emit valuations. When you feel at harmony with the mix, open your eyes, write down the figure, and it will be a harmonious result.
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> In the words of the statute, the product will be a value that is fair and just in relation to the assessment of other properties in the municipality. The whole assessment process is difficult to define. Each part put in the mix is referred to as a mere tool, each test is referred to as a mere indicator, yet, somehow, the result is contended to be unassailably reasonable and right.

Well, he ended his statement by giving a little statement about the Municipal Board, and his frustration, and he said,

> This board, it hears appeals, and decides what it feels. This board to which the Minister refers

gives effect to what it prefers. All is done in the course of a hearing to impress on those who are appearing whether to object or support it be to them some comfort that democracy is hearing and believing. But justice is a word I dare not use, lest I confuse wrong and right, true and false, bad and good, no matter what I think that in another's eyes, the decision is not what it should, or could, or would be, if only I had understood.

Those were the comments of Leon Mitchell.

So, Mr. Chairman, define value as market value, because if you do not, you are not being honest with the people of Manitoba. We have had too much subjective interpretation by assessors and we have gone around the merry-go-round too many times.

Now I am going to page 5 of my submission, and I have a heading saying Problems Involved in Defining Value as Market Value. I recognize that there are problems involved in assessing all property at market value. It is a problem, not only in this jurisdiction but in other jurisdictions as well. It is a great problem for the assessor who must assess all property using mass appraisal techniques, all going back to a reference year.

What if, for example, the assessor fixes a value which is not market value as defined by the courts. Must the taxpayer accept it? Are you going to accept what the bureaucrat tells you? The assessor's value may be close to market, but may also be considerably off the mark. What happens if, for example, in 1990, the value has increased substantially or decreased substantially since 1985? Does the taxpayer gain substantially, or does he lose substantially? If market is the reference year such as 1985, the assessment will not be fair and reasonable to a person who has had his building recently listed as an historic building, and whose market value has severely dropped. The Fort Garry Hotel is a good case.

What if the taxpayer purchased land in 1990, and found that it was contaminated, and was now worthless—I have a case on point—and could not be used for anything and its value has been affixed at the 1985 market value? Does the taxpayer pay the market value of the reference year, with respect to the worthless property?

This legislation says he does, and there is no escape. What is the Board of Revision to do in these circumstances? Where is the relief in these special situations? Surely the taxpayer should not be allowed to wait until the next reference year in order to obtain relief. The taxpayer may be bankrupt by then.

There is a problem in market value, and I appreciate the problems that the provincial assessor is going to have. We should trademark farm property in a different category. You cannot compare farm property with city property, and I will tell you why. You all know that market value is defined by the courts as determined by one of three methods, namely, the comparative sales approach, the income approach, and the replacement or reproduction cost approach. It is difficult, however, to utilize any one of these approaches when one deals with farm property. It is difficult to use the comparative sales approach if foreigners have been buying farm property at relatively high prices, or if farm property is not trading, so it is unfair to use the comparative sales approach.

How does one utilize the income approach to value farm property when the income depends on many factors not under the control of the farmers, such as weather and world markets? You cannot use that approach. In my respectful submission the answer to this whole problem of market value can be solved as follows—and by the way, you certainly can use the depreciated reproduction cost approach—what are you going to use? The depreciation reproduction cost of a farm, the land?

My answer to this problem is this: let the assessor assess at a reference year using his mass appraisal technique, since that is the only technique available to him. You cannot expect an assessor to go and assess every individual piece of property at market. He has a problem doing that.

In order to determine equity—and that is what I am here speaking about—which is an entirely different matter, the onus should not be on the assessor. The onus should then shift to the taxpayer to prove today's market value of his property for the taxation year in question. If the assessed value of the property, as determined by the assessor, approximates the true and actual market value, then there is no need to adjust the assessment. That can be done yearly.

On the other hand, if the assessment of the property, as determined by the assessor, is not in the same proportion to the current market value of the subject as are the assessed values of other properties to their current values, then one can take his case to the Board of Revision and ask the Board of Revision to fix the assessment in the same proportion to the current market value of the subject property as are assessments in general to the current market values of other properties in the municipality.

We have had the Municipal Board decide cases along those lines. Not only our Municipal Board, municipal boards across Canada have decided cases and done equity on those lines. One might ask, and this is a good question, how does one determine the current market values of other properties in the municipality for a current taxation year?

The answer to this is to adopt a practice that has been followed in the past. It is this: the provincial assessor—and most of you are not aware of this, I am telling it as a fact—and the city assessor can at any time tell you what the assessment to sales ratio is in any municipality at any time. This is determined by an examination of the sales of all properties in the municipality in any year.

This is done by an examination of all land transactions which proceed to the land titles offices. The Assessment Departments of both the City of Winnipeg and the provincial assessor look at every transaction to determine the sworn values of the property. They thus keep records to make comparisons of assessment to sales price of each property and determine the ratio.

* (2040)

There are some that may be way out, too high, some too low, but there is a general average. In 1987, for example, the assessment sales ratio of the City of Winnipeg was 50 percent of 1987 market value. That is to say that the total assessment of the City of Winnipeg in 1987 was approximately 50 percent of market value. I had Mr. Funk give evidence in the proceeding, who produced and totalled all the sales of all the properties in the City of Winnipeg in 1986. They came to about a billion and so many dollars, and then he totalled up all the assessments of all the properties, and they came to about $550 million to $570 million, and it all came to about 50 percent of market.

So if a taxpayer wanted to appeal his assessment, he would insist that the assessor tell him what the level of assessment for this year is, and he might say that it is 50 percent of market. I as a taxpayer would then have to have the onus of going out and proving what my market value was. If my assessment is higher than the proportion which generally applies, then I am entitled to a reduction. That is simple. Taxpayers understand it. Members, lay people who sit on the Board of Revision can understand it, the courts in Canada, the municipal boards understand it. We are trying to confuse it.

In 1990, as a result of this assessment, it may be that the assessment of the City of Winnipeg may be 80 percent of 1985 values. In each case, therefore, the onus should rest on the taxpayer to establish current market value and relate the value to the assessment so fixed by the assessor, and let the assessor proceed to do appraisals with his mass technique methods. That is his job.

That is what I have to say about values and how you should proceed to do equity. Do not take away a taxpayer's right to appeal an inequity in any year. If you do, that will be unprecedented in Canada and it will make mockery of our system in Manitoba.

Insofar as farm property is concerned, I think you should have a special section in your Act dealing with farm property. Farm property is what is causing the problems in defining value, and I recognize that. That should be treated differently than other property. It is very hard to determine market value of farm property.

A gross inequity took place during the last reassessment when the assessor for the City of Winnipeg assessed property at 1975 market values. The people in St. Germain, whose market values were skyrocketing in 1975 because you could develop beyond the urban limit line, had values that were up in the stratosphere. When the City of Winnipeg in 1977 made it a policy or a law that they were not going to permit further expansion, these values dropped. Yet when the assessments came out in 1987, these people were almost at 100 percent of market, yet everybody else in the City of Winnipeg was 50 percent of market.

So what the assessor did, was trying to do justice as of 1975. You cannot do that. That is wrong. The Court of Appeal on the case, the Shapiro case that I was on, said, that is wrong. It did not upset it because it would create chaos. You cannot do that. That is what I have to say about value and market value.

My next point is machinery and equipment as fixtures. This is a very serious point, because this province is not competitive with Ontario and Quebec. If you are going to attract industry to Manitoba, you do not chase away potential investors and industrialists who want to come to Manitoba to do business, if they are not going to get the same treatment as the great industrial provinces of Ontario and Quebec.

I say that it appears from the legislation that machinery and equipment which is affixed to the land and used in manufacturing is assessable as an improvement. For example, the Act defines improvement as meaning "(a) a building, fixture or structure that is erected or placed in, on, over or under land, whether or not the building, fixture or structure is affixed to the land and is capable of being transferred without special mention by a transfer of land; and includes (b) a part of a building, fixture or structure under clause (a); (c) plant machinery, equipment and containers that are used in the retail marketing of oil and oil products."

Personal property in Bill No. 79 is defined as meaning "goods and chattels and, without limiting the generality of the foregoing, includes inventory, machinery and equipment but does not include an intangible item of personal property or goods or chattels that are improvements."

According to this definition, dentists' drills, heavy X-ray equipment, restaurant equipment bolted to floors, computer support equipment, car wash equipment and other technological equipment which is found in plants and offices, appears to be assessable as forming part of the building. Here we have inconsistencies in the policies of the assessment department. Some view computer support systems, and I have had a case on this, non-assessable. Others, they treat them as fixtures. It is willy-nilly, helter-skelter that if the assessor is so inclined he is going to tax something as a fixture.

The word fixtures includes lighting fixtures, toilet fixtures, sinks and so forth, which form part of the building. I say what about such fixtures as barbers' chairs and dentists' drills and x-ray equipment and all the equipment that are in hospitals. If it is the intention to assess this type of equipment as fixtures then the Act should clearly state its intention in this regard.

Now in contrasting our provisions—that is, the provisions in the proposed Bill—with those of the Ontario Assessment Act, one notes that machinery and equipment used for manufacturing or farming purposes, or for purposes of a concentrator or smelter, are exempt from taxation, as well as machinery and equipment used for producing electric power, and also machinery and equipment used in the mining process. Is it the intention of the legislation to assess as fixtures, machinery and equipment used for the manufacturing process? If it is, then the legislation should clearly state that it is.

I am not holding a brief for industry, I am not holding a brief for anybody tonight. I am saying, as a taxpayer

and resident of Manitoba, clarify the law, because it is not clear and it has caused hardship and it has caused concerns to certain taxpayers that I have represented in the past.

The next item is The Reference Year Concept. The Act proposes to assess property in 1990 at the market value as of 1985 and thereafter there will be a general reassessment every three years, and that the reference year thereafter will be no more than two years prior to taxation.

It is my opinion that certain safeguards must be built into the legislation, because there is no guarantee that a general reassessment will take place, as was the case in the City of Winnipeg where the legislation provided for a general reassessment every three years, and yet the assessor failed to produce a reassessment as required by the Act, necessitating a group of taxpayers called Self Help Alliance for Fair Taxation—SHAFT—to go to legal aid. I was asked to represent them, and I had to take the city assessor to court and get an Order of Mandamus ordering the city assessor under penalty of jail to do his statutory duty.

The road to hell, Mr. Chairman, is paved with good intentions, but I say there have to be other safeguards because if the history of the actions of the assessors in the past is any indication what it will be in the future, then I fear for the taxpayers of the City of Winnipeg.

What then does the taxpayer do in circumstances where the statutory officer has failed to perform his duty? Must the taxpayer go to the expense of applying to the Court of Queen's Bench for a Mandamus Order, which at best is a discretionary Order?

Who says you are going to get a Mandamus Order? Under these circumstances, it behooves the taxpayer to apply for relief to the Board of Revision. In this case, the Board of Revision, as I said earlier, should do equity not by determining what the market value of the subject was as at the reference year, but by determining the current market value of the subject property in relation to the assessed value fixed at the reference year, and determine the relationship between the current market value and the assessed value, and seeing whether that ratio is in line with the assessment of sales ratio of the municipality in general for that current year. The just and equitable provisions in Sections 54(4) and 60(2) ought to remain.

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I want to point out something, that in 1950 the Supreme Court of Canada and later the House of Lords in England, the Judicial Committee of the Privy Council, and the lead case in assessment law, stated this very important principle. This is the Chief Justice of Canada, Justice Renfret, who stated, and I quote, "In the yearly valuation of a property for purposes of municipal assessment, there is no room for hypothesis as regards the future of the property. The assessor should not look at past"—past I put 1985—"or subsequent or potential values. His valuation must be based on conditions as he finds them at the date of the assessment." That is a principle which was long established. What are we going to do here, throw out the common law of Canada?

The next little item, Powers of the Board of Revision. It is my respectful submission that it is a fundamental principle of justice that the judicial body that makes the decision is the judicial body that hears the evidence. Unfortunately such is not the case in the proposed appeals to the Board of Revision. It has not been, as a matter of practice, and I thought we would have corrected this. Very little has changed in the legislation. Section 38(1) permits the Board of Revision to designate a panel or panels consisting of not less than three members of the board to sit and hear applications for revision. Section 38(3) states that the panel has all the powers and duties of the board other than the power of the board to make an order under Subsection 54(2), and the duty of the board to report to council, that is Council of the City of Winnipeg, the spelling is wrong there, in my brief, under Subsection 54(4).

Pursuant to Section 54(1), the panel hears the application and upon completion of the hearing, submits a report to the board. The board can either accept it or reject it. Thus it is the board which makes the decision as to whether or not to allow the appeal, and all this is done in the absence of the party whose rights are affected. Section 54(1) states: "Where a panel hears an application that is referred to it, a panel shall, upon completion of the hearing, submit a report to the board with respect to the application."

It is my respectful submission that the report of the panel which goes to the board should also be forwarded to the taxpayer who should have the right to appear before the board to make further representations in the case where the board is not going to accept the submission of the panel which heard the evidence. It is my opinion that it is fundamentally wrong to have the rights of the taxpayer adjudicated upon by persons before whom the taxpayer has not had an opportunity to appear. I am not sure, Mr. Chairman, or members of this panel if you are aware of that fact, that the judges who make the decision are not the judges who hear the evidence. Is that not a fine state of affairs? That has not been cleaned up.

Finally, a word on exemptions. This Bill exempts from assessment the real and personal property that is part of a centennial project as defined in The Centennial Projects Tax Status Act. This exemption under The Centennial Projects Tax Status Act is an exemption which even the Crown does not enjoy. Can you imagine that? Crown property is assessable, whereas property under The Centennial Projects Tax Status Act is not assessable. This means that an occupier of Crown property which is exempt is subject to taxation.

For example, I go across to the Woodsworth Building, and I lease the whole Woodsworth Building, I would be assessed as an occupier of Crown land. On the other hand, if I go to one of the cultural societies and lease property, I am not assessable. On the other hand, an occupier of property which is not even assessable is not taxed. Again, I gave the example of the Woodsworth Building which, if it were totally leased to a private concern, that private corporation or individual would be assessed with respect to the value of its occupancy and the municipality would benefit. On the other hand, if that same individual were to occupy, for

business purposes, a portion or all of a building exempt under The Centennial Projects Tax Status Act, then that individual or corporation would not be assessed. That somehow does not sit right with the people in Manitoba, I submit.

At present, there are two cultural groups which enjoy absolute tax exemption status, namely, the French cultural group and the Ukrainian cultural group.

Now I recognize that this is a political issue and one which the Government must come to grips with immediately, for there are other cultural groups who wish to enjoy the same privileges. The law, therefore, should be amended to either extend the privilege to other cultural groups or to deny it to all of them.

Your brochure, Mr. Chairman, is entitled Assessment Reform: A Commitment to Fairness. If you are going to be fair in giving any exemptions to cultural groups, then there are other groups in Manitoba who pay taxes and should enjoy the same privileges as the few. Thank you.

Mr. Chairman: Thank you, Mr. Mercury. Are there any questions for the presenter? Mr. Penner.

Hon. Jack Penner (Minister of Rural Development): First of all, Mr. Chairman, I would like to thank Mr. Mercury for the history lesson. I think there is a court case that was reiterated to some extent.

Let me get back to the amending of assessments or a person's right to appeal an assessment in any given year, which you indicate is not part of this Bill. I would argue that it is.

