

TORONTO STAFF REPORT

June 5, 2006

To: Policy and Finance Committee

From: City Manager
Deputy City Manager and Chief Financial Officer

Subject: Provincial Ombudsman's Report on the Municipal Property Assessment Corporation (MPAC)

Purpose:

To report on the Provincial Ombudsman's report on the Municipal Property Assessment Corporation (MPAC), and to review the implications for the City arising from the Ombudsman's recommendations. This report also responds to motions referred to the Policy and Finance Committee pertaining to the Ombudsman's report.

Financial Implications and Impact Statement:

There are no direct financial implications arising from the adoption of the recommendations in this report.

A number of the recommendations contained in the Ombudsman's report, if implemented by MPAC, may require changes to existing processes and procedures within various City divisions, and may result in future financial impacts. These include potentially higher annual fees for MPAC's services, an increased volume of assessment appeals and concomitant reductions in taxation revenue, and higher costs to the City to monitor assessment appeal activity and to represent the City's interests before the Assessment Review Board.

As yet, the potential financial impacts of such changes are not quantifiable. Ongoing discussions between the Province, the City and MPAC will determine the nature and impact of any changes implemented by MPAC in response to the Ombudsman's recommendations. Staff will provide follow-up reports to Council on potential financial implications to the City as warranted.

Recommendations:

It is recommended that:

- (1) Council endorse the 22 recommendations of the Ontario Ombudsman's investigative report regarding MPAC released March 28, 2006, with the following additional comments:
 - (a) Recommendation No. 12 of the Ombudsman's report "that MPAC standardize its inspection audit reports...", should be broadened to require that MPAC undertake a review of its entire property inspection function, with the aim of improving the quality of the property information it relies on to complete assessments;
 - (b) Recommendation No. 15 of the Ombudsman's report, "that MPAC should be bound to apply assessment reductions imposed by the ARB to future years' market value assessments of the same property...", should be broadened to require that both assessment reductions as well as assessment increases imposed by the ARB should be applied to future years' assessments; and
 - (c) Recommendation No. 17 of the Ombudsman's report, "that MPAC should be bound to apply reductions agreed to in minutes of settlement to future years' assessment of the same property...", should be broadened to require that both assessment reductions as well as assessment increases agreed to in minutes of settlement should be applied to future years' assessments;
- (2) Council petition the Government of Ontario to make the necessary legislative changes to assist MPAC in implementing the Ombudsman's recommendations;
- (3) the Mayor be directed to write to the provincial Ministers of Finance and Municipal Affairs and Housing, requesting that City of Toronto be consulted prior to the enactment of any legislative changes required to implement the Ombudsman's recommendations;
- (4) the City Manager be directed to write to the Municipal Property Assessment Corporation requesting that City of Toronto be consulted prior to the implementation of any changes stemming from the Ombudsman's report that may have financial implications for the City of Toronto;
- (5) the Clerk be directed to forward a copy of this report to the Ontario Ombudsman, the Municipal Property Assessment Corporation, and the provincial Ministers of Finance and Municipal Affairs and Housing, indicating Council's support of the Ombudsman's recommendations with the modifications as noted herein; and,
- (6) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In June 2005, the Provincial Ombudsman began an investigation into the operations of the Municipal Property Assessment Corporation (MPAC), in response to complaints from taxpayers that MPAC was not taking into account assessment reductions resulting from Requests for Reconsideration and decisions of the Assessment Review Board (ARB) in subsequent reassessments. Preliminary investigations provided grounds to open a full investigation, which was announced on October 17, 2005.

On March 28, 2006 the Ombudsman released its final report of findings in a document entitled: "Getting it Right: Investigation into the Transparency of the Property Assessment Process and the Integrity and Efficiency of Decision-Making at the Municipal Property Assessment Corporation."

At its meeting of April 11, 2006, the Policy and Finance Committee considered the following items concerning the Ombudsman's report, referring both to the City Manager for consideration, in consultation with the Mayor, for report thereon to the Policy and Finance Committee for its meeting scheduled to be held in June:

- (i) Communication dated March 31, 2006 from the City Clerk advising that City Council on March 29 and 30, 2006, referred a Motion from Councillor Fletcher headed "MPAC Reform - Request to Establish an Assessment Monitoring Group" to the Policy and Finance Committee; and
- (ii) Communication dated April 5, 2006 from Councillor Michael Walker attaching a motion entitled: "Assessment System for The City of Toronto - "What Does the Real Estate Market Have to do with Property Taxes?", regarding the property assessment system used by The City of Toronto; and advising that after discussion with Mayor David Miller, he is forwarding this motion to the Policy and Finance Committee for its consideration and endorsement.

This report summarizes the key findings of the Ombudsman's report and MPAC's response thereto, and provides information on the implications of the Ombudsman's recommendations to the City of Toronto. The report also provides information on the above noted motions.

Comments:

On March 28, 2006, Ontario Ombudsman André Marin released the final report of an investigation into the Municipal Property Assessment Corporation (MPAC). The report contains a series of recommendations for improving the integrity and efficiency of MPAC's decision-making, and the perceived lack of transparency in MPAC's property assessment processes.

In general, the report highlights the following problems that were discovered over the course of the investigation:

- MPAC makes it difficult for taxpayers to access information about their property;

- MPAC is protective of its evaluation processes;
- MPAC is not concerned enough about problems it has encountered in ensuring the accuracy of its information;
- There is a discrepancy in the respective methods MPAC and the Assessment Review Board (ARB) use in assessing the current value of properties;
- Property assessment information that might benefit the taxpayer is not consistently recorded by MPAC; and,
- At times during the appeal process, MPAC appears to be at an unfair advantage by having property information not readily available to taxpayers.

The Ombudsman's report contains 22 recommendations to address these problems, including a number of suggested improvements to the information contained on MPAC's *Notice of Assessment* form, enhancements to provide greater access to assessment information by property owners, procedural changes to increase the effectiveness of the property inspection process, and recommended changes to ensure that valuations reflect actual selling prices, and that decisions of the Assessment Review Board are appropriately reflected in subsequent property assessments.

