Third Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

MUNICIPAL AFFAIRS

39-40 Elizabeth II

Chairperson
Mr. Bob Rose
Constituency of Turtle Mountain

VOL. XLI No. 7 - 2:30 p.m., TUESDAY, JUNE 23, 1992

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS

Tuesday, June 23, 1992

TIME – 2:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Bob Rose (Turtle Mountain)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Derkach, Driedger, Findlay

Ms. Cerilli, Messrs. Edwards, Gaudry, Rose, Ms. Wowchuk

*Substitutions:

Mr. Sveinson for Mr. McAlpine

APPEARING:

John Plohman, MLA for Dauphin

Jack Penner, MLA for Emerson

WITNESSES:

Bill 20–The Municipal Assessment Amendment Act

John Perrin, Private Citizen

Larry Chornoboy, Tupperware

Bob Douglas, Keystone Agricultural Producers

Jim Perfaniuk, Private Citizen

Bill 49–The Environment Amendment Act

Wayne Neily, Manitoba Environmental Council

Don Sullivan, Choices

Bill 82–The Farm Practices Protection and Consequential Amendments Act

Larry Walker, Union of Manitoba Municipalities

Alfred J. Poetker, Oakville Colony - Portage la Prairie

MATTERS UNDER DISCUSSION:

Bill 20–The Municipal Assessment Amendment Act

Bill 49–The Environment Amendment Act

Bill 82–The Farm Practices Protection and Consequential Amendments Act

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Clerk of Committees (Ms. Patricia Chaychuk-Fitzpatrick): Will the Standing Committee on Municipal Affairs please come to order.

We must proceed to elect a chairperson. Are there any nominations?

Hon. Leonard Derkach (Minister of Rural Development): I nominate Mr. Rose.

Madam Clerk: Mr. Rose has been nominated. Are there any other nominations? Seeing there are no other nominations, Mr. Rose, you are elected Chair.

* (1440)

Mr. Chairperson: Will the Standing Committee on Municipal Affairs please come to order.

This afternoon the committee will be resuming consideration of five bills: Bill 20, The Municipal Assessment Amendment Act; Bill 34, The Surveys Amendment Act; Bill 49, The Environment Amendment Act; Bill 79, The Highways Protection and Consequential Amendments Act; and Bill 82, The Farm Practices Protection and Consequential Amendments Act.

At the last meeting of the Municipal Affairs committee, the committee heard from four presenters on Bill 20. At that meeting the committee had been addressing questions to one presenter, Mr. Michael Mercury, and it was agreed that the committee would continue with questions on Mr. Mercury's presentation. Following that, we shall continue on with the other presenters registered to speak to Bills 20, 49 and 82.

If Mr. Mercury is in attendance, will he please approach the podium.

I have been advised that Mr. Mercury is not in attendance.

Mr. John Plohman (Dauphin): Mr. Chairperson, I wonder whether there would be leave of the committee to come back to the questioning and

completion of the presentation by Mr. Mercury, if he is able to attend later and if we are still sitting at that time today.

As well, I wonder if you might ask if there is anyone else who wishes to make a verbal presentation here today.

Mr. Chairperson: Is it the will of the committee to consider Mr. Mercury's presentation if he appears before the committee is completed?

Hon. Albert Driedger (Minister of Highways and Transportation): Mr. Chairperson, I would suggest that we go through the list in terms of the presenters that we have on the various bills. Once having completed listening to presenters, then I would suggest that we then go clause by clause. If the individual has not shown by that time, then I do not think that we make provision to have it be interrupted at any time during the course of the balance of our deliberations.

So let us go through the presenters and at the end call again. If the individual is not here, then we proceed clause by clause as we have done in the past.

Mr. Chairperson: Does the committee agree? Okay, that is agreed.

Mr. Plohman: Not yet. Mr. Chairperson, I think what was stated was that all the presenters on all the bills and then we could call again. That would give a little more time for the person before we start clause by clause.

There is no harm for this committee to consider Bill 20 again insofar as presenters are concerned even though we have heard presentations on other bills in the meantime.

Mr. Driedger: That is exactly what I said.

Mr. Plohman: Except that the Chairperson interpreted it slightly differently, as I heard it.

Mr. Chairperson: For clarification, does the committee then agree to hear presenters on all bills and then ask for anyone who was not present for presentations on all bills, if they are present then to come forward and make their presentation?

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed and so ordered.

The next presenter listed on Bill 20, Mr. John Perrin, private citizen. Is Mr. Perrin here?

Mr. Plohman: I had suggested–and no one has spoken contrary to that–that you canvass the audience to see if there is anyone else of the public that are here who wants to make a verbal presentation to the committee today. It is standard procedure that we know if there are more presenters, Mr. Chairperson, at this time.

Mr. Chairperson: Mr. Plohman, I agree that is standard procedure. Is there anyone else in the audience who wishes to make a presentation to any of the bills listed before the committee? If so, would they please give their names to the Clerk?

I have been advised that, before we recognize Mr. Perrin, Mr. Earl Geddes of Keystone Agricultural Producers Inc. submitted a written submission yesterday and would prefer to present that in person today. Does that agree with the committee?

Some Honourable Members: Agreed.

Mr. Chairperson: Okay. List Mr. Earl Geddes of Keystone Agricultural Producers as No. 4 on Bill 20.

Mr. John Perrin, you may proceed.

* (1445)

Bill 20–The Municipal Assessment Amendment Act

Mr. John Perrin (Private Citizen): Mr. Chairperson, I am here today to tell a story, the story of my family's experience when our right to appeal a property tax assessment was taken away. The reason this relates to consideration of Bill 20 is because Bill 20 proposes to postpone the next general reassessment until 1994, and under the terms of Bill 79, until the next general reassessment, nonresidential property owners are not able to satisfy themselves that they can get relief in a property tax assessment appeal. Therefore, I am here because I want to explain and to try to drive home for this committee what can happen when there is not an adequate appeal process in place so that taxpayers can get relief that they ought to be entitled to under the law within a reasonable period of time.

In June of 1979, my family purchased the Fort Garry Hotel for approximately $2.4 million. The hotel, as an operation, had been losing money. We were well aware of this fact. Hopefully, as a family operation, we would be able to turn matters around, make the necessary renovations and put the hotel's operations on a solid footing. In this respect we were frustrated by politicians and the law.

Our first frustration occurred in February 1980. We had no sooner taken possession in November of 1979 when we received notice that the city intended to list the hotel building as a historical building. This in effect meant that the building could not be demolished. We had no intention of demolishing the building at that time simply because we had given our word to CN that we would use our best efforts to operate the hotel for at least five years.

In spite of our intentions to maintain the hotel building, the city nevertheless thought it in its best interest to list the property historically over our objections. This listing later proved to be disastrous because it denied us the right to develop our property as we saw fit.

CN had never paid taxes to the city but rather paid grants in lieu of taxes. In February of 1980, the Board of Revision published a notice in the newspaper which stated that if a property owner wished to appeal his assessment he should do so before a certain time, I believe mid-March. This, of course, is normal practice with issuance of assessment notices. We missed reading this advertisement and, therefore, the time for appealing the assessment had long expired by the time we received our first tax bill in May of 1980. Be that as it may, we did in fact file an assessment appeal in 1981.

Our assessment was inordinately high. It indicated that in order for it to be equitable and fair, the hotel building and the lands on which it stood, not including the lands behind the hotel, had to have a market value of at least $10 million. We only paid $2.4 million for the entire site, which is down to Assiniboine Avenue. So, when I say in excess of $10 million, I mean just the hotel building and the land on which it stood.

Unbeknownst to us and to many taxpayers, the province of Manitoba in July 1980 passed infamous–I call it infamous–Bill 100 which said in effect that the assessor, in making assessments for the years 1981 and 1982, shall make the assessments using the same level of value as he used in making assessments for 1980. No one knew exactly what this bill meant. The City of Winnipeg interpreted the bill as meaning that assessments were frozen at their 1980 amounts, and therefore, whether you liked it or not, you were stuck with an inequitable assessment.

* (1450)

It was not until we filed our appeal in 1981 that these facts became known to us. In the meantime, in 1981 a group of Portage Avenue property owners also appealed their land assessments. This was a notorious case. When the appeals were filed, the city solicitor immediately went to the Manitoba Court of Queen's Bench and successfully argued that Bill 100 meant that assessments were frozen at their 1980 amounts without appeal.

As a result, our 1981 assessment appeal was not heard by the Board of Revision in a timely fashion. The Portage Avenue case was known as the Morguard case. It was appealed to the Manitoba Court of Appeal which unanimously confirmed the decision of the Court of Queen's Bench. It was now late 1982 and early 1983. No appeals were heard with respect to assessments in 1982 and 1983. Our taxes, however, were accumulating and they were inordinately high. They were accumulating at the time at a rate of just under $400,000 per year on a property that we paid, land and building, $900,000 for.

We were now attempting to obtain financing from various financial institutions and they refused. Although they would not say so specifically in writing, it was well known that financial institutions would not lend money against historical buildings for the simple reason that if the business failed, the mortgage company would not be able to tear down the building and utilize the land for another purpose.

As a result of our failure to obtain financing to be secured against the building itself, we, in fact, spent our own monies, considerable sums, in order to make some essential renovations, all the while, I might add, believing that sooner or later our assessment appeal would be heard and would, in all likelihood, be equitably dealt with. We believed in the system.

By 1983 the situation became rather desperate and the City of Winnipeg therefore sold our property in a tax sale claiming $1,088,000 or thereabouts. This was done prior to our appeal having been heard by any tribunal. Why? Because the courts held that Bill 100 meant that assessments were frozen at their 1980 amounts. In the city's application for a tax sale certificate, Mayor Norrie and Mr. Hutcheon, the city treasurer at the time, affirmed that the land and the hotel building on which it sat had a value of

$1 million and no more. This was on their certificate filed in the Land Titles branch.

This, in spite of the fact that the assessment indicated a value for the hotel building and the land in excess of $10 million, and yet we could not appeal. Also at this particular time, Great-West Life, seeing that the taxes to the rear had not been paid, paid them. We owed Great-West Life $1 million. The amount was secured by two collateral mortgages, each for $1 million, one registered against the hotel building and the land on which it sat, and the other against all the lands to the rear including the parking lots. Great-West Life paid the taxes with respect to the lands to the rear, added the amount paid to the mortgage–I think Mr. Mercury referred to this type of scenario yesterday–demanded payment, and when payment was not made took the party's property to foreclosure.

The sale was well advertised and an auction was held. There was not even one bidder who would pay the amount owing under the mortgage for all of the property, while the assessment was in excess of $10 million. In other words, the historical listing had so depreciated the property that all the property was worth less than the amount owing to Great-West Life, yet we were being denied the right to appeal our assessment and obtain relief.

Great-West Life was not so foolish as to acquire title to all the property as a result of its foreclosure. Great-West Life had already had one bad experience with the Empire Hotel which, after numerous requests, finally persuaded the city to allow that it be torn down and stored somewhere, thereby satisfying members of the Historical Society that something valuable had been preserved.

Great-West Life, in its own wisdom, discharged the mortgage with respect to the Fort Garry Hotel and the land on which it sat for nothing. This is how much they thought this historical building was worth. They were happy to get rid of the liability. On the other hand, however, they did foreclose and took title to the back lands which they ultimately sold to Mr. Martin Bergen. This had the result, of course, of depriving the hotel of its parking facility. Instead of us having the right to develop, our right was given to Mr. Bergen.

* (1455)

Prior to Great-West Life foreclosing, we anticipated that we would have to take some action if we were to salvage some of our investment, because we were locked in this no man's land where we had a historical building that we could not touch and we had an assessment that we could not get relief on. The hotel could not be fully renovated, and even though we had improved the financial picture substantially over that when CN operated it, we nevertheless made the decision to demolish the hotel and sell or develop all the lands.

We were prevented from doing this because of the historical listing, and we therefore applied to have the hotel building delisted so that we could carry out our demolition. The City of Winnipeg denied our application. We continued to operate the hotel at a loss as a result of the inordinately high assessment all the while believing, of course, that sooner or later we would get justice. I would like to remind you again that when the city applied and received the tax sales certificate in 1983, we had not been given the opportunity to appeal our assessment.

On December 15, 1983, the Supreme Court of Canada in the Morguard case reversed the decisions of the Manitoba courts and held that assessments were not frozen at their 1980 amounts, but rather taxpayers could now proceed to utilize the appeal process and appeal inequities and assessments to the Board of Revision and the Municipal Board. It was now too late for us to a large extent. We had not appealed in 1982 and 1983 because of the decision of the Manitoba courts. Our lawyers believed at that time that there was no point in appealing.

In any event, we proceeded with our 1981 appeal in 1984 after the property had been sold by the city for taxes in June of 1983. The matter was heard by the Board of Revision which, after a lengthy hearing, reduced the assessment somewhat. The assessment, so reduced, indicated that the hotel building and the land on which it sat had a market value of approximately $7.5 million. This again was far from satisfactory, and an appeal from that decision was taken to the Municipal Board. By now it was late 1984.

The Municipal Board confirmed the decision of the Board of Revision but, in confirming the decision, based its findings on the erroneous principle that assessments were not to be based on market value but on reproduction cost. This reasoning later proved to be faulty, but unfortunately we did not have the benefit of the law at that time.

As a result of the grossly erroneous decision of the Municipal Board, an application was made to a judge in chambers of the Court of Appeal for leave to appeal the decision to the Court of Appeal. That right was provided for in The Municipal Board Act, but The City of Winnipeg Act was silent on the right of appeal, so Justice Philp of the Manitoba Court of Appeal held that the legislation, meaning The City of Winnipeg Act, was such that we did not even have a right to seek leave for appeal and that the order of the Municipal Board was final. Thus, we were now left without any means of redressing a decision which later proved to be wrong.

I will pause at this point in the narrative to say that Andy Anstett–and I think that is spelled wrong in the document–who was then Minister of Municipal Affairs, was contacted. We complained to him that Manitoba did not have meaningful jurisprudence on assessments simply because the legislation was such that taxpayers were denied the right to appeal to the courts.

In July of 1985, Mr. Anstett caused an amendment to The Municipal Assessment Act to be made which now permits taxpayers the right to appeal a wrong decision of the Municipal Board to the Manitoba Court of Appeal. Of course, the amendment to the act was not retroactive, so it did not apply to our 1981 appeal. By now, it was late 1985-86. We had lost the property to the rear to Great-West Life and the taxes were accumulating. The building was still assessed inordinately high. The balance sheet of the hotel, as a result, was something of a disaster. The tax liability exceeded the value of the real estate substantially. The Sheraton had now established in downtown Winnipeg and other hotels were renovating, and we had nothing but negative publicity. During all this time we were also trying to run a business, and we were trying to keep a low profile on these tax questions because we were, I think, fairly widely around City Hall for one place, being accused of being irresponsible corporate citizens, and we were rich people who were refusing to pay their taxes, and so on and so forth.

In the meantime, we could not raise monies to renovate because of the historical listing of the hotel. While we were acting in good faith and working very hard to keep the operations afloat, and hoping still for some arrangement, the city was preparing to take title to the property, unbeknownst to us, I might add. In late January 1987, the hotel was forced to shut its doors and the city took title pursuant to the tax sales certificate.

We did not file assessment appeals in 1982 or 1983. I should add at this point that, when the hotel closed, we had 200 employees, a payroll of about $2.5 million, that we were generating over $6 million in revenue. I think we were a reasonably decent employer in the city of Winnipeg, with a unionized work force and so on.

We did not file our assessment appeals in 1982 or 1983 simply because of the fact that the Manitoba courts had ruled that no right of appeal existed. When the Supreme Court came down with its decision on December 15, 1983, restoring the right of appeal, we in fact filed a 1984 appeal. This appeal was not heard until recent times, and the reason why it was not heard is as follows: after we were forced to shut down the hotel's operations, we instructed counsel to bring an action against the city. That action is ongoing as we speak

* (1500)

A statement of claim was filed in the Manitoba Court of Queen's Bench in April 1987. The City of Winnipeg, however, did not defend the action, but rather sought and obtained the assistance and co-operation of the provincial and federal governments which, together with the city, answered our statement of claim by filing a joint petition in bankruptcy.

That matter was heard by Justice Lockwood of the Manitoba Court of Queen's Bench, who issued a receiving order putting Harvard Investments Ltd., the company which owned the hotel, into bankruptcy. We filed an appeal to the Manitoba Court of Appeal, which, after hearing argument, rescinded the receiving order and stayed the petition. It also appointed an interim receiver to take the furniture, fixtures, and equipment and other inventories and sell them to pay creditors.

The Court of Appeal, however, specifically restored our right to prosecute the City of Winnipeg with respect to the damage it had inflicted upon the company. In 1990, the Board of Revision ordered that the 1984, '85, '86 and '87 assessment appeals, which had been slated to be heard, should now be heard. The reason why the whole procedure had been delayed was due to the fact that we were trying to keep the company out of bankruptcy, while governments were mainly trying to silence us by

putting the hotel into bankruptcy. We were not silenced.

Since our last hearing in November 1984, where the Municipal Board held that market value was not a basis for assessment, the courts of Manitoba had now had the opportunity to review the legislation. In November 1987, in the famous Shapiro case, the Court of Appeal held that market value is the test. The law, therefore, had finally been interpreted to mean that equity in assessments is to be based on market value at the time of assessment.

This had always been the law. This had been the law from the time we first appealed, but it had been misinterpreted by the bureaucrats in the assessment department and by the various appeal tribunals, including the Municipal Board.

We did not even have the right to appeal the erroneous decision of the Municipal Board to the Manitoba Court of Appeal. This misinterpretation was not only shared by the Municipal Board, but also by the assessment department and the legal department of the City of Winnipeg.

In June 1991, the Municipal Board heard our assessment appeal for those years: '84, '85 and '86. The board was bound this time by the Shapiro decision whereby the assessor is required to make valuations for assessment purposes on the basis of current market value. This, of course, had been our understanding of the law since 1980. But through all our appeals over the previous 10 years we had been denied the justice of this correct interpretation.

The Municipal Board's decision, handed down in July 1991, found the land and hotel building had been overassessed by 7.81 times, and that the taxes should have been 12.79 percent of the amount for which the property was seized. The board found the hotel building had been overassessed by 9,700 percent.