Section 13(1) Where, in a year in which a general assessment under Subsection 9(1) is not required, an assessor is satisfied that, in respect to the assessable property,

(a) the property is not entered in an assessment roll;

(b) by reason of

(i) an error or omission in an assessment roll entry,

(ii) destruction of or damage to the property,

(iii) altered or new improvements to the property,

(iv) a change in the physical characteristics of the property,

(v) a change in the zoning or permitted uses applicable to the property, or

(vi) subdivision of the land that forms all or a part of the property,

the assessed value of the property is not the same as the value entered in the assessment roll; or

(c) there is

(i) a change in the classification of the property under this Act,

(ii) a change in the eligibility of the property for, or in the amount of, an exemption under this Act,

(iii) a change in the boundary of the municipality in which the property is located that affects the property, or

(iv) a change in a school division, school district or hospital district boundary that affects the property;

the assessor shall amend the assessment roll by making an amending entry

in the roll that is being prepared by the assessor under Subsections 9(3) or 9(4).

Then we go on to 41(1) which states: A board shall sit each year for the purpose of hearing applications for revision under Section 42.

Section 42 says—42(1): A person, including an assessor, may make application for the revision of an assessment roll with respect to

(a) liability to taxation;

(b) amount of an assessed value; or

(c) classification of property.

I submit to you, Sir, that that clearly defines a person's right to ask for reassessment of property in any given year.

Mr. Mercury: Mr. Minister and Mr. Chairman, can I comment on that? May I please comment on that?

Mr. Chairman: Mr. Mercury.

Mr. Mercury: Mr. Minister, with all due respect, those deal with physical changes. You are not dealing with a loss in value in property.

Mr. Penner: Yes, you are.

Mr. Mercury: No, you are not. And here you have Mr. Nugent and myself, and there are others that will disagree with you, and that does not even accord with the provincial assessor, who had said this: If PCBs come into Transcona and are stored in Transcona, as they have been, and people are not going to buy properties in Transcona in 1990 and the property values go down, or if an abattoir is opened up down the street and there are odours and property values de-escalate, and the value has gone down.

Mr. Penner: It is covered.

* (2100)

Mr. Mercury: No, it does not cover it, Mr. Chairman, because what you are saying is that the assessment, the assessed value, is the value at the reference year as determined by the assessor, and he has not stated what the value is. So let him state, for example, its market value.

Mr. Chairman, I have had opinions from assessors before and we have differed. I suggest, Mr. Minister,

that the opinions that you are getting are misleading or wrong. That is my professional opinion.

I would ask the authorities who are advising the Government, if PCBs were stored next to your home and your property value went down, that would not be covered. So what is the great fear of appealing to the Board of Revision to deal with those situations? Cases are cases. We have cases that are marginal situations, but that is why we have courts. I am saying you are wrong, Mr. Minister, with all due respect, and I have been studying this subject for the last 20 years.

Mr. Chairman: Thank you, Mr. Mercury. Mr. Pankratz, did you have a question?

Mr. Pankratz: I have a question to Mr. Mercury. He stated, I think, that the farm properties should have their own assessment. i would just like to ask Mr. Mercury whether he would like to elaborate a little more on that.

Mr. Mercury: You know, you had a definition in The Municipal Assessment Act as to value and it said what the assessor had to do. That was a direction. The assessment of farm property, and I have not had much to do with farm properties, I recognize causes a problem. How are you going to define market value of a farm that has been in the family for three generations, that depends upon weather and world markets, that perhaps has very little livestock or a lot of livestock? What is the market value?

Those are very, very difficult situations to deal with and I think that, to clarify all this legislation, you have to have two values. You have to have a market value concept that deals with, fundamentally, an urban setting, and you have to have a different set of rules when you deal with farm property.

Farm property is in a category all of itself. What we are doing here in this legislation, we are trying to say, as you say in your brochure, it is market value, but you do not define it. I asked the assessor, why do you not define it? Well, we do not want to pin ourselves down. Why do they not define it?

I do not want to be representing taxpayers and have gobbledygook answers that Mr. MacDonald gave to the Municipal Board in 1968. What is value? It is typical value; it is assessed value. That does not tell anybody anything. We are supposed to clarify the law, we are not supposed to continue to make it a mystical eastern, oriental religion that no one understands, except maybe a few.

Mr. Chairman: Thank you. Are there any other questions for Mr. Mercury?

Mr. Pankratz: When land is zoned agriculture, would you, in your opinion, classify that as farm land?

Mr. Mercury: I think farm land is the actual use of farm land. If it is zoned agriculture and you have a skyscraper it is not farm land. The classification has to be tied into the property in use. If it is used as a farm—or if it looks like a duck, walks like a duck, quacks like a duck, it has to be a duck, but it depends on what its use is. If somebody is using farm property and keeping it as farm property, and someone comes along and re-zones it C-2, you can bankrupt that farmer. You are going to force him to sell. You have a political problem then.

Mr. Roch: You mention in your brief—you have actually brought several excellent points—but one line which especially concerns me is the definition of, or the fact that value if not defined. You are not, or maybe I cannot see this being quite clear in your brief, but are you saying that the definition of value should be market value and that market value should be further clarified?

Mr. Mercury: Absolutely; absolutely. You know, they had a brochure. I told you about the cross-examination of Mr. Finlay, the assessor. He said, we do not assess at market. The City of Winnipeg put out a brochure and they said, another misleading document put out by Government—the reassessment procedure for 1987 is identical to the process normally carried out during an annual assessment. Both the market value of your land and the market value of buildings on the site are evaluated.

Yet I have quoted you evidence, just from two cases that they do not assess at market. So I say to you, why continue to exasperate taxpayers, people of Manitoba, and say in the legislation what you intend to say.

I have heard the provincial assessor say, well the courts have defined it. Sure the courts have defined it, and the courts develop common law and eventually common law becomes statute law, and the statute codifies the common law. Certainly our laws have matured in this respect to such a degree that we can now codify the common law. Market value is market value, value in exchange. Put it in the Act so the assessors do not have to walk around like lawyers do with volumes of the Supreme Court of Canada to determine what the values are or what definitions are.

Mr. Roch: Have the courts, in the past, in any of these cases, defined or given any indication of the definition of market value?

Mr. Mercury: Yes, they have. The most recent decision was the decision of the Manitoba Court of Appeal. I think it was in November 1987 of the Shapiro case versus the City of Winnipeg. Other cases are cases that went to the Supreme Court, the City of Montreal versus the city assessor. Back in the '30s the Supreme Court of Canada has defined it. The House of Lords has defined it. Our courts earlier have defined it.

Let me tell you something which bothered me, and bothered a lot of lawyers in this field. Did you know that until 1985 a taxpayer could not go to the courts on the merits of a case and have the courts adjudicate, look at the evidence to see if the boards went off the mark? As a result of representations which I made to the then Minister of Municipal Affairs, Mr. Anstett, I said all this hocus-pocus and mumbo jumbo and the smoked mirrors can be cleared up if you read the

decision of Harvard Investments versus the City of Winnipeg where the Court of Appeal said you cannot appeal, legislation does not allow you to appeal, and then give the taxpayer the right to appeal.

In 1985, thank God, the province finally came to its senses and gave taxpayers the right to go to the Court of Appeal on a question of law or jurisdiction on a case, and there they could actually look at the evidence. Up until that time there were no appeals as a right to the courts. We did have those rights in the past, in the '30s, in the '40s and I think in the early '50s, but then the administration said, you know we cannot afford to have our assessors sit on these appeals; it is taking too much time, so damn be the taxpayer, take away his right of appeal, let him go before the Board of Revision or the Municipal Board, which are dominated by laypeople who are impressed with the assessors and all their gobbledegook. You do not get satisfaction that way.

We are now beginning to develop some jurisprudence in our courts in Manitoba. Thank goodness for that. We are lacking in jurisprudence in this province behind other provinces. I must say I am a member of the Canadian Property Tax Agents' Association, I go to a lot of their conferences, and our assessment laws and our procedures are a national joke. I am sorry to say that.

Mr. Roch: If I understand you correctly, if the market value is clearly defined or value is clearly defined in the Bill it would eliminate a lot of the potential problems which would force courts to . . . .

* (2110)

Mr. Mercury: That would certainly go a long way to making the legislation honest. I come back to the Minister—and I respect the fact that he is a layperson in this respect, but I hope the Minister has some credence in my judgment when I say that he must restore the right that the taxpayer presently enjoys, vis-a-vis the right to appeal inequities as they exist today, and not take it away.

Bill No. 79 now is going to take away the rights that every one of you Members here now enjoy, and you are going to take that away. I say please do not take that away. It makes it easier for the assessment department, but it is tough on the people in Manitoba who want to appeal an inequity.

Mr. Roch: On a different matter—and I will be as brief as I can. On the issue of the cultural groups and the organizations which the Government may feel deserve a break for one reason or another, would you feel, in your opinion, it might be fairer that the Government give grants in lieu of taxes in order to make up for those if they feel a certain group is deserving of funding over and above another group or other taxpayers?

Mr. Mercury: I am not a politician. I can tell you, if you are going to give grants to who you think is deserving you are going to have a problem. I would not want to be the Minister who says that the Ukrainians are going to get it, but the Italians are not; who says the Poles are going to get it, but the Icelanders are not; or the Mennonites are going to get it, but the Germans are not, because they do not qualify, because they do not have the number of friends in Government.

I think you have to treat people equally. We are all Canadians. We come from different backgrounds. We all want to be treated fairly and equitably. We all want to feel as if we are equal citizens in this province, that there are no favourite sons. The Indians do not even get the tax breaks that some cultural groups get.

Mr. Roch: What I was—

Mr. Chairman: Mr. Roch, the Minister would like to respond to the question.

Mr. Penner: In response to the point that you just raised, as far as The Consequential Amendments Act and the provisions for the inclusion of some exemptions of some of the properties identified in The Consequential Amendments Act—and I am sure you know this, that the City of Winnipeg in fact recommended the exemption to the Legislature, and therefore the Legislature responded and in fact allowed those and made provisions for those organizations to be exempted from.

That provision still stands if a municipality, or a city for that matter, in the Province of Manitoba wants to exempt a given cultural organization from taxation within their boundaries they can come forward and make those recommendations to the province and ask that those organizations be exempted. For that reason those organizations and the properties identified under The Consequential Amendments Act are there. They are clearly identified in the Act as having been amended by this Act to include the provisions of the assessable amount of exemptions allowed for in the Act.

Mr. Mercury: Mr. Chairman, can I respond to that?

Mr. Chairman: Mr. Mercury, yes.

Mr. Mercury: Mr. Minister, I know your Government did not enact The Centennial Projects Tax Status Act, and you have inherited a situation which is fraught with, what I would say, political dynamite.

You know I wrote to you on this particular matter because I had been asked by the Greek community of Winnipeg to find out whether or not—they wanted to build a cultural centre—they would be accorded equal treatment. The answer I got was to the effect that tax reform is underway; wait until you see our Bill.

I had a meeting with a senior Member of the Government and the general feeling was either you give the exemption to all or you take it away. I see that in the Bill that problem has not been addressed. I read in the paper that the Folk Arts Council is now making some waves on this.

You say, look, we are not the bad guys because it is the City of Winnipeg that came and asked us, and so we are doing it for the City of Winnipeg. You know

the buck stops here. You are the persons who enact, make the laws. You incorporate the City of Winnipeg. You are the great wise fathers who are supposed to do equity.

Since you are now introducing new law in Manitoba—talks about a commitment to fairness—I think the responsibility is on the Government and not on the city. That is shifting the buck.

Mr. Chairman: Mr. Plohman, did you have a question?

Mr. Plohman: Thank you, Mr. Chairman. First of all, Mr. Mercury, I am very interested in your comments about this being a rush job, because we happen to share your concerns. Your impression of the process, as far as passing this in a very short time line, from the time it was first introduced into the Legislature, relative to the fact that this is a very important Bill and affects so many people in Manitoba. My question to you is though: what would you suggest would be a better process, so we would get around this being what you call a rush job? What would you feel would be a fair way to deal with this in order to incorporate all of the changes that you see and improvements and others?

For example, I think it is illustrated very well the kind of rush this is. Here we have a person such as yourself, who is very familiar with this whole area from your work, who has made one presentation or would have made one presentation this morning but made another presentation as well in the evening. In other words, it substantially changed in one day. There are so many people who do not really realize what is in this Bill. Would you agree with that and would you feel that there is some other process that we should be going through to ensure that we receive the widest possible representation?

* (2120)

Mr. Mercury: Mr. Chairman, to be very frank and honest with you, I think the Bill falls short of what I would have expected to have been in the Bill in terms of fairness to the taxpayer after all these years. I do not think it would take much to make the necessary amendments, and I appreciate the fact that budgets have to be struck, taxes have to be collected in the new year. That is somewhat urgent. You know that Rome was not built in a day, and we have taken a great deal of time and pride in the fact that we have spent a great deal of time on this matter, which is basically legislation that deals with the very lifeblood of Manitobans. That is where we get our money from.

That is one piece of legislation which I think is the most important piece of legislation. Therefore, I would suggest—now this may not sit well with Members in the department—that we roll up our sleeves and do some work and do it fast. I think that Mr. Nugent, myself—and though the lawyer for the City of Winnipeg has objections to this in the question of market value—and those of us, and there are very few of us in the Bar who deal with this, would render the assistance to the department to come forward and tidy up this legislation and make it understandable, so you all can understand it.

I have a hard time trying to understand it, and if it were not for the fact that Ross Nugent today twigged on this—and we had lunch together and he was very ill and he had to go home. He said, Mike, whatever you do tonight, lay it on thick because this is really bad legislation, and it is taking away the fundamental right of the taxpayer to appeal an inequity in the year.

We, Nugent and I, have had our problems. We had to go all the way to the Supreme Court of Canada to finally straighten out the law and then we were told, you know, they really did want to freeze assessments but the legislation was poorly drafted. Now they are coming back and want to do it better. They almost—I passed up on it when I first read it hastily. Ross Nugent did not, and when I examined it over the lunch hour I thought I should come back and make a supplementary submission which was basically my main submission. Yes, do not rush this legislation. It needs improvement.

Mr. Plohman: Mr. Chairman, I appreciate those comments. Would the presenter, Mr. Mercury, feel that there are statutory requirements that would require this Bill to be passed before Christmas? In other words, the Government is wanting to have this passed before the break on Friday. We are suggesting that we have another opportunity for public hearings early in January and then proceed with amendments following that. That would give a little bit of time to prepare those. We feel that that is a realistic timetable.

Mr. Mercury: I think that perhaps some sections in your Bill may be enacted right away because you have to do certain things, but the fundamental section, such as the definition of value and the appeal process, can be dealt with rather summarily. The question of exemptions, you can take six months or eight months to deal with that. If you want to give the Italians, and the Poles, and the Icelanders, and the Mennonites exemptions, you can do that in the summertime. You can do it during the Folklorama week, or the week before Folklorama. You can do it then or before then to make yourselves popular. You can put this Bill through with certain amendments, but do not let it go through, I implore you, do not let it go through in its present form with those specific key sections.

Mr. Plohman: Mr. Chairman, Mr. Mercury suggests, demands actually, that the market value be defined, or that value be defined as market value and market value be defined. Mr. Nugent suggested this morning that the definition in The Expropriation Act is a good one, or the one in Ontario. Do you agree with that, that would be all that is required to borrow that definition and use it here?

Mr. Mercury: I would think that I have not—to tell you the truth, I have not looked carefully at the definition of market value in The Expropriation Act, but those people who deal with evaluations know what market value means. It is defined in every manual, Marshall and Swift and Boeche manuals, the Appraisal Institute defines market value. I do not think that is a problem.

You can do that very quickly, but I do think you should also talk to the members of the Bar who deal with this technical subject to refine that and get that out of the way. You are not expected, as lay people, to understand or get into those technicalities. You are leaning on your advisors, and I think I have a strong difference of opinion between myself and Nugent on one hand, and what your advisors are saying on the other hand.

Mr. Chairman: Mr. Plohman, do you have a final question?