The full text of the Ombudsman's report is available at:

<http://www.ombudsman.on.ca/pdf/MPACFINALREPORTENG.pdf>

MPAC responded immediately to the Ombudsman's report, in the form of a letter from Debbie Zimmerman, Chair of the MPAC Board of Directors, dated March 22, 2006. In the letter, MPAC indicates that, of the 22 recommendations made by the Ombudsman, 17 are being implemented by MPAC, a further three are being examined to determine potential impacts and resource requirements before proceeding, and two are recommendations that MPAC feels are the responsibility of the Government of Ontario to address. MPAC's response is included as an appendix to the Ombudsman's report.

City staff have completed an extensive review of the Ombudsman's report, as well as MPAC's response. A number of the recommendations contained in the report, if implemented by MPAC, may require changes to existing processes and procedures within various City divisions, particularly in Revenue Services. In other cases, implementation of the Ombudsman's recommendation may require amendments to the *Assessment Act* or other legislation. As such, this report recommends that the City of Toronto be consulted prior to the enactment of any legislative changes required to implement the Ombudsman's recommendations, and that the City also be consulted by MPAC prior to the implementation of any changes stemming from the Ombudsman's report that may have financial implications for the City of Toronto.

A full listing of the Ombudsman's recommendations, together with MPAC's response, and the City of Toronto's response, including proposed modifications to several of the Ombudsman's recommendations, is attached as Appendix 1 to this report.

Implications for the City of Toronto arising from the Ombudsman's report:

In general, City staff support the recommendations contained in the Ombudsman's report and recommend that City Council endorse the Ombudsman's recommendations as a means of creating greater transparency, accountability and fairness for the taxpayers of Toronto.

In several cases, however, staff have identified that implementation of the Ombudsman's recommendations may have financial or other implications for the City of Toronto, or that the Ombudsman's recommendations should be broadened to include additional wording, as detailed below.

Recommendation No. 8:

That the Government of Ontario undertake a review of whether the public interest is better served by permitting MPAC to maintain confidentiality over its intellectual products, or by requiring full disclosure of property assessment methodology to Ontario taxpayers.

The Ombudsman's report notes MPAC's concern that making its assessment methodologies and assessment information publicly available may result in a loss of customers in the financial services sector that currently purchase assessment/property information from MPAC. Further, MPAC's methods and the systems and products used for property evaluation have been developed and refined over time, at considerable expense to the corporation – if MPAC's intellectual products were to lose protection, private sector interests would be able to utilize this information and duplicate MPAC's methodologies, either to challenge MPAC's assessments, or to compete directly with MPAC in the provision of assessment/appraisal type services.

MPAC feels it is the responsibility of the Government of Ontario to determine whether the public interest would be served by requiring full disclosure of property assessment methodology. While staff concur with this view, it is noted that, should MPAC lose the protection over the confidentiality of its intellectual products, this will result in direct revenue losses to MPAC. And, as MPAC uses revenue from the sale of its products to offset its total operating costs, any decrease in revenues could be expected to be passed on to MPAC's municipal clients as higher fees for its services.

Recommendation No. 11:

That MPAC undertake a review of its staffing needs to determine whether staffing strategies can be identified and pursued for improving the accurate collection of property data.

The Ombudsman's report notes that MPAC is the largest assessment body in Canada, evaluating more than \$1.1 trillion in property. Nevertheless, in spite of performing a mammoth and challenging task, the Ombudsman suggests MPAC does so with fewer resources than it should. This lack of resources contributes to MPAC being understaffed, which the Ombudsman suggests is one of the many causes for taxpayer complaints with MPAC and evidence that changes need to be made.

While MPAC agrees with the recommendation, they note in their response that in order to address the issue fully, they need to go further than reviewing staffing strategies. Storage,

processing and integration of attribute and spatial data and the organization structure to support the high quality data must also be considered.

Staff concur with the recommendation and with MPAC's comments, and note that additional operating costs incurred by MPAC to increase staff, or for improvements in data management, could result in higher fees for MPAC's services being charged to municipalities.

Recommendation No. 12:

That MPAC standardize its inspection audit reports, and provide the Ombudsman with the results of its inspection audits and quality reviews for 2006, as they become available.

MPAC agrees with the recommendation. Staff also agree with the recommendation but would like to see it expanded so that MPAC not only standardizes its inspection audit reports, but also reviews its entire property inspection function with the aim of improving the quality of the property information it relies on to complete assessments. This is identified in Recommendation (1) (a) of this report.

Recommendation No. 15:

That MPAC should be bound to apply any assessment reductions imposed by the ARB to future years' market value assessments of the same property, unless they have been determined to be wrong by a court of law or MPAC can clearly demonstrate that the circumstances justifying the assessment reduction have changed. In such case the reasons justifying the change should be set out in the taxpayers' assessment notice.

MPAC has agreed that reductions granted by the ARB, whether Minutes of Settlement or decisions of the Board, will be carried forward. Requests for Reconsideration will also be carried forward unless circumstances noted by the Ombudsman prevent this.

Staff agree in part with the recommendation and MPAC's comments. However, the Ombudsman's recommendation only speaks to "any assessment reductions". To ensure consistency and accuracy in property valuations, the recommendation should be broadened to apply consistently to both assessment reductions as well as assessment increases ordered by the ARB. This is identified in Recommendation (1) (b) of this report.

Recommendation No. 16:

That MPAC should ensure that all minutes of settlement it enters into relating to assessment reductions contain reasons clearly explaining why a reduction has been agreed to, and that these reasons are recorded.

MPAC agrees it can provide additional information to the taxpayer to explain the reasons for the settlement and will record the reasons in its files, but suggests that all parties should continue to have the option of not recording the reason for the settlement in the Minutes.

Staff support MPAC's position that parties should continue to have the option of not recording the reasons for settlement in the Minutes. If the Ombudsman's recommendation is accepted, it may serve as a disincentive to settling cases, as it will require that all parties agree on not only

the CVA and tax class but also on the reasons. As stated in MPAC's response, often each party has different reasons for agreeing to a settlement.

Additionally, there is the concern that the Minutes of Settlement agreed to as a compromise in one case might be used as a precedent in other negotiations. It is in the City's interest to maintain the "without prejudice" basis for minutes of settlement. It is in all parties' interests, including the City's, for settlements to be encouraged where possible, to avoid the costs associated with litigating all disputes. To the extent that this recommendation might discourage or hinder settlements and encourage litigation, there may be financial implications for the City.