If the various appeal bodies had made this decision when we were first appealed in 1981 or 1982, we would in all likelihood still own the Fort Garry Hotel today. An incorrect interpretation of the law by assessment and legal bureaucrats at both the City of Winnipeg and the Province of Manitoba stood uncorrected for over 10 years, and our property was confiscated simply because our right of appeal was repeatedly denied.

This bill, which proposes to postpone a general reassessment until 1994, also postpones for property owners, except residential property owners, the right to appeal. No one should ever have to face the systematic injustice which we as property owners in Manitoba have faced. No one should ever be denied the right to appeal an assessment in any year and for any reason. Thank you, Mr. Chairperson.

Mr. Chairperson: Thank you, Mr. Perrin. Do any members of the committee have any questions or comments? Okay, thanks very much.

Mr. John Plohman (Dauphin): I thought the minister would traditionally question first.

Mr. Chairperson: Mr. Perrin, I am sorry. I think we have some questions or comments for your presentation. You may wish to respond.

* (1505)

Mr. Plohman: I just wanted to first of all thank Mr. Perrin for coming here today and this is, obviously, a very difficult issue that has taken a lot of energy and a lot of time and a lot of money, I guess, for Mr. Perrin over the last 10 years.

I want to ask him just, first of all–it is really a side issue, but it deals with his story–whether he was ever reimbursed for the taxes that he was assessed during that time, and any damages.

Mr. Perrin: No, we have had no reimbursement at all. We are having to pursue a statement of claim against the City of Winnipeg in court.

Mr. Plohman: And that is ongoing.

Mr. Perrin: That is ongoing.

Mr. Plohman: Do you feel in your particular instance if–there was the appeal difficulties, of course, because you were not able to appeal the designation–but had the assessment been based on something different in a category for historical buildings, based on historical designation, that that would have dealt with your situation and would deal with that kind of a situation in the future.

Mr. Perrin: Mr. Plohman, that is a worthwhile point and there maybe perhaps should be some consideration for a tax relief for historical buildings, but our argument throughout the period was simply this. We were not after a tax break. All we were after was an assessment based on the market value. Now if the historical listing negatively affected the market value or if the market value since the last general reassessment had been negatively affected for any reason–external, internal, whatever, it does not matter–then we should have the benefit of an assessment based on

that market value as everybody else in the city of Winnipeg was at the time, but we were denied that.

So I would say that to single out historical buildings is not really fair to all nonresidential property owners. Right now, we have two classes of property owners in Manitoba, residential ones and nonresidential ones. The residential ones can appeal in any year for any reason and the nonresidential ones cannot. The reason I am here is to point out that the longer you leave that kind of regimen in place, the greater the chance of the kind of terrible consequences flowing that flowed for us from a system where at the time the right to appeal was there. There had been no statutory denial of the right of appeal as there is today. Yet, we could not appeal.

Mr. Plohman: Why had they–and if I did not follow it clearly in your presentation–why was the value so far out? Say we take the historical designation out of it. Why was it so far out for market value?

Mr. Perrin: The reason, Mr. Chairperson, is because the City of Winnipeg, the bureaucracy in the assessment department–and I believe that there is some relationship between the assessors at the City of Winnipeg and assessors in the provincial assessors department; they operate according to the same kinds of quasi-professional methodology in terms of the way they do their assessments–they argued, and argued repeatedly in our appeals and argued with us when we went to see them before we appealed officially, that the assessments were not to be based on market value, that in fact they were to be based on reproduction cost according to their manuals and their tables.

I went to the trouble of reading their manuals and tables and the expert manuals at the time, and of course what I uncovered in reading that material was that, in any event, no matter how you calculate a depreciated reproduction cost on a building, you have got to relate it back to market value to determine whether or not you have done it properly.

The assessors at the City of Winnipeg absolutely steadfastly refused to consider market value. As I have said, the Municipal Board totally erroneously agreed with them, that, in fact, the basis for assessment was reproduction cost and not market value, when, all during that time, the statute law said and was subsequently interpreted by the Court of Appeal as meaning market value. It was a misinterpretation by the bureaucrats and then bad advice to the politicians, both provincial and civic, which resulted in this kind of hardship for at least one property owner.

Mr. Plohman: It is clear now that market value is to be the basis for assessment. If the assessment was updated every year on a yearly basis, would that eliminate the need for the kind of wide-open appeals that Mr. Mercury was talking about and you are advocating, or would you say that, regardless of how often assessment is done, the appeal should still be there?

* (1510)

Mr. Perrin: Obviously, if you had a general reassessment every year, you would no doubt reduce the requirement for appeal. I am not an expert on how the assessment departments work, and I am not sure that an annual general reassessment is necessary. If you have a general reassessment every two years, three years, five years, something like that, and so long as you have the right of appeal for those people between general reassessments who, for whatever reason, the marginal people, because the general reassessment will suit the majority of property owners justfine. For the minority, the people whose property values for one reason or another are adversely affected during that period between general assessments, so long as there is an appeal right, then you are in effect providing the equivalent of a general reassessment every year.

For the majority, their values do not change dramatically, they are content. For the ones where there is a problem, they have a right to an appeal process and, in effect, a reassessment as a result of their appeal.

Mr. Plohman: Finally, your basic reason for coming here today of course was to tell your story, but also to ask, as I understand it, that the assessment date not be pushed back by one year and that there be appeals for business and farmers just as it applies to homeowners.

Mr. Perrin: Yes, precisely, correct.

Hon. Leonard Derkach (Minister of Rural Development): Thank you for your presentation, Mr. Perrin. An extremely sad story, indeed, but I guess what I got from your presentation was that indeed assessment reform was required in the province. I think a lot of the difficulties that you experienced have been corrected through the assessment reform process in that today we are

basing the value of the assessment on market value, for one thing, and secondly that if, for example, because of historical designation, some assessor decided that your building is worth $10 million rather than $2 million, you would, under today's legislation, have the right to appeal that.

Mr. Perrin: Not if it were subsequent to 1985. If it were subsequent to 1985, and we could show that the market value had declined dramatically, say in 1989 as compared to 1985, we have no right of appeal. We would go to the Board of Revision and the assessor would testify that he is required by the law to make the assessment based on the 1985 value.

Mr. Derkach: I guess, because we are still basing our values on 1985, we are in a transitional period of time where that is a problem. However, if you were to be able to argue to the assessment or to the appeal board, the Board of Reference, that indeed the value of your property had changed or the assessment had changed because of a different designation or because of some other factor that had caused a different value on that building, then the Board of Reference could indeed hear your appeal. Although it is not laid out specifically in Section 13, it can be considered under current legislation.

Mr. Perrin: I am not a lawyer, but the advice that I have received is that is not the case for nonresidential property owners subsequent to 1985. The point I want to make about the Fort Garry is not that the assessor wrongly assessed the hotel as having a value of $10 million as a result of its historical listing. The fact at the time when our problems began was that there had been no general reassessment for many years; therefore, the value that was shown was the value that had been calculated perhaps 30 years earlier and was the one that had been carried forward.

CN had never bothered appealing because it was just part of their grant in lieu of taxes, but when we appealed and had what we believed every right to appeal on the basis of a demonstrated value in the market place, we, to our astonishment, found that we could not appeal even though we believed, and I think every other taxpayer at that time believed they had the right of appeal. We were even more astonished when we found out we could not get to the Court of Appeal.

So I will just finish this answer by saying this: We have changed the assessment system, but my understanding of it is that much of the change has been driven by appeals. It has not been driven by the assessment bureaucracy or by the politicians. There was a reluctance, particularly at the City of Winnipeg, to deal with changes in the assessment system for some fear that there would be a diminution of the tax base.

In fact, the mayor was quoted many times as saying that to provide equity to one property owner where that resulted in a reduced assessment, then the bill just had to be picked up by everybody else and that was not fair. He was arguing that if you were stuck with a high assessment, that is too bad. Everybody in this room understands that there is no equity in that, that everybody should be paying taxes based on an assessment based on the relative value of their property in each year of the assessment.

It was not until the Shapiro case in 1987, after our building had been seized, that the Court of Appeal finally, as a result of Andy Anstett's change to The City of Winnipeg Act in '85, finally heard one of these appeals and ruled that the act meant market value and not what the assessors had been arguing all of these years, which was reproduction cost. By then it was much too late for us.

I want to repeat again that the importance is in the appeal process and having access to it, because without that appeal process you do not have a safety valve, and you do not have a methodology for taxpayers to get a remedy to a problem when they are faced with, as we all know what can often be, an intractable bureaucracy when it comes to something that has been done in the past and not wanting to change.

The changes in the assessment law in Manitoba as I understand them have been forced by property owners.

Mr. Derkach: Mr. Perrin, I was part of that assessment reform committee of cabinet and indeed, I think there was a general recognition by at least our government that there needed to be some changes to assessment, and so we moved ahead. Who drove the assessment reform, I guess, in the initial stages, of course, would be the property taxpayers. But there was a recognition that reassessment had not been done in the city for

many years, in the rural part of the province more frequently, but indeed not on a consistent basis.

What we are trying to do through assessment reform, is to get a more regular system of reassessment, and we are moving to a reassessment every three years and it is based on a market value or on a reference year, pardon me, based on market value but on a reference year two years ahead of the assessment. At that point in time we feel that we will be in a position to much better realistically assess property at its current market value.

Bill 20 does not deal with appeal rights, and it does not address that. Indeed, that may be a subject for another day, but what we are doing is postponing the reassessment by one year for reasons that we have stated time and time again, that being the implementation of the education funding formula and also the portioning strategy being worked through the system. In this way, it does protect property owners from, I think, confusion in the market place and in paying their taxes and secondly, on the issue of the portioning being worked through.

But I would like to ask whether or not you would agree with the process of reassessment being done every three years based on a reference year that is two years previous to the assessment year.

Mr. Perrin: Mr. Minister, I do not have a problem with a periodic general reassessment, whether it is every two years or three years or five years. I do not think really is all that crucial. The reference year, which I understand you must have really as an administrative necessity, really is unrelated to the question of the right of appeal.

You must not have a system–I do not care how often there is a reassessment–that takes away the right of appeal for any class of property owner, let alone all property owners. Because when you do that, you at least open up the possibility of a tremendous inequity occurring of the type that occurred to us.

I think somebody said yesterday that taxpayers perhaps should not rest quietly and confidently in the notion that once there is supposedly a system in place to do general reassessments every once in a while, that that in fact will be done given the past history. That may be unfair. The point though is that the right of appeal, the easy access to appeal tribunals and to a court of law, in the event of a continuing disagreement over an assessment, must not be taken away from any property owner.

Really, what we are doing with Bill 20 is we are extending to nine years the period in which nonresidential property owners do not have the benefit of a market value assessment. That is wrong, particularly when the clock is running on a three-year time frame for a tax sale if you have not paid your taxes.

* (1520)

So we are now in a situation where we will have gone three times–the length of time you are permitted by the taxing authority–to not pay your taxes before your property is up for tax sale and potential seizure. So there is something seriously wrong with that, and I just do not think that–I recognize the practical situation you are in. I recognize that, but I am arguing the principle. I would expect nothing less from this government, at least a recognition of the importance that that principle be honoured, which is that the convenience of the taxpayer comes before the convenience of the tax collector. It is very important that whatever the convenience or inconvenience to the assessor, that taxpayers have the right of appeal.

Mr. Derkach: Mr. Perrin, you would agree that Bill 20 does not deal with appeal rights, it deals with the extension of the assessment year.

Mr. Perrin: It does deal with appeal rights to the extent that it further delays for a year the right of a nonresidential property owner to relief.

I am here because of that. I think I probably would have come and opposed Bill 79 at the time, except that I could not make my argument very coherently or very clearly because I did not have the benefit of the recent decision of the Manitoba Court of Appeal and the Municipal Board in our case.

It was very difficult to find anybody whom you could convince that we were right about our tax appeal. But now that we know we were right, I can come and tell a story and point out that you are making it difficult potentially for the marginal cases, and it is not the kind of regimen that I think that we want to advocate in Manitoba.

Mr. Plohman: Just on a point here of clarification. The minister continues to say that it does not deal with appeal, and clearly Section 5 does deal with those issues. In relation to the reference here being

removed, it does affect, does impact on the whole issue of appeal.

Mr. Derkach: It is process, not the right.

Mr. Plohman: But it does impact on the ability.

Mr. Derkach: Mr. Chairperson, just to clarify Mr. Plohman's comments. It deals with process, Mr. Plohman, and you know that very well.

Mr. Chairperson: Thank you. Are there any further questions or comments for the presenter? If not, I would like to thank you very much, Mr. Perrin, for your presentation this afternoon.

Mr. Perrin: Thank you, Mr. Chairperson.

Mr. Chairperson: For the information of the committee, a fifth presenter has been added, Mr. Jim Perfaniuk, private citizen.

I will call now, No. 3, Mr. Larry Chornoboy, Tupperware. You have a presentation that is being distributed. Any time you are prepared to begin.

Mr. Larry Chornoboy (Tupperware): Mr. Chairperson, I am here today to speak on behalf of Tupperware. In these times of downsizing, right sizing, or relocation of businesses, I hope my analysis this afternoon will apply to any existing building that is empty and available for sale to a potential employer.

I would like to walk this committee through the process that a company goes through in deciding whether to relocate to a given facility in a given community. I put together, for your benefit this afternoon, if you follow along with me, what I call a marketing analysis. Really, the issue is, how can we increase the Tupperware building's attractiveness to prospective industrial businesses?

The analysis will deal with the buyer analysis, in other words, the needs. What does a large company look for in a town when selecting a site for a new manufacturing plant? Two, decision making, or what process does a large company use when deciding between prospective sites?

The first thing to do, I would like to walk you through, is the site selection process. A company will look at a town's infrastructure. In other words, is it a good place for manufacturing or for doing business? They will look at, is there an existing building? Is there availability of suitably zoned land? Is there a quality work force in effect of ethic, loyalty and stability? What is the area's labour relations history? How are the area's other employers growing? What is their size? How is their employment? Is the town served by utilities–water, sewer, power, energy? What is the availability of transportation?

The second factor that a business would look at is to do a cost analysis of business factors. In other words, is it a good place to do business? What is the proximity to raw materials? What is the proximity to markets, customers? What are the costs of utilities–gas, electricity, water, telecommunications? What about the plant spending profile? How much are we going to pay for buildings, land, payroll, taxes? They will look at the local business picture.

They will also look at the area. What is the lifestyle opportunities? Is it a good place to live, recreationally? Is it well maintained–good housing, good schools, health, cultural, career opportunities, cost of living?

One other key factor that a business will look at is, do they have a supportive provincial and local government? Once they decide on a site–that is the first decision a company will go through. Let us assume that they look at the town of Morden because that is the area that a Tupperware plant is located in. They will take a look at the strengths and weaknesses afforded by that town. They will look at the town's infrastructures. They will look at the strengths of those infrastructures. One of the strengths in Morden is that there is an existing building, the Tupperware building. Because of its size, almost a quarter million square feet, it is really only good for a major employer.

They will look at the quality of the work force, again a strength of Morden, strong work ethics, strong loyalty, positive labour relations. Other factors in the town, perhaps neutral, are the zoned land, utility distribution and transportation modes. One of the weaknesses the town of Morden has at this current time is the tax structure. When doing a cost analysis of the business factors, they will split that up into strengths and weaknesses. Strengths in Morden are low utility costs and a high value work force. A neutral situation right now is the local business picture. Again, a weakness in the town in doing a cost analysis is the tax structure.

They will also look at the strengths and weaknesses of the area's lifestyle: strengths–well-maintained community, moderate cost of living; neutral facilities–perhaps it is a little far from Winnipeg, the housing is high, hard to resell;

some weaknesses–perhaps the spousal career opportunities, the size of the town and lack of post-secondary education.

The last thing they will look at is other key factors. One of the strengths that Morden has is that there is no other dominant employer. I hope I have this one in the right order. I have supportive government at all levels. I trust that belongs under strengths and not under neutral or under weaknesses.

The analysis really focuses, if you look at it carefully, Mr. Chairperson, on two main issues: the tax structure and supportive government, two key elements that a firm will look at when deciding whether to relocate to a community.

So the bottom line is we want to move this property in order to allow another company to offer employment. What I would expect of you, the legislators and this committee, is whatever is necessary to ensure that rural communities of Manitoba can continue to thrive by offering employment to the youth and unemployed residents to keep them in their communities. If that means restoring a business owner's right to appeal in between business reassessment years, or not postponing the general reassessment because in effect you may be delaying a sale for another year and delaying employment to the unemployed citizens of that area for another year, or as Mr. Klym suggested yesterday, creating a special consultative process between government and businesses, then so be it. Those are the issues you must deal with. Thank you, Mr. Chairperson.

Mr.Chairperson: Thank you, Mr. Chornoboy. Are there any questions or comments for the presenter?

* (1530)

Mr. Derkach: I have no specific questions of Mr. Chornoboy, except to say thank you for your presentation. Indeed, your issues that you have raised are not ones that we have not considered seriously and we will continue to consider them as we move along with reassessment reform.

I think you are probably well aware that in doing any major reform on such matters as assessment, any body, government will have to work through some of the issues that seem to come up in the process. I think it was indicated by the minister at that time that indeed there would be a given period of time where adjustments need to be made. We are finding ourselves in that position now. We are making an amendment to the assessment act to reflect some of the changes that are happening with regard to assessment and to taxation.

Mr. Chairperson: Mr. Chornoboy, do you wish to comment?

Mr. Chornoboy: No, thank you.

Mr. Plohman: Mr. Chornoboy, I imagine there were many factors involved in determination to close the plant. Would reassessment, prior to the closing, have affected it in a positive way? Say there was a massive drop in assessment, that would have been just one factor of your costs. Would it have made a difference?

Mr. Chornoboy: No, I do not believe that would have made a difference in whether Tupperware had relocated out of the area or not. It was a general restructuring of the company. The company, when I joined the company 13 years ago, had six plants in North America. Now we have two. So the issue really today is how can we look to the government, to the legislators of the province, to assist us in selling the plant to another potential employer to provide employment.