Mr. Plohman: No, I have two questions, Mr. Chairman. When you first made your presentation, I was under the impression that there was no provision in the Bill for appeal between reference years, but after Mr. Penner (Minister of Rural Development) made reference to Sections 13 (1), 41 (1) and 42, dealing with the opportunities for appeal, I thought that maybe your concerns were narrower than you first had indicated to the committee. I really would like some clarification there.

It seems that what you said in response to Mr. Penner is that there are certain situations that would not be appealable, such as non-tangible things like odours, or hazardous goods stored nearby, or other problems that may result in the land being worth less than it was at the time it was assessed, that those would not be appealable. I would agree with you. It does not seem to make reference to that in Section 13 (1), but there seems to be a lot of grounds for appeal which seems to be contrary to what you have led us to believe initially. Could you clarify that?

Mr. Mercury: Yes, I would be happy to. Those provisions that the provincial assessors pointed out to the Minister were in essence the same provisions which gave supposedly rights of appeal to taxpayers when Bill 100 was enacted. For example, Bill 100 said that making assessments for the year 1981 and 1982 the assessor shall use the same level of value that he used in making assessments in 1980. The courts interpreted that as a freeze in Manitoba.

There was a section in that Bill which really threw off the legislators, because if they knew the real intent, they would never have passed Bill 100. Section 5, and it is appended and my first submission said this, and I will read it for the record:

> Where after the assessment of any land, building or personal property was made for the assessment roll for the municipality for 1980, the value of the land or building is altered because,

and I am answering you now, Mr. Minister,

> a local improvement benefiting the land, building or personal property is installed or constructed; or
>
> a new plan of subdivision of the land is registered, or
>
> zoning or building restrictions affecting the land, building or personal property are enacted or varied or the committed use of the land is regulated or varied in accordance of the law; or
>
> the land, building or personal property is improved or altered in a manner not reflected in the assessment thereof for the assessment roll for the previous year; or
>
> a building is erected, constructed or completed on land, and the erection and construction or completion of the building is not reflected in the assessment of the property for the assessment roll for the previous year; or
>
> a building or improvement or personal property is demolished, destroyed or damaged; or
>
> the use of a building or personal property is changed, the assessor shall, for the purpose of preparing the assessment roll for the year'81 and'82 in both of these years assess the land, building and personal property as though, et cetera, et cetera, et cetera, and you could appeal against that.

* (2130)

When all the property owners on Portage Avenue, between Eaton's and The Bay, both north and south, between Memorial Boulevard to Notre Dame appealed their land assessments, Mr. Sanford, the city solicitor, went charging off to the Court of Queen's Bench and said, you cannot appeal. There is a freeze. Even though you have these provisions, there is a freeze. The purpose of the legislation was to freeze the taxpayers' right to appeal values in general even if these changes did not take place.

My learned friend Mr. Sanford, who is in the audience today, succeeded in persuading the late Mr. Justice Wilson that there was a freeze, so the taxpayers had no remedy. Mr. Nugent and I appealed that to the Manitoba Court of Appeal. Chief Justice Freedman, Justice Matas, and Justice Huband all agreed with Justice Wilson and they threw us out. Well, an application was made for leave to the Supreme Court of Canada. It was granted. The Supreme Court of Canada unanimously reversed the courts of Manitoba.

The Free Press wrote an editorial saying, the drafters of the legislation did a bum job. They tried to freeze, they thought they had frozen, and they did not do a good job. Now they are trying to do it and they are giving you the same argument, the same reasons to appeal these changes. Those are physical changes.

It does not deal with the fact that in between periods of assessment on Portage Avenue you had shopping centres develop, that the relative values of properties in the City of Winnipeg downtown versus outskirts had dramatically changed; where you found the land under the Woolworth store in downtown Winnipeg was paying more in taxes than all the lands of the St. Vital shopping centre; where you found the Clarendon Hotel land was assessed at $39 a square foot and the land under the Winnipeg Inn or the Westin at $2.60. The courts said that is inequitable.

You were piling on mill rates on these people on Portage Avenue until you choked them to death, until you destroyed downtown Winnipeg because the assessor did not do equity and because the Province

of Manitoba enacted legislation which was finally unstuck on December 15, 1983. Then you expropriated the property on December 15, 1983. What was the market value of 1983? You held up the taxpayers for those years, and the city coughed up $10 million.

I am saying to you, from my experience, this legislation is bad unless you ensure that the rights which the taxpayer presently enjoys today, right now, are continued in this Bill.

Mr. Plohman: Yes, Mr. Chairman, I would just ask the presenter whether he would suggest that an amendment could be made in 13(1) to include that kind of appeal mechanism which he suggested, or in 42. Or has he looked at the suggested placement of such an amendment in the Bill, and the kinds of wording that it might include?

Mr. Mercury: I cannot do any drafting right now but I will tell you what I would like to see in the Act. I would like language in the Act which would mirror the language of the courts in Nova Scotia and the rules in Nova Scotia which would give the taxpayer this right, and I think the Nova Scotia legislation is very good legislation. There you appeal, not to a board of revision, but to a county court judge, dealing equity.

The court of appeal in Nova Scotia in the case of Hebb versus the town of Lunenberg stated, a county court judge in an assessment trial de novo should apply the Section 38 rules as directed by Chief Justice Illsley. This is what your board should do, if you could codify this in the law you would go a long way to satisfying our concerns. He should, I suggest, first ascertain the actual cash value of the property under appeal and determine the ratio of the assessment to that value. That is easy to understand. He then should determine the general level of assessment relative to the actual cash values of the properties in the town or municipality generally. To do so he should ascertain on the evidence before him whether the general assessment ratio is what the assessor states it is or whether it is a different ratio.

In most cases lack of other evidence may compel him to accept the assessor's ratio. If the ratio is thus higher, the judge should reduce the appealed assessment to conform with the general ratio. What that means, if you wrote in your legislation words to the effect that say, irrespective of how the assessor makes his assessment, let us say he does it as of 1985, '86, '87, I do not care. Whether he uses mass appraisal techniques, I do not care how he does it as long as he gets to a product, a result.

Then the taxpayer comes along and he says, this is the assessment and here is proof of my market value today. You contrast the assessment to the market value and you determine the ratio. Then I would say the legislation should compel the assessor, because he has this information, to tell the administrative tribunal what the general level is as of 1990. It may be 80 percent, it may be 75 percent of current market, and therefore the administrative tribunal should be directed to fix the assessment in relationship to the current specific market value of that property generally as it exists in the municipality at that time. That is what is done in Nova Scotia, that is the common law in Ontario, and that is what is happening in many jurisdictions. I say you can do that quite easily and that is what should be done.

Mr. Plohman: My last point following this, Mr. Mercury's outline is basically what is in his paper for determining market value or fair value for land, or for property. I just wanted to ask him one question to follow up in dealing with the two-value system. Mr. Mercury, you said that you felt there should be two values, one based on market value once it is defined, and one on agricultural value of land.

Mr. Mercury: That is a separate category.

Mr. Plohman: Yes, but would you suggest that the two-value system that was outlined in the Weir report on farm property would be satisfactory to deal with that issue that you raised? I do not expect you to be intimately familiar with the report.

Mr. Mercury: It has been a long time since I read the Weir report, but I do recognize the difficulties with farm property, and I do think that there should be a special chapter written about it in dealing with value.

Mr. Plohman: Just one last point, Mr. Chairman, I think it has been suggested that Mr. Mercury might be out of a job if taxpayers could understand these Acts in everyday language as he is suggesting. He may be working himself out of a job by suggesting that the language be so clear that everyone could understand it.

Mr. Mercury: I am not looking for work, there is a lot of work out there, but I do feel sorry for those taxpayers on Portage Avenue who for years should have had their equity done, but they did not have it done and they had to go to the Supreme Court, and that was only for two years or three years. They ultimately received $10 million for a short period of time so you can imagine the gross injustice that befell those property owners and the benefits others were enjoying at their expense, all of which damaged our downtown to the tune of at least $200 million that we have had to spend on Core Area Initiative. All this money, just to restore the downtown and make it something which at one time we were proud of.

Mr. Chairman: Mr. Uruski, do you have a question?

Mr. Bill Uruski (Interlake): Mr. Chairman, to Mr. Mercury: in your brief on page 13, dealing with the appeal to the Board of Revision to a panel which may make a submission, you are indicating that if the entire board does not agree with the submission of the panel, the taxpayer should be heard. Should the right to be heard not be there? There may be cases where the board will in fact reverse the decision of the panel, which may have gone against the taxpayer in the first place. That would be a possibility, would it not?

* (2140)

Mr. Mercury: It certainly would. Now I am not privy to those deliberations, but when I go before the Board

of Revision and the chairman of the panel says to me—he blurted this out once, and he said it to my client and other taxpayers sitting in the boardrooms waiting to have their cases heard—not once, but on other occasions, you know, our power is only to recommend. We do not have the power to make the decision, the order. This means that those panels really are just messenger boys. They make the recommendation and they go to the full board, and the full board decides. How can you have, in this day and age, judges deciding cases, who have not even listened to the evidence? I am amazed.

Mr. Uruski: Mr. Chairman, is it your experience, Mr. Mercury, that when you have gone before a board or representatives of the board, that a recommendation is generally rendered at the time that the taxpayer or his representative is before the board?

Mr. Mercury: No, it is not.

Mr. Uruski: Then what you are saying is that the taxpayer does not know what the recommendation is, nor what the decision may or may not be.

Mr. Mercury: We do not know the recommendation of the panel. All we get is a letter from the secretary of the board, saying that the assessment is confirmed or it is reduced. Now very rarely will they even give you reasons and so lay people do not even know what is going on. That is not fair.

Mr. Uruski: Does Mr. Mercury have any suggestions in which this might be improved? It does not have to be at this meeting, but if he has, I would be pleased to hear from him.

Mr. Mercury: Yes, I notice that the deputy mayor of the City of Winnipeg is here, and perhaps he might listen to this. I think that the Board of Revision should have a chairman who is a permanent member, and he should be paid a reasonable salary and be there full time, so there is some continuity. They can have their panels, and have a person who understands assessment. You do not have to have 29 or 30 members of the Board of Revision simply because the city wants to dole out some patronage to people who do not know the first thing about assessments.

I was before a panel earlier this year. When I was asking a question of the assessor, and I asked if I could see his field sheet, the chairman of the panel said, what is a field sheet? We have never seen a field sheet before. The field sheet is what the assessor uses to calculate the assessment. The chairman of the panel said to me, you are wasting our time. You know, Mr. Mercury, I saw this property last night and I have already made up my mind. We have lay people, well-intentioned, but not knowledgeable, making so-called recommendations to people who do not even hear the evidence. So I do think you have to have a full-time chairman of the Board of Revision, as you do with a municipal board. I do not think you need 29 or 30 members. I think the City of Winnipeg would be well advised to cut that down to 15 people or 12 people who are somewhat knowledgeable in this business, and have some continuity and develop some jurisprudence at the board levels.

Mr. Uruski: Mr. Chairman, your suggestion may be fine for the City of Winnipeg, but when you start going out of the boundaries of Winnipeg and hitting rural Manitoba, you have 100 or more municipalities, some of which are a couple of townships in size, and usually four or five very community-minded and good-willed people who as well do not understand the system. What would you suggest in those areas? Some other process, other than what you have recommended for the city, would likely have to take place.

Mr. Mercury: I do think that in the towns the Boards of Revision usually consist of members of council, and I do not think they go and recommend, do they? I am not sure, I think the Board of Revision in the rural municipality that hears the evidence makes the decision. In the City of Winnipeg the panel of the Board of Revision that hears the evidence does not make the decision. I think that is contrary to the fundamental principles of British justice.

Mr. Chairman: Thank you very much, Mr. Mercury, for your time this evening.

Mr. Mercury: Sorry it took so long.

Mr. Chairman: We have a couple of out-of-town people who would like to—we realize it is a very cold night, and we would like to hear their presentations. I hope Mr. Golden does not mind if we call Mr. Cook and Mr. Kuzminski before him. I hope you do not mind, Mr. Golden?

Mr. Al Golden (Private Citizen): My presentation might be at a future date. Our City Council is dealing with this matter tomorrow, and I would very much like to make my own representation on my own behalf after I have heard Council's position. My matter could be laid over to a future date.

Mr. Uruski: Mr. Chairman, just on a point of procedure. As I understand, we have agreed to hear out-of-town submissions. Perhaps being the time of evening now, we may want to decide that those two out-of-town, or how many out-of-town submissions there are, that will be the end of our submissions for tonight, being the lateness of the evening as it is already, and the coldness of the night, and that we will advise Members as to future sittings. Or have we already decided as to future sittings?

Mr. Chairman: Tomorrow. Tomorrow evening.

Mr. Uruski: Maybe we should be saying to delegations that other than the two out-of-town submissions, the rest will be heard tomorrow.

Mr. Golden: Mr. Chairman, if I might also—

Mr. Chairman: Just a minute, Mr. Golden. Mr. Minister would like to—

* (2150)

Mr. Penner: If it be the panel's wishes, and if necessary, we can sit tomorrow night. We can also sit Thursday morning as well as Thursday evening if it is deemed necessary. I think we want to hear as many groups or individuals in this matter as we can, and want to be as open as we can, and let everybody voice their opinions properly. So we will take the time that is required to hear as many people as we can.

Mr. Golden: Mr. Chairman, I never received any notice that I was to appear this morning. I heard on the news the hearings were being held, and Mr. Mercury informed me that I had missed my appointment for this morning, that I was not aware of. I have problems as well in that we have meetings scheduled; I have responsibilities. If I could receive some reasonable notices as to when I am expected to appear, in case it conflicts with my other responsibilities.

Mr. Chairman: Thank you, Mr. Golden, but I understand you were notified; the message was left on your answering machine. But we will notify you. You want to come back tomorrow night, or Thursday? When is it you would like to come back, Mr. Golden?

Mr. Golden: Well, tomorrow we have City Council meeting, and some of my colleagues are long-winded, so it may be late. I am not sure if I am going to be available tomorrow.

Mr. Chairman: We could accommodate you on Thursday.

Mr. Golden: Thursday would be fine.

Mr. Chairman: Mr. Taylor was first here, Mr. Plohman.

Mr. Harold Taylor (Wolseley): Mr. Chairman, why do you not just follow along with what the Member for Interlake (Mr. Uruski) was bringing up? Are we going to be dealing with delegations tonight in the fashion that those who have the greatest distance to travel will be given first consideration?

Mr. Chairman: That is what we said when we first started, Mr. Taylor.

Mr. Taylor: That is not the indication I got from the names that you just brought forward. They are people who are relatively close to the city, and if there are people that are from an hour's drive out, I think those should be—

Mr. Chairman: Mr. Taylor, when we first started, we asked the people who are from rural areas to stand, and we have identified them—

Mr. Taylor: —realized what happened. I am not sure that the information got on the table, and that is why—I was talking to some Members—I brought it up.

Mr. Chairman: Okay, thank you—Mr. Plohman.

Mr. Plohman: Mr. Chairman, I think it is clear that we have, in terms of House business, agreed that there will be a sitting if necessary tomorrow night to hear the rest of the presentations or to hear presentations, maybe not the remainder of them depending on the time required, but we have not made any decisions about sitting any other time beyond that. There are some of us who would like to have some sittings in the new year as well. That also has to be decided. But I think by assuming at this point that we are going to be sitting Thursday, when we may very well complete those that are already registered tomorrow evening, I think it is premature.

Therefore, I would say that we would ask Mr. Golden, and give him as much flexibility as possible tomorrow evening to try to work his presentation in tomorrow night at some time during that evening. He does not have to come at a specific time, but hopefully before ten o'clock. To get his presentation, we should try to be as flexible as possible to do that.