Recommendation No. 17:

That MPAC should be bound to apply reductions agreed to in minutes of settlement to future years' assessment of the same property unless MPAC can clearly demonstrate that the circumstances justifying the assessment reduction have changed. If so, the reason justifying the change should be set out in the taxpayer's assessment notice.

MPAC has agreed that reductions granted by the ARB, whether Minutes of Settlement or decisions of the Board, will be carried forward. Requests for Reconsideration will also be carried forward unless circumstances noted by the Ombudsman prevent this.

Staff agree in part with the recommendation and MPAC's comments, but note that the Ombudsman's recommendation only speaks to assessment "reductions". To ensure consistency and accuracy in property valuations, the recommendation should be applied consistently to assessment reductions and increases, as well as property classification changes, to subsequent years. This is identified in Recommendation (1) (c) of this report.

As the Ombudsman's recommendation increases the importance of Minutes of Settlement, the City may need to direct additional resources to reviewing minutes of settlement, particularly for those appeals that may have significant financial or precedent-setting implications.

Recommendation No. 21:

That the initial onus of proof in assessment matters before the ARB be placed on MPAC to substantiate its assessments when they are challenged.

MPAC neither endorses nor rejects the recommendation, but has stated that the rule that the onus is on the taxpayer in appealing an assessment is based on legislation. As such, any change to shift that onus would have to be made by the Province.

Staff concur with MPAC's view that this is a legislative issue, and one that would require additional research. It is also possible that a reversal of onus would likely result in more appeals, thereby increasing the proportion of the tax base at risk, and may increase the number of appeals in which the City participates. This may also result in further financial implications because of the City's obligation to fund MPAC - if MPAC was required to devote more resources to the appeal process, its costs would increase and be passed on to municipalities.

In summary, the Ombudsman's recommendations, once implemented by MPAC, will serve to improve access to property and assessment information by property owners, and increase understanding and transparency of the assessment process. The acceptance and use of actual sale prices as the best evidence of property assessment will ensure greater fairness for ratepayers. Most importantly, however, are the recommendations to ensure that assessment changes, whether the result of ARB decisions, Minutes of Settlement or Requests for Reconsideration, are appropriately reflected in subsequent reassessments. The changes recommended by the Ombudsman's report, and MPAC's commitment to implement these changes, will address a longstanding deficiency in MPAC's operations, and should be expected to result in fewer appeals, more certainty for property owners, and greater equity in assessments. As such, it is recommended that City Council endorse the Ombudsman's recommendations with additional comments as noted above and identified in Recommendation 1 of this report.

It is not possible, as yet, to predict the potential financial impacts of implementing all of the recommendations. MPAC has agreed to undertake a more detailed examination of three of the recommendations to determine potential impacts and resource requirements before proceeding, and two other recommendations have been referred to the Government of Ontario to address. These changes may require legislative amendment to implement – it is recommended that Council seek to ensure the City of Toronto's involvement in any discussions of possible legislative changes such that both the City's and Toronto property owners' interests are represented.

In any event, the outcome of consultations between the Province, the City and MPAC will determine the nature of the final changes implemented by MPAC in response to the Ombudsman's recommendations. Staff will provide a follow-up report to the Council on potential financial implications for the City as warranted.

Motions referred to the City Manager for consideration:

(a) “MPAC Reform - Request to Establish an Assessment Monitoring Group”

At its meeting of March 29 and 30, 2006, Council considered Motion J(7): *MPAC Reform - Request to Establish an Assessment Monitoring Group*, and referred the item to the Policy and Finance Committee.

This motion resolved that Toronto City Council support and urge MPAC and the Government of Ontario to implement immediately the recommendations in the Ombudsman's report 'Getting it Right', to create greater transparency, accountability and fairness for the taxpayers of Toronto and so advise the Ombudsman. Recommendations (1) and (2) of this report accomplish this.

The motion also recommends that an Assessment Monitoring Group be established to monitor and report to Council on the actions of MPAC, the Assessment Review Board and the provincial government with respect to Current Value Assessment (CVA), assessment and appeals, and the implementation of the Ombudsman's report. The motion further requests that the City Manager poll Councillors to determine interest in joining the Monitoring Group, with the group to report

to the January 2007 meeting of the Policy and Finance Committee on the progress that MPAC has made toward implementation of the Ombudsman's recommendations.

In fact, an assessment monitoring group currently exists, in the form of a staff unit within Revenue Services Division. In August of 2004, the Assessment Analysis Unit was created to review and monitor the assessment information provided by MPAC to ensure that the data is accurate and up-to-date, and to initiate assessment appeals or Requests for Reconsideration, with the approval of Council, for properties that staff identify as being significantly under-valued or misclassified. The City's Revenue Services Division will also be reporting to Council on MPAC's progress in implementing the Ombudsman's recommendations, trends in the number of appeals filed, etc.

Additionally, the Treasurer is required to submit a report annually to the Policy and Finance Committee and Council, following the close of the assessment roll, as a means of monitoring the quality of MPAC's customer service and assessment product, using key performance measures and standard quantitative measures of assessment quality including assessment-to-sale ratios (re: Clause No. 23 of Report No. 2 of the Administration Committee - *Municipal Property Assessment Corporation's (MPAC) "Futures" Program*, adopted by Council at its meeting of February 4, 5 and 6, 2003). This report will also provide the opportunity to report annually on the progress of the implementation of the Ombudsman's recommendations.

And finally, the City of Toronto has one Councillor that currently sits on the MPAC Board of Directors, having nominated Councillor Jenkins as Toronto's representative in 2005. Council has, as recently as September 2005, requested that the Province of Ontario amend the *Municipal Property Assessment Corporation Act 1997* to provide for a permanent seat on the Municipal Property Assessment Corporation Board of Directors for the City of Toronto, to be filled by an individual appointed by Toronto Council (Clause 8 of Report No. 8 of the Policy & Finance Committee, adopted by Council September 28, 29 and 30, 2005). This would ensure that Toronto's interests are consistently represented on MPAC's Board of Directors, and would provide a further ability to inform Council of MPAC's progress.

Given the above venues to monitor and inform Council on issues concerning MPAC, it is felt that a further Assessment Monitoring Group is not necessary at this time.