Assessment certainly is a problem today in us selling the plant to another employer. Every employer that we have talked to has looked at the plant and has said it is assessed certainly at $6.5 million. It cost us $4 million to build 13 years ago, it is for sale at approximately $1.5 million, and the taxes are almost a quarter million. So there is just no way anyone, at this point in time, is making any serious offers to purchase. The only one offer that has been made is approximately a third of the price that we have placed on it. Even that offer is subject to some sort of amendment to this bill, because a presenter was here yesterday who was one of the offerers.

Mr. Plohman: Mr. Chornoboy, would you see this in any way–if there was a provision that would allow a reassessment to drop drastically upon closure, that this would accelerate decisions to close plants, in other words, be an incentive to close?

Mr. Chornoboy: Certainly not in Tupperware's case.

Mr.Plohman: But you recognize, Mr. Chairperson, that it could–would you say it could be, or would you think it would be the opposite, it would prolong the operation?

Mr. Chornoboy: I think if an employer is an employer who is doing a positive business in a

community, I do not really think that assessment of their value is going to make a major business decision for them.

Mr. Plohman: If there was an appeal process that would allow for reassessment based on changed circumstances, such as a closure of a plant, should that apply immediately upon closure six months hence, a year or when?

Mr. Chornoboy: That should apply as soon as possible in order to begin the process of encouraging another employer to move into that facility.

Mr. Plohman: Would you say then, if it was upon sale, that it would take effect with the new owner? Is that really what you are after? I mean there is the general issue here of a general appeal. Others have addressed it: Mr. Perrin and Mr. Mercury, the need to perhaps have consideration of any external factor as an appealable factor. Suppose that was not the government's desire to move in that direction, and there was some desire to move towards alleviation of the problem that you and others face, having closed for whatever reason. Would you see that applying to the enterprise after it is closed and before the new person takes ownership of it and establishes whatever type of plant subsequently?

Mr. Chornoboy: Yes. I think it would have to be done with the owner prior to the sale to encourage a sale. You would want to have the property reassessed prior to offering up for sale, because certainly a potential buyer will look at the tax situation prior to purchasing. That is a problem that we are currently facing.

Mr. Plohman: But it would certainly help if it took effect upon sale, as well?

Mr. Chornoboy: Yes.

Mr. Chairperson: Are there any further questions or comments for the presenter? If not, I would like to thank you very much, Mr. Choronboy for your presentation.

Presenter No. 4, Earl Geddes, Keystone Agricultural Producers.

Mr. Bob Douglas (Keystone Agricultural Producers): Mr. Chairperson, members of the committee, let me first apologize for Earl Geddes and Les Jacobson who are otherwise occupied in a third line defence meeting in Winnipeg and are not available. If it had been later, they might have got here before you finished, but they have asked me to stand in for them on this occasion.

Mr. Chairperson, you have a copy of the submission that we left you yesterday, and the committee members have it. We have more copies if they are short.

Mr. Chairperson: Is there any member of the committee that wishes a copy of the submission? Just to clarify the record, the presenter is Mr. Bob Douglas. Whenever you are ready, Mr. Douglas.

Mr. Douglas: Keystone Agricultural Producers Inc. has two basic concerns about Bill 20. These concerns were identified to the Minister of Rural Development in mid-March of this year, and we have had some considerable exchange with Mr. Derkach and members of his department staff regarding these concerns since that time.

The transcripts of the committee hearings on Bill 79, which took place on December 19, 1989, indicate that the Minister of Rural Development of that time was of the belief that the proposed legislation did not alter the right of appeal relating to external factors for farm property owners. However, since that time the decision of the Municipal Board and the Manitoba Court of Appeal have confirmed that only homeowners have such a right of appeal.

The Municipal Board, in a recent case, has held that since the legislation required all assessments to be done at 1985 market values, an appellant could not seek a reduction in the 1990 reassessed value even though the value of his property had declined dramatically by 1990. The Manitoba Court of Appeal confirmed this decision, with a provincial solicitor arguing this case, in contradiction to the assurances given by the minister in December of 1989.

Despite the fact of the decision taken by the Municipal Board and the Court of Appeal, the current Minister of Rural Development continues to contend that the appeal rights of farmers were not altered with the passage of the new Municipal Act on January 1990–that is a correction, Mr. Chairperson, if I can put it in–although he acknowledges that the use of the term "external factors" in Section 13(1)(b)(vii) could create confusion regarding what constitutes an appealable condition. In this light, we would recommend that Bill 20 be adjusted to clearly provide that farm

property assessments may be appealed because of external factors.

Our question is: Why do we leave the matter open to debate? Why does the government not rewrite Section 13 so that the matter is clear? This would save property owners some considerable costs in lawyers' fees and, in the process, clearly re-establish the right of the farm property owners to appeal assessments on an annual basis and in circumstances where external factors have altered the value of the property. We continue to be at a loss in attempting to understand why farm property owners and other business property owners, for that matter, should not enjoy the same rights of appeal as residential property owners.

KAP's second concern with respect to Bill 20 relates to the proposed delay in the next general reassessment from 1992 to 1993 tax year, to 1993 to the 1994 tax year. At the time of the introduction of Bill 79 in November of 1989, representatives of the government proudly declared that never again would delays in the stated frequency of assessment be permitted. Bill 20 already proposes to violate that principle.

We contend that some property owners will be significantly disadvantaged because of this delay. While it is technically correct that portioning prevents significant shifts between property classes, property owners within classes who have had greater than average reductions in their property value will be losers. In our opinion, it is unfortunate the one-year delay was initiated. However, we acknowledge that it may not be practical at this late date to revert to the original schedule. All of which is respectfully submitted on behalf of the Keystone Agriculture Producers.

Mr. Chairperson: Thank you, Mr. Douglas.

* (1540)

Mr. Derkach: Mr. Douglas, I am not aware of what the Minister of Rural Development said in 1989 to you, but certainly you have never heard from me the fact that–and I am using the word "external factors" that you are talking about here. I had never used the term to you nor to any of your presenters. Is that correct?

Mr. Douglas: Mr. Derkach, could you just clarify that last part of your statement?

Mr. Derkach: In Section 4, Mr. Douglas, you state that despite the fact that decisions taken by the Municipal Board and the Court of Appeal, the current Minister of Rural Development continues to contend the appeal rate of farmers were not altered for the passage of The Municipal Act. Earlier, you talk about external factors, the appeal based on external factors, which is an entirely different matter than as addressed by Section 13 of the act.

Mr. Douglas: Mr. Derkach, first of all, I acknowledge that you were not the minister of the day, but it was quite clear, and I sat through those hearings in 1989 when all members of the Legislature on the committee heard that argument go on. What you simply need to do is go and read the Hansard of the day to see how clear it is.

Now in your case, I do not have with me, and I wish I had, a letter I think you wrote to us in December of 1991 which argued that the government had not in 1989 changed the right of appeal to farmers. We contend that if you look at the record and read it all the way through and look at the Municipal Board and the Court of Appeal hearings, it is quite clear you did change them.

So we are not particularly trying to pinpoint criticism to anyone in particular. What I think our argument is, is to get you to recognize the principle and then simply make a minor amendment that will correct the situation in which farm property is appealable for external factors. We are not including everything in that.

Mr. Derkach: Well, Mr. Douglas, I guess the definition of external factors is what needs to be made clear, but will you acknowledge the fact that farmers do have the right to appeal should there be an impact on their property because of a circumstance that has altered the value of that property, a local circumstance that has altered the value of that property, i.e. let us say, a chemical spill on their property or adjacent property which affects its value.

Mr. Douglas: Mr. Derkach, that is a matter that I think is open to the legal profession to argue. We have had legal opinions that it does not. I know that we have had a discussion in your office and you argued it had. We think it is not clear. I think our basic argument is let us not leave the legislation with some ambiguity to not be clear what is covered. Let us make sure it is in there and is clear what is appealable. I think our basic argument is, let us not leave the legislation with some ambiguity to not be clear what is covered, let us make sure that it is in there and it is clear what is appealable. I think you

told us, Mr. Minister, in your office that if there were an oil spill or a gas well that blew, an oil well that blew, not to worry, that your assessment department would simply take care of it. We do not have any problem with that, except we, I think, are arguing that we should make it clear in the legislation.

We have read the Ontario act, and we think in these kinds of situations, in the Ontario assessment act, it is quite clearly spelled out. That is the kind of argument we are trying to put forward.

Mr. Derkach: I guess from your president, Mr. Geddes, I have had the assurance that he is not, on behalf of his organization, asking for the right of appeal to farmers based on general market values. In other words, if the grain market in the world has changed and caused the value of the property to decrease because of that, that is not the basis of the request for appeal. Is that correct?

Mr. Douglas: That is correct, but Mr. Derkach, there are other external factors that we think should be clarified. If in this province you lose a branch line railway, we think the property owners close to that–it happened in the same year of reassessment–farmers would be disadvantaged for three years. We think that is an external factor that should be considered.

In the case of Ontario, because of a decision by the federal government to ban sales of tobacco and advertising, the tobacco farmers in Ontario got very badly hurt. Now they were permitted under the Ontario legislation to go and appeal, and we think that is the kind of thing we are asking for in this province.

Mr. Derkach: Mr. Douglas, I guess we do not disagree then. As a matter of fact, in terms of something impacting on your property, whether it is to the adjacent property or on your property which impacts on the value of that property and we are talking about a localized situation, you are asking that there be a right to appeal on that basis as I understand it.

Mr. Douglas: Mr. Derkach, I think it entirely depends on what the definition of external factors is. We are simply requesting that you write them down in the legislation so there is no doubt about what they are.

Mr. Derkach: Mr. Douglas, you referred to rail line abandonment. I would like to ask whether you have any information which would support the contention that farmland in areas affected by rail line abandonment has seen a direct or related drop in value.

Mr. Douglas: I do not have it with me, but looking back at the work we did in the late '70s, I think it is quite clear that is a factor. It also is a factor at the time because you are assessing at market value and you are using market conditions. There are a lot of other factors, other than the branch line, that affects that price of land. It is not a pure science in terms of exactly what is impacting it.

Mr. Derkach: So, the position of Keystone then is that you support the legislation in terms of the regular cycle of reassessment based on a reference year, but you are questioning the definition of the appeal rights that are currently under Section 13 of the act presently.

Mr. Douglas: Mr. Derkach, yes, we support in principle the regular three-year tripartite or tri-year reassessment. What is happening in Bill 20, as we understand it, you are extending it a year and we are objecting to that. I think we say in the submission that we think it may not be practical and we understand that. We can appreciate where you are coming from to complete it in 1992, but the principle, sort of the initiation of 79, has been broken by the extension of a year. The other part of it, on the external factor appeal process, we are simply asking, and I think the group of us were here in 1989 and really offered the government, along with a number of lawyers, to simply go behind closed doors and rewrite it so we had no difficulty in understanding what it meant. The government of the day was not prepared to accept that offer and we think the Municipal Board and the court cases in a sense have shown that there is some confusion.

Mr. Derkach: Mr. Douglas, you are asking that we broaden the appeal rights or perhaps you are asking that we better define on what basis [inaudible]. Can I ask what suggestions you might have of how we can, I guess, preserve the integrity of the reassessment cycle and yet allow for those appeals in an orderly fashion?

Mr. Douglas: Mr. Derkach, I do not think there is any problem with integrity. I do not think you will be flooded; I think there is a relatively small number. I think the assessors are simply flagging it as a big issue.

There is a matter of principle here. There are some property owners who are disadvantaged, and we think you should simply deal with it.

Mr. Derkach: Can you give me some examples of your term of some property owners being disadvantaged?

Mr. Douglas: I think it is the difficulty of anticipating what might be a practical one. I used the branch line one. I think under certain conditions of today, with the pressure on international grain markets and so on, if you lost certain branch lines at this time, with some of those farmers along there, the property values would be significantly reduced. Under this legislation, I see in the interpretation that we are being given to us, there is no way to appeal.

We think that is the kind of issue that we should be putting in the legislation, so that the farmer can appeal it.

Mr. Derkach: Mr. Douglas, branch line abandonment is not new in Manitoba. I guess I need to know because we do not have any evidence that would show us a direct correlation between branch line abandonment in local areas and the lowering of assessment on farmland. But, if you have that kind of information, could you share it with us?

* (1550)

Mr. Douglas: Mr. Derkach, the problem with the situation you are giving is that you are looking back into the 1970s. When you had a branch line and you took it out and you only had to move grain another six miles, the impact was not as great. But I can think of branch lines in Manitoba where farmers, instead of hauling 20 miles, will haul 50 miles, and the impact will be significantly greater.

Mr. Derkach: After we achieve the three-year cycle of reassessment, do you see that as a problem at that point in time?

Mr. Douglas: Yes, not as significant a problem as the eight or nine years that you are now in, but, yes, I still see it as being a problem. We think it can be drafted in such a way as to make it work.

Mr. Derkach: Certainly, I would just like to say thank you to Mr. Douglas for the presentation on behalf of the Keystone Agricultural Producers.

We have met on several occasion, both with the president and the executive and with Mr. Douglas present. Indeed, I think we have had a fair exchange on how we can better address some of the concerns of Keystone Agricultural Producers as they relate to reassessment. Thank you very much.

Mr. Plohman: Mr. Douglas, I just wanted to ask you for clarification. If you are referring to in your brief, in reference to the previous minister's assurances that appeal was there, to the sections of Hansard, where the minister at that time on December 19, 1989, the Honourable Jack Penner said to Mr. Mercury during an exchange, and I will just take brief excerpts from it: Let me get back to the amending of assessments or a person's right to appeal an assessment in a given year, which you indicate is not part of this bill. I would argue that it is.

Then he went in through Section 13.1 and listed a number of the provisions in Section 13.1, and then Mr. Mercury said: Mr. Minister, with all due respect, those deal with physical changes; you are not dealing with a loss in value and property.

Mr. Mercury says, no, you are not, when Mr. Penner says, yes, you are. Subsequently, there was an argument there. Subsequently, court cases have proven that Mr. Mercury was right as he indicated yesterday in his presentation, that he was right in saying that the minister was incorrect in saying that there was that kind of appeal available.

I am asking if that is the assurance that you were referring to when you said that the previous minister had indicated that appeal was there in fact. Subsequent to that, we did move an amendment to 13.1 which added a section which ensured that homeowners could in fact appeal on the basis of external factors.

I think that was an admission by both the government and the opposition, and, in fact, external factors were not considered. It was specifically put in there for homeowners, and it was not put in for farmland at that time. So I am asking for clarification as to whether that is the argument you are making, basically, that it applies to homeowners, that it does not apply to farmers and to business owners.

Mr. Douglas: Yes, Mr. Plohman, that is what I was referring to, the assurances we had, and other letters of correspondence arguing since that they had not, but I think the courts have proven that wrong.

Mr. Plohman: So what we have here are simply provisions in Section 13(1) that deal with physical changes, and you are saying that perhaps there should be a consideration of external factors that are unique to an area. You are not talking about a

general drop in the world price of grain or anything like that. You are not arguing for that at all. You are saying that unique factors that affect farmers in a certain area—and you mentioned rail line abandonment. Perhaps, I mentioned yesterday—would you agree—a major plant closure, for example, Campbell Soup or Carnation or McCain, in terms of its impact on local land values. Do you see that kind of a situation affecting land values, and would that apply as to an external factor in your mind?

Mr. Douglas: Yes, I would agree with that. That is the kind of thing we are referring to that should be taken care of in an amendment in this case.

Mr. Plohman: Mr. Chairperson, the Lamont-Oiha Farms case that also is an example where there was a tremendous drop in value, and yet there was no appeal available. I cite that as an example as well.

So the basic thrust of your presentation and that of the Keystone Agricultural Producers here today is that you are opposed to backing up this reassessment by one year. You have taken that position right along. Although you have some understanding, it might be difficult for the government to revert back to the original schedule, you are opposed to them changing it contrary to the promises that were made in 1989-90 when the bill was being passed, Bill 79.

Mr. Douglas: That is correct.

Mr. Plohman: The other major thrust, Mr. Chairperson, of your brief is that you would like to ensure that the appeal is dealt with.

Mr. Douglas: Yes.

Mr. Derkach: Mr. Douglas, just for clarification, when you—I think we are talking about some different things when we are talking about external factors here. If the external factors are world grain prices, which would impact on everybody uniformly, therefore you would indicate that should not be a consideration for appeal. Is that correct?

Mr. Douglas: Mr. Chairperson, in response to that question. The difficulty here becomes that you are talking about world grain prices, but we are really talking about markets. We are talking about a market value on a farm. Yes, we are simply saying that the market value of a farm will move depending on world markets, but there is a fine line here in terms of what is included and not included. We think that the international market situation will turn up in the value of farms, as it should, if you are going to do market assessment. But there is another group of external factors that are not in that same category that seem to us need to be taken care of.

Mr. Derkach: So, Mr. Douglas, you would agree that if it is an external factor, such as the international world grain market, that would impact uniformly on the price of land, then that would not be an external factor that you would consider appealable.

Mr. Douglas: Mr. Derkach, in the broad sense, yes, but there are other factors, and I am thinking of the situation of the Ontario tobacco farmer, which had government decisions and a total withdrawal out of production, and that land price on that sandy soil in Ontario simply went from a very, very high price—probably the highest priced land in Ontario—to almost the bottom. It was not totally unrelated to market and value, but there were other factors in it. So it is other external factors which drive the market value, which I think has to be taken into account.

So I am not totally divorcing and totally taking away some market factors, because there will be some market factors involved. But it is not the prime reason. If you leave the international market—and of course if you talk about the international market in grain, not all farmers are impacted in the same way. Some may be, because of lower prices, impacted to be more profitable. So there are two sides of the issue all the time.

Mr. Derkach: But, Mr. Douglas, that argument can be made with the rotation of the use of farmland even in our province where, because it is more profitable to grow a particular kind of crop, there could be a shift from the usage of land from one crop to another. Are you suggesting then that under those conditions the market value of that land should be appealable?

Mr. Douglas: No, not necessarily from the straight market value. No, I am not suggesting that.

Mr. Derkach: Thank you very much.