Mr. Chairman: Yes. Thank you, Mr. Plohman. I hope that answers your question, Mr. Golden.

Mr. Golden: Yes, Mr. Chairman, if the timing of our council meeting tomorrow will allow, I will be here immediately following the council meeting.

Mr. Chairman: Thank you.

Mr. Golden: Thank you.

Mr. Chairman: Okay, I would like to call Mr. John Cook, please.

An Honourable Member: I would like to make a—

Mr. Chairman: Before you start, Mr. Cook—Mr. Pankratz.

Mr. Pankratz: Mr. Chairman, I would like to bring to the attention of the members of the board that I think in all fairness to all our Members that are going to be making representation as to which we dates we will be hearing them. In that respect I would wish that we would be able to confirm that if we do not finish tomorrow, we would sit Thursday morning to hear the balance and Thursday evening if required.

Mr. Chairman: Okay—Mr. Plohman.

Mr. Plohman: Mr. Chairman, I think that is a matter for the House Leaders to discuss tomorrow. We already have a meeting set up. Certainly we can at that time discuss something like that. It is a hypothetical nature at this particular point, and certainly not the place for it. If we want to do this while the public is waiting to make presentations, we have certainly a way to make them very upset and annoyed, and I do not think the committee is doing itself justice by discussing it at this point.

Mr. Chairman: Right, I agree. That is an item for House Leaders to decide tomorrow—Mr. Cook.

Mr. John Cook (Springfield Agricultural Ratepayers Association): Mr. Chairman, members of the Legislative Review Committee, I was asked by the Springfield Agricultural Ratepayers Association to present two concerns to the committee, which I will do tonight. I will start off by saying the Springfield Agricultural Ratepayers Association is a group of agricultural land owners, and they are rural municipality of Springfield who have been concerned about the addition of a T.3 residential assessment value to T.4 agricultural land as well as the educational costs that were being assessed on agricultural land.

The Springfield Agricultural Ratepayers Association would like to express the following concerns regarding Bill 79:

> Bill 79 does not appear to consider the impact of high-value city and town assessments being applied to adjoining agricultural land with the resulting detrimental effect on the future agricultural capabilities of the adjoining land—an example, real property taxes rising above the productive capability of these lands which will cause the future loss of ownership and possible abandonment. Other provinces have recognized this problem and have made the necessary changes in their legislation to prevent this.
>
> Bill 79 has recognized the high educational cost that has been placed on agricultural property. However, it does not appear that the removal of the educational support levy from agricultural property, with the addition of the educational support levy on farm homes, Residential 1, as well as the special levy for education being placed on all agricultural property including farm homes will correct the educational cost inequity that exists between the agricultural and rural residential uses in the provinces. There is a definite lack of information available to the citizens of Manitoba to enable them to properly assess the impact of Bill 79, and a shortage of time to prepare a brief to present at this hearing.

Thank you.

Mr. Chairman: Thank you, Mr. Cook. Are there any questions for Mr. Cook? Mr. Roch.

Mr. Roch: If I understand you correctly then, what you are saying is that farm land should be taxed as farm land no matter where it is located.

* (2200)

Mr. Cook: Yes, we believe that an agricultural property, whether it is located adjoining the City of Winnipeg, City of Brandon, or the Town of Oakbank, if you wish, has productive capabilities. It has a requirement to pay a fair equitable share of the costs incurred regarding education, road services, and other community services that we all enjoy. We recognize that, but I think it is coded and classified as agricultural land, and it should be assessed as agricultural land—not as something else, not having some future interpretation of what a future value may be, being applied to it at current times, but what exists at the time of the assessment.

I think the codes and classifications we use in Manitoba do, in their own right, identify the different uses of property. They identify whether the land is industrial land, agricultural land, residential land, or whatever it is. The Agricultural Ratepayers Association from Springfield is of that opinion that to achieve equity use must be a consideration in evaluation.

Mr. Chairman: Thank you. Mr. Uruski was first, Mr. Findlay—Mr. Uruski.

Mr. Uruski: Mr. Chairman, to Mr. Cook, just so that I understand your presentation, you indicate that use should be the prime factor in calculating the assessed value. Would the sale of farm land or market value, as has been debated today, for farm use also be a contributing factor to assessment?

Mr. Cook: It has been a customary method of attempting to arrive at a value of agricultural property as well as other properties. If there is a situation, and this was touched on by the previous presenter—and I come from a situation very similar where I am on a third-generation farm operation, that land has not moved—it is very difficult to establish a value. It does have a productivity value. I am not suggesting that the productivity value is the correct value. It certainly is not the value that we would like to see on it from that point of view; the productivity value is much different.

Mr. Chairman: Mr. Uruski, do you have a further question?

Mr. Uruski: Just for clarification, just that Mr. Cook and I are on the same wavelength, as I understand you to say in the first paragraph, you talked about residential assessment to agricultural T.3 and T.4 assessment. Am I correct in assuming what you are saying is that, if the land is being farmed but yet there may be residential development on that same quality of land in the same area, do not assess the land that is being used for farming at the value that the other land was being sold?

Mr. Cook: That is correct. I could expand slightly. I do not want to get off track, but within our municipality of Springfield, we have a residential zoning that is identifiable; it has been done on maps. It varies right across the municipality. At the far eastern portion, it starts at $600 of assessment for a five-acre parcel. I think in some portions to the western part of the municipality it goes up to $6,000, and it varies across the municipality. This is the basic assessment for a five-acre parcel. So this is a residential value. Our objections going back—and it is slightly away from what is in this presentation—to the T3 residential assessment value, these value increments were initially applied, I think in 1976, to the home farm quarter with the homesite on it, that additional assessment was placed on the farm base.

In 1985-86 when the assessment came out this incremental value was applied to all titles, all agricultural titles, 40 acres and up. It was a very inequitable system. When in some odd parts of our municipality there is a number of 40 acre parcels of land that have been

assembled into productive acreages. When you add an increment of say $1,200 on a 40 acre parcel and assemble those parcels into a land rental base the taxes become exorbitant, equity is lost.

Mr. Uruski: Mr. Chairman, to Mr. Cook, would your group or yourself be favourable to the suggestion that, in the event agricultural land that has been assessed for agricultural purposes, as you say, was eventually rezoned and sold for a higher value, there should be a recapture over, say, a five- or 10-year period of that higher assessed value that that land was sold? Would you be disposed to such a provision if that was available in the Act?

Mr. Cook: I have given it a lot of thought and I have not really come to resolve that in my mind at the present time. I do think if that direction becomes necessary that recapture should take place at the time of rezoning and should be assessed against the applicant for the rezoning, the applicant and the recipient. If it is the same person, fine. That is the person who should pay the recapture, not the long-term owner if you wish, that is an opinion.

Mr. Uruski: Mr. Chairman, one or the other will have to pay it if it is changed. You are in agreement that we as farmers cannot have it both ways. We cannot sit on the land and say, today is my day I am going to cash in my chips from farming and sell it for residential development and say it is all mine, knowing that other people or at least people, for example, in the City of Winnipeg, or in the boundaries of Winnipeg have been complaining about that very situation, saying we are now being assessed for farm land at residential development rates and you are killing us with the assessment in our taxes. We cannot have it both ways.

Mr. Cook: You are saying if you assess at agricultural values, then you require recapture. If it is necessary, it is necessary, I am not adverse to paying my fair share of taxes. No way. Say someone—like you were saying, we are close to the City of Winnipeg, we move out and we go to the eastern part of the municipality. In the last 50 years real property has escalated in value and maybe in the next 50 years it will de-escalate. Who knows? However, is it wrong because the economy is rising we have to deal with 5 percent to 7 percent inflation? We have dealt with that now for a number of years. Should there not be some benefit to the property owner from that inflationary factor that he has to deal with.

Mr. Uruski: Mr. Chairman, I would say that in terms of the assessed value, if market value drops and correspondingly assessment should drop so that there is a movement along the lines of the market, but in terms of saying that our rate as farmers, and I being a farmer to say that I want a lower rate based on the productivity of my land and not totally tied to the market value, then I cannot argue to say that I want to keep all of those benefits and then some, if I am given the ability to rezone and sell for a much higher value. Then the rest of society in effect says, well, then you have something that we may not have had an opportunity to get.

* (2210)

Mr. Cook: I could be receptive to that type of thing. Like I say, I just have not resolved that completely in my mind.

Mr. Findlay: Essentially I wanted to ask the same question: whether you are prepared to take agricultural value now and then retroactively pay tax for five years if you sell it for something other than agriculture, and you are not so inclined to accept that outright at this point. What I would really like to ask you is, you have used the words, pay taxes on the basis of productivity value or agricultural value. Could you define what you mean by agricultural value or productivity value?

Mr. Cook: Productivity value is an allusive sort of value, it is like any other value that is very difficult to establish. I could not give you a definition of productivity value without going back through my records and developing figures. My basic projection regarding productivity value at the present time is $200 an acre. Land has been selling in some areas for $200 and in others much more. Whether the higher value is productivity or speculation, or what it is, I have never tried to determine. There is a certain amount of speculation involved and there is a risk in that.

Mr. Findlay: Just one more quick question. My understanding, my interpretation of productivity value is what the land can produce in terms of dollars per acre, and the tax should be a portion thereof. In your mind do you have any idea of what the portion thereof should be?

Mr. Cook: What proportion of the productivity should be considered to be assessment?

Mr. Findlay: Of the earning power.

Mr. Cook: I have not dealt with it really in hard terms. It has to be worked out at a level that all residents or property owners, citizens in a municipality pay their fair and just share of the costs of operating the services that are necessary to them education, roads, and so on, things like that. If your farm family is taxed at a comparable level to a residential use, both activities, the residential user goes to the City of Winnipeg for example, or to the Town of Beausejour or wherever, creates a family income, comes back home and enjoys the amenities of our municipality for an example, while the farm operator stays home and uses the land base to do the same thing, I think they should be somewhat comparable in the costs of their taxes for funding goods and services.

Hon. Glen Cummings (Minister of Environment): Yes, I think my questions were essentially answered. There is one aspect to establishment of a different level of taxation for agricultural land that is also receiving value for urban pressure. One of the reasons that this causes problems, as we have discussed on a different time and place, is that also some of the prices that start to fall into place are also driven by the farmers themselves where there is expansion and they are competing for

the property. Therefore, I would simply ask if you support the concept of a market value assessment as this Bill is based on?

Mr. Cook: If it is a true market value and it is identifiable, it should be something that we can all live with, as long as we can identify what market value really is. Market value should be something that is established here and now. Not something that may happen 10 years down the road or 20 years down the road or whatever, not somebody's perception as to what might happen but what is happening now. I think we could probably live with that.

Mr. Taylor: That is where we want to be. Mr. Cook, earlier in the discussion you were talking about the productivity value of a farmer on a per acre basis. It strikes me that might be a rather different but maybe effective way to deal with the whole problem of revenues to a municipality. Are you really talking about moving toward some form of municipal income tax?

Mr. Cook: I do not believe I am.

Mr. Taylor: Is the earning of the farmer therefore the amount that he or she would pay to that municipality? Are you going on down the—I am trying to understand the concept you are presenting to us.

Mr. Cook: No, I did not have any concept such as that in the back of my mind, none whatever.

Mr. Taylor: In discussions, did the Springfield Agricultural Ratepayers Association have ideas as to how productivity value could be established to go at assessment in a different way? Was there any brainstorming done on that?

Mr. Cook: We have not struggled with that term. Productivity value, and I think in the minds of the ratepayers association is—I figure that they have to consider in depth when they are attempting or initiating a land purchase. The productivity value is the criteria that is necessary to make a decision, not the market value, but the productivity value.

Mr. Plohman: Mr. Chairman, just a couple of quick points. I think that the assessment branch has been able to do that for some time now, judging by this brochure that was circulated by Mr. Meyer earlier. They have obviously developed a set of criteria that determines the value of agricultural land based on productivity and a number of other factors, certainly not based on the market value that would be determined on the basis of industrial development or other pressures for development that might take place. I think the system is there, and I believe they can do it.

Mr. Chairman, I want to ask through you to the presenter, Mr. Cook. You make the point that there is a definite lack of information available to the citizens of Manitoba to enable them to properly assess the impact of Bill No. 79, the shortage of time to prepare.

What would you feel is necessary? Under ideal circumstances, what should the Legislature, what should the Government be doing on this kind of an issue? Considering that this has been in the making for some eight years, in terms of following up on the Weir Report, what should be done now, and how much time should be taken? What kind of information should be going out to the people of Manitoba?

Mr. Cook: Mr. Chairman, the Ag Ratepayers Association uses our local municipality as a link between the municipal citizens and the provincial Government. I obtained a copy of Bill 79 from a municipal office and kept in contact with them, expecting further information to come forward to that municipal office to enable citizens to evaluate. I checked last week and there was no further information available at that office. I think that our municipal offices, our municipalities, are our citizen link to our provincial Government. I think the information should go out to the municipal offices and there it can be distributed out to the citizens. I think it is an efficient method.

* (2220)

Mr. Plohman: Are you saying, Mr. Cook, that the municipalities have not been asking for the information that they need, or that the onus is on the Government to get that information out to the municipalities?

Mr. Cook: I would think that I would place the onus on the Government to send it out. On the other hand, I suppose if I was sitting at a different chair, I just might take the reverse opinion and say, well, maybe it should be asked for. You do not ask for something if you do not know whether it is available or not. If it is available, I think it should be sent out with the request that this municipal office notify their citizens. There are a few people, and interested key groups, and interested people that they know about and can contact, who will take the information around.

Mr. Plohman: I could not agree with you more, Mr. Cook, and that is why we would like to have some time for others to make presentations as more information gets out about this Bill.

Mr. Chairman: Mr. Minister, Mr. Penner, here.

Mr. Penner: For the information of the committee and Members or interested parties present, it has always been our intention to provide the municipalities or interested parties with the information that has been asked for. It has been clearly stated on numerous occasions and meeting with municipal organizations that if they would want further information on the Bill, our staff would be available to come out and discuss Bills with municipalities, or individuals, or organizations or myself.

I have made myself clearly available at any time when the requests were made to discuss not only the intent of the Bill but the contents of the Bill. Therefore I am, I guess, somewhat taken aback that there are people in the province who are wondering or need further information on this. If there are those people, by all means, we will certainly do our utmost to come out

and make information available to individuals and/or organizations. We have, I think, clearly indicated to all the municipalities that there is an 800 number that they can call. All they need do is pick up the phone and say, would you come down and give us more information on it.

Mr. Chairman: Did you want to add anything, Mr. Cook?

Mr. Cook: I will say thank you, and I will personally take that message forward.

Mr. Chairman: Mrs. Charles has a question.

Mrs. Gwen Charles (Selkirk): Could the Minister inform us what packages were sent out to the municipalities? Were they given a copy of the Bill and the overview of the Government, plus brochures in any numbers for each council member?

Mr. Penner: Yes, there were packages of information sent out that contained the Bill. Also, a defined version, a short version of the Bill, and also brochures were sent out to the municipalities for information.

Mr. Chairman: Thank you very much, Mr. Cook, for your presentation.

Mr. Cook: Thank you, I appreciate the opportunity.

Mr. Chairman: Before we go on to our next presenter, Mr. Kuzminski, the Minister, Mr. Penner, would like a minute to explain something here.

Mr. Penner: We have—and this might be somewhat unusual, but I feel that in order to save time—spent a substantial amount of time discussing the area of market value. Maybe it would be useful if I indicated to the committee at this time that it is my intention to bring forward an amendment to the Bill that will deal with market value. If we want to accept that, that might save us some time. It would reflect very closely the area that is dealt with in The Expropriation Act, that was referred to before by Mr. Mercury.

Mr. Chairman: Thank you, Mr. Penner. Mr. Kuzminski, we have your brief, it is being distributed right now. You can start if you would like.