- (b) "Assessment System for The City of Toronto - "What Does the Real Estate Market Have to do with Property Taxes?"

At its meeting of April 11, 2006, the Policy and Finance Committee had before it a communication dated April 5, 2006 from Councillor Michael Walker attaching a motion entitled: "Assessment System for The City of Toronto - "What Does the Real Estate Market Have to do with Property Taxes?", containing a number of recommendations regarding the property assessment system used by The City of Toronto and throughout the Province of Ontario: Current Value Assessment (CVA). The following section provides information on each of the recommendations proposed in Councillor Walker's motion (the recommendations proposed by Councillor Walker are reproduced in italics in the boxed sections below).

- (i) *Council endorse the recommendations of the Ontario Ombudsman's investigative report regarding MPAC released March 28, 2006;*
- (ii) *direct the City Manager to report to the Policy and Finance Committee on the Ombudsman's report with particular attention to the implications for taxpayers and the City of Toronto;*

This staff report, and Recommendation (1) herein, addresses both items (i) and (ii) above.

- (iii) *petition the provincial government for an immediate moratorium on future property tax reassessments in the City of Toronto;*

A reassessment moratorium would give property owners a reprieve from steady assessment increases of the past few years and provide stable property tax burdens over the period of the moratorium. However, in a presentation given to the Association of Municipalities of Ontario in October 2005, Dr. Enid Slack of the Institute of Municipal Finance and Governance, warns that the stability and predictability that is gained from property assessment freezes is at the expense of equity in property tax assessments.

The concept of annual reassessments is one of the key elements of Ontario's Fair Assessment System that introduced Current Value Assessment in 1998. If assessments are updated on a regular, periodic basis, than the assessed value of the property will continue to reflect actual market value, and the magnitude of assessment changes due to annual reassessments would be expected to be significantly less dramatic than the shifts that may occur when properties have not been reassessed for a long period of time. Averaging of annual assessed values over a two or three-year period could also help to smooth assessment fluctuations from year to year, although this option is not currently required in Ontario.

Professor Harry Kitchen, an economist at Trent University in his report "Property Taxation: Issues in Implementation", advises that a fair and productive assessment base also requires consistent valuations and revaluations. A moratorium introduced today, while providing some property owners a break, will also mean that the reforms introduced by the province in 1998 to attain a steady annual reassessment cycle will be thwarted. Furthermore, when the time comes to reassess following the moratorium, the same kinds of sudden and dramatic changes in tax burdens may occur between property classes and property types that prompted assessment reform in the first place. As such, the annual reassessment cycle mandated by Ontario's *Assessment Act* may be preferable to a frozen assessment base that would, over time, introduce inequities of its own in assessment and taxation levels.

(iv) *petition the provincial government for a six-month extension of the March 31, 2006 deadline for appeals at the Assessment Review Board (ARB);*

This recommendation has already been fulfilled in some measure. On March 30, 2006, Ontario’s Minister of Finance Dwight Duncan announced the passage of legislation that extends the assessment appeal deadline for the 2006 tax year from March 31 to June 30. The extension applies to properties in all classes.

(v) *direct the appropriate City staff to report to the Policy and Finance Committee on the comparative details of all property assessment systems for tax generation used by similar cities and regions in Canada and other countries (i.e., Nova Scotia, Britain, Israel, USA), with attention to the “California-model: Market Value Point of Sale”, including the operating cost of running such systems;*

Table 1, below, provides a comparative summary of the various types of property assessment systems in use in jurisdictions within Canada, U.S. and abroad.

Table 1
Comparative Summary of Property Assessment Systems

Property Assessment Method	Description	Advantages	Disadvantages
<p>CURRENT OR MARKET VALUE ASSESSMENT</p> <p>In use in Ontario and all other provinces and territories in Canada, most states in the United States, western Europe, and other countries with developed real estate markets</p>	<p>Properties valued on basis of price determined between a willing buyer and willing seller on the open market. Ideally, for properties sold in a year, current value is selling price. For properties not sold, current value is estimated using sales comparison, cost/replacement approach and income approach.</p> <p>Estimates rely on mass appraisal techniques using multiple regression analysis that considers a number of variables that may affect value (e.g., living area, lot size, location, age of building, no. of bathrooms). Mass appraisal allows assessment updates more often without physical inspection of all properties.</p> <p>In Canada, no restrictions on assessment increases. Ontario and Nova Scotia reassessed annually.</p>	<p>Current value captures local government amenities, e.g., homes located close to transit or parks benefit more from these services. Current value of these homes is higher than those that do not benefit.</p> <p>Improvements to property increase owner’s equity and, especially in rising markets, increase in tax burden not likely to exceed gain in wealth.</p>	<p>In areas with high levels of property sales transactions, assessed values can rise dramatically, leading to tax burdens beyond taxpayers’ ability to pay.</p> <p>Penalizes property owners who make improvements.</p> <p>Mass appraisal methods to determine current value can result in errors, most significant where actual sales price of property, i.e. current value, is lower than mass appraisal value.</p> <p>For properties not sold, current value is based on subjective judgment / competency of assessor.</p>