* (1600)

Ms. Rosann Wowchuk (Swan River): Mr. Chairperson, I want to thank Mr. Douglas for his presentation on behalf of Mr. Earl Geddes as well. We also have had many discussions with Mr. Douglas and members of KAP on this particular issue, and I would just like to clear a few things with Mr. Douglas.

You have expressed concern about the delay in the reassessment, and that has been one of our concerns as well. Have you done any studies? Has your organization done any studies as far as what land values were in 1985 versus what they are now? Can you give us some idea of what the drop has been?

Mr. Douglas: Mr. Chairperson, I would just be using FCC or other land values, the provincial department. When we appeared here in 1989, we showed you the current 1985 values of farmland and the published figures of 1989. As far as we were concerned, the land value prices were higher than they should have been vis-a-vis where the trend was going. We could see a problem developing because at that time, you see, we are five years off. That is why we are arguing that the more regular and up-to-date assessment will follow that trend much more closely.

The problem we have with the market assessment is that there are a lot of other factors driving farmland prices other than the value or productive value of that farm. I think this is one of the real difficulties we are going to have as years go along because of the urban pressure on lands. Bill 79 did do one significant thing, and that is to give us Section 17 and 17(2) on a farm productive value, a very important aspect of the entire question.

Ms. Wowchuk: On the same subject of reassessment, we were concerned when we saw the delay in assessment and have said we are opposed to that delay because it could be the thin edge of the wedge, so to speak, and the beginning of further delays. Do you have any concerns that this may be, although the legislation now says one year, the beginning and next year there could be delays again. Is that a concern of your organization?

Mr. Douglas: Mr. Chairperson, I would not think so. We assume that Legislatures will live by their word and for some reason that we are not totally clear on, why the one-year delay at this time. We think you maybe should be seriously looking at Legislatures though of going much further with the Weir Report when they suggested an independent commission totally away from government departments set up and appointed and a single assessment authority in the province. We do not think you are going to get away from some of the argument and acceptance by the public until you do that kind of thing for the total province.

An Honourable Member: We were wondering which cap you had on.

Mr. Douglas: I am wearing the KAP cap, but the city of Winnipeg supports a single assessment authority for the province. There was only one group before the Weir review that did not. There is only one organization in this province that did not support it.

Ms. Wowchuk: Mr. Douglas, you are speaking on behalf of farmers and asking for a right to appeal. Do you think that same right of appeal should be extended to business people as well that have difficulty with going out of business or find their assessments are too high?

Mr. Douglas: Mr. Chairperson, yes.

Ms. Wowchuk: You had also indicated that there should be clearer definitions of the right to appeal and that things should be written down. Are you suggesting that it be outlined in the legislation, the particular external factors that should be considered, or just general—I am just looking for clarification of what you mean when you say that external factors should be written down in the legislation.

Mr. Douglas: I had the advantage of being here and making representation to the Standing Committee when Bill 33 and Bill 100 came before you. As a lay person, I argued that bill was unclear, and I think I was proven correct, and the farm population in my estimation lost in that case because the legislation was not written clearly. We are suggesting in this situation that we think if someone puts their mind to it, they can write it down and be very clear as to what external factors we are talking about. We have not attempted to draft it. We did not think it was our role to draft it, but we think it can be done. We would be only too happy to volunteer to be a part of reviewing it if you have any difficulty as to whether it is understood.

Ms. Wowchuk: Another issue that was raised by a presenter yesterday was that possibly there should be annual assessments or assessments done every two years. What is your opinion on that? Do you think that an assessment every three years is often enough or have you considered, has your organization looked at the other aspects of more frequent assessment?

Mr. Douglas: I think the three years is reasonable. I think you can go overboard, some have tried to do it more frequently. With the new technology we

have coming though, and the circumstances, I might make a suggestion to you as I think we have to get to the point that the assessor cuts the rolls off in June, gives everybody their assessment and they can appeal between then and December. Then the municipality that is levying the taxes knows exactly where they are when they go into the new fiscal year in January 1. It seems to me it is quite practical. It can be done. I think the difficulty we have got into here is we have not ever quite got caught up and flowing, basically, out of our efforts in 1989. I think you are working towards it, but we still have a little way to go.

Mr. Jack Penner (Emerson): Mr. Douglas, do you agree with the concept of a base line year–

Mr. Chairperson: Excuse me, Mr. Penner, would you bring your microphone in a little bit, please?

Mr. Penner: Do you apply to the principles of using the base line year to establish an equitable assessment in a given jurisdiction?

Mr. Douglas: Mr. Chairperson, the answer would be yes providing that base year is not too far away from the year that they are going to use it for taxation.

Mr. Penner: In light of the fact that the Province of Manitoba moved on a bill that previous governments had, for the past decade, refused to move on for one reason or another. One of the reasons, I understand, was that the department and the various ministers had not found a way other than to establish a base line year using data that was available to them as current as they had accessible to them.

Using that to establish a base line year, we found when we established the legislation that the data that we had that was as current as could be was 1985 data, and therefore, the base-line that was set was 1985. Now accepting those principles that the only way to apply an equitable assessment to given properties in the province, you had to at some point in time establish a line where you would use the cutoff for assessment in order to ensure equitability. Having said that, do you still concur that there should be a base line set given the principles that equitable and correct assessments could be used to establish that initial process to roll us into a market value assessment base?

Mr. Douglas: Mr. Chairperson, the problem with the situation is that Mr. Penner is making an assumption that no government was willing to deal with it. Both the NDP and the Conservatives dealt with it in Bills 33 and 100, but did not do anything to it. That was not the problem. The problem was that no one had tried to enforce any municipality to live within the legislation because the provisions were there. Mr. Penner is absolutely right. You have to have a base year and probably in 1989–1985 was the only one you had at that time–but I contend with the new technology and as we update the system, we can become a lot more current than that.

Mr. Penner: Mr. Douglas is absolutely correct, and it was clearly stated in the bill that we would roll over assessments onto a three-year cycle once we had established that three-year cycle. There were some problems with ensuring that the data that was being collected would in fact be correct. Therefore, one of the reasons for this bill is to ensure that there be correct data and to allow the educational system again to ensure that they were able to meet those deadlines that you are well aware that had to be met.

* (1610)

The question I have, however, is the question that Mr. Mercury put before this committee a couple of days ago, and that is the question of appeal. In the case of the Olha Farms, where Olha Farms were assessed at $393,000, I believe, for farmland that was purchased and they deemed the assessment to be too high, appealed to the Municipal Board for a reassessment and the assessment was lowered, I understand, to about $163,000 or thereabouts–I am not going to quote the exact figures–but $163-somewhat thousand. Olha Farms determined that it was still too high and appealed to the provincial Court of Appeal which denied the appeal.

However, is it your opinion that the appeal was readily available to Ohla Farms in their assessment at $393,000 and dropping it to $163,000? Does that appeal exist for all farmers in this province in your assessment, Mr. Douglas?

Mr. Douglas: Mr. Chairperson, we seem to have a little difficulty with the terminologies. The farmers and everyone else can appeal assessment annually, but you do not have the right to appeal because of external factors. It is the external factor issue that we are trying to deal with. Mr. Penner is suggesting to me, if I heard him correctly, that this bill was sort of dealing with a data base. I do not see anything in Bill 20 to that effect at all. It was

really Bill 79 that he brought in that had a turnaround time of process that had to be taken care of.

Mr. Penner: Mr. Chairperson, I want to simply establish something. This province has been accused, and specifically myself, of preventing farmers' appeals and not allowing farmers to appeal their assessments. I want to establish very clearly from Mr. Douglas whether the farm community, in fact, assumes that they are not able to appeal their assessment. I would like either a yes or a no from Mr. Douglas.

Mr. Douglas: Mr. Chairperson, on an external factor, the answer the courts have told you is no. If it is a straight assessment, an appeal of your own regular assessment, the answer is yes.

Mr. Penner: Mr. Chairperson, I believe what the courts have said is that you cannot appeal beyond the base-line year, either due to external or other factors, but the appeal can be made on values of the base-line year. Any farmer has that right. Any person in this province has the right to appeal property values based on base-line values, base line being 1985, the year 1985. I believe, Mr. Douglas, that same appeal process stands even when we roll into the new current process or year base that we are into, in other words, when our assessment will be three years back. Would you concur that appeal process still stands as it did under the old act?

Mr. Douglas: Mr. Chairperson, on the simple assessment appeal, yes, but on the matter of external factor, no. Courts have told you differently and that is the case and it becomes pretty obvious.

Mr. Penner: Mr. Douglas, are you suggesting that farmers or other industry, other property should be allowed to reassess or appeal assessments, given either external market factors, for instance in grain, given the factors of closing in industry, probably such as the potato or the sugar beet industry and what effects that would have on farmland property? Are the Keystone Agricultural Producers proposing that there be an appeal process that would either raise or lower values of farmland due to those kinds of external factors?

Mr. Douglas: Mr. Chairperson, it depends on what the factors are and the external factors. If there was a reason that Canada totally left the sugar beet industry in the same year that a general assessment was done, I am sure Mr. Penner and his other sugar beet producers would be rather anxious to have the opportunity, because it is an external factor that is causing a reduction in the land values likely—now not necessarily. There may be another crop that is valuable enough that may not impact. But what we are simply saying is if that kind of thing is happening, we think farmers should have the right.

They had the right prior to 1989 for external factors, and because of the way the bill is written with the reference year we interpret it is not there now.

Mr. Penner: Mr. Chairperson, I find that comment interesting. I would wonder whether the farm community would in fact agree with that approach. I would wonder whether in fact the farm community would want to have somebody appeal one's farmland values in a given area due the fact of the opening of an industry and the increased value that might encourage in a given area, because the same principles would then apply.

I am wondering whether the distortion within a given municipality could be rather significant in light of the fact that property values could virtually fluctuate an assessment or assess values on a given daily basis and the rather chaotic process that a given municipality would have then to determine what the mill rate should be in a given year or maybe even in a past year and some of the rebates that might in fact be reflected if those kinds of judgments were made. I am wondering whether the farm community, in fact, really would be interested in that kind of a process to be established in all of the province.

Mr. Douglas: Mr. Chairperson, with portioning it is not a major factor because it is redistributed in total. But the issue basically is—Mr. Penner suggested "daily." We are not suggesting daily. We are suggesting it is annual.

If I read the act correctly, Mr. Penner, you put in the provision that you brought in Bill 79, the provision for the assessment to go back and correct rolls annually. So the assessor, if he wants to today, can go in and if there is a higher assessment in a certain area or there is a correction to be made, I think they can do it.

Mr. Chairperson: Are there any further questions or comments for the presenter? If not, I would like to thank Mr. Douglas for his presentation on behalf of KAP.

The next presenter is Mr. Jim Perfaniuk, private citizen. Mr. Perfaniuk, did you have a copy of a written submission?

Mr. Jim Perfaniuk (Private Citizen): No, I did not expect to speak today. But when I realized what section of the act you were working on, I did want to speak. I do not have one. I am sorry, but I can supply one afterward, if required.

Mr. Chairperson: Thank you. Proceed.

Mr. Perfaniuk: Mr. Chairperson, our reference is to The Municipal Act and Regulation 28/90. The area of our concerns is in the area of large property owners within the city of Winnipeg and how they are being treated and how they are being classified as to the Class 30 classification that is legislated and in conjunction with the definitions within the regulation referring to the farm property.

It appears, Mr. Chairperson, that there is a difference in how the City of Winnipeg applies the act and regulation as compared to how the province is applying it. I am suggesting that there is only one act, one piece of legislation, and there should be only way of interpreting it and applying it within this province, and it is not being applied. It is being applied in more than one way, and in many, many cases, which I will try to give you a couple of examples without burdening you on this, subject to administrations's interpretation and certainly not the legislation.

* (1620)

The act and regulation in itself appear to be clear when read and the main criterion for classification of land appears to be the use. It seems to turn on that word "use." Now both the act and the regulation seem to put their weight of the full intent on that turning point of "use of property," and that is for the first instance, and then the second would be the portioning of the land as to its use. That seems to be the way I read the act and the legislation.

Now when the land is being classified as Class 30 by the provincial administration, the province seems to be applying the legislation as written. We find that the classification as expressed seems to turn on the words "as to its use" by the province. But, when it comes to the city's application of farm classification, they are not consistent with the province in their application of the act or the regulation, and in defining farm Class 30.

The city chooses to apply its own interpretation of this classification. Here is one example, and I would ask that someone tried to show me where this is. Here is one of the quotes from the senior executive of the city assessment department when the question was asked: Why is this piece of land not being classified as Class 30? You have 36 acres of vacant land; you have six acres that are under alfalfa; it has the farm zoning; and there are about three-quarters of an acre used for dwellings. Well, the assessor simply says, we do not feel that it fits the farm qualification. I do not see that wording any place in the act.

So my point, Mr. Chairperson, is that the act is unclear in one area, and I will point out the area, it is 6(d) of farming classification. Now when we talk about that, I will first refer to 6(a). Section 6(a) clearly states: land or any portion of land that is solely used for farming falls into the context of Class 30, or farm classification. That is no argument.

But it is in the city of Winnipeg, because I just cited an example. There were six acres under alfalfa crop sold to a third party, and the city assessor felt it did not fit into classification. That is not what the act says.

Further to that, to make my point where I am requesting that a gray area be cleared up because it is an area being used by administration when they choose to twist—I guess it might be a harsh word—choose to get revenge on someone. There is discrimination in their application, which I can supply written evidence if the board so chooses after this hearing.

But, anyway, my point is, let us get back to reality, is farm property which 6(a) clearly states the land should be portioned. But, when we go down to 6(d), the word "portioned" is not in that section; 6(d) only says: undeveloped, unimproved or vacant land that falls within a zoning criteria of farm and it is primarily usable for farming purposes.

Therefore, when we have a situation like a lot of landowners have within the city of Winnipeg, as I gave, where they have say a 42-acre parcel, an example I will give you, 36 acres is vacant and it is unusable due to extenuating circumstances, swampy conditions. It could not be put into use. You have six acres of highland that is into a commercial crop production and three-quarters of an acre or say one acre into residential. They choose not to portion that land into two classes, class 30 and class 10. They choose to portion all into class 10 as residential.

Now, it is absolutely ludicrous to suggest that anyone requires 42 acres of land to live on. When I did mention extenuating circumstances, in this particular case, the 36 acres of swampy land–and it is swampy, because the City of Winnipeg in its wisdom chose to create a road, a dike road a half a mile long with no culverts to stop the natural water flow. So the game that is being played within the city, one department ties your hands by refusing co-operation to get the water off your land. You get it to the city land, but you cannot take it away from there. That is the point.

So your hands are tied to the amount of land that you can really use for farming. Then on the other hand the assessment department says, hey, it is not vacant. You are using it for residential, but when its swampy, treed and willowed land, it cannot be used for any purpose. It cannot be used for residential. It cannot be used for farming. It cannot be used for anything in its present natural state.

So what I am suggesting, Mr. Chairperson, is that the board take a very clear look at this and see if we can clear up this gray area in the act and that is 6(d) to add in the wording "or any portion of land that is vacant." See, the other point I might make out is where administration is playing the game and, unfortunately, it seems to have the chief provincials or acting chief provincial assessors' condolences, again, which I suggest is wrong here.

They used that definition portion–in the classification of land property 6(d), it says they cannot portion it because it does not have that word portioning in there, but yet on the same piece of property, they chose to portion residential and other. If we look at the definition of other, there is no mention of portioning in other. If you look at the definition of residential, there is no mention of portioning land in that either. So really, what I am suggesting here and exposing, this is left to administration's whim to which ever way they can apply it.

What is really going happen here, the end result and the serious repercussion, a lot of landowners in this city will–some are already selling their land to pay for their taxes, and this is a fact. Others are going to lose their land for taxes or sell at a depressed market. I think the real, I guess the moral issue of it all is you have people within the city of Winnipeg who have lived on their land for four or five decades. They are now 65-75 years old. They cannot afford this type of classification and the interpretation of the classification as the City of Winnipeg is doing. As I pointed out earlier, the province does appear to apply it fairly. To my knowledge, we have several parcels of farmland within different municipalities of the province, and they are applying it fairly. We have the very same situation in the city of Winnipeg, and it is being applied differently.

Mr. Chairperson, I ask that this body consider amending the regulation 6(d) to add in "or any portion of land" to make it clear so administration cannot play word games or mind games with the landowner that cannot afford to take them to task. When I make this statement "take him to task," what really happens to us in the real world out there, administration laughs at us. It says, so take it to court, we have not had a ruling. That is a very serious statement, because take it to court means $10,000 or $20,000 or $30,000 of legal expense to one individual. He cannot afford that and administration does not pay a nickel. Again, the taxpayers pay for his legal position. It is nice to be in that position, so take it to court, who cares? Let us get a ruling.

So we are asking our elected bodies here to take a serious look at this and clear up the gray areas where the act can be implemented as it was intended. I am certain that the intent of this act in regulation is not the way it is being applied in this specific instance.

Mr. Derkach, I do have a copy of exact situations and comparisons and I would like a meeting with you at a convenient time to discuss it in your office. If other members of this committee would like a copy of what I have just said, I will gladly submit it. I am sorry, I was not prepared to speak today, but I realized I could, and I wanted to take advantage because it is a very serious issue, not just for myself, for a lot of other people within this city.

* (1630)

Mr. Chairperson: Thank you, Mr. Perfaniuk. Just for your information, your comments will be recorded in Hansard so they will be available to anyone who wishes to see them later on.

Mr. Derkach: Mr. Perfaniuk, I thank you for your concern. You have raised this concern with me previously in a letter that you had written to me, and I understand that you have a problem with the perceived inconsistency of the application of the regulation, but this really does not have anything to

do with Bill 20 that is before us right now. However, I respect the time and the effort that you have made to come before this committee. I can assure you that I am prepared to meet with you sometime in the future, and the staff are, to try to get your views on the inconsistency that you point out. We will try to ensure that we can work through your problem with you.

Mr. Perfaniuk: I thank you, and I apologize if this was not the right time for this specific item, but I was informed that we were dealing with the assessment act and I am speaking both on the act and the regulation so, if I am in error, I apologize. I am just not totally familiar with the rules of the House.