Mr. John Kuzminski (Private citizen): Mr. Chairman and members of the committee, I am a farmer and at the same time a seed processor. In Manitoba we have approximately 230 authorized seed plants. Authorized seed plants means that we are authorized by Agriculture Canada. We pay a fee to Agriculture Canada for this authorization, and there are others as well. This brief of mine is going to be in regard to all seed plant processors in Manitoba. We will just start off with this grain cleaning process.

You have a schematic here of a seed cleaning plant, this one here. If you follow this thing—I will read this first paragraph to you: Grain is unloaded and deposited into the receiving conveyor located outside the east wall of a building, and is then taken up by a receiving leg to a side-draw hopper bin (identified on drawing as north or south bins) located outside the east wall of building, or to Bin 1 located above forever-cleaner.

Cleaning Mills, inside the building. After grain passes through the forever-cleaner, it goes up a leg to a surge bin and passes through the carter disc separator cleaning mill and then again into a leg up to another surge bin, then passes through the 245 shell cleaner, then again into another leg to a hopper bin, which is located in the interior of the building, for bagging or to load-out Bin 1 or Bin 2 (located outside the south wall of building) for bulk loading into trucks. All screening from the three cleaning mills fall into a common surge bin (located beneath the floor of the building) and is then moved by an auger to a screening leg located outside the west wall of the building to a screening Bin 1 or 2 for bulk loading into trucks.

When you look at the assessment, the north bin and the south bin, Bin No. 1, outside bin, Bin No. 2 and the screening bin are all assessed. When grain comes into the north bin or the south bin, the only way that grain can come out of those bins is through the cleaning process; otherwise it becomes part of the cleaning process. Because you cannot take that grain out any other way, it has to go through the cleaning. When it enters, grain that comes into the hopper Bin 1 or Bin 2, that again has to be taken away before you can do any more cleaning.

If there is—let us say a farmer brought his grain in and I do customer cleaning, brought his grain in and it is in Bin 1 and he says, I am going away to town and I am going to come back. Well, fine, but I am cleaning for another customer and I put the grain in Bin 2. He has gone away. The farmer never came back to pick up his grain from Bin 1; the grain is in Bin 2, that farmer is not back; and I have got a customer to start cleaning a third bin, I cannot start this customer because they have no place to put the clean grain. So otherwise, these bins that are in here, the holding bins, are all part of the processing equipment; all part of the processing equipment. The mills, there is nothing that is taxable as far as the mills are concerned.

* (2230)

This pertains to all seed cleaning plants in the Province of Manitoba. What we actually need, we need a definition to define this. I believe, in the assessment Act, there is nothing in the assessment Act to define seed plant processors in Manitoba and there is approximately 230 of them. In the present assessment Act you have railroads, you have gas lines, you have pipelines, you have elevators, but there is nothing on seed plants. There are more seed plants in Manitoba than there are these that I have mentioned, and there is nothing in for seed plants.

Now, it is quite hard. I have visited many other seed plants and their assessment is completely different in every one of them. Some are assessed; some are not assessed. How much easier it would be for the assessor, if he can define what is processing equipment and what is not processing equipment.

To define this—let us say all equipment used in the processes of seed cleaning, holding bins used incidental

thereto, I mean that holding bins incidental to seed cleaning. Other bins incidental to storage of grain fall on a different category. You have two categories of bins: you have storage bins; you have holding bins. These holding bins are part of your seed cleaning processing; that is what they are and therefore I believe that these items should have a definition in it. These items are a taxable item.

If you look in a letter and this is dated August 28, 1987, from Mr. Roberts, a provincial engineer. He looked at my schematic and the first question he asked me: when you put grain in the north or south bin, can this grain be taken out and put back on that truck? I said, no, there is no way of getting that grain back on that truck. It has to go through the cleaning process.

Now if you read, he says, further to our discussion of August 20, 1987, I have considered the function of the bins in your plant and believe that they should be considered as components of process. Their function is dynamic not static as is normally the case with structure. The bins are also dedicated to service to the cleaning operation and could not, with the spouting arrangement that is provided, be utilized as part of a normal farming operation. These bins are a necessary device, providing a buffer function between two other pieces of equipment. They are also used to control the flow of seed to the plant. In short, the bins are an integral part of the process and serve no useful purpose other than to complete the process flow to the seed cleaning plant.

I also have talked to Ron Britten (phonetic) from the University of Manitoba. He is an engineer at the University of Manitoba. He also looked at this schematic and he agreed that this is processing equipment. I also talked to Dave Huminicki from the Department of Engineering in Manitoba. I also got a letter from him. He states that this is processing equipment. I have also had Mr. Brown over at my place a couple of years ago. He is quite familiar with this set up.

I believe, this is not only for myself, this is for all seed plant processors in Manitoba. It does not matter whether a guy is doing custom cleaning, doing commercial cleaning, buying grain or selling grain, if this equipment is processing equipment, then this processing equipment should be exempt, there would be no ifs or buts about anybody, either commercial or not commercial.

Mr. Chairman: Thank you, Mr. Kuzminski. Are there any questions to Mr. Kuzminski? Mr. Findlay, did you have a question? Mr. Findlay.

Mr. Findlay: Did I get your conclusion right? Did you say that seed cleaning plants should all be exempt?

Mr. Kuzminski: I did not say exempt; I said—My building is taxable. I am not complaining about the building that the seed plant is sitting in, but these bins. Some of the seed plants, these bins are fed with an auger; mine are fed with an elevator, an upright elevator, that is how they are fed. Some are fed with an auger. I mean, it does not matter if they are fed with an auger or how they are fed, they are only used for the processing of grain, nothing else. I am just talking about the processing equipment and I am saying these holding bins are processing equipment and nothing else. I am not talking about the building. I am not quibbling about the building; the building should be a taxable item and let it be a taxable item.

Mr. Findlay: You are referring to the bins outside the building. Is that what you are referring to?

Mr. Kuzminski: Right. I mean, would you read this, the letter that I read there? It tells you all about just how this processing is done. There is nothing wrong with the building being taxable. I am not complaining about the building being taxable.

I understand that under the new assessment that is going to be approved for 1990, all farm buildings or farm bins—grain bins are going to be taxable. That is fine. If they are going to be taxable, everybody is going to get the same medicine. I am not going to be the only one, but what is processing equipment let be processing equipment.

Let us say, for example, we have the hydro plant in Selkirk, in East Selkirk. They have bins there that hold coal. Those bins are not taxable. They are exempt from taxation. You mean to tell me Hydro is any different than any farmer who is a grain processor.

Mr. Chairman: Mr. Plohman, you had a question.

Mr. Plohman: I think my question has been clarified. Thank you.

Mr. Cummings: I was only going to draw the question, Mr. Kuzminski, that a parallel might be drawn to a grain drying operation whereby the surge bins are in fact part of the mechanics of the operation, but are components of what can also be used for long-term storage.

Is it your contention that none of these bins would be used for long-term storage because you are running a cleaning operation year round or six months of the year?

Mr. Kuzminski: You tell me, how would you store grain in the north bin or the south bin? You are looking at that sketch. Let us say if I used those bins for storage, how would you store grain; store grain and take it out of that storage and take it to the elevator if it has to go through the cleaning process?

Mr. Cummings: I do not want to get into a discussion about how the grain could be diverted out of the tank. I was just asking the question if it is the contention of the seed cleaning industry that at no time would those surge bins be used for anything other than operations. If that can be shown, then I have some sympathy for what you are saying.

Mr. Kuzminski: Okay. Let us say these two bins, the south and the north bins, are strictly for grain that is coming in and the only way it can get out of there is through that cleaning process. The load-out Bins No.

1 and No. 2 are sitting about 68 feet in the air on a steel structure. The spouting is coming into those bins. You do not put any grain into those bins. How could you use that for storage?

* (2240)

Mr. Chairman: Thank you, Mr. Kuzminski. Any other questions? Thank you very much for your presentation this evening.

Our next presenter will be Mr. Jack Fotheringham from the Manitoba Seed Growers. Do you have a written presentation, Mr. Fotheringham?

Mr. Jack Fotheringham (Manitoba Seed Growers): No, I do not.

Mr. Chairman: Okay, thank you. Please continue.

Mr. Fotheringham: Mr. Chairman, members of the committee, thank you for the opportunity to make a presentation to you. I am a director of the Canadian Seed Growers Association, Manitoba Branch and as such dealing specifically with the topic of seed processing also. Mr. Kuzminski's presentation is somewhat similar to what I am interested in presenting to you. We will try not to be too repetitious. I do not expect to be long.

I appreciate the opportunity to be here, and we welcome what we think are some of the improvements in the proposed Bill. We are particularly interested and impressed by the press release that did make statements about ensuring fairness, because that is probably one of the areas we feel some concern about for seed growers.

The Seed Growers Association represents all of the seed growers across the province including, in most cases, most of the seed cleaning plants or seed processing plants in the province as well.

In January of this year our committee met with the Minister of Municipal Affairs and previously had met with officers of the Assessment Branch to discuss some of the implications of assessment and some of the inequities, I guess you would say, of how we thought assessments were being applied across the province, because we were finding quite a bit of disparity of procedure and application of the regulations, we thought.

Essentially our presentation at that time boiled down to four points and I will just touch on those. In reviewing Bill No. 79 we are drawn to make some conclusions about what we see. We are not sure they are warranted in every case. We also are left with some questions relative to these points.

In the first instance, one of the things that we were speaking about was: where only part of a building is used to house a seed processing plant, only that part should be assessed as such. We were getting a variety of feedback from members that some assessors were assessing the entire building, even though parts of the building were used for other purposes and in some cases only a part of the building.

Now in looking at the Bill in Section 26 (1) on page 29, it seems to us that perhaps this speaks to that and should alleviate our concern. If that is the case then I think we can pass on from that item. Another item that we spoke to is that seed purchased and processed for resale should not be subject to assessment and tax. That was, in particular, in judging and operation to be commercial as opposed to a farming operation.

When we look at Section 31(4)(c) on page 31 which says that grain held in storage or in a warehouse for the sole purpose of later shipment and sale is exempt, then I think that has again answered our concerns if we are interpreting this correctly.

The third item, we are not so sure about. Where a major portion of the seed processed is the farmer's own, then the seed plant operation should be considered only a farming operation as opposed to a commercial operation. This is perhaps where I think seed processors have felt there has been some lack of fairness of application. Because typically they operate in a building which is visible, then that aspect of their farming operation is subject to tax, and has been in the past assessed and taxed for school levy as well as municipal tax on the building and on a portion of land that is assessed for that purpose also.

By the same token, many of those farmers are undertaking that operation as an aspect of farming that may be in place of raising livestock or some other similar kind of activity. Many of them will point to examples of individuals who carry on off-farm activities, as we usually refer to them, whether it be carpentry or trades of various kinds. If they operate from the back of a panel truck, then of course they are not taxable. They may pay a business licence, but that is probably the extent of it.

In many instances they may make more money out of doing that than in fact the seed processor is making out of the commercial side of his operation. If he is cleaning his own seed and cleaning some seed for his neighbors, then he may be assessed commercially, whereas the others are not being assessed at all, and this appears to be an inequity. So we say that a farmer engaged in processing his own seed, and a minor portion is custom work for other farmers, should not put his status as a farmer in jeopardy.

Just as many farmers may custom combine for neighbors, haul grain occasionally for neighbors, use specialized equipment that not everybody can afford to have to provide a service for others, then neither should this be singled out to be any different than that.

The fourth item, in Section 31(4), on page 31 again, on personal property tax exemption we note the exemption of farm implements and farm machinery. Now we are assuming that this includes the equipment in a seed processing line, and that is what Mr. Kuzminski has just been speaking to you about. We also say that equally as important in a processing line are the holding tanks or surge tanks or surge bins, holding bins—depending on what you want to call them—which, like the legs and the augers and any other means of conveyance of the seed through the plant, are essential to the operation of the plant. While they may look like

other bins on the farm in some cases, generally speaking they are not as large and their main purpose is to be a part of that seed processing. So we suggest that they should be treated as the equipment is treated and be exempt.

It may be true in fact that grain could be stored in them, but I use my own case as an example, in which we typically will harvest our last crop, perhaps it might be flax, and put it in one of the incoming bins. It might sit there for a month while we do fall work, and then we go ahead and clean it. So I guess to that extent it may be stored there. Again, in the spring, the last lot of seed that we clean may sit in the outgoing clean bin for a matter of possibly only a few weeks while it is picked up. Sometimes not at all, but sometimes it might be. I would suggest that the major purpose of those bins is for seed processing, not for seed storage. Therefore we submit that they should be exempt.

I think, Mr. Chairman, those are essentially the matters we wanted to bring here. When we made our previous submissions, we were advised that this was a committee at which we should bring forth these points. We realize that they are a little bit particular and detailed, but nevertheless, if they are not addressed now, then perhaps they will be lost in interpretation later on. Thank you for your time, and we hope that perhaps these will be considered.

* (2250)

Mr. Chairman: Thank you, Mr. Fotheringham. I believe Mr. Penner has a question for you.

Mr. Penner: Yes, Mr. Fotheringham, you indicate that you would deem the bins you use in your operation as part of the operation, and therefore the bins should be exempt from taxation, should be considered part of the production equipment of the seed plant. Is that correct?

Mr. Fotheringham: They are like the hopper on the combine or the box on the back of the truck. It does not work very well for the purpose it is intended if we do not have those bins on the line. Therefore they are in effect equipment as opposed to storage facilities.

Mr. Penner: Would you then similarly consider a drier operation on a farm, and bins used in the drier operation in a similar manner?

Mr. Fotheringham: I do not see how I could argue against it. It would seem to me that it is applicable. Again, maybe even in some instances—in what we are talking about, time may play a factor, but we had not really considered that. In our view most seed cleaning plants, although they are seasonal, during the period of time they are not in use is not the time of year that you are probably storing a lot of grain in them or would be, especially these years.

Mr. Penner: Let me take you one step further then, and go to your local fertilizer dealer. Would you consider the storage bins he uses to store the product that he will sell to you next fall or next spring? Would you consider those storage bins as part of his production equipment, and therefore should be exempt?

Mr. Fotheringham: Well, in the one instance I have been talking about farming, and in the other instance—I am not so sure. I had not really thought about it, but our argument, I guess, is that we are essentially talking about operations that are farm operations. We recognize there may well be larger commercial operations, seed processing, grain trading and so on, that maybe would not be covered in our argument. Therefore I am not so sure that I could include the fertilizer plant as your are describing it.

Mr. Chairman: I think Mr. Fotheringham does have a very good point though. What is a seed plant? Is it commercial or is it agriculture? If it is used partly for both, how should it be addressed? I think that is one question which should be looked at. Any other questions for Mr. Fotheringham? Mr. Plohman.

Mr. Plohman: Mr. Chairman, I did not understand Mr. Fotheringham's statement about putting in status. I wrote down what he said, I think: farmers should not put a status as a farmer in jeopardy just because he processes a minor part of his seed volume for neighbours, and so on. What sections was he referring to where he would be putting his status as a farmer in jeopardy? Was he thinking about the 31(4)(b), where they are talking about farm implements and farm machinery that is exempt; or is he talking about another section which would apply only to farmers and have an exemption for farmers that is not there for anyone else?

Certainly I know you are aware, Mr. Fotheringham, that the proposal in this Bill is that all farm buildings would now be subject to assessment and taxation, so there would no longer be anomalies for outbuildings. Everyone would be treated the same. So was it from the point of view, Mr. Chairman, of the equipment that you are referring to that exemption, or what section were you referring to?