Property Assessment Method	Description	Advantages	Disadvantages
<p>ACTUAL VALUE</p> <p>“California Model” (Proposition 13) Nine other U.S. states</p>	<p>Form of current value.</p> <p>In California, assessment increases are restricted and can only occur at time of sale or resale. In between sales, annual assessment increases limited to the rate of inflation up to 2 percent per year. No reassessment if property transferred to children of owner.</p>	<p>Stable and predictable tax burdens. Addresses the issue of rapid rise in property values leading to tax burdens beyond ability to pay.</p> <p>Can contribute to neighbourhood preservation as property sales are discouraged.</p>	<p>Unequal tax treatment of properties with similar actual value. Taxpayer resistance to reassessment grows over time, entrenching inequities in tax burdens.</p> <p>Inequities can carry on generations (e.g., young family purchases home and pays taxes on current value, another family inherits a home and pays tax at parents’ purchase price).</p> <p>Reassessment is more frequent for starter homes which means that younger, less affluent first-time homeowners face higher tax burden.</p>
<p>VALUATION BANDS</p> <p>Used in England and Wales</p>	<p>Form of current value. A dwelling is valued at the amount that it would have sold on the open market by a willing vendor in 1991. No revaluation since 1993. Properties placed on a “valuation list” in one of eight “valuation bands” which determines amount of council (property) tax to be paid.</p>	<p>Stable and predictable tax burdens. Addresses the issue of rapid rise in property values leading to tax burdens beyond ability to pay. Properties do not shift to a different band simply from sale. Improvements and/or new construction need to have been made.</p>	<p>Inequitable, in a similar way to Ontario prior to the introduction of CVA, where market value assessments were long out of date. Similar property types could be taxed at widely varying taxation levels. A revaluation will mean large tax shifts.</p>
<p>UNIT VALUE / AREA ASSESSMENT</p> <p>Used in Israel, Chile, China, some former Soviet Republics</p>	<p>Assessed value is the sum of the lot area times an assessment rate per square metre of lot area plus building area times an assessment rate per square metre of building area.</p> <p>In some unit assessment systems, adjustments are made for location, quality / use of property, or other factors.</p>	<p>More effective than current value systems in countries or parts of countries (e.g., Canada’s north in hamlets where a majority of the property is owned by the government), without fully functioning real estate markets.</p> <p>More objective system when compared to subjectivity/ competency of assessor in current value assessments systems.</p>	<p>Unit value does not capture varying local services, and overlooks locational influences.</p> <p>Can result in greater tax burden on low-income taxpayers because average incomes in high value areas are higher than in low-value areas.</p> <p>Values per sq. metre need to be set initially and readjusted over time as circumstances change, leading to subjectivity in rate setting.</p>

Sources: Harry Kitchen (2003), “Property Tax: Issues in Implementation”, a paper prepared for The Consortium for Economic Policy Research and Advices, Association of Universities and Colleges of Canada, pp. 8 – 17; and Enid Slack (2005), “Assessment Under Threat”, a presentation prepared for Association of Municipalities of Ontario, Niagara Falls, Ontario, October 18, 2005.

Unfortunately, detailed comparative information on the operating costs of the assessment systems above was unavailable. In some circumstances, assessment costs per property were provided, but these figures may include different factors and so do not lend themselves to comparison, e.g., operating costs of county assessors in California includes “County Clerk” costs; in Alberta, municipalities conduct their own assessments, in contrast to Ontario’s province-wide assessment system. Additionally, comparative assessment costs between jurisdictions in Canada are deemed proprietary and are not publicly available.

(vi) *petition the provincial government for changes to the new City of Toronto Act (Bill 53) for control over choice of property assessment system and method of tax collection;*

A step has already been taken by City Council to achieve greater control over its property tax system. On April 26, 2006, on behalf of City Council, Mayor David Miller and City Manager Shirley Hoy made a deputation to the Standing Committee on General Government at Queen’s Park with respect to Bill 53, *An Act to amend the City of Toronto Acts, 1997 (Nos. 1 and 2)* (new City of Toronto Act). Among a number of amendments sought by City Council, the Mayor requested that the City be given full control over its property tax base. This amendment is also contained in the January 12, 2006 Policy and Finance Committee staff report titled “Bill 53 – Stronger City of Toronto for a Stronger Ontario Act, 2005”, adopted by City Council on January 31, and February 1 and 2, 2006 (re: Clause 1 of Policy and Finance Committee Report 1).

There are considerations which run against the City abandoning both MPAC and the current value assessment system. Harry Kitchen, in his report “Property Taxation: Issues in Implementation”, stresses that uniformity in property assessments is required for a fair property tax system. Over time, different property assessment methods cause distortions and inequities in local tax practices. Kitchen suggests, in fact, that even with standardized assessment manuals and province-wide rules in place, uniformity is best achieved when the assessment function is centralized. This would appear to be the view of the provincial government as well. The process of centralizing property assessment began in 1970 when this function was taken away from the municipalities. The next opportunity led not to decentralizing, but ultimately the creation of MPAC, which today conducts assessments for all municipalities in the province. It is therefore far from certain that the province will support the City of Toronto being given sole responsibility for property assessment. There is also the consideration of cost. Professor Kitchen notes that a centralized agency for property assessment can take advantage of economies of scale that would not exist if municipalities conducted their own assessments.

(vii) *petition the provincial government to reform the Assessment Act, so the City of Toronto is able to employ a system by which property reassessments occur only at the Point-of-Sale arms-length transactions between a willing seller and a willing buyer (California-model), with annual assessment increasing maximums according to a 3-year running average of the Consumer Price Index (CPI);*

In 1978, a property tax limitation initiative was approved by California voters called Proposition 13. Until this time, real property in California was appraised on a cycle, with no more than 5-year intervals between reassessments. These regular updates meant that assessed values were normally at or close to current market value. With the approval of Proposition 13, property values were rolled back to 1975 market value levels and annual assessment increases after 1978 were limited to the rate of inflation up to 2 percent. The only instance where a property's assessment is based on current market value is when there has been a change of ownership of the property or a new property is constructed. Subsequent years' increases in assessed value for these properties will fall under the 2 percent limit. Thus the effect of Proposition 13 was to transform what had been a current value-based property tax system like Ontario's to an acquisition value-based system.

The California State Board of Equalization describes in its 2005 publication "California Property Tax – An Overview" that since the passage of Proposition 13, disparities in assessments of similar properties have been created based entirely on the dates the properties were purchased. Long term property owners, whose assessments have generally not risen greater than 2 per cent per year, tend to have significantly lower tax liability than recent buyers, whose assessments are based on current value.

In addition to some of the problems with the California model outlined above, there are financial consequences from adopting this model that would have to be considered. In California, passage of Proposition 13 meant property assessment increases were capped at 2 per cent, and, property tax rates were limited to approximately 1 per cent. In Professor Kitchen's report, the author states that, because of these limitations on assessment increases and tax rates, the counties' property tax revenues dropped by 45 per cent after Proposition 13. According to the California Board of Equalization, the fiscal crisis faced by California's counties (which are responsible for property tax assessment and collection) immediately after Proposition 13 led to massive billion dollar bailouts by the state government.