Mr. Derkach: Just in conclusion, Mr. Chairperson, I would just like to thank Mr. Perfaniuk for coming today, for making the effort in presenting his case before the committee. As I indicated, staff in my department will address the situation even though it does not relate to Bill 20. I understand that you have addressed it with staff previously, and the matter is now before us to consider.

Mr. Perfaniuk: Thank you very much for that consideration.

Ms. Wowchuk: I want to thank you also, Mr. Perfaniuk, for making your presentation. I am glad you took the opportunity to speak to it, even though it does not relate to the bill. When you get a chance to address the minister on an issue like this, you should take it.

As I have said in our earlier conversation, we will be taking this matter also to the department staff and urging them to work on it. Just while you are here, perhaps I can ask the minister: Can you explain to Mr. Perfaniuk what steps he has to go through to get a regulation changed while he is here because that is one of the questions he—[interjection] No, it is not. I realize it is not, but since he is here, can you tell him? Does he have to deal with staff or do you deal with it?

Mr. Derkach: Mr. Chairperson, just I guess on a point of order. This is not germane to the bill and neither is Ms. Wowchuk's question relevant to the bill.

If there is a problem in terms of an individual who has a difficulty with a regulation, then certainly every individual in Manitoba has the right to address his concern with the minister or with a member of the Legislature, that it be brought to the minister's attention, and we will then investigate it through staff in an appropriate way and get back to the individual who has a problem to put either the department's case forward or to interpret the regulation or to clarify a regulation if indeed it needs that. So we try to work with anybody who has a concern or question about any matter.

Mr. Chairperson: Mr. Perfaniuk, do you have any comments? Are there any further questions or comments for Mr. Perfaniuk?

Mr. Perfaniuk: Not from my point, unless the committee has any questions.

Mr. Chairperson: I thank you for your presentation. If there are no further questions or comments, thank you very much.

Mr. Plohman: I have just one brief question. It is my understanding that you believe this to be an issue that is broader than yourself. It is just that you are the one who is taking issue with it. But you think this could be a problem for many property owners and that is why you are addressing it here. Is that correct?

Mr. Perfaniuk: Yes, it is. Mr. Chairperson, I do know of three property owners who were forced to sell their land at these low prices of today—because there is a big difference with '92 values with our recession—just so they could pay taxes. They just could not afford to keep the land any longer. It is going to become much broader yet as other people are getting squeezed. They try to pay within their means, but after two or three years they finally just do not have any more resources to pay. So, yes, it is a broad issue. It is not a Mr. Perfaniuk issue. It much broader than that, and serious.

Mr. Plohman: Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Perfaniuk.

Mr. Perfaniuk: Thank you, Mr. Chairperson.

Mr. Chairperson: With the exception of the previously mentioned uncompleted presentation of Mr. Mercury, that completes the public presentations on Bill 20.

Bill 49–The Environment Amendment Act

Mr. Chairperson: We will now move forward to consideration of presentations of Bill 49, The Environment Amendment Act. I have two presenters listed: Mr. Wayne Neily, Manitoba Environmental Council; Mr. Don Sullivan from

Choices. If there is anyone else in the audience that wishes to make presentations to Bill 49, will they please make themselves known to the Clerk.

I will now call on Mr. Wayne Neily, Manitoba Environmental Council. A copy of your written presentation is being distributed, Mr. Neily. You may begin whenever you please.

Mr. Wayne Neily (Manitoba Environmental Council): Thank you, Mr. Chairperson. Committee members, I have a few other copies, if you do not have enough, of the presentation.

I would like to apologize, first of all, on behalf of the chairman of the council, Dr. Allan Lansdown, who is out of town this week, out of the province, and also give the regrets of the chair of our environmental impact assessment committee, Chris Kaufmann, who was here most of the afternoon but had to leave for another appointment.

For our presentation, if everyone has it by now, I will follow it through, and you may need to have a copy of the bill at hand to read it, because we did not cite extensively things that are already in the bill.

After careful review of this bill by our executive and environmental impact assessment committees, we have concluded that there are potentially serious negative consequences to it, although the changes that the minister has indicated his intention to introduce will improve it significantly. We would rather see public discussion of the issues involved before any introduction of any amendments such as this bill to The Environment Act. This illustrates what the department may see as minor housekeeping amendments could have unforeseen impacts if safeguards are not built in.

The Environment Act and environmental impact assessment process certainly have weaknesses that need to be addressed, and we would welcome the establishment of a multistakeholder committee to come up with suggested amendments. But this bill does not resolve any of the major ones.

Specific comments on Bill 49, by section, follow:

Section 2, the reason for this is unclear. Presumably it is to bring the quorum for meetings in line with that for public hearings, in subsection 7(5) of the act. We would prefer to see this done by increasing the quorum in 7(5) to four, at least until (1) there are certain clear criteria established for appointments to the commission; (2) an appointment process is put in place that can be seen to be apolitical; (3) some basic ecological training is provided for any members who do not already have it–this is members of the commission, of course; (4) it becomes standard procedure for CEC panels to include at least one member with general biological and one with general chemical or other relevant expertise to ensure effective questioning of the witnesses; or for it to hire such expertise, independent of government where there is any government support for the project, for questioning during the public hearings.

We consider that the larger minimum panel size would be more likely to have public confidence and to represent a cross section of public opinion.

* (1640)

Section 3: This seems harmless if the quorums are made the same for meetings and hearings. Subsection 7(7) had always seemed a bit superfluous anyway in view of 7(6).

Section 4: This revision in Section 13 of the act seems to be a retrograde step in view of the Manitoba round table's stated first principle of sustainable development, integration of environmental and economic decision making, and is our most serious concern with the bill at present.

Despite the title of 13(1), the principal change proposed seems to be to change the possibility of issuing a licence in stages to one of issuing a series of licences for different stages of the same project. Since the entire act and environmental assessment processes are based on licence applications, the natural consequence would be to consider the impacts of one step at a time in corresponding stages, any one of whose impacts might be less significant than those of the project considered as a whole.

With a series of licences, there is a danger that the public, the proponent or the Clean Environment Commission will not grasp the full environmental implications of the intended whole project before critical stages involving substantial funds are permitted. The potential for making the environmental impact assessment process part of planning for the project is weakened. The question, what is the best way to achieve the intended objective, will become even less relevant than it is at the present time because early licences in the series can take the project past economical retreat. Moreover, it is a brave Clean Environment Commission that might recommend against a

project or recommend radical mitigation measures after early stages have set a pattern.

There may on occasion be good reason for issuing a licence in stages, such as the issuance of a temporary Stage 1 licence for interim operation of some relatively innocuous or environmentally beneficial project that cannot stop for the full assessment without negative environmental consequences. It may be that in most cases a major environmental impact assessment should be done in two or three stages: the first to examine the need in environmental desirability of the objective of the project in the context of sustainable development; that, or the next stage, to consider alternative ways of achieving that objective including the proponents' proposal; the last, dealing with the detailed project and site-specific impacts that are the major focus of most current environmental impact assessments.

A licence could logically be staged in a similar manner. Even in this broad context, however, the principle of one licence for one development as indicated in 10(1), 11(1) and 12(1) of the act should remain to ensure integrated analysis of the environmental and economic impacts no matter how many steps are needed to get there.

The existing Section 13 seems to provide more than enough flexibility for stage licensing while maintaining the integrity of the assessment process. What may be needed is more flexibility to allow or even require staging of the EIA process so that there is a clearly defined screening stage with certain requirements, followed by other stages as suggested above, and the licensed stages and expectations with relation to depth of study and detail of analysis could be equivalent. This would have the potential to greatly reduce costs to both proponents and the public by eliminating projects that are fundamentally unacceptable before intensive site-specific studies are required.

It should also eliminate situations such as we have seen recently when most of the environmental impact assessment has been done on a project before the guidelines have been issued, sometimes before the licence application has been made, by encouraging proponents to apply at an earlier stage of the planning.

The proposed subsection 13(2) dealing with preliminary steps represents a very serious undermining of the existing process. Allowing issuance of licences prior to any approval and based solely on an EIA–which I might put in quotation marks there–consisting of the "opinion of the director or minister" that the impacts are "known" and "minor."

Given the total lack of the requirement for basic ecological information–that is ecosystems to be affected, the presence of rare or endangered species, et cetera–in the initial proposals at present, required by the licensing procedures regulation, the lack of expertise in this area within the department, and the fact that initial construction activities may well be the most ecologically destructive parts of many of the small projects, this subsection holds the potential for some real disasters.

The description "foot-in-the-door approach" seems appropriate to these provisions of the bill. What had been a sensible section of the act–13–has been changed to a measure that weakens the protection that the EIA process provides to the Manitoba environment. If the bill should be approved with this section intact, the best we could hope is that scoping for the first licence in the series would be sufficiently wide to put the whole project into its environmental context–sufficient for the public and the Clean Environment Commission to see ahead and recommend critical study before licences for the next and subsequent stages are requested.

Section 5: This section, while including one improvement to be introduced, that is deleting the, "or on the advice of other affected departments," in 14(2), also represent further weakening of the act, making changes, which while increasing the already discretionary powers of the director and minister, do so in ways that are most likely to be harmful to the environment. They reduce the opportunity for public scrutiny and input to the project and licence alterations, while removing even the slightly objective test of, "significant adverse environment effects," to distinguish major from minor alterations.

(Mr. Gerry McAlpine, Acting Chairperson, in the Chair)

In the existing act, the director or minister may approve an alteration outside the assessment process, where, "the potential environmental effects resulting from the proposed alteration are of a minor nature," or, "on the advice of other affected departments." This is in subsection 14(2).

This is bad enough but fortunately is subject to the three restrictions from subsections 14(1) and 14(3). It does not apply where (1) the licence was appealed, (2) the alteration in the project would require modification of the assessment or licence, or (3) where it would be likely to cause significant adverse environmental effects. Any of these would require the proponent to reapply under Sections 10, 11, or 12.

Now this may have been a bit of overkill for many minor alterations, but the solution is not to remove them all and leave it to the discretion of the director, which is essentially what this bill does. Reasonable flexibility could have been built in by requiring notification of all public registries, and of parties who had indicated concern during the original licensing process of any proposed alterations.

No response from these within 30 days, along with the judgment of the director that there would be, "no significant adverse environmental effects," should be adequate tests for approval of alterations without reopening the entire licensing process. One or two expressions of concern, however, should be enough to trigger reapplication.

The proposed 14(2)(c) in this bill is of very limited value since appeals are more likely to have been of a licence as a whole than of some condition of it.

Section 6: This new paragraph allowing delayed appeal of some terms or conditions that will take effect at a future date may have some merit as far as closing the appeal period is concerned, but why should it have to wait until the damage is underway for commencing the appeal period? Some flexibility in the length of such a period may be good, but a minimum period of 30 days should be provided.

Section 7: The intent is unclear, but since the power is already there in 41(1), all the specific areas being, quote: without restricting the generality of the foregoing, it seems not too critical. It is the actual regulations that will be of importance, the briefing notes indicating that these are intended to require the proponent to cover costs to the public associated with joint assessment hearings, rather than the reverse which might also be possible under (cc), suggests that positive results will ensue; 7(2) seems like a good idea, resulting in a regulation which one would hope it would not be necessary to apply.

Summary: We are still uncertain whether the benefits of this bill outweigh its potential negative effects. if it is to be passed, we would recommend at least a change to Section 4, that is Section 13 of the act, to require that the initial EIA leading to the initial licence of a project to be licensed in series, be required to consider the overall impacts of the development, its need and alternatives and appropriateness in the context of sustainable development. That would include, of course, its cumulative effects and the interrelation impacts of other developments.

Leaving Section 13 as it is, that is deleting Section 4 from this bill while a more comprehensive review of the act and EIA process is undertaken, would be preferable in our view. Other changes are less critical, but we would recommend amending Section 2 of Bill 49 to read: Subsection 7(5) is amended by striking out three and substituting four.

* (1650)

If Section 14 must be amended, we recommend at least a safeguard of a new subsection 14(4) which could read something to this effect: (a) any alteration proposal filed under subsection 14(1) shall be placed on the public registries at least 30 days before any final decision on its approval pursuant to subsections 14(2) or 14(3); (b) if the proposed alteration applies to a development already licensed under this act, the parties that intervened in the original licensing and assessment process shall be notified and given 30 days to comment before a decision on approval of the alteration; (c) if two or more parties object to the proposed alteration pursuant to (a) and (b) above, it shall be treated as a major proposed alteration subject to subsection 14(3), notwithstanding any previous decision to consider under 14(2); (d) any approval for an alteration pursuant to Section 14(2) for a development that has already received an environmental licence shall be filed with the public registries and any parties who intervened in the original licensing process shall be informed. Such approvals shall be subject to appeal under Section 27 of the act.

With the addition of these safeguards for the public, there can be more assurance that the greater flexibility provided to the director and the proponent by these amendments will be used judiciously and therefore all Manitobans will benefit.

We thank you for this opportunity of expressing our concerns, and hope that our suggestions will

help you develop ever better environmental legislation.

The Acting Chairperson (Mr. McAlpine): Thank you, Mr. Nelly. Would you entertain any questions from the committee?

Mr. Nelly: Yes, I will be happy to.

Mr. Paul Edwards (St. James): Thank you, Mr. Nelly, for your presentation, which is extremely interesting and useful to the committee.

The Acting Chairperson (Mr. McAlpine): Mr. Edwards, could I ask you to pull your mike forward, please.

Mr. Edwards: Oh, sorry. Mr. Neily, thank you for your presentation, which has been both useful and interesting to committee members, I am sure.

You say on page 2 in the first paragraph, last sentence–you are speaking about the licence being allowed to be issued in series for different stages of the same project, and you say: ". . . any one of whose impacts might be less significant than those of the project considered as a whole." Is it safe to say that is an understatement and that in fact it would be impossible for any one of the stages to be more significant than those of the project considered as a whole, and it is in fact likely that considering one aspect of a project is going to result in finding environmental impact that is less than the whole?

(Mr. Chairperson in the Chair)

Mr. Nelly: Yes, as a matter of fact, you are quite right, of course. It is an understatement. I do not know as I would go so far as to say that it is impossible. Some aspects of it might have positive environmental impacts and some have negative, but certainly it is an understatement in general.

Mr. Edwards: Mr. Chairperson, one of the things that struck me when I saw this bill–and it was particularly ironic in view of the ongoing saga of Rafferty-Alameda, and indeed the Oldman River in these last few months–was that if there is one lesson to be taken from those two projects, it is that we must assess the cumulative impacts of a project up-front before construction begins. That seems to me to be the lesson from those two projects, and it struck me that this bill was, in fact, playing into that approach to construction of projects, which was similar to what the Saskatchewan Court of Appeal said in Rafferty-Alameda when they essentially said, at the end of the day, this thing has not been properly assessed, but they have built 90 percent of it and it is too late to go back.

Do you see any links between your view of what is happening in this bill and what we should have learned from the saga of both Rafferty-Alameda and the Oldman River in the last number of years in this country?

Mr. Nelly: Certainly this bill does not do anything to overcome the difficulties that you mention there, and it has the possibilities of accentuating, as we suggested, in the paragraph referring to taking the project past economical retreat. I presume that was not the intention. As we pointed out elsewhere, we feel that the lack of clarity in some parts of environmental assessment process, as outlined in the act, need to be addressed. Certainly, consideration of cumulative impacts and some of the broader questions relating to just how the process should work are things that should be addressed in the act, but they go well beyond the scope of this bill.

Mr. Edwards: This is my last question, Mr. Neily. You say, in conclusion: We are still uncertain whether the benefits of this bill outweigh its potential negative effects.

I acknowledge that there are some alterations which are positive or at least one hopes will have a positive effect, at least in my view and, I see here in your presentation, from the point of view of the Manitoba Environmental Council.

If we are unsuccessful at this committee in securing amendments to those that you have recommended, as well as others, achieving what you have said out here as criticisms, which I believe are valid, do you recommend passage of this bill in any event?

Mr. Nelly: That is a difficult question. We grappled with that in committee. If we came to that, our original inclination was to recommend against passage of it completely. After hearing of some of the amendments which are either proposed or already introduced with respect to it, it looks as though there will be some significant improvements.

The question with respect to Section 4 is a very serious concern, and we feel uncomfortable about passage of that in any circumstances.

Mr. Edwards: Maybe I can just follow up briefly on that. You mentioned in the brief that there are amendments that you know of coming from the government. I am unaware of amendments that the

government would be proposing. I take, from your answer, that your conclusion as to uncertainty has been swayed, in part, by some discussion or at least indication from the government that there are amendments. I do not have them.

When did you discuss with the minister or have discussion about amendments?

Mr. Nelly: We had some discussion with the government on that earlier in the month, I think about a week or two ago.

Mr. Edwards: Did you actually see or were you provided with, albeit in draft version, some proposed amendments which would be coming forth from the government?

Mr. Nelly: I have not been provided with copies of those, no. It was discussion as to what might be appropriate.

Mr. Edwards: Was there, however, specific discussion about specific amendments that the government was proposing to bring forward?

Mr. Nelly: Yes.

Ms. Marianne Cerilli (Radisson): Mr. Nelly, I too appreciate the detail of the presentation on this rather technical piece of legislation, and I appreciate the–

Mr. Chairperson: Excuse me, Ms. Cerilli. Could you bring your microphone up, please.

Ms. Cerilli: Should I start again?

Mr. Chairperson: Please.

Ms. Cerilli: I was just saying that I appreciate the time that you and other members of the Environmental Council put into dealing with legislation that is technical. I am concerned that this bill is not getting the attention in the general public that it deserves.

Would you agree that this is one of the most backward or regressive pieces of legislation that we have seen within the last couple of years?

* (1700)

Mr. Nelly: No, I would not go that far. I think there have been some much more outstanding examples.

Ms. Cerilli: The Wildlife Act.

Mr. Nelly: Exactly.

Ms. Cerilli: Yes, I would agree. The Wildlife Act from the last session of the Legislature is right up there.

I guess the other part of my question was: Are you concerned that there has not been enough attention given to this legislation? Has there been very much discussion of the legislation amongst the various environmental organizations?

Mr. Nelly: To my knowledge, there has not been. It is one of so many issues that are going on right now, that things such as Conawapa and hazardous waste facility, and so on, are all getting higher priority, perhaps rightly so. But it is difficult for volunteer groups to cope with everything that is coming forward, and I can understand that something as technical as this is not likely to catch the public's attention.