Mr. Fotheringham: I was not really referring to a section there because I guess I could not identify a section that particularly spoke to this matter. What I was referring to more so was the past practice which identifies a seed plant that does custom work as being a commercial enterprise. Up until now, in the present system in fact, the building which houses the seed plant plus some land that is assigned to that has been assessed and taxed although other farm buildings had been exempt.

Now I am not clear as to—and I guess that is one of the points I was making, that we are not clear in every instance about what the implications of this proposed legislation will be. We are arguing that we would like that farmer with the seed plant to be treated as a farmer.

Mr. Plohman: Mr. Chairman, under those circumstances I think the anomaly would be eliminated and it would not be in your favour. According to the way I understand, all of these buildings would now be

treated the same whether they are used for a seed cleaning operation or as granary bins for storage.

So I think that is what it comes down to, is elimination of the anomaly, but it certainly does not provide an exemption for that property.

Mr. Fotheringham: But it treats everybody more equitably.

Mr. Plohman: Right. Mr. Chairman, there was one other complaint that was made that Mr. Fotheringham referred to, 26(1) the portions of a building used for a purpose for which an exemption from taxation is available under Sections 22 or 23. The exemption applies to the portion of the taxation for that building, applies to the building in the same proportion as used for that particular function, and you thought maybe that would deal with your concern.

But that section deals with Sections 22 and 23, which are exemptions from taxation and nowhere does it include the kind of use that you were referring to, so I am wondering whether you misinterpreted that section in terms of how it would provide some relief for you? I do not see that it could, because if you look through 22 and 23 you are talking about essentially heritage buildings over 60 years old being exempt, and 23 dealing with a number of different kinds of facilities, none of them relating specifically to agriculture.

Mr. Fotheringham: That may well be that we have misinterpreted this, but I think it would only come into play if in fact the building is being assessed as a commercial operation, where we are concerned about apportioning out only a part of the building that applies. Some seed plants are located in farm barns, for example, but may only use a small portion of one end. In the past, where there has been assessment as a commercial enterprise, then our argument has been only that portion of the building that is in use for that purpose should be so assessed. It may well be that this does not apply any more. We cannot see it in here and maybe our concerns are alleviated.

Mr. Plohman: My suggestion is that they are not alleviated by the sections that you referred to, but they may be alleviated by the general treatment of all buildings.

Mr. Fotheringham: Right.

Mr. Chairman: Do you want to add something, Mr. Penner?

Mr. Penner: No, I am fine, thanks.

Mr. Chairman: Okay. Any other questions for Mr. Fotheringham? If not, thank you very much for your presentation.

Perhaps we will go now to Mr. Geddes from the Keystone Agricultural Producers. Okay, Mr. Geddes, your brief is being distributed, but if you would like to start.

* (2300)

Mr. Earl Geddes (Keystone Agricultural Producers Inc.): Thank you very much, Mr. Chairman. Members of the Committee, it is a pleasure to be here this evening to address the legislative committee on Bill No. 79, The Municipal Assessment and Consequential Amendments Act. We certainly welcome the opportunity to be here.

I have with me this evening my First Vice-President, Mr. Alan Ransom, Member of our Executive, Owen McAuley, and our General Manager, Bob Douglas, who I may wish to refer to in question period if it becomes necessary for me to do that, with your permission.

Over several decades, Mr. Chairman, farmers in Manitoba have expressed concern and dissatisfaction with the inequities in the property assessment system and how these inequities have resulted in a disproportionate share of tax dollars being drawn from farm land. In point of fact, the appointment of the Manitoba Assessment Review Committee (The Weir Commission) in July of 1979 was, at least in part, in direct response to pressure from farm people for much needed changes to the system.

The release of the report of the Review Committee in March 1982 was welcomed by the farm community. The introduction of related legislation, in the form of Bill 79, some seven years later, is also received as welcome news. Officials of Keystone Agricultural Producers Inc. understand very clearly the political sensitivity of attempting to make changes in the area of property assessment and taxation policy, and applaud the Government for its courage in pressing forward with this task.

Having said this, we would like to take the opportunity to make some observations and recommendations relative to Bill 79.

KAP officials appreciate the fact that in proposing to eliminate the application of the Education Support Levy on farm property, the Government is recognizing, in legislation, a serious inequity which has existed for farmers in the assessment and taxation system over many years.

KAP has consistently put forward the position that education should be regarded more as a "people" service, and that the method of funding of educational services should be closely related to that principle. To this end, KAP has consistently recommended that taxation for education should be shifted away from farm property, both farm land and production buildings, with a measure of taxation for educational services being assessed on farm homes for this purpose.

Bill 79, as it relates to farm property, represents a step in the right direction, or in the correct direction. However, KAP continues to contend that taxation to fund educational services should be shifted away from farm land and farm production buildings totally, whether in terms of the Education Support Levy or Special Divisional Levies. To this end, Mr. Chairman, we would ask that Clause 23, Section (2) of Bill 79 be amended to accommodate that request.

As another condition of its recommendation that farm homes be taxed to support educational services, KAP

has insisted that the one-third reduction on all building assessments should be eliminated, and that the education tax burden should be redistributed fairly across both farm and urban residences and businesses. While Bill 79, if adopted, will eliminate the one-third reduction on assessments, it will not necessarily bring about the redistribution of the load of taxation for educational services to which we refer.

KAP officials understand the reasoning behind the introduction of "portioning" with the elimination of balanced and equalized assessments; however, portioning or a redistribution of tax load within classes of property will not bring about the total redistribution needed. Specific steps must be taken to ensure that those who have been paying a disproportionate share will not continue to do so.

KAP believes that in dealing with the matter of assessments, full consideration must be given to the disparity which arose in rural and urban assessments created by the freeze on urban assessments put in place by Bill 100 and perpetuated later by Bill 33.

KAP has consistently agreed with the report of the Review Committee regarding the need to establish a single assessing authority for all property throughout the province to ensure consistency. While we acknowledge that Bill 79 appears to attempt to address this area of concern, we are somewhat disappointed that the goal of a single assessing authority will not have been totally accomplished. We continue to believe that such a measure should be provided as quickly as possible. Keystone Agricultural Producers also believes that the recommendation of the Review Committee that the entire area of property assessment be governed by a committee of citizens specifically established for this purpose, continues to have some significant merit and should be implemented.

We have some questions about the application of what is termed "market value"—and the Minister has indicated that there may be some amendments coming—as the basis of property assessment. We contend that taxpayers should have a clear definition of the term "market value" if they are to have any understanding of the implications of the proposed legislation. The definition is not provided in Bill 79, and to date no one has satisfactorily answered our questions or queries on that matter.

KAP would have some concern with market value being determined strictly on the basis of sales in any given area because of the wide fluctuations which farm properties have undergone over the years, often with little or no relationship to the ability of the property to generate reasonable return on investment.

We do believe that the Review Committee's report provided some recommendations on value which must be included in Bill 79 if it is to prove acceptable. It would require an amendment to include these two clauses from the Weir Report. Clause III-A-1 stated in part: "All valuations should be at the assessor's opinion of the fair value of the property. That is to say, the price at which the assessors believe the property would most likely have sold in an open market transaction involving a buyer and a seller, both of whom desired to come to terms, but were under no undue constraints to do so." Coupled with Section III-A-6 which stated in part: "In establishing the valuation of farm land, sales data should be analyzed with relation to the productive capacity of the soil, to ensure that the valuation established reflects the fair value of the land for agricultural purposes."

KAP officials believe the term "land" and "soil" in this definition could, and very likely should be replaced by the term "farm property", as is defined in the legislation encompassing both land and production buildings.

The reason we make that recommendation is that if one does not have a clear definition of value, one essentially has no basis on which to launch appeals to a Court of Revision.

* (2310)

KAP officials feel the absence of a provision within Bill 79, a provision for a dual assessment system on farm properties in the vicinity of urban areas, represents a shortcoming in this proposed legislation. KAP continues to believe that the assessment of farm property should be based on its productive potential, while still being used for agricultural purposes. However, if such land were sold at a later date for urban development, we would see nothing wrong with a recapturing—perhaps over a five-year period—of taxes based on an assessment and a development rate. We believe an amendment to Bill 79 should be made establishing this provision to come into effect January 1, 1991.

KAP believes that as a part of revamping of assessment legislation in Manitoba, steps should be taken to make the entire matter of property assessment more understandable for the general public. Such an educational thrust would assist citizens in taking an active and informed part in discussions on a subject which is of major importance to them.

In making these comments in relation to Bill 79, Mr. Chairman, we are aware that the Government has expressed its intention to publish a discussion document intended to foster consideration and debate on the entire matter of funding of educational services. We look forward to participating in finding solutions which will alleviate the disproportionate share of the tax burden which agricultural production units have been carrying.

That, Mr. Chairman, is our presentation. We would welcome questions and comments that the committee may have. Thank you.

Mr. Chairman: Thank you, Mr. Geddes. I believe Mr. Cummings here is first.

Mr. Cummings: I would like to ask, Mr. Geddes, for your thoughts. In your presentation where you refer to something other than just sales value being used to determine the value of the property, it seems to me there is no doubt the agricultural community has suffered in the last number of years because of high assessment, and then land values were dropping.

People saw an inequity between what they were paying based on high previous values, and seeing an inability to recover at this time.

With this system in place, with a much more rapid reassessment, would KAP not consider that an adequate balance, if you will, because we have seen lands that sold—in extreme cases there has been 50 percent devaluation in sales in specific areas, which will soon start to be reflected and will benefit those landholders. I ask if you would not see that as a reasonable trade-off in terms of establishing value rather than trying to come up with yet another system?

Mr. Geddes: I will use two examples in response to the question. First of all, in Lorne Municipality a week ago a quarter section of land was sold for $168,000, which is $1,000 an acre. The individual who bought the land rented it back to another farmer for a two-year period at $40 an acre. That was a farmer who purchased the land and rented it back. Under that scenario in Lorne Municipality—and one of our executive people comes from Lorne Municipality, and he says, if somebody offered me that amount of money for my property, I would sell the whole thing. My farm is not valued at that amount of dollars. So simply using that, if that were the only transaction in that municipality in that year, would give an unfair reflection of the assessed value in that municipality.

I will quote from the statistics that were generated from the 1988, 1987, 1986 average dollar per acre of farm transactions which were generated in this province. I will pick out Crop District No. 3, Archie. You go from a 1986 average value of sales—$214; 1987—$87; 1988—$162. Those are the reflections of the market transactions without any consideration of whether it is hay land or grain land or what it is.

What we are saying is that the recommendation Mr. Weir put into his report, or his committee put in, does take into consideration, other than simply the market value, to some extent the productivity or some reasonableness in assessing that land. I think it would be important, Mr. Chairman, that some of those considerations be given in those cases.

Quite likely in most cases, market value may very well reflect what is going on, but if that is your only basis of assessment, then you will have a significant problem in Lorne Municipality next year.

Mr. Findlay: A further question on the concept of being able to assess the value of agricultural land, and it was raised by another presenter earlier this evening. Have you given any thought to the ability to use soil classification as a method of assessing the value of land, because we have the soil maps, we have the classification done, and crop insurance has established a productivity based on soil class or soil type. Do you see that as a more stable base for determining comparative value?

Mr. Geddes: The use of soil classification is possibly one of the vehicles you could use to assess productivity of land. You have the Canadian Land Inventory Index, that is one vehicle. You have crop insurance productivity ratings that I am sure can be used as a balance against the market value to ensure the market value or the sales are actually reflecting productivity of that property.

The use of soil zone mapping itself—I guess I am not a technician, Mr. Chairman, and would not be able to respond whether that would be a more equitable or fair way.

Mr. Findlay: I only raise it in the context of trying to see if there is some other mechanism. We can take out these peaks and valleys which will definitely occur at any time when supply and demand is establishing price, because you have given some examples that are fairly extreme.

One other question, over on page 6, you refer to the dual assessment system, and you are in agreement of a five-year retroactive taxation if sold for something other than farm value. You use the words "productive potential" to determine the basis of taxation of that farm property. Do you have any way of defining productive potential?

* (2320)

Mr. Geddes: Mr. Chairman, one possible way of defining productive potential in those areas where market value is not a realistic measure would be, I think what you will find inside of the new crop insurance legislation, which establishes norms for production rather than attempts to take out the peaks and valleys. That may very well be a tool that is usable in assessment or trying to establish a productive potential of a various class or piece of property.

I am quite sure that you are probably not all familiar with the legislation that is just being passed federally to accommodate some changes in crop insurance, but as one of the concepts that is in there, and I think to the questioner maybe one of the ways of determining productive potential of agricultural property, a fairly large statistical base to develop that norm which is different than a 10-year average.

Mr. Plohman: Mr. Chairman, I note Mr. Geddes that you have said on Page 3 that those who have been paying a disproportionate share will not continue to do so and that steps should be taken to ensure that. Do you also feel the converse is true, that those who have under this legislation it could be said that they have not been paying their share should not have to pay an increased portion immediately to the extent that it would present hardships to them. In other words, there is going to be some perhaps building-intensive farms that may face significant increases should there be a compulsory phasing to ease the burden that this will place on some producers, perhaps livestock producers, hog farmers or other producers who are utilizing building-intensive farms.

Mr. Geddes: Mr. Chairman, in response to the questioner I believe it is the contention of Keystone Agricultural Producers and has always been that education tax should not be raised on farm property and as our brief states, it should be removed from all

farm property. If, that being the case, and we would expect that that amendment would be there, the need to phase in a municipal tax which would be raised on farm buildings is significantly less although it might be a useful function to be able to phase it in. Our contention is that education tax should not be raised on farm property and we state that very clearly in our presentation.

Mr. Plohman: I am not attempting to entrap Mr. Geddes into adopting a premise that the organization does not agree with, but the provisions of the Bill at the present time are that all outbuildings would be assessed and be taxable. You refer to farm production buildings. Is that meant to refer to all outbuildings or only to certain kinds?

Mr. Geddes: Mr. Chairman, in a number of the discussions we have had as an organization we have often wondered why storage buildings would be taxed at all. I understand under the legislation all farm buildings will be. Farm production buildings is more the terminology we have used all along. If in fact there will be tax levied against them for divisional educational purposes I think there is some reason why a consideration to a phase-in period for livestock intensive operations should be considered.

Mr. Plohman: Mr. Chairman, would you Mr. Geddes favour a compulsory phasing over a certain percentage, or do you think that should just be left to the discretion of the municipalities, or do you think the province might want to indicate that a municipality must phase in an increase over a certain percentage?

Mr. Geddes: Mr. Chairman, I really have not had the luxury of discussing that concept with my organizational colleagues, and I think you will find as we do, as we travel around the province that there are significant differences among municipalities and I think the options should be left up to the municipalities if they wished. That is a very personal view, not an organizational response.

Mr. Plohman: One other question, I am very interested in your recommendation that the Weir Commission on a dual value system for farm land be included in this Bill. I note that you suggested this be establised effective January 1, 1991, in other words, one year hence, following the implementation of the other provisions of this Bill as it is now envisaged.

There would be a shock for one year. If there is going to be an increase in taxation brought up to 1985 or current assessment values, there may be a disproportionate amount having to be paid for that one-year period, because this would not come in until 1991. Would you see a system being put in place to recover that the following year, to have a lesser amount to offset that disproportionate amount for that one-year period?

Mr. Geddes: Two responses, if I can remember the first one. First, we suggested 1991 because it is an issue that we have pushed hard on for some time and are not confident that putting 1990 in there is realistic. One of the things we always attempt to do as an organization is present a politically-feasible concept, so we are saying 1991. The other response was that I am not convinced in my mind that when you remove the one-third exemption there will be an undue penalty this year over last year on those properties, changing the assessment process. Other than that I have no response.