Unlike municipalities in Ontario, local governments in California have access to other tax revenues, including a portion of the state sales tax. Hence a shortfall in property tax revenue due to caps on assessment and tax rate increases could be made up through alternate means, e.g. by increasing other forms of taxes. In Ontario, however, the *Municipal Act* places a number of constraints on municipalities in terms of sources of tax revenues, borrowing powers, and the requirement that municipalities not run deficits. Most of these constraints are duplicated in the new *City of Toronto Act*, and even with the new financial tools in the legislation, City Council has already recognized that these powers may not be sufficient to resolve the City's structural financial needs.

Recognizing that the effectiveness of a cap or moratorium on property assessment would only be effective if it was also accompanied by a tax rate freeze, the City of Toronto does not have the fiscal capacity to suffer any reduction in its current level of tax revenues. As such, a California-style system that links property values to sale prices may have significant financial implications for the City of Toronto. Much further study would be required to determine both the potential effectiveness and the potential fiscal implications of a point-of-sale type of assessment system.

(viii) petition the provincial government for changes to the new City of Toronto Act (Bill 53) with regard to stopping Toronto's collection of education taxes for the provincial government and with the aim of distributing the burden of the education tax equally amongst all municipalities in the province, starting first with harmonizing our burden with the '905 region';

The collection of provincial education taxes by municipalities is a statutory requirement established under the *Education Act* - the collection of education taxes by municipalities pre-dates the current CVA-based tax regime. As such, substantive legislative change would be required to change this situation, as it applies to the collection of education taxes by all municipalities within the province. It is unlikely that Toronto could petition the Provincial Government to prescribe legislation specific to Toronto that would alleviate the requirement to collect and remit education taxes.

In terms of the education tax burden, a single province-wide tax rate for education purposes has applied to all residential property since the introduction of CVA in 1998. Education tax rates for non-residential properties (commercial, industrial and multi-residential tax classes), however, vary from municipality to municipality, and are prescribed each year by the Minister of Finance.

Toronto City Council has consistently held the position that non-residential education tax rates should be equalized across the province, to distribute the education tax burden more equitably between municipalities, and that, as an immediate measure, Toronto's education tax rates should be reduced to the average level of non-residential education tax rates within the Greater Toronto Area (GTA, or "905" region). Most recently, Council reiterated its position regarding the equalization of education tax rates within Toronto by its adoption of Clause 1 of Report No. 2 of the Joint Policy and Finance Committee and Economic Development and Parks Committee ("Final Recommendations – Enhancing Toronto's Business Climate – It's Everybody's Business"), on October 26, 27, 28 and 31, 2005, which included the following 2 recommendations:

- (1) as part of the New Deal with the Province of Ontario, the provincial government be requested to commit to reducing the Education Levy on the industrial and commercial class in Toronto; and*
- (2) the Province of Ontario be advised that City Council has taken a strong position on reducing the business tax ratio over the long-term, as a strategy to retain and attract business, and strongly requests that the Province contribute to this sustainability strategy by immediately lowering the Education Tax Rate to the average of the surrounding Greater Toronto Area municipalities;*

(ix) *petition the provincial government to repeal the Fair Municipal Finance Act, 1997, with specific regard to replacing the Ontario Fair Assessment System (OFAS) which was intended to make property assessment and the calculation of property taxes fair, consistent and understandable.*

The *Fair Municipal Finance Act, No. 1* and *No. 2*, introduced in 1997, was a collection of changes to various statutes that dealt with municipal finance and property assessment, that laid out the framework for the government's "Who Does What" initiatives and the current CVA-based assessment system – the package of assessment and taxation reforms was also referred to collectively as the Ontario Fair Assessment System (OFAS). These legislative amendments have now been embedded in Ontario's current *Municipal Act, Assessment Act, Education Act*, and many others. As such, the *Fair Municipal Finance Act*, by itself, served only to update these individual acts – it cannot now be repealed as an entity.

It should be noted that a detailed review of the merits of the current value assessment (CVA) system in Ontario is far beyond the mandate undertaken by the Provincial Ombudsman in his review of MPAC. The report contains no recommendations to suggest that MPAC, or the province for that matter, should adopt a new method for assessing property in Ontario. While the Ombudsman is critical of some of MPAC's methods and practices, his report does not address the appropriateness or effectiveness of the CVA method itself.

In summary, any proposal to replace or amend the existing assessment and taxation regime would require the approval of the Government of Ontario, and substantive legislative change to effect a new model for assessment in Toronto. Much further study would be necessary to fully evaluate possible alternatives, and the potential effectiveness and fiscal implications of alternate assessment systems.

Conclusions:

This report recommends that Council endorse, with additional comments, the recommendations contained in the Ontario Ombudsman's report on the Municipal Property Assessment Corporation (MPAC). The Ombudsman's recommendations, once implemented by MPAC, will serve to improve access to property and assessment information by property owners, and increase understanding and transparency of the assessment process. Additionally, the use of actual sale prices as evidence of property value, and the recommendations to ensure that assessment changes, whether the result of ARB decisions, Minutes of Settlement or Requests for Reconsideration, are appropriately reflected in subsequent reassessments, will ensure greater fairness for ratepayers.

The report also provides information relating to two motions concerning the Ombudsman's report. The staff commentary on these motions is provided for information purposes.

Staff will be providing follow-up reports to Council on MPAC's progress in implementing the Ombudsman's recommendations, and any potential implications to the City arising therefrom, as warranted.

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List of Attachments:

Appendix 1: Summary of Provincial Ombudsman's Recommendations, Response by MPAC,
and City of Toronto Response

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Appendix 1: Summary of Provincial Ombudsman’s Recommendations, Response by MPAC, and City of Toronto Response