Ms. Cerilli: Even though this legislation has the ability to impact on all those projects that you have mentioned. It has far reaching effects. Is that correct?

Mr. Nelly: It certainly has the ability to impact on any projects which come forward after its passage. I do not know about the ones that are currently in progress.

Ms. Cerilli: I want to go back to the comments that you were making about the benefits of the legislation, and I just want you to clarify for me the sections of the bill that you feel are improvements.

Mr. Nelly: We identified one improvement in Section 4, as I recall–no, sorry, Section 5. I do not think there is any improvement in Section 4. I think that is the consensus of our council. Section 5 did have the potential of getting rid of one of the more regrettable points in the existing act, and of clarifying the process of perhaps providing some flexibility. I think it is reasonable that the department should not have to go through the entire licensing process for a very minor alteration. From the point of view of a principle, that is reasonable. It is just that it is supplied with such a blanket approach that we do not like it. We feel the need to have safeguards in there.

I think the Sections 7 and even 6 have some positive aspects to them. In 6, I think there needs to be a change so that the appeal period does not have to wait until the damage is under way, but it is a good idea to have a delayed appeal period in circumstances where particular part of the licence will be put into effect at a later date because it will be possible that there will be unforeseen results which the parties concerned should be able to appeal.

Ms. Cerilli: The entire intent of the first couple of sections is to provide more controls, we would think, on staging of licences. We have to remind ourselves that this is environmental legislation that we are making. I am wondering if you can tell us, what are the conditions that you think should be in place so that staging of licences is going to in fact protect the environment?

Mr. Nelly: How long do I have? This is a very large area, of course. We have suggested setting up of a multistakeholder committee to come up with some specific recommendations on it. I think it is beyond the scope of what we can deal with in this bill or amendments. I would be prepared to identify a few points which have long been of concern to the council, some sort of major weaknesses of the bill, if you wish. Unfortunately, our chair of the committee who would be able to provide more detail on that has had to leave.

Just quickly, we have identified one area which we see as needing strengthening, and that is with respect to the Clean Environment Commission, appointments and qualifications or general procedure. Related to that is restoring the licensing or at least the initial licensing or primary licensing capability to the Clean Environment Commission. Right now with it being in the hands of the director, the initial licensing responsibility, it makes it very doubtful that anything which the government supports strongly the director is going to oppose or turn down a licence for. That is not any reflection on the director involved, it is just a natural result of things, and it also means that the appeal process is going to be of doubtful value if the government has already come out in favour of a particular position. Again, that is no reflection on any particular government. It is just the nature of the way things are.

Another area, probably one of the most important areas that needs revision, is this whole identification of the environmental impact assessment process. It is very vague right now. There is no requirement for–as a matter of fact, I do not think the term "environmental impact assessment" is even mentioned in the act. It is referred to as environmental assessment, and there is no distinction made between the concept of impact assessment and concept of mitigation planning which is something that should be at a later stage.

There is little consideration of alternatives, cumulative impacts, all of these things that have been suggested in here. We suggested at the bottom of–I think it was page 2–some of the possible stages that could be considered in a comprehensive process. I think, from that point of view, there is a desirability of staging the process. Whether it requires staging a licence or some kind of staging of permission to go ahead with further studies, I do not know. That is something that would be need to be resolved further.

There was a fourth point I was going to mention, but it has gone out of my head at the moment.

Ms. Cerilli: I am quite concerned about the implications that this is going to have for a number of the proposed projects that the government is going to be looking at. I am concerned that this is going to simply expedite the development before the environmental assessment process takes place. I guess that is the major concern with the bill. I would even wonder if that major concern does not outweigh the advantages that you were mentioning before or the improvements.

Mr. Nelly: You may well be right as far as outweighing the benefits. Our major concern is not so much that it might expedite developments, but that it might result in less effective environmental impact assessments.

Ms. Cerilli: I have no further questions.

Mr. Chairperson: Are there any further questions or comments for the presenter?

Hon. Glen Cummings (Minister of Environment): Mr. Nelly, in the process of arriving at these recommendations, would you tell the committee how that was done, please?

Mr. Nelly: We did have a review of this by our Environmental Impact Assessment Committee. They examined the bill and met to come up with some recommendations. A letter containing these was submitted to the minister. At that point, as a matter of fact, well, it was very similar to this brief that we are presenting, but there were a few things that it contained that we have since realized were not necessary because we have had some clarification. The minister invited us to meet with him and discuss these issues, which we did.

This clarified a few areas, some cases where we had not fully understood the implications of it and some cases where I understood some improvements were going to be introduced. Following this, it went back to the executive and was

reviewed again. We came up with this brief which has been presented here today.

* (1710)

Mr. Cummings: How many members sat as part of that committee that made the decision?

Mr. Nelly: Of the Environmental Impact Assessment Committee?

Mr. Cummings: The members who made the decision on the presentation.

Mr. Nelly: Of the initial committee, I think there are approximately 10 members on it who received the bill for comment. Of those, we got four of them together who put together some comments. This went back out to the committee.

Following that, it went to the executive which has six members, and I think three of them were present at the meeting. Then it has gone to you from there. Again, because of the timing, we did not get it out to the full council.

Mr. Cummings: How many members are there on the full council?

Mr. Nelly: Approximately 61, somewhere in there.

Mr. Cummings: Then seven members out of 60 made the decision. Is that correct?

Mr. Nelly: I am not sure of the exact number that would be involved. It would be somewhere around 10, I would think.

Mr. Chairperson: Are there any further questions or comments for the presenter? If not, I would like to thank Mr. Neily for his presentation this afternoon.

The next presenter is Mr. Don Sullivan, Choices. Do you have a copy of your presentation to distribute, Mr. Sullivan?

Mr. Don Sullivan (Choices): No, this will be an oral presentation.

Mr. Chairperson: That is fine, thank you. Proceed.

Mr. Sullivan: Mr. Chairperson, committee members, I would like to thank you for being here this evening.

I represent Choices which has a membership of roughly about 1,000 people. I am also chair of the Environment Committee. The mandate of the Environment Committee of Choices is to adhere to the concept of sustainable development as it applies to social justice, economic equity and environmental protection.

On a regional sense, this committee uses as its guidelines the following principles of sustainable development, as proposed but not adhered to by the government of Manitoba. These principles are used only as a guideline by Choices' Environment Committee, as we stress a systemic approach to the environmental, social and economic problems facing society today.

I am here today to speak on Bill 49, The Environment Amendment Act. I, along with my organization, have some grave concerns with this bill. I had a chance to read the Manitoba Bar Association's brief on the amendments on Bill 49 and also looked at the Manitoba Environmental Council. Not being a lawyer, I do not think I am well-versed enough to go into subsections and sections of the subsections. However, I will bring in a layman's concept of what I think this bill is.

I think this bill is very reductionist in approach. I think it will circumvent, and looking around this room, probably emasculate the environmental assessment process. The reason why I see this as such is that in looking over the various amendments, what you are doing in essence to these amendments is giving the minister even more powers not only to issue licences at stages, but then even preliminary steps, so now we are even fractionizing it more, so in essence he will be able to issue a licence on a fraction of a fraction of a stage of a development.

Now, I always thought that the best way to approach the environment was by a systemic approach, and you have to look at the whole development as one part, rather than just as little different parts. So this bill will go a long way–and maybe the minister would like to share his comments with me–in what I have heard from Mr. Neily over there, the backdoor approach, well, the door-to-door approach, the foot-in-the-door approach. My approach would be it is the backdoor approach to getting development projects which this present government deems is necessary for some reason. Two in particular come to mind, Conawapa, which really does not have an economic foot to stand on right at present, and the second project is the Assiniboine Diversion project, which seems to be getting into a bit of a problem right now, and the way to facilitate this project is certainly by making these kinds of amendments.

So, yes, there are some very grave suspicions about what is going on. My recommendation, I think

the one that Choices recommends, given the lack of maturity by this government in dealing with processes–and one has to look at The Wildlife Act. They did not get their way; they were in problems; they just took their marbles home and just changed the act, changed the rules of the game. That is easy enough to do.

My recommendation would be to take the discretion that he presently has and definitely more discretion he will have if these amendments go through out of the minister's hands. I think the minister should not, no political person should have these types of powers to grant licences on a discretionary basis.

My recommendation would be to set up a separate body, and I think you have one already, The Clean Environment Commission, and have them do their total assessment process and have them make the decision whether they issue the licence, and only then and after then, the minister should have the power to either override those recommendations or not.

What I find particularly disturbing is one section here. I will quote this from the Manitoba Bar Association's report: Subsection 14(3): The proposed subsection 14(3), found in Bill 49, deletes the requirement that any alteration likely to cause a significant adverse environmental effect go through a normal licensing process. Under the new wording, an alteration can have significant adverse environmental effect, and so long as the minister has received the advice of other affected departments, the minister can exempt the alterations from normal licensing processes. This is completely out of step with both the principle of the environmental assessment and the basic licensing process contained in The Environment Act.

Now, that comes from the Manitoba Bar Association, and that leads me to believe that these amendments would go a long way for one purpose, and that is political expediency.

As I had mentioned, I think that the CEC should have the powers to grant licences, just given the kinds of things that the present government has been doing with our environment. I know that not too long ago, we had the World Summit on the Environment, and the First Minister (Mr. Filmon) was out there with one other person. Certainly, he was doing a good public relations job of selling the benefits of how wonderful Manitoba is in taking care of its environment. It is too bad they could not be here to see some of these amendments. I am sure they would be astounded. I always thought that talk was cheap. Unfortunately, that was pretty expensive talk on behalf of the taxpayers of Manitoba to send the minister out there expounding the wonderful things of how well our environment is.

* (1720)

In closing, the political intent of this government becomes evidently clear if we look at the projects that this government wishes to push through in the coming years, the Assiniboine Diversion project, Conawapa, issuing of a forestry management's licence to Abitibi-Price and Repap, which are all cutting in provincial parks, not just in Nopiming, but every provincial park we have has resource extraction in it.

I think this government only talks about protecting Manitoba's environment. I think we have had enough studies and we know what the problems are, and I think action is required. I guess sending our First Minister (Mr. Filmon) to Rio was an expensive party, and nothing was really learned, I think, by the First Minister out there, or he would be here trying to make amendments to these amendments.

I suggest that come the next election, the First Minister better start patching up his canoe because there are holes that have developed over his tenure, and surely, if he uses it in the next campaign, he will sink. Thank you.

Mr. Chairperson: Thank you, Mr. Sullivan. Are there any questions or comments for the presenter?

Ms. Cerilli: Mr. Chairperson, I would just like to ask one question and maybe even make a suggestion. I know that it is a lot of work, and I appreciate the work that you have done and the time you have spent waiting today.

I want to ask, considering the two major projects that you have mentioned, Conawapa and the Assiniboine Diversion, and knowing that you have some contact with some of the people that are working on those issues, I am wondering if there is any consideration to try to apply these Bill 49 amendments to those two projects, to look at the kind of staging that might happen, the kind of money that would be expended on preliminary steps or stages that could be licensed early and to see how that would affect the development of those projects.

Mr. Sullivan: Essentially, in a layman's term, I see it as nickeling and diming us to death right through the project. I mean, the purpose is to build on the momentum of stage-to-stage licensing. I think that this is quite evident in what happened through the Rafferty-Alameda project and also with the Oldman dam, which eventually the federal government had to rule on.

So, yes, my concerns are expressed not only by myself, but also by Manitobans Against the Assiniboine Diversion project and other folks in rural Manitoba.

Mr. Chairperson: Are there any further questions or comments for the presenter? Hearing none, I thank you very much, Mr. Sullivan, for your presentation this afternoon.

That completes the presentations on Bill 49.

Bill 82–The Farm Practices Protection and Consequential Amendments Act

Mr. Chairperson: We will now move to presentations on Bill 82, The Farm Practices Protection and Consequential Amendments Act. We have three presenters listed: Mr. Larry Walker, Union of Manitoba Municipalities; Mr. Earl Geddes, Keystone Agricultural Producers Inc; Mr. Alfred J. Poetker, Oakville Colony, Portage la Prairie.

If there is anyone else who would care to make a presentation to Bill 82, I would ask if they would make their intentions known to the Clerk.

Committee Substitution

Hon. Albert Driedger (Minister of Highways and Transportation): I wonder if I could move a committee change. I move, with the leave of the committee, that the member for La Verendrye (Mr. Sveinson) replace the member for Sturgeon Creek (Mr. McAlpine) on the Standing Committee on Municipal Affairs effective immediately. [Agreed]

* * *

Mr. Chairperson: Order, please. We will call Mr. Larry Walker, Union of Manitoba Municipalities. Mr. Walker, a copy of your presentation has been distributed. You may proceed as you wish.

Mr. Larry Walker (Union of Manitoba Municipalities): Thank you. Mr. Chairperson, ladies and gentlemen of the committee, good afternoon. I am Larry Walker, the reeve of the Rural Municipality of Miniota. I am also a director of the Union of Manitoba Municipalities, and I have been instructed to make this presentation on behalf of the Union of Manitoba Municipalities.

The Union of Manitoba Municipalities welcomes the opportunity to present our views before the committee considering Bill 82, The Farm Practices Protection and Consequential Amendments Act. The Union of Manitoba Municipalities represents 161 of the 201 municipalities in Manitoba, including all of the 105 rural municipalities, 14 local government districts, 23 villages, seven towns and three cities.

The mandate of our organization is to assist member municipalities in their endeavour to achieve strong, effective local government. To accomplish this goal, our organization acts on behalf of the members to bring about changes, whether it is through legislation or otherwise, that will encourage the strength and effectiveness of municipalities.

The UMM agrees that the farm practices legislation is necessary to address some of the issues arising in the changing rural environment. As the number of nonfarm residents increases while agriculture operations become less numerous, the potential for conflict increases. It is therefore essential that normal farm practice be protected and that there be a forum to resolve disputes between farmers and other rural residents.

The UMM is generally in favour of Bill 82. However, we do have concerns about particular aspects of the bill and the province's role in land-use planning. Our central concern is that the farm practices act may be ineffective unless the province amends other legislation which deals with land-use issues and agricultural practices.

Section 2(1) of Bill 82 outlines the legislation which farm practices must conform to in order to be protected under nuisance claims. Listed in this section are The Environment Act, Public Health Act and land use control laws such as The Planning Act. The UMM strongly believes that if these acts are to be used as standards, they should be substantially strengthened.

Many conflicts between farmers and other rural residents could be avoided through improved planning practices. To achieve this, we recommend that the province strengthen The Environment Act by outlining minimum standards for municipalities to follow in regard to zoning regulations which deal with acceptable farm

practice. In regard to livestock operations, the province should establish minimum standards for animal waste units and distances from populated areas.

The UMM also agrees the province strongly encourage all municipalities to adopt zoning by-laws. We agree with the 1989 Manitoba agriculture discussion paper on farm practices legislation which cautioned that farm practices legislation should not replace careful planning as the proper instrument to address land-use issues. The paper stated that such reliance results in constant conflict and that planning is the only effective tool to prevent conflict situations from developing.

Unfortunately, in the current proposed revisions to the provincial land-use policies, the province is moving in the opposite direction in making the guidelines less permissive and less regulatory. We emphasize that stricter regulations on The Environment Act and the land use control laws will prevent potential land-use conflicts from occurring and having to be dealt with through the farm practices act.

There are a few other aspects of the bill on which we will now comment. Section 2(1) lists nuisance as odours, noise, dust, smoke and other disturbance. We note that the pollution of ground water is not specifically mentioned. Once again we recommend that the issue be addressed through amendments to The Environment Act. Section 6 states that the Farm Practices Protection Board may determine its own practice and procedure for its hearings. The UMM hopes that the hearings will be relatively informal and bear little resemblance to the confrontational nature of a court of law. The hearings will then be less intimidating and will allow for an open and full exchange of information.

* (1730)

Section 9(5) states that a person shall not commence a nuisance action for at least 60 days after making an application to the Farm Practice Protection Board. We recommend that this period of time be lengthened to 90 days. This would allow the board a more reasonable length of time to meet with parties, research issues and present a written decision.

Section 12(2) states that the board will give written reasons for its decision at the request of the parties. We suggest written reasons for the decisions should be automatically distributed to the parties involved. The distribution of written reasons should also apply when the board refuses to consider an application. In conclusion, we would like to restate our support of the bill and urge the province to establish stricter and more clear guidelines in the legislation affecting land use issues and agricultural practices. Thank you.

Mr. Chairperson: Thank you very much, Mr. Walker. Are there any questions or comments for Mr. Walker?

Hon. Glen Findlay (Minister of Agriculture): I certainly want to thank Mr. Walker for representing the UMM today in terms of Bill 82. Mr. Walker is clearly aware that over the course of the last two-plus years there has been a lot of discussion involving UMM executive and developing this bill along with Keystone Agricultural Producers and any other interested parties after the white paper originally went out to some 11 groups. The majority responded with some kind of comment, and so the bill that we have in front of us is an evolution of that process built upon the kind of legislation that exists, particularly in Ontario.

I think we have strengthened the legislation here, relative to what Ontario has in place. And clearly the issues that Mr. Walker has identified here, dealing with The Planning Act and The Environment Act, we have identified those, has been part of the discussions so far. I think that it is fair to say the discussion will have to continue on those two acts relative to the ministers involved so that we can evolve the kind of changes there that are deemed to be appropriate. So I guess all I can say is that for those acts that process still has to occur or has to materialize because it has started already.

With regard to the guidelines, Mr. Walker, I think that you are aware that we have set up what we call the Agricultural Guidelines Development Committee which you have a representative on. We have asked you for a nomination and that person's name has come forward, a Mrs. Linda Duncan. A lot of things have happened over the last years and I certainly wanted to congratulate UMM in the supportive and constructive role that they have played in terms of evolving what we have here today. I think things only work if there is a large degree of consensus that we are moving in the right direction. You have identified that a lot of conflicts can be avoided by appropriate and reasonable planning.