Mr. Uruski: Mr. Chairman, I would just like to follow up with Mr. Geddes on the question of assessment of farm land and farm buildings. We have generally been of the opinion that there should be more than just market value as being the assessment tools for assessing farm land. How does your association view, or what kind of tools should be used to assess farm buildings, recognizing that as you mentioned earlier grain storage buildings are maybe used temporarily; you may have different types of livestock enterprises may use buildings for calving operation just for a month and a half or two or three months of the year shall we say and the rest of the time they are vacant. You may have on the one hand poultry operations which will be using the building all year round and you may have another poultry operation which may use the building for twelve, fourteen weeks. How would you, what would KAP, has KAP discussed this area of what would you base assessment of farm buildings on, or what criteria would be used?

* (2330)

Mr. Geddes: A very difficult area and one which we struggle with and one which prompted us to bring forward the amendments we are asking for out of the Weir report that takes a look at more than simply what you might assess a farm building at as its market value. Establishing market value on a hog barn that is sitting on a quarter section of land with no hogs in it is somewhat different from establishing market value on a hog barn that is sitting in a farm yard and creates some problems. We are quite certain in our minds that there should be a difference between a farm building that is generating income and one which is not.

That is why the term farm productive buildings, that terminology is used one other point in this presentation, because we have as an organization said that we believe farm production buildings, buildings that are adding income to that farm family, can quite possibly be assessed and taxed for municipal purposes only. We will make that point over and over again.

If, in fact, they are taxed for municipal purposes the same process that is used in assessing the value of a farm home quite possibly can be applied. Establishing market value on a farm home, as you are aware, also has some problems.

Mr. Uruski: Mr. Chairman, I would just like to follow that up a bit. We are recognizing that market value will likely be difficult to establish on farm buildings, whether it be a home, whether it be any of the production buildings. Is one of the methods for assessment purposes, the construction cost or construction value,

I guess one could put it that way, construction costs of the building—should that be used as the basis of assessment, or do we get down to the very question of actual use as being a criteria fairly parallel to the principle of productive capacity of farm land, depending what it is used for, will be its productive capacity.

Where are we headed, or where are you headed in terms of your druthers, I guess I would put it that way?

Mr. Geddes: Mr. Chairman, in response to the question, I guess, looking at doing an assessment of value of a farm building it is going to be very difficult not to consider either the original construction cost or some portion thereof or the replacement cost of that structure in formulating that value. Simply by calculating the value of a quarter section with a barn on it and an equal quarter section with it off in a sales scenario is not going to generate a market value for that property. You will have to consider other than that. That is why we have asked for the amendments in the Legislation, to do that.

Mr. Uruski: Mr. Chairman, that is really not what I have asked. I guess what I am getting at is, if we have difficulty of establishing and we want to use several criteria of establishing assessment for farm land, how we tax it, whether we tax it for education or for municipal purposes. Leave that aside.

The real question is how do we establish an assessment base? We heard earlier from Mr. Kuzminski about the question of grain storage buildings, technically, because in the way they were deemed to be used were assessible and their evaluation. I guess what I am getting to, in terms of farm buildings, is whether they should be treated and in what way should they be treated in order to establish a greater fairness, because we are trying to establish a greater fairness in terms of farm land rather than just using the market as fairness. What system should be used to establish a greater fairness in terms of establishing a value for assessment purposes on farm buildings, knowing the whole host of varied components, or uses of those buildings, will vary from very short times of the year, and to some that will be used 12 months of the year.

Mr. Geddes: Mr. Chairman, not pretending to be a technician or having the ability to design how assessments should be done, I would simply say that a use of construction cost or replacement cost plus some productive value of that facility has to be considered. When we have said, in questioning not in our presentation, a vacant building at some point should not be assessed, because it is not generating revenue to that operation.

You have an environment Act in this province that says if a building is vacant from livestock production for a certain period of time it loses its permit. If it wishes to regenerate it has to have another permit to refill that barn in the same operation. I am not exactly sure of the number of years that are involved there, but that is there. You might very well use that as a criteria to drop a farm building off of the tax roll rather than having it be 60 years old.

It would seem logical to me if I bought a property with a barn on it, that might have some productive value at some point, if someone else wanted to use it and I was being taxed on it I might very well go out and burn it down, which is not necessarily the best use of that farm building at the time. I would suggest simply the construction costs and the productivity value of that facility to that farm family would be part of the criteria of having to be used. As I said, I am not a technician and I do not pretend to be. There are others that can design that better. Tthey have obviously designed one process, because they are all assessed at this time.

Mr. Uruski: Mr. Chairman, in your presentation, which I have just had pointed out to me by my colleague from Dauphin, on page 6 you speak of a dual assessment system on farm properties. Would that dual assessment system, that you speak of in your brief, also include farm buildings as part of that definition?

Mr. Geddes: We speak primarily of farm property here, of farm buildings that were put in a position of having an unfair tax load in the vicinity of a city, because there was some unusual value to them because of urban development, or urban sprawl, which is highly unlikely in most cases. The value to a developer of a hog barn or a poultry barn is getting rid of it more than anything else. So essentially we are talking about the value of farm land in this dual assessment system.

We think there are creative ways that you may recapture that taxation. We are just suggesting one.

Mr. Chairman: Are there any other questions? Mr. Penner.

Mr. Penner: —not so much a question, maybe more of a comment than anything else, I guess.

On page no. 3, paragraph 2, you refer to portioning and the classes that have been established. You also indicate that there should be or is a redistribution of the tax total within the classes of the property. You indicate that will not bring about the total redistribution of the tax load that is needed. Could you explain that?

* (2340)

Mr. Geddes: Mr. Chairman, what we are referring to in this section is, although in the Bill there has been some redistribution allowed before we get into the portioning exercise where education support levy has been removed from farm property of which we greatly appreciate that inside of this Bill, it is a step certainly in the right direction.

The fact that education tax can still be levied at the divisional level on not only farm land but farm buildings and farm homes gives us serious concern to believe that the redistribution is possibly not taken place in a way that is sustainable. We have a serious concern that by leaving that avenue of taxation open and the possibility of subsequent provincial Governments, or for that matter this provincial Government, deciding that the divisions need to raise more of the educational

tax, that you may very well not have done any redistribution at all. We have a concern there.

Mr. Penner: We believe Weir indicated that the classes and a system of portioning be established to ensure that there not be any shifting of liabilities from one area to another, in other words, from agriculture to commercial and commercial to residential or the other classes.

It almost appears as if you are indicating here that there seems to be in your mind some doubt as to whether, in fact, this will occur under the portioning and the classification in other areas than the ESL. Is that what you are referring to here?

Mr. Geddes: Mr. Chairman, what I believe we are referring to here—the concern that the redistribution may not entirely take place is the potential for the downside on the divisional levy. If in fact there is a shift of education tax, and it really has very little to do with assessment but a shift in the way education funding is done in the province, you may very well not have had a shift. I should go on the record as saying our organization does approve of a number of the parts of the Weir Report, but the part that says there shall be no shifts between classifications is one part which we do not approve of because we believe that agricultural land and farm families have for too long paid a disproportionate share of the education tax.

We want to be certain, Mr. Chairman, that when we are going through this process of assessment review, or regenerating a new assessment process in this province, that we do not simply remove one level of taxation and have it replaced by another at the divisional level.

Mr. Penner: I think your assessment, Mr. Geddes, is somewhat correct, that in fact the divisional taxes, school taxes, will shift somewhat. They will shift away from the land and shift more toward the buildings, and I think if that is what you are referring to then that is correct, that will happen.

But again it will alleviate to a greater degree the educational burden on farm land. However, some of that money, divisional tax dollars, will be raised by the buildings and similarly the municipal tax will shift again somewhat from the land base to the building base. Therefore, the discussions, that I think have many times taken place in the farm community over the years, indicating that land has carried a disproportionate share of the tax load over the years is alleviated not only by the elimination of the ESL but also by the reduction—and the transfer probably might be a better term used—of some of that tax load from the land to the buildings in those areas. I wonder whether you concur with that move taking place, or whether you have some reservations in that area?

Mr. Geddes: Mr. Chairman, I agree that is what will happen with the Bill as it is currently proposed. As the Minister has indicated, there will be a shift away from farm land to other farm properties, but I believe there will be one other shift at the divisional level that we need to keep in mind. In rural Manitoba you will have a shift with an enlarged municipal assessment base, in many cases, away from the small homes in some of the small communities.

That is not the case in every situation, it depends entirely on the size of the farm community in that municipality where, if the one-third assessment removal exemption from the building removal is higher than the addition of the farm homes and the farm buildings, you will not have the shift. If you do have a lower assessment increase because of the removal of the one-third exemption than the addition of the farm properties into there, then you will have a shift away from the farm homes in those small communities, one area where we do have a concern.

Mr. Chairman: Are there any other questions? Mr. Plohman.

Mr. Plohman: There is one other area I just wanted to explore a bit, and that is dealing with wildlife habitat property. Do you think there should be a subclassification or some provision for an incentive for farmers to keep bushland as bushland, or areas that might be swampland and sloughs and so on for ducks and wildlife—that there should be some encouragement to retain that land in its natural state through a reduced assessment provision for that land, and not at the same rate as agricultural land would be assessed?

Mr. Geddes: I lost a thought halfway through the question. In response to the question, to begin with I think what we need to do is make sure that there is no incentive to take marginal land and put it into production. Now, whether or not you have to provide additional incentives to keep it out of production is another question. By removing the taxation from a slough or a small piece of bush, you apply it somewhere else in the municipality, so the incentive may not be there to do that.

I think a point, when we are talking about incentives to do certain things, that I was remiss in making in one other question and it has to do with the levying of taxation on farm buildings for educational purposes; the divisional levy does provide a disincentive to value-added rural development livestock operations. It does have a tendency to do that because you will now be carrying another educational tax on a farm, whether it be a hog barn or beef barn, it may not be significant, it may not be enough to deter the operation of that facility, but it is a consideration that we have to take into account when we are trying to revitalize our rural areas.

Whether or not there needs to be an incentive to keep sloughs and small bushes in place for ducks and deer, I would probably be better to ask my colleague, Allan Ransom, although he may not give the answer that I want him to give.

The policy of Keystone Agricultural Producers is that there should be incentives to keep marginal land from coming into production but there should also be no incentive to take it out of production. Sometimes taxation does that, certainly farm programs do.

* (2350)

Mr. Plohman: Mr. Chairman, just before Mr. Ransom makes some comments. Really what I am getting at is that it should not be an encouragement for farmers to clear the bush and put it into agriculture use simply because of the assessment on it. It is assessed on its productive capacities and capabilities and, therefore, it serves as an incentive for the farmer to clear it and get some revenue from it because he is being taxed at that higher level.

So in order to keep him from having to do that, have a lower level of assessment and taxation on that land so it provides that incentive to retain it. When we use incentive it can be used both ways, it is discouragement, or encouragement is another way of you saying it.

Mr. Geddes: Mr. Chairman, in response to those comments or question. I think it is important to keep in mind that what we have said in our presentation is that not only market value, but productivity capability of the land should be considered in developing the assessed value of that property.

It does take into account somewhat the concerns of the questioner, but one other more serious problem we have, I think, is that if people are bringing marginal unproductive land into production because of the $4 or $5 per acre tax they are paying on it. We had better do a better job of education on our farm people because to bring marginal land into production because they are paying $4 an acre tax on it is not a good enough reason to farm that land in my mind.

Mr. Plohman: Mr. Chairman, there is very productive land that is in bush, it does not mean it is marginal, but it means that if it is based strictly on the productivity of that soil, if it was farmed, as opposed to in trees or in bush, then there is an encouragement to clear it. It does not mean that it is marginal land. There are many areas of our province that have very productive soils that are in forest right now, so that is part of the question I am asking. I would be interested in hearing some comments from Mr. Ransom on that.

Mr. Geddes: I will respond and then ask Mr. Ransom to respond also. I agree fully with you, if you have land which is covered with bush that has a Class 1, Class 2, 3 productive capacity our contention, as we have said in our presentation, that more than market value should be considered. The market value of a piece of wooded property is probably the value of clearing it, less than the other property there, and that has to be taken into consideration in doing the assessment. Allan, do you have some comments?

Mr. Allan Ransom (Keystone Agricultural Producers Inc.): I think Mr. Geddes has covered the point reasonably well in this aspect of land that is not in agriculture production, though it may be on agricultural land. I guess you recognize that it already is looked at in the present day system. For example, my farm, I have a quarter section that is totally cleared, and I also have a quarter section in the same soil type that is only half cleared. My taxes are half on that piece of property. That recognizes the use of the land and the wildlife use of that land at present state. In terms of keeping it in that state, we will probably have to look at more of an incentive.

Mr. Chairman: Any other questions—Mr. Penner.

Mr. Penner: One more area—again on page 3, paragraph three, you indicate that KAP believes that in dealing with the matter of assessments, full consideration must be given to the disparity which arose in rural and urban assessment created by the freeze on urban assessment put in place by Bill 100, and perpetuated later by Bill 33. Could you explain that?

Mr. Geddes: Mr. Chairman, the reason that we put that paragraph into this presentation is just to simply have on the record the fact that the farm community is quite aware of the disparity that was created between farm assessment, which was moving toward current assessed values at that period of time, and the freezing of urban assessments at that time.

We may at a later time wish to use that as a negotiating point when we are talking about levying of taxes or assessment in other areas. We simply wanted to put it into the record. The farm community is not blind to the fact that the freezing of urban assessments,at a time when their assessments were continually going up towards the current market level was there.

Mr. Penner: Bill 33 though used 1975 values across the province.

Mr. Geddes: I agree, Mr. Chairman. At the same time I believe that the farm levels were somewhat higher than that, were they not, or the assessments were at least more current?

Mr. Penner: There was some currency initiated in some of the municipalities where the assessment I guess was done later than the 1975 value.

Mr. Geddes: Mr. Chairman, if I might respond additionally that is part of the reason why we are saying also that it is important that we move to a single assessment authority. I believe the legislation attempts to do that, and I think it maybe can be a little bit stronger, but now having farm homes equally in Class 1 with other residences in the province, we are wanting to be sure that there is an equity in the assessment in those classifications.

Mr. Chairman: Any other questions? If not, thank you very much, Mr. Geddes and the—

Mr. Geddes: Thank you, Mr. Chairman, and Members of the committee for the opportunity.

Mr. Chairman: I guess we have one more rural group, and that is Manson Moir from the Union of Manitoba Municipalities.

Mr. Moir, your brief is being circulated here. Okay, you may start, Mr. Moir.

Mr. Manson Moir (Union of Manitoba Municipalities): Mr. Chairman, Members of the committee, thank you for this opportunity to appear before committee and present our views.

You introduced me as Manson Moir, and I am the President of the Union of Manitoba Municipalities. Our organization represents 161 member municipalities, 105 rural municipalities, 14 LGDs, two cities, 18 towns and 22 villages. It signifies that our members represent a very large area of the province, pretty well every area of the province, with the exception of the City of Winnipeg.

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A change in the Assessment Act has been desired by our members for a number of years. UMM and our members took the opportunity to take an active role in the Manitoba Assessment Review at all phases expressing concerns about the inequities of the old assessment Act and putting forth ideas for changes. There was a generally full agreement and acceptance of the final draft of the Weir Report. Since its adoption by our members, we have asked that it be put into practice.

The introduction of Bill 79 was welcomed by our members. It appears that the Act will be a fair way of assessing property, but the problem of understanding assessment will have to be addressed at the local level. There are a few parts of the Act that I would like to address and express our views.

Part 4, the Assessment Process; we are pleased that you now have the ability to bring the assessments up to date every three years. In the past it has been very inconsistent and often caused a great deal of misunderstanding and confusion when assessments were often as many as 10 years apart.