	Ombudsman’s Recommendation	MPAC’s response	City of Toronto Response
1.	That MPAC should amend the brochure that accompanies its Notice of Assessment to describe the importance to taxpayers of ensuring that MPAC has accurate information about the taxpayer’s property, and describing alternative means for learning about <i>all</i> of the information that MPAC has relating to the subject property.	MPAC agrees with the recommendation and will implement the changes to the brochure for the 2006 Assessment Update.	City agrees with the recommendation. Once the 2006 Notices of Assessment and accompanying brochure(s) are finalized by MPAC, Revenue Services will ensure that an information package is distributed to Councillors and will arrange for briefing sessions for Councillors and their staff.
2.	That MPAC should amend the Notice of Assessment to describe, for cases where “multiple regression analysis” techniques have been used, not only the average municipal assessment increase or decrease but also the average percentage change within the particular neighbourhood zone the property falls within.	MPAC agrees with the recommendation to provide more complete information concerning the performance of the local real estate market. The Property Assessment Notice will now include the primary approach used to derive the property value. The brochure will contain general information about the subject and how taxpayers can obtain more specific information. Additional information will also be provided on the website and through the Customer Contact Centre. The recommendation will be implemented as part of the 2007 Assessment Update.	See above
3.	That MPAC should amend the Brochure that accompanies its Notice of Assessment to describe how information about comparable properties can be useful on appeal, furnish accurate and complete information as to exactly how many comparables can be secured and how these comparables can be accessed, making particular note that the six comparables that MPAC selects are likely to be relied on by MPAC in the event of an appeal to the ARB.	MPAC agrees with this recommendation and will implement for the 2006 Assessment Update.	See above
4.	That MPAC should include a box on the Notice of Assessment provided to property owners recording the previous years where Requests for Reconsideration (RFR) settlements or ARB reassessments were achieved. The box should record “No” if MPAC believes there are none. Where MPAC is aware that reassessments have occurred, the years in question and type of review used should be recorded.	MPAC agrees with this recommendation and will target implementation in 2007.	See above

	Ombudsman's Recommendation	MPAC's response	City of Toronto Response
5.	That MPAC provide a copy of the Property Profile Report relating to the property when it sends out its property assessment notices.	MPAC agrees with the recommendation and in 2006, will undertake a pilot project in one geographic area to assist in developing strategies for wider distribution and determining the additional costs as well as increased staffing requirements to respond to anticipated increases in enquiries.	See above
6.	That MPAC, in providing information about comparables, should include all relevant information about those properties that may be relevant to the evaluation of the property.	MPAC agrees with the recommendation and will undertake a broader review of their release of comparables. The immediate implementation of this is outlined in recommendation 7 in the Multiple Regression Analysis proposal with the release of the Detailed Valuation Enquiry screen information for residential properties.	<p>City agrees with the recommendation. To be effective, however, a coordinated process is required between MPAC and the City, as the City has key property information that MPAC requires in order to accurately assess a property (e.g. up-to-date Building / Planning information, By-Laws, re-Zoning, Site Plans, Permits, Properties Severances, Properties Consolidations, Committee of Adjustments Consents, etc).</p> <p>A coordinated process between MPAC and the City will assist in ensuring that the comparables provided by MPAC to taxpayers are reliable and defensible.</p> <p>The City should also encourage MPAC to establish a systematic process to obtain other relevant property information, required for the accurate assessment and classification of properties, from other sources such as the OMB (e.g. OMB applications / decisions).</p>
7.	That MPAC implement the changes in its Proposal for Release of MRA Related Data, dated Nov. 17, 2005.	MPAC agrees with this recommendation and an internal MPAC team has been struck to implement the Proposal.	City agrees with the recommendation.
8.	That the Government of Ontario undertake a review of whether the public interest is better served by permitting MPAC to maintain confidentiality over its intellectual products, or by requiring full disclosure of property assessment methodology to Ontario taxpayers.	MPAC feels this recommendation is the responsibility of the Government of Ontario and a review of whether the public interest is better served by permitting MPAC to maintain confidentiality over its intellectual products or by requiring full disclosure of the property assessment methodology to taxpayers should be completed.	<p>City agrees with the recommendation.</p> <p>The Ombudsman's report notes MPAC's concern that making public its assessment methodologies may mean a loss of customers in the financial services sector that purchase assessment information from MPAC. If MPAC's intellectual products lose protection, competitors will be able to copy MPAC's methodologies.</p> <p>A financial implication for the City, should MPAC's concerns be realized, is that the loss of revenue to MPAC will be passed along as higher fees charged to municipalities for its services.</p>

	Ombudsman's Recommendation	MPAC's response	City of Toronto Response
9.	That MPAC ensure that its administrative procedures regarding assessments and inspections, disclosure of information, RFRs and ARB appeals be set out in writing and made available to the public on its website. The procedures should include those administrative procedures incorporating the recommendations set out in this report.	MPAC agrees with this recommendation.	City agrees with the recommendations and will ensure that once MPAC documents its administrative procedures, that Councillors and their staff are informed.
10.	That MPAC review its current Customer Contact Centre practices with a view to ensuring that property owners gain access to those staff who can most appropriately address their enquiries.	MPAC agrees with the recommendation. It requires further review prior to implementation.	City agrees with the recommendation. Revenue Services staff will ensure that its existing procedures for directing taxpayers to the most appropriate MPAC official are updated and mirror the changes that MPAC has undertaken to implement.
11.	That MPAC undertake a review of its staffing needs to determine whether staffing strategies can be identified and pursued for improving the accurate collection of property data.	MPAC agrees with the recommendation but in order to address the issue fully, they need to go further than reviewing staffing strategies. Storage, processing and integration of attribute and spatial data and the organization structure to support the high quality data must also be considered.	City agrees with both the recommendation and MPAC's comments. Additional operating costs incurred by MPAC to increase staff, or for improvements in data management, could result in higher fees for MPAC's services being charged to municipalities.
12.	That MPAC standardize its inspection audit reports, and provide the Ombudsman with the results of its inspection audits and quality reviews for 2006, as they become available.	MPAC agrees with this recommendation.	City agrees with the recommendation but would like to see it expanded so that MPAC not only standardizes its inspection audit reports, but also reviews its entire property inspection function with the aim of improving the quality of the property information it relies on to complete assessments.
13.	That, when a property assessment is challenged based on an actual sale price proximate to the valuation date, MPAC should generally accept that sale price as the best evidence of the property assessment. The actual sale prices should also be treated as an important factor in assessing the current value of the particular property in future years. MPAC should deviate from these general rules only if there are concrete, cogent reasons for believing that the sale has not been made under market conditions or does not otherwise reflect actual market value.	MPAC agrees with this recommendation and will take steps to ensure that this principle is properly communicated. As well, MPAC will place stronger emphasis on the issue in its ongoing staff training. If the sale is not considered to be the best indicator of current value, the taxpayer will be fully informed of the reasons for the determination.	City agrees with the recommendation and MPAC's comments insofar as it applies to residential properties. However, it should be applied consistently – i.e. MPAC should accept actual sale prices (as long as they are valid) whether they are lower or higher than MPAC's assessed current value. With respect to non-residential properties, where the number of sale transactions may be limited, MPAC uses other valuation methods such as the income approach or replacement cost approach to determine current assessed value.