I might just ask Mr. Walker what role he sees UMM executive or municipalities playing in the future relative to planning decisions. Through this process it has been so clearly identified that it is critical that appropriate planning be done up front. Do you see any changes that UMM wants to have happen so that the municipalities can have the appropriate plans that allow agriculture to occur, and how they will be able to make decisions in the future when applications for–I guess we will have to say larger agricultural operations occur–particularly an example like Oakville or like the Dauphin application for hog operations? What role do you see UMM playing in that process in the future?

Mr. Walker: I guess, Mr. Minister, the participation that we have been allowed to have in the past, we thank you for the opportunity of having input on the discussion paper with this bill. We are presently having a committee working on land use policies. I guess those kinds of continual communication and participation are what we look forward to.

In terms of being specific in what we suggest in this presentation is that I think our committee would like to see, first of all, all the municipalities in the province involved in planning, so that they have their own local planning statement or their own local regulations set up, so that they have some foundation when an individual comes for a development, whatever kind it might be, that they have ground rules laid out, so that the individual knows beforehand what the rules of the game are that he is being involved in. I guess that ongoing right up through The Planning Act and all of the other ones, we would like to see them strengthened so that there are ground rules, so when somebody goes to an established golf course or a hog operation, it is clear to them what the ground rules are and they can go from there.

Mr. Findlay: You know, we are in the process of developing the guidelines, but I would certainly have to say that no guidelines can be totally specific, they always have to have a level of interpretation around them. A guideline that might work for, let us say, manure disposal in one region of the province might not be exactly the same in another region because of the proximity of residences or type of soil or drainage. There is always going to be an element of interpretation, even with the guidelines, no matter how carefully they are put together. The municipalities in terms of municipal councils will continue to play very significant, valuable roles relative to interpretation.

I guess I am just sort of asking for your interpretation of what role they will play in it because I see it as continuing to be very important. Sometimes we tend to think that, well, we will set up guidelines and that will be our crutch. It will not be a very strong crutch because there is certainly going to be interpretations still having to be done.

We are very pleased to see the general feeling coming forward that the guidelines are important and they should be used in planning to try to avoid the conflicts that could occur down the road where this act would apply. I guess I really thank you for your general comment in that direction, but I just want to caution UMM that tougher decisions still lie ahead for all of us involved.

Mr. Walker: If I could react to it–to the minister–I guess that is why we would like to see all municipalities have their own planning statement so that the diversity of this province can be displayed in the diversity that can be applied through local planning statements rather than the way some of them are now having to work under the provincial Planning Act.

Mr. Findlay: One of your comments here is that you would like to see the hearings relatively informal, and I would say, absolutely, that is the intent. That is why we have set up the board in that somebody with a complaint has to come before the board before they can proceed to court.

We have indicated 60 days between application before somebody would go to court, and we have certainly talked about whether that is long enough or not. I guess we have not had anybody to this point in the consultation process, say that 60 days is not long enough. It is kind of funny that just two or three days ago my staff and I discussed it. I thought myself that maybe we should be looking at a longer time frame.

You had not raised this at the UMM previously, and I just want to ask, is this sort of recently rethought that 60 days, maybe for reasons that you know that you want to let us know about, is seen to be too short? Because on the other side of the coin is we want to look to be responding quickly. If a real bad situation exists, we want to be responsible to the potentially offended public. [interjection] Do you like 60, or is the 90 you think acceptable from both sides of the coin?

Mr. Walker: I think the reason it is in there is because we did a review of our position and our presentation when we prepared our brief for today. It was a concern of the committee that we wanted to make sure that all parties were heard and that all information was on the table because of the repercussions of the decision that the board might or might not make. I would expect that we might be a little bit flexible on that, but we want to make sure that everybody is heard and all the information is brought before the board, and they have sufficient time to do that.

Mr. Findlay: In terms of the process that the board will follow, there has to be time in my mind allowed for a mediation process, because clearly the board's first activity has to be attempt to mediate. If they cannot mediate, then they have to rule, but we all know that mediation sometimes can work if enough time is allowed. I am actually quite glad to see you make a recommendation, and 90 might be better than 60, so I thank you for it.

* (1740)

Mr. Paul Edwards (St. James): Mr. Chairperson, I want to thank Mr. Walker for coming forward and the work of the UMM on the issues leading to this bill and the effort to come to our committee today. It is appreciated.

I want to pick up very briefly on a comment made about The Environment Act and about some specific recommendations that the act should be substantially strengthened in the words of the UMM. Has the UMM met with the Minister of the Environment (Mr. Cummings) on this issue in concert with the efforts to improve this area of the law? Have there been discussions with the Minister of Environment, and if so, have they been fruitful?

Mr. Walker: The UMM has an ongoing discussion with our Minister of Rural Development (Mr. Derkach). We bring all of our issues forward to him.

Specifically, we have not had a specific discussion with the minister in terms of how we might change The Environment Act to fit in with the farm practices legislation, and I would hope that like the other things, that this would be an ongoing discussion with the minister, and the UMM would have opportunity to have input and discussion.

Mr. Edwards: I would have hoped, of course, as I see your presentation suggests, that these things could have come forward together to create a package. I think that would be the optimum. It may not be possible at this time, but I, too, hope that the government will work expeditiously to make this a fuller package and clear up some of the concerns you have raised.

Specifically, I want to talk about the suggestion, in particular, that Section 2(1) does not list ground water pollution. Do you, in your experience, have any idea as to why this was left out? Is it your information that the government, for some reason, does not want this in, or do you think this is just an oversight?

I see it as a pretty significant one, in particular, in view of the Bristol situation north of the city here, I am not sure if you are aware of it, where a substantial ground water pollution has taken place. It seems a particular irony that it be left out of this bill. I certainly support your conclusion that it should be in there. Is there any reason that you know of as to why it would not be in that list?

Mr. Walker: No, there is no particular reason. The directors of the UMM, as is everybody else in this province, are concerned about our environment and want to protect it. The old Nuisance Act includes things like odour, noise, dust, smoke and other disturbances, and that is a general term that covers a whole lot of things out there.

Our committee felt that we are sufficiently concerned about ground water, that maybe in The Environment Act, we should talk in terms of distances and size of some developments in relation to ground water supplies.

Mr. Edwards: I think it is an excellent point, and it is one that we will certainly follow up on when we get to clause-by-clause.

The old Nuisance Act, of course, is a product of different years. As time goes on, sometimes we learn more and more what specifically we should be seeing as environmentally sensitive. Ground water is an issue which has to come to the fore in recent years, and I think it is an appropriate amendment. I thank you for drawing it to our attention.

Those are my questions, Mr. Chairperson.

Mr. John Plohman (Dauphin): I wanted to ask the representative from UMM—first of all, I want to thank you for your presentation. I think it is an excellent presentation, very informative, and certainly supports the kinds of concerns that we have about this bill and that I think have just been raised by the representative from the second opposition party as well, and we have raised these in second reading.

It was a discussion paper put out which identified four issues that had to be identified, The Farm Practices Protection bill being only one of them. There were the guidelines for livestock in particular, the strengthening of The Environment Act and the zoning guidelines and provisions. All those were identified in the discussion paper, and yet they are not being acted on to this point. At least, they are not being implemented at this point, even though the bill is being implemented. That is the concern that we have. You seem to have reinforced that concern with your presentation here today.

You did mention a 1989 Manitoba agriculture discussion paper. Are you speaking about the same paper that was recently sent out February 5 as a discussion paper by the minister's Chief of Soils and Land Utilization, Mr. Partridge?

Mr. Walker: No, the original farm practices discussion paper was sent out by the minister's office in 1989, I think. [interjection]

Mr. Plohman: I thank the minister for the clarification. He sent it out in December of 1989. However, the discussion paper that was sent out February 5, '92, contains attachments, one dealing with land use planning, environment regulation, the proposed Farm Practices Protection Act and livestock production.

I guess if I showed the presenter that particular paper, then he could verify whether that is the same as the one that was sent out in '89. I believe it is the same, essentially. If it is not, the minister can clarify that during our discussion of the clause-by-clause of the bill.

There is also a second attachment, a second discussion paper, dealing with the proposed Farm Practices Protection Act. So there are two of them in this one that was sent out February 5.

What I wanted to ask you is whether these issues dealing with land use planning, with The Environment Act strengthening, were identified in the '89 paper.

Mr. Walker: I cannot say that the papers are the same word for word, Mr. Plohman. In terms of whether these issues were raised in those papers, I do not just remember.

Our committee has dealt with all the papers, and these are the concerns that we have, and we have presented them accordingly. If there is anything to come out of them, we would just hope that we are involved in the discussion and have input.

Mr. Plohman: Mr. Chairperson, I think this is an important point. The four points that the minister mentions in the paper that was released on February 5 deal with assisting municipalities in their land use planning approaches to agriculture operations, reviewing livestock regulations under The Environment Act with a view to setting minimum environment standards, establishing farm practices protection legislation and development of livestock guidelines, a code of practice to guide and supplement all three of the above–four points.

Were those the four points that were identified as necessary in the original discussion paper? I am not talking about word for word, but just generally, were those issues the ones raised. Were they raised during the initial discussions in '89? Do you recall that?

Mr. Walker: I am not sure. I think they were, but I cannot see why that is really that important at this point.

Mr. Plohman: It is not, with all due respect, I guess, for you to judge whether it is important to me or not, but I feel they are important, and I will tell you why.

The minister has said that he is just getting started on those issues, and you have confirmed today that discussion has been going on since '89 on these issues. There is already over two years, three years, for the minister to start implementing some of these other points. I just wanted to confirm that because we will take that up with the minister.

I am not asking you to do that, but I wanted you to just confirm that you were referring to a discussion paper which generally dealt with the same issues that the minister now distributed on February 5 of '92. So it is much older in terms of the discussion.

I want to ask about the current proposed revisions to the provincial land use policies that you mentioned in your paper. I find that very interesting. You said the province is moving in the opposite direction in making the guidelines less permissive and less regulatory–we emphasize that stricter regulations are necessary.

Can you give us some examples? What are you talking about in the land use policies? Have you been consulted on land use policy changes in the last year or so, and are there widespread changes that you have had referred to you from the minister or from the Minister of Environment (Mr. Cummings) and the other ministers responsible for land use planning?

* (1750)

Mr. Walker: There is a discussion paper out now, and the UMM has a committee of four or five directors who are discussing it and studying it, and our initial discussion out of the discussion paper is that we would like to see some firming up of some of the land-use regulations in terms of distances, animal waste units. Like I said before, this is a pretty diverse province, and what might suit one planning area or one municipality in terms of waste units or animal units–there is the size of an operation–might not fit another. We would just like to see some firming up of those acts so that there are firm guidelines for people to work with.

Mr. Plohman: I understand that, and I agree with you 100 percent, but I was just wondering why you said the province is moving in the opposite direction. The proposals that have come out in that discussion paper that is before you now, have they gone the opposite direction?

Mr. Walker: I do not know where they have moved from the present act, but they seem a little permissive to the committee.

Mr. Plohman: Well, Mr. Walker, you might want to, if you can get the get the UMM to do that, share them with us. The minister has not shared those with us, and we would certainly like to discuss those with the minister, so if you are able to do that, we would really appreciate that, because it is rather interesting that the government might be suggesting more permissive regulations at a time that it is putting out a discussion paper saying that they have to tighten up, yet they are not implementing it at the time. The fact is coming forward, and they are saying "trust us,"–[interjection] Well, we will see. The minister is not too happy with my conclusions drawn on that.

I am not intending to embarrass you, Mr. Walker. I am just trying to get the facts as to what is contained in your presentation and how it relates to the bill, and I think there are important points. You did mention the particular need to deal with ground water, and I think that is noted and important. You also mention the issue of 90 days versus 60 days. Do you see that to give more time to act as a dispute-resolution mechanism as opposed to an arbitrary ruling, that many of these disputes would not get to formal rulings by the Farm Practices Protection Board, but in fact they would bring the parties together and resolve the dispute outside of the formal proceedings? Is that what you mean by that additional time, to give more time to kind of resolve these issues outside of a formal order in a court-like type of approach?

Mr. Walker: That is only part of it. As I indicated to the minister, we wanted to ensure that everybody was heard and everybody had every opportunity to put all their information before the board and the board had sufficient time to, if you like, try and mediate and solve a problem and come up with a satisfactory conclusion whether it is through some kind of mediation or whether it is on a ruling.

Mr. Plohman: Mr. Chairperson, do you feel, though, that three months after a complaint, it would still be relevant, a person bringing forward a complaint? We are getting to the point now of such an extended period of time that it is almost forgotten, particularly if it is something that occurs annually, say, stubble burning or something like that.

Mr. Walker: I guess that that is probably an issue. It is a problem that has been out there for quite some time, and I think that it is going to take time for this farm practices bill to sort some of those things out. Yes, maybe 90 days–90 minutes might be too long to resolve a stubble-burning problem, but you have to be reasonable. It can not be solved in 90 minutes. You know, maybe there is going to be some additional inconvenience until this practices bill gets the opportunity to sort some of these of things out. We want to make sure it is done right rather than too quick. We would sooner that all the facts are on the table and it is done right.

Mr. Plohman: Just on that in doing it right, since that is an important point, would you say that it would be moving in the direction of doing it right had those other issues that you have identified in your paper also been addressed by the minister at the same time as bringing in this bill, or would you rather see this bill go ahead without having those other issues addressed?

Mr. Walker: Our prime concern is that first of all, the bill go ahead. We would like to have seen some amendments from some of the other ministers, you know, on the table with it. Yes, I mean, that would be our preference, but we support the bill, and we want to see it go ahead.

Mr. Plohman: In regard to the fact the minister has not addressed–[interjection]–the minister has just told me to quit badgering the witness. I will decide when I am badgering. I will ask the questions I want to in here. It is still a free country with free speech,

and I do not need you telling me, Mr. Minister, when I can speak and when I cannot.

Mr. Chairperson, those are all the questions I have for the presenter, Mr. Walker, and I thank you for your presentation.

Hon. Glen Cummings (Minister of Environment): Mr. Chairperson, I will keep my questions very brief, because I think we would like to have an opportunity to hear all of the presenters. I just had one concern and that is, has the UMM taken an official position that they want agricultural operations brought into The Environment Act for licensing?

I did not make that assumption from your presentation, but I wanted to make it very clear whether that discussion had occurred or whether that was the implication from your presentation.

Mr. Walker: No, I do not think that is the intent at all. In terms of dealing with The Environment Act, we would prefer to deal with it as we have dealt with all governments and all acts and to have consultation and input into the development, and the fact that we have had opportunity to have input on discussion papers and work with different ministers and have input under the development of legislation.

Mr. Cummings: Mr. Chairperson, I think that this is a significant point. I would ask then if Mr. Walker agrees that the ongoing debate that needs to occur in relationship to environment planning and the interrelationship of the two being as complex as it is, that this might well be a lengthy process before an understanding is reached on how various facets of the two bills can be linked.

Mr. Walker: Yes, I guess it very well could take some time. We are prepared to take the time because we think it is important enough to spend the time to do it.

I have to point out that we are dealing with the farm practices legislation. We have concerns about these others. We have addressed them, and hopefully, we can continue to deal with them.

Mr. Plohman: For further clarification, because the Minister of the Environment (Mr. Cummings) did ask specifically whether you felt agriculture practices should come under The Environment Act, and I believe you said no.

Yet I am reading [interjection] Okay, you can clarify that, Mr. Walker, but I just wanted to say that I read, that it says in your brief: We emphasize that stricter regulations in The Environment Act and land use control laws will prevent potential land use conflicts from occurring.

I assumed, since The Environment Act was mentioned in terms of stricter regulations, that is precisely what you wanted done. [interjection] Well, the member for La Verendrye (Mr. Sveinson) says, do not assume. Well, that is what it says, so now I have to, in light of the answer, ask you just one more time about that.

Mr. Walker: I think the question, Mr. Chairperson, was, has the UMM taken a position that they wish to have agriculture under The Environment Act, and we have not taken that position.

Mr. Plohman: Okay, but you have taken a position in this presentation which says precisely that you would like stricter controls under The Environment Act. Is that not the same thing?

Mr. Walker: Well, I think that The Environment Act can have clauses that pertain to agriculture and still not have agriculture under The Environment Act.

Mr. Chairperson: Thank you. Are there any further questions or comments for the presenter? If not, I would like to thank you very much, Mr. Walker, for your presentation this afternoon.

Mr. Walker: Thank you on behalf of the UMM for the opportunity to be here.

Mr. Findlay: One last comment, again, I would like to thank Mr. Walker for his comments, and clearly, the discussion on The Environment Act shows the level of further discussion that is going to be needed to clear out some of the ambiguity maybe that exists relative to the desired intent you have on The Environment Act. The present position is that agriculture is not under the act. So there is a fair bit of work to be done there and it is going to take some time.

On the last page of your presentation here is: "We suggest that written reasons for the decisions be automatically distributed to the parties involved."

In the bill it says, in 12(2) Decision given to parties, that "The board shall give a copy of its decision to each of the parties and shall, at the request of a party, give written reasons for the decision."

Do you not see that 12(2) as really providing what you are asking for?

Mr. Walker: Yes, Mr. Minister, I think probably it does.

* (1800)

Mr. Findlay: I gather there is maybe a potential loophole in the case of where the board refuses to consider an application. Maybe the interpretation of 12(2) would not be that the decision was made, but once you make the decision not to hear, that is a decision. The intent, and my intent here, is that anytime a decision of any nature is taken that there be written reasons given. I think that is your desire.

Mr. Walker: That was the intent of the committee, of the board, too, was that notification be given in writing on any decision.

Mr. Chairperson: Are there any further questions or comments for the presenter?

Mr. Driedger: No question here. I believe we have one presenter left and I do not know how long that presenter would be. The individual has been here for two days, and I was wondering whether we could maybe hear Mr. Poetker or not. I have no idea though how long his presentation is going to be.

Mr. Chairperson: Is it the will of the committee? I think the normal agreement was to break from six to seven. Is it the will of the committee to hear Mr. Poetker at this point?

Mr. Edwards: Mr. Chairperson, I saw you put up your fingers that there were two. Are there two presenters?

Mr. Chairperson: I have Mr. Geddes and Mr. Poetker listed. Keystone Agricultural Producers.

Mr. Edwards: I think Mr. Geddes presented earlier to the bill.