Part 5, in Assessments, Assessment at value, granted market value will be more readily understood. The assessment of land in most cases can be arrived at by using adequate sales in the municipalities, but we do have some concerns about establishing the market value of farm homes. Very rarely are farm homes sold separately in most rural areas. It is hoped that the mechanism of assessing farm homes is adequate or that there is a ready method of correction if it appears that the value of farms homes is not realistic.

Land that is located within the Perimeter adjacent to the City of Winnipeg and zoned as agriculture will have a speculative value as well as a farm value. This is also the situation surrounding other urban areas such as Brandon and Portage for example. Most of the sales of land within the Perimeter are on small acreages and do not necessarily reflect true value. It may be necessary to establish an agricultural value for this land and assess it accordingly. Then if it is rezoned for development there should be a way of reclaiming taxes based on the speculative value of the property for the previous five years.

Under Part 6, exemptions, we do not have any problem with the exemptions of these properties, but we do have concern as to who is to make up the loss of revenues to the municipalities. We feel that the loss of revenue should be made up by the provincial Government and not by the rest of the ratepayers in the municipality.

Section 23(2), farm land exemption from the education support levy, this is a step in the right direction, but the fact that school divisions can levy on farm land and buildings causes us some concern. What we are asking the Government to do is to remove the dependency of education funding from property. We feel that this is a regressive method of taxation. We would like some assurance from the Government that they will go in this direction. We are concerned that if school boards are faced with the need for more funding, the only avenue that they will have is to place a larger special levy on property. We will have lost everything we have gained by removing ESL from farm land and buildings.

Part 9, phasing in, our concern about phasing in is that it puts the onus on the local council. Now some of our members will agree that this is a good idea while others will have difficulty in accepting that responsibility, in many cases difficulty between adjacent municipalities. If a certain class of property is phased in one municipality and not the adjacent one with similar situations the ratepayers will have a difficulty in being assured this is a fair way.

Phasing in of separate property could even be more controversial. We feel that there should be some percentage of increase stated in the Act that could justify phasing in. Failing that, we would ask that the Assessment Branch arrive at a figure to pass that on to local councils. The municipalities are anxious to proceed with the assessment reform, and we feel that the acceptance of Bill 79 will allow for changes members have been requesting.

I have stated that UMM's concerns—and I am sure others will have concerns, too. We feel passage of this Bill is very important to allow municipalities and school boards to prepare their budgets for the coming year. If this committee recommends any change, we hope that these changes will not affect the immediate passage of Bill 79 in the Manitoba Legislature.

The UMM, as in the past, will be pleased to work with the Government to help implement Bill 79. Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Moir. Are there any questions from the committee? Mr. Findlay.

Mr. Findlay: Just back on your first page, Manson, you indicate you have concerns about establishing the market value of farm homes. What is the nature of your concern?

Mr. Moir: Mr. Chairman, Mr. Findlay, I would be very surprised if there are enough farm homes sold separately to establish any kind of a value to them. If it comes to a market value, I think there is going to have to be other methods used in establishing the value of a farm home.

Mr. Findlay: It is my understanding that assessment has been done over the past years. You have not seen

how it was done so that you feel comfortable with the methodology that was used by the Assessment Branch?

Mr. Moir: Mr. Chairman, I realize that it has been and that farm homes have been assessed. I did look at some in our own municipality and I do not think that there is any way that we could base the method that has been used to arrive at the present assessment in arriving at a fair market value to that.

Mr. Findlay: Would the same concern be in the case of outbuildings too?

Mr. Moir: Mr. Chairman, yes, I agree that we would have that same problem. It may be more readily acceptable to or more easy to establish a value of an outbuilding than a farm home though.

Mr. Findlay: I have just one more area, in phasing in you see difficulty between municipalities. I guess, as President of UMM, should you not, as a group of municipalities, make a unilateral decision by UMM that all municipalities would do a certain set of phasing in so that it would be uniform?

Mr. Moir: Mr. Chairman, we really have not thought of it in that manner, Mr. Findlay, and I sometimes wonder if our member municipalities would take kindly to such advice. I think each municipality is very independent in making their decisions but I think there should be some guidelines for them to establish the criteria of phasing in. Who is going to do that? I do not think that particularly UMM wants to do that.

Mr. Chairman: Mr. Plohman, I guess, was first.

Mr. Plohman: Just on that, Mr. Chairman, since Mr. Moir suggested that the province perhaps set a maximum above which phasing in must take place, I would suggest that below a certain number, the municipalities could make that decision under the scenario that you are suggesting here, but that above a certain percentage, they would have to do it and therefore there would not be any controversy.

Is that the kind of guidelines you are asking for? What percentage would you think might be a fair number above which the phasing would take place, 20 percent increase, 10 percent increase?

Mr. Moir: Mr. Chairman, we, as an organization, have not really discussed this in particular percentage but just at a very short meeting we had last week. I would suggest that likely something over 20 percent would be a figure that we would have to look at; something like that.

Mr. Plohman: Mr. Chairman, keeping in mind that this is a three-year period, 1990, '91, '92 that we are discussing, 20 percent per year would give a 60 percent increase over a three-year period. That would be the maximum increase that any property could have over that three-year period and you would think that would be the highest figure that you personally would feel would be fair.

Mr. Moir: Mr. Chairman, I guess I am going to have to plead a little bit of ignorance on this percentage-wise. We really did not sit down and talk about percentages—what we would like to see, and I said 20 percent just as it sounds like it would be a good figure to start with.

An Honourable Member: We will not hold you to it.

Mr. Moir: Maybe we could escalate that in at 20, 30, 60 percent so that the fourth year would be full. It could be a graduating percentage.

Mr. Plohman: Mr. Chairman, I also note that Mr. Moir has mentioned that there are going to be some changes perhaps and that there maybe should be and that he has some concerns his organization and others may have, but that he hopes that these changes will not affect the "immediate" passage of Bill No. 79. What does he consider immediate or necessary in order at the outside for municipalities and school divisions to be able to undertake their budget process this year?

The Statutory requirement, I believe, is January 15 for school divisions to receive this information. Do you think there is some flexibility in that date in terms of the budget process? It is Statutory, but that can be dealt with.

Mr. Moir: I really cannot speak for the school boards but I would think that the sooner we get on with it, the better. Immediate, January 15, sounds like a good date to start. I realize that there are areas that will be changed, but if we can implement the—I am not sure of the procedure, Mr. Chairman, of implementing the Bill, but if it can be implemented in such a way that we can begin to use some of the main parts of the Bill in establishing our budget for the coming years.

Mr. Plohman: Earlier there was a presenter suggested that there was not enough information that had been sent out to municipalities so that they have an understanding of the impact this is going to have on their municipality.

Do you feel that more municipalities would be here if they had more, or are they just accepting this and saying, well, we will see what happens or do you think there is enough information, or if they were given another couple of weeks there might be a few more who want to come forward and raise some questions about this as they become aware of what is going on here?

Mr. Moir: Mr. Chairman, all the municipalities were supplied with information the day that the Bill was introduced in the House; it was handed out to them. I am sure that each municipality has had an opportunity to review this among themselves. Rural Development have offered to have meetings with us; our particular area has taken them up on that offer already.

The Town of Melita hosted the local municipalities in our area. Mr. Brown attended that meeting and whether we are an exception, and maybe we are, I realize that there are some other municipalities that

have had meetings with the Minister as well as his staff and I think every opportunity has been given to them.

Again it is a change; it is a fairly big change and we have been asking for it and maybe one of the intricacies of municipal politicians is, we have been waiting for this change for so long, let us try it and if it breaks down, we will fix it somewhere along the line.

* (0010)

Mr. Plohman: Okay, I take it that the municipalities feel that anything is better than what you have had.

Mr. Moir: That is right.

Mr. Plohman: So you are not saying this change, you are saying you have been waiting for a change, a major assessment reform. What I am I guess asking about, is the specifics of this one the one that they want? Have they had time to study it? That is really what I am getting at. Is that the one you want, or are there some things in here that have to be changed and should we take the time to try and do it a little better to improve it, or should we just simply say, well the time line is of the essence, let us do it and worry about the problems later on?

Mr. Moir: Mr. Chairman, I think that we hoped that this committee has the ability to recognize the changes that need to be made at this time, and we have all the confidence that you do have that ability and we trust that will be the method that will get this Bill moving into the Legislature again.

Mr. Chairman: Mr. Roch, you had a question?

Mr. Roch: My concerns have been covered.

Mr. Chairman: You have been looked after? Mr. Penner.

Mr. Penner: Mr. Chairman, in response to some of the issues raised by Mr. Plohman, it would appear to me that he has on a number of occasions questioned whether we should in fact institute a limit of some 20-odd percent, at which it would be probably a level that we would cause phasing in to take place.

Interestingly, I had a look at some of the properties, the taxed properties, the other day. If you in fact would do that you might cause a lot of municipalities to phase in values or amounts of less than $1.00. We looked at some of the taxes that were levied on some properties. There are I guess a number of them in some of the municipalities that are $1 or lower even in some areas. Maybe not much lower, but if you in fact caused a 20 percent limit and caused phasing over that, you would in fact maybe at $1.20 have to rebate some of the taxes or lower them to some level.

I am not sure whether that is in fact what we are aiming to do or what Mr. Plohman is suggesting that in fact should happen. So I raise that simply for consideration for the committee when we make those kinds of considerations later on, because there are I guess a number of anomalies that do occur in taxation of properties that need to be looked at when you cause some changes, as was reflected by the presentation made by UMM, and I appreciate that.

One question, Manson, of you is, what would your view be of the two-value system that has been mentioned here a number of times reflecting the urban shadow, evaluation of farm properties in those areas. What is your view on that?

Mr. Moir: Mr. Chairman, we recognize that there is a discrepancy in the ability to be able to look at and find a value of that, of land within the shadow of an urban . . . here again I have lost my train of thought here for a second.

Mr. Penner: Basically what I am asking is, have you any position on whether we should in fact implement a two-value system in causing reduction and then applying some measure of a rebate or a clawback on the tax at a later time, sometime. Have you given any consideration to that sort of measure or amendment being made to the Bill, to allow for that?

Mr. Moir: Mr. Chairman, I beg your pardon for sort of losing this one for a second. In our presentation we said that the land should be assessed at farm value if that is what it is zoned as. When it does become zoned otherwise, then assess it as that and have a vehicle that taxes can be claimed in a five-year period. There has been fairly general agreement amongst our members on that particular segment.

Mr. Chairman, if I might go back to the phasing in, I guess one of the problems that the municipal members have had in understanding this, maybe we all come from Missouri and we have to be shown. I think when we get more information, and maybe Mr. Plohman had a point, if we had more information of the actual changes that might come about within our own municipalities, those that are going to be very easily recognized, those are the things that we can see very readily. We would be in much better shape to comment on it then.

Mr. Cummings: Mr. Moir, as you may have surmised, there is probably some obvious disagreement around this table as to when this Bill should be passed. You indicated that by the 15th of January you would like to see it passed, or you would like to have the information in your hand, but I would ask you if you would give us some advice in terms of the fact that traditionally school divisions have already received their information regarding the level of assessment for them to prepare their taxation. If the province were to after the 15th of January have to start to prepare the information for the municipalities, would that cause you some difficulty?

Mr. Moir: Mr. Chairman, I really do not understand the question. After the 15th of January?

Mr. Cummings: Yes, what I am saying is until the Bill is passed there is always the possibility of amendments out there that could substantially change the context of the Bill and ultimately affect how assessment is done in this province. So I am suggesting that there is very

little work that can go on in preparing rolls until the final dot is put on the legislation, so I am asking if when you said the 15th of January would be soon enough for you, whether you meant that you wanted the information from the Government completed for the municipalities or whether you simply meant that was the time which would be acceptable to have the Bill passed?

Mr. Moir: Mr. Chairman, I was thinking of the school divisions. Their need to arrive at their budget is an earlier date than ours. Ours is the 15th of April. It would give us a little bit of latitude in that area, and I do not want to sound as though this Act should just go through the way it is because we want it to be in effect. We are as concerned as anybody about some of the amendments that should be made. The information that municipalities would receive, I think it makes it a lot easier for us to understand just the implications of the Act and I would ask, Mr. Chairman, can that information be given to the municipalities before the Act is put through the Bill?

Mr. Penner: No, the information that you would be seeking, the assessment levels for the municipalities simply would not be able to be given to municipalities or the school districts before we would have a final passage of the Bill and were able to determine what level the calculations would have to be done at. Statute directs now that the school divisions must have the assessment levels or be able to do the calculation and the Government indicate to the school divisions what levels of support there will be to the divisions. So that has to be done by the 15th of January.

Of course, from then on you have a regular series of events that occur, including providing the municipalities with the level of assessment. So I think that we are tied fairly closely to a series of events and dates that we would have to follow, unless the municipalities and the school division would concur with setting aside that time limit for a period of time, and that would put them in, I think, a fairly untenable position later on down the road in providing funding for themselves, doing the numbers.

Mr. Chairman: Mr. Uruski you had a question for Mr. Meyer.

Mr. Uruski: Mr. Chairman, I just want to go back to this whole question of phasing, because I sense from Manson that there is some confusion and misunderstanding. Let me put it this way.

If one of your farmers or several of your farmers in your municipality receives an increase as a result of the new level of assessment, because buildings will be assessed and homes will be assessed, and if it is well received on the same mill rates or at least the same level of taxation to make the same revenues they had in '89—a thousand dollars of increase, what would your recommendation be for apportionment? Would you say that $1,000 increase, for one it may be 30 percent, for one that $1,000 may be 100 percent increase, if I use that amount. How would you apportion it? Or would you recommend apportioning or phase it? Would you recommend that there be no phasing?

Mr. Peter Meyer (Private Citizen): I guess this is what I mean, there has been confusion and we recognize there are going to be different sectors, segments, that are going to have large increases. The significance of these increases in individual cases, as you pointed out will be quite different, they are bound to be. Working on a percentage, I can recognize, is really not going to solve the problem.

Mr. Uruski: Mr. Chairman, I guess you could have, say, a $50 increase on a low valued property which will be a 100 percent, and I guess if you use percentages, maybe a dollar and a percentage amount would be required. But, are you saying that phasing is a necessity? Is three years enough, or is three years not enough depending on the amount of increase?

I mean that is—and I ask that in this context: I am making the assumption that Municipal Affairs and the Minister have shared with you some of the impacts of the shifts. If they have not shared that information on what kind of shifts have occurred based on the new reassessment, then the passage of this Bill very quickly causes me some concern because I am reading that from what Manson is saying.

Mr. Meyer: We have not had any detail—amount of information—we have had sample informations given to us, and I guess they really do not point out any consistent method or any consistent line of changes within any one particular—just because one particular—let us take a hog farm. Just because the method of assessing has changed on it, really does not run in a true line; the effect is not going to be the same. It is very difficult for us to just use a sample or two and try and imagine what it would be like over a whole municipality or over a whole region. Before I can say that is definitely what we would like to see, maybe we should have some more figures on it.

Mr. Uruski: I thank Mr. Meyer for his candidness.

Mr. Chairman: Any other questions? If not, thank you very much, Mr. Meyer for your presentation.

The rules of Committee rise—or—we have Mr. and Mrs. Balneaves here. They have been waiting all evening; is it the will of the Committee that we hear them, or the Committee rise? Mr. Cummings.

Mr. Cummings: Depending on their will, but I would think we should give them the courtesy of hearing them, seeing that they have been here for quite some time.

Mr. G. Les Balneaves (Private Citizen): I would be quite happy if you are going to have another session tomorrow. If you could put me on first on the program, I will be quite happy to leave it at that. It is getting very late, I am sure you are all very, very tired.-(interjection)-

Mr. Chairman: Yes, eight o'clock tomorrow night and we will put you on first then.

COMMITTEE ROSE AT: 12:12 a.m. (Dec. 20, 1989).