	Ombudsman’s Recommendation	MPAC’s response	City of Toronto Response
14.	That MPAC should apply ARB findings of value at specific valuation dates when carrying out assessments for future years based on the same date.	Annual assessment updates are now required by the <i>Assessment Act</i> so this should not occur however, if it should MPAC agrees that the decisions of the ARB will be carried forward to future assessment years where the valuation date has not changed.	City agrees with the recommendation and MPAC’s comment. MPAC should apply an ARB finding of value if it is lower or if it is higher than MPAC’s current value assessment after any necessary adjustments, (i.e. change in valuation base year, and/or any changes or improvements to the property).
15.	That MPAC should be bound to apply any assessment reductions imposed by the ARB to future years’ market value assessments of the same property, unless they have been determined to be wrong by a court of law or MPAC can clearly demonstrate that the circumstances justifying the assessment reduction have changed. In such case the reasons justifying the change should be set out in the taxpayers’ assessment notice.	MPAC agrees that reductions granted by the ARB, whether Minutes of Settlement or decisions of the Board will be carried forward. Requests for Reconsideration will be carried forward unless circumstances noted by the Ombudsman prevent this. In these cases, MPAC will notify the taxpayer. Steps which have been taken or will be taken are: Electronic tools have been developed to scan the various databases; exception listings with possible anomalies are produced for staff review; exception listings will be reviewed several times throughout the year to ensure appeal adjustments are properly updated; with the implementation of the Integrated Property System in 2006, MPAC will examine options for automating the process to minimize the chance of error; clear directives will be provided to staff to ensure a consistent understanding of the occasions when decisions cannot legally be carried forward; a better coding system will be established and audits will be conducted.	City agrees in part with the recommendation and MPAC’s comments. However, the Ombudsman’s recommendation only speaks to “any assessment reductions”. To ensure consistency and accuracy in property valuations, the recommendation should be applied consistently to both assessment reductions as well as assessment increases ordered by the ARB.
16.	That MPAC should ensure that all minutes of settlement it enters into relating to assessment reductions contain reasons clearly explaining why a reduction has been agreed to, and that these reasons are recorded.	MPAC agrees it can provide additional information to the taxpayer to explain the reasons for the settlement and will record the reasons in its files. All parties should continue to have the option of not recording the reason for the settlement in the Minutes.	City agrees with MPAC’s decision to provide additional information on the reasons for settlement. City supports MPAC’s position that parties should continue to have the option of not recording the reasons for settlement in the Minutes. If the Ombudsman’s recommendation is accepted, it might be a disincentive to settling cases as it will require all parties to agree on not only the CVA and tax class but also on the reasons. As stated in MPAC’s response, often each party has different reasons for agreeing to a settlement. Additionally, there is the concern that the Minutes of Settlement agreed to as a compromise in one case might be used as a precedent in other

	Ombudsman’s Recommendation	MPAC’s response	City of Toronto Response
17.	That MPAC should be bound to apply reductions agreed to in minutes of settlement to future years’ assessment of the same property unless MPAC can clearly demonstrate that the circumstances justifying the assessment reduction have changed. If so the reason justifying the change should be set out in the taxpayer’s assessment notice.	MPAC agrees and combined its reply to 17 with recommendation 15. See no. 15.	<p>negotiations. It is in the City’s interest to maintain the “without prejudice” basis for minutes of settlement.</p> <p>It is in all parties’, including the City’s, interest for settlements to be encouraged where possible, to avoid the costs associated with litigating all disputes. To the extent that this recommendation might discourage or hinder settlements and encourage litigation, there might be financial implications for the City.</p> <p>City agrees in part with the recommendation and MPAC’s comments.</p> <p>However, the Ombudsman’s recommendation only speaks to assessment “reductions”. To ensure consistency and accuracy in property valuations, the recommendation should be applied consistently to both assessment reductions <u>and</u> increases, as well as property classification changes, to subsequent years.</p> <p>As the Ombudsman’s recommendation increases the importance of Minutes of Settlement, the City may need to direct additional resources to reviewing minutes of settlement.</p>
18.	That MPAC should request reasons for ARB decisions if the basis for an assessment decision is unclear, and record all ARB reasons.	MPAC agrees with this recommendation.	City agrees with the recommendation. However, the reasons for the ARB’s decisions should also be provided to the municipality.
19.	That MPAC immediately cease the practice of bringing new property comparables to ARB hearing without sufficient prior disclosure.	MPAC agrees with this recommendation and will establish standards and review staffing requirements to sufficiently notify the property owner prior to the hearing date (such as 7 days’ prior notice) when comparables will be used. In cases where sufficient information is not given and the other party requires more time, MPAC will consent to an adjournment of the hearing.	City agrees with the recommendation and MPAC’s comments.
20.	That MPAC give direction to its staff to ensure that challenges to assessments are seriously considered and resolved at the earliest opportunity and that last minute settlements before the ARB are discouraged.	MPAC agrees with this recommendation.	City agrees with the recommendation.

	Ombudsman's Recommendation	MPAC's response	City of Toronto Response
21.	That the initial onus of proof in assessment matters before the ARB be placed on MPAC to substantiate its assessments when they are challenged.	The rule that the onus is on the taxpayer in appealing an assessment is based on legislation. Any change to shift that onus would have to be made by the Province. MPAC does not endorse nor reject the recommendation.	City agrees with MPAC's response that this is an issue that requires a legislative change and one that would require additional research. City agrees that a reversal of onus will likely result in more appeals and might increase the volume of appeals the City gets involved in. There might also be additional financial implications because of the City's obligation to fund MPAC. If MPAC is required to devote more resources to the appeal process, its costs will increase and those costs will be transferred to the municipalities.
22.	That MPAC report back to the Ombudsman's Office in six months time on its pledge in implementing the Ombudsman's recommendations.	MPAC agrees with this recommendation.	City agrees with the recommendation.