Mr. Chairperson: That was a different bill.

Mr. Edwards: In any event, this same committee considering this bill reconvenes at seven. Is that a continuation of that?

Mr. Chairperson: That is correct.

Mr. Edwards: I have no problem. I guess what I would ask for is an hour regardless of when we break. I do not know if there is a problem with that with other committee members.

Mr. Plohman: I would like us to get started as early as we can after dinner break. I just wanted to ask if we agree to this at this time that we also have flexibility in terms of who we hear later on. It may be that a representative from Keystone will be here at that time, and I do not mean that this should cut off any presentations when we reconvene.

The other thing is we also have a potential of, unless someone else knows differently, that Mr. Mercury may return to complete his presentations. He was not able to be here today. I think as long as we have an understanding that we would hear him, or anyone who comes forward at a later time this evening, then I have no difficulty with this.

Mr. Findlay: I would recommend we hear Mr. Poetker now. I understand that Keystone left a one-page written submission with the Clerk so their submission is here. That takes care of the second one, unless they show up this evening. If they did, I would recommend we would hear them at that time, but Mr. Poetker definitely has been here two days [interjection] or anyone else, yes.

Mr. Chairperson: I understand there is agreement then of the committee to hear Mr. Alfred Poetker of Oakville Colony, Portage la Prairie. Mr. Poetker, would you come forward please. A copy of your presentation is being distributed. You may begin whenever you please.

Mr. Alfred J. Poetker (Oakville Colony, Portage la Prairie): Thank you, Mr. Chairperson, I appreciate the opportunity to make the presentation today. My name is Alf Poetker. I am with the engineering firm Poetker MacLaren Limited. Poetker MacLaren provides professional service to many rural municipalities, planning districts and to farm organization and producers. Many of our producer clients are colony farms of the Hutterian people.

I am here today to represent, in particular, the Milltown and Norquay colonies. I am confident, nevertheless, that the issues addressed in this presentation are equally applicable to the entire livestock production industry of the province of Manitoba.

For several years now, the Milltown and Norquay colonies have been attempting to obtain approval to establish a typical state-of-the-art colony livestock operation at the Norquay site. Under the provincial Planning Act, the municipality has enacted a zoning by-law which requires a conditional use approval for large livestock operations. Under Section 59 of The Planning Act, the authority for approving such conditional use rests entirely with the municipal council with no right of appeal.

The application may be denied without any requirement to provide reasons for such rejection. Approval, on the other hand, could be challenged if it cannot be demonstrated that the proposal is, " . . . desirable for, and compatible with, the

neighbourhood, the community and the general environment . . ." That is Section 59(4)(b)(i).

(Mr. Ben Sveinson, Acting Chairperson, in the Chair)

This requirement puts a tremendous onus on the applicant to provide the requisite assurances, and by the way, we have no quarrel with that. On the other hand, it does provide a mechanism for opponents to lobby against and stop a project, whatever its merits, and there is no burden of proof required of such interveners, and we do have a quarrel with that.

The government of Manitoba is intentionally supportive of agricultural production in the province. The introduction of this farm practices protection legislation is evidence of that intent, so is an environmental act that excludes agricultural operations from having to secure environment act licences.

Agricultural regulations, that is Section 93/88(R) under The Environment Act, are common-sense requirements that are endorsed by producers and regulators alike. Good farming practice is in the best interest of the neighbourhood, of the agricultural industry, and indeed of the producer.

The Planning Act and the municipal zoning by-laws are intended, among other things, to ensure that large livestock operations are located in areas which are appropriately zoned for such operations. Is it too much to state that such zoning is also intended to create areas where such operations can rightfully be established and protected?

Unfortunately, residents are often permitted to subdivide small rural holdings, usually existing farmyards or homesteads. These become rural residences for people who may not derive their living from agricultural production. Their perception of a clean, rural environment frequently comes into conflict with the reality of agricultural production, things such as noise, dust and odour, no matter how prudently the farming operation is managed.

While The Environment Act recognizes the reality of agricultural production in this regard, The Planning Act does not. It may, in fact, permit those who live in the area, by virtue of a variance to the by-law, that is, the rural nonfarming residence, to stop the development of legitimate farming operations that may conform to the zoning intent, but which require conditional use approval. It was hoped by the Milltown and Norquay colonies that the farm practices protection legislation would address the foregoing concerns.

While Bill 82, as it now stands, addresses many of the concerns of existing operations to continue their reasonable practices with the protection of legislation. It does not appear to address the need of the agricultural sector to grow and develop in areas where market conditions permit such growth and expansion. We believe this to be needlessly limiting and contrary to the intent of the government to provide support to the agricultural industry.

Support for sustainable growth and development needs to be demonstrated in one of a number of alternatives. Firstly, the proposed legislation could be expanded to clearly protect designated and zoned farmland for purposes of agricultural growth and development including the establishment of livestock operations, both large and small.

With or without such expansion of the proposed legislation, there is a need for clear guidelines for the development of large livestock operations. Rules are usually not popular, but given the choice, most of us would rather live with them than to not have any. Guidelines, such as recommended farm practices, set back limits, waste handling, and utilization procedures would be useful to the producer in planning and developing new operations with some degree of assurance of success. More importantly, they would give the planning boards and municipal councils a reasonable and independent basis on which to evaluate proposals within their jurisdiction while allowing the freedom to apply local factors to each situation.

In the alternative or in addition to the foregoing, there is a need for an appeal mechanism regarding decisions by municipal councils which may be motivated by factors completely outside of the technical merits of a proposal. It is recognized that such appeal would be open to both an applicant and to an intervener.

* (1810)

A further problem with The Planning Act as it is now applied is that the setting of conditions for development and operation of livestock production facilities is relatively meaningless, unless there is a mechanism for monitoring and enforcement. Most municipalities have no such capability. Typically, they look to the provincial government for

assistance in this regard, as they do in other matters of planning and environmental management.

The logic of including developmental guidelines and monitoring procedures with farm practices protection legislation may stretch the imagination. Nevertheless, both are needed for the protection of agriculture, if not as part of this legislation, then as separate and parallel initiatives. They would provide a much-needed basis for evaluation of proposals, as well as assurances to the public that producers would not create unwarranted nuisance conditions nor irreversible harm to the environment.

With the legislation that exists today, producers are being thwarted in their attempts to expand existing livestock operations or to develop new ones—this, even on lands zoned for the least restrictive agricultural operations. Interveners are banding together to oppose such operations in various parts of the province, sometimes proposing physically impossible restrictions such as a two-mile mutual separation distance from the nearest residence.

Manitoba agriculture has enough adversaries in terms of trade protection and subsidies which exist among Canada's trading partners and competitors. We do not need to empower our own citizens to unfairly suppress, and in fact, derail the expansion and development of legitimate agricultural operations. The losers will be not only the agricultural producers of this province, but indeed all of its citizens.

The future of the agricultural industry in this province is in your hands. We urge you handle it with courage and responsibility. Thank you for your consideration.

(Mr. Chairperson in the Chair)

Mr. Chairperson: Thank you, Mr. Poetker. Are there any questions?

Mr. Findlay: I would like to thank Mr. Poetker for coming forward and expressing concerns on issues that are, some relevant to the bill, and some certainly go beyond the bill and deal with The Planning Act and the kind of application he has seen in one or maybe more instances in the province of Manitoba.

Although it is not germane to the bill, I might ask, second paragraph on the third page, you are referring to an appeal mechanism regarding decisions by municipal councils, what specifically would you like to recommend as an appeal mechanism?

Mr. Poetker: When we are dealing with certain by-laws with the municipalities, like the money by-law, for example, for expansion of a water plant or other decisions, there is an appeal mechanism to the municipal board. Something of that nature, I believe, could be workable.

Mr. Findlay: Certainly the other thing you identify is a need of guidelines. Are you aware that we have already struck a Guidelines Development Committee that has spawned out of the process of developing this bill that we have before us, with broad representation, with the intent of having guidelines that are usable by the board that will be hearing complaints under this bill, but also we would intend to be used by the municipalities in both setting the plans and the guidelines under those plans, and then to be used in hearings that they might get involved in in decisions down the road?

That process is underway and I want to ask if you are aware of it, and if you think that is the appropriate process to follow to try to have guidelines that everybody can live with?

Mr. Poetker: Yes, indeed, I have heard that this is in process. In fact, you mentioned it to the previous presenter. I had heard of it independently, and I would like to support that and support the broad representation, as you have indicated. I would also like to encourage you to be fairly bold in terms of setting those guidelines.

I know that you have provision in this bill for regulations. I am not sure that is as far as we would want to go, although there are regulations under The Environment Act which I believe are very workable for agriculture, they are tough. There is the mechanism to charge people if they violate those regulations, so a requirement for licences, I believe, is something that is not needed for agricultural operations, but the regulations are still there.

The guidelines would be good as a sounding board if nothing else. I feel that when we have been making presentations on these conditional use applications to municipal councils, they often feel that they have no basis on which to evaluate what is right and what is wrong.

If an objector comes and says there should be a two-mile mutual separation, we know that in the intense agricultural operations in Manitoba there is no such place, but there are jurisdictions that say a quarter mile. For example, the Environment department has a guideline of 1,000 feet for a

sewage lagoon. That is a guideline that the Clean Environment Commission has reinforced over and over again. It is reasonable, and one sewage lagoon is not too different from another.

I think that with the emerging technology in the livestock operations, and with the operators themselves recognizing the need for good farming practice, there will be less and less difference between one barn and another, so 1,500 feet or a quarter mile or 0.6 kilometers or whatever you want to use may be a reasonable guideline that is applicable across the province.

Mr. Findlay: Just one last question, we all have to recognize that under The Planning Act municipal councils have a tremendous amount of authority, both in setting up the plans and the making decisions under those plans. Although we might give them guidelines, they will be under a lot of pressure because emotion gets involved in some of those hearings. Although we may put guidelines, and councils may want to abide by them, when it comes time for an ultimate decision, emotion still plays a tremendous role.

I do not know how you legislate against emotional input and people having to make a decision under those circumstances. Maybe you might comment on that, because I know you have seen it on at least one occasion. How do you recommend that we as legislators try to deal with that?

Mr. Poetker: Emotion is a part of many hearings. I have been to many hearings of the Clean Environment Commission which have been equally emotional. I guess that is where I have always felt a lot more comfortable with the Clean Environment Commission than I have with planning boards and municipal councils, because I feel a lot more confident there will be that level of independence that does not respond to the emotion of the day. With the municipal councils, that emotional response may well come from a neighbour or a voter, so that is where I feel at least there needs to be some mechanism where this can come to an appeal before an independent body.

Mr. Plohman: Mr. Chairperson, I want to thank Mr. Poetker for addressing many of the companion issues to the bill, The Farm Practices Protection Act, identifying many concerns from the side of the proponent of a development as opposed to from the other side of someone intervening to protest what might be being put forward for development.

We saw a major conflict with Pur-A-Tone and the R.M. of Dauphin for a livestock hog operation, perhaps similar to what you have experienced in the past. I think it identified to me, and I think many others have seen this kind of a situation, where there is a need for what you have identified on page 2 in your question: Is it too much to state, that such zoning is also intended to create areas where such operations can rightfully be established and protected?

In other words having appropriate zoning for such operations so you do not have to go through all of those hoops every time again. That area is designated for a certain use. Providing there is no violation of the environment requirements and certain other guidelines that are put in place, it is almost more of a de facto approval already, rather than have to go through and reinvent the wheel every time. I think that most people would agree with that, if that kind of zoning could be built in in the planning for all municipalities, and it is something that should be addressed.

* (1820)

I agree with your point on that and I appreciate you for making that. You also mention that on the bottom of page two where you say "zoned farmland for purposes of agricultural growth and development, including the establishment of livestock operations both large and small." That is what is missing at the present time in the municipalities.

Is that what you have found, that no one really has an area set aside that they could immediately send you to and say if you want to do that you are welcome, we want you here, there is the area that we have designated for that kind of operation, go to it?

Mr. Poetker: There is something comparable to what you are just describing in terms of the zoning in towns and cities. We have the residential and we have the multiple family and then we have commercial and industrial, light industrial, finally, heavy industrial. It is the heavy industrial areas where you have the operations that create dust and various other noxious conditions.

If we had a parallel, or if we in fact have a parallel in the agricultural area, it probably is what I refer to as the least restrictive. It is often A80 in the zoning by-laws. Immediately around the community you might have A5, and then you might have A40 which

is a little more restrictive, and then finally, A80 which is the least restrictive. That is where people logically should be locating, and that is where they are going, but they are still being stopped. That is our concern.

Mr. Plohman: So there are some areas that are zoned, as you say, A80, and yet they are not being accepted generally, because there are so many other things that have been left open. Perhaps the zoning initially was not exhaustive enough in terms of the kinds of tests that it was put to before they zoned it that way.

In other words, ground water conditions, soil conditions and so on could all be checked ahead of time so that you have that area zoned, and you do not have to go through all that to see if it is suitable now for that kind of operation. Would you see a more intense investigation before zoning takes place, and once that process is gone through, there would not be a need to go through it to the same extent for each individual operation that is being proposed?

Mr. Poetker: I have not considered the possibility of actually creating a sort of precinct where you would have all of your large livestock operations.

You raise the question of ground water. It is my personal belief, and based somewhat on technological expertise, that our conventional fertilizing practices are no more detrimental to soils where ground water may be a hazard than agricultural operations where you spread manure on land.

We put a lot of chemicals on our farmlands. I do not want to open up another can of worms on that issue, but one of the things that we have done with some of our projects is we have monitored the wells, shallow wells, in the area where people are spreading both manure on the one hand, and other areas where they are spreading fertilizer at the normal rates of 100 pounds of nitrogen per acre, let us say. We have not found in Manitoba, in the areas–these are nonirrigating areas–that there is any impact on the quality of the ground water.

Mr. Plohman: Well, I think more and more people are recognizing that fertilizing and chemicals and so on are having a great impact on surface water. Case in point is the Dauphin Lake Basin Advisory Committee on how the runoff from agricultural operations is affecting the water. It has been identified as one of the major concerns in the draft Basin Plan, and many farmers are objecting now to the fact that that has been identified.

It seems that what you are saying is true, that the old traditional methods of fertilizing may be more harmful to the environment than the methods of chemicals and fertilizers that are being used in a widespread way today.

I wanted to just ask you one last question. The minister raised this with you about an appeal mechanism for decisions by municipal councils. So, not only do you want guidelines in place and proper zoning and so on, but you want to go further than that and say you want somebody to be able to overrule those councils when they do not make the decision that you want.

I look at that and say, that might be having your cake and eating it too. In other words, you want all these guidelines, but if you are not satisfied that the council made the right decision you can appeal it and have somebody overturn it.

Do you not see the councils, since their jurisdiction is over local government that they should be, providing they are meeting all the guidelines and requirements that are set out, that they should be the final body in terms of decision making on this?

Mr. Poetker: I always understand that guidelines are just that, and I have indicated that a municipal council should have authority to apply local conditions to it. My concern with regard to the appeal is that there be an independent body where people are not evaluating these on the basis of the technical merits. I guess I have seen a council take a hard look at a 500-name petition where people are signing this petition from twenty miles away, but they are all voters.

Mr. Plohman: So what you are suggesting is that a motion in politics is taking precedent over the real impacts of a development. It is the perception that people have about it and that is resulting in wrong decisions being made in some cases, and therefore you want an independent body to in fact be able to overturn that. Can you imagine the impact that is going to have locally when the council decision is overruled? Are you going to want to live in that kind of a situation?

Mr. Poetker: From my experience, we have conducted open houses on environmental issues and on farm livestock operations, and I have seen people and I have seen municipal councillors say, well, when we make a decision we do not have the

right to say anything on the environmental issue anyway. Sometimes at these open houses some people from the Environment department have been there and they have simply pointed to them and said, well, they will tell us what to do.

Mr. Plohman: That is the problem right now. There just is not enough structure for the councillors to rely on. But if you have that structure, and it is an informed decision, based on all of the information being available, and proper zoning and guidelines in place, then that will eliminate to a large extent those decisions being made strictly on the basis of how many people signed a petition. I have faith that the councillors would then be able to make informed and right decisions based on the facts. If you are basing it on petitions, politics that affect all of us around here–provincially, federally, whatever–the question is: Do you want to operate in a community that does not want you there anyway at that point? You want to put forward your development even though it had to be agreed to by an overruling of the council.

Mr. Poetker: I believe that many people will make a case for what they want, or what they believe in, and it if rules against them, they accept the decisions. I have felt in a number of conditional-use applications that people who have vigorously opposed the operations have simply come forward after the hearing and openly asked for information about it in almost a supportive way. So I do not believe that people would say, well, if this is approved against my will I will go there and harass this operation as long as it is there.

Mr. Edwards: Mr. Chairperson, the hour is late and I simply want to express gratitude to Mr. Poetker for having stayed with us for this time, to come forward and give us his views. I also want to say that I had the pleasure of visiting the Norquay and Milltown colonies with respect to this specific issue after having met with the concerned citizens of Oakville and have had the pleasure of learning about this issue.

I acknowledge the concerns which are brought forward. They are not easy issues, as we can see from some of the questions as well, but I think your perspective is valuable. I appreciate your comments, and I can assure you that your written submission will be considered carefully in the clause-by-clause analysis of this bill. Thank you.

* (1830)

Mr. Cummings: Mr. Chairperson, I do not want to prolong this, simply to thank Mr. Poetker for his presentation. The debate that we have had is something that I wanted to get on the record as well.

The concerns that are raised are not just unique to Milltown; there are a number of other circumstances across the province where there is extreme difficulty. In some respects agriculture in some parts of the province–rephrase that–in many respects in some parts of the province agriculture is under attack, and yet we are a province of only a million people in a vast agricultural area. This issue has to be dealt with or there will be difficulties.

I think Mr. Poetker and Milltown have demonstrated that there needs to be serious consideration by all parties outside of political consideration. Thank you.

Mr. Chairperson: No other questions or comments?

Mr. Findlay: I would just like to again thank Mr. Poetker for coming and standing through two days waiting for an opportunity, because what you are putting in front of us here is a lot more issues relative to your operations and farm operations, and I thank you for bringing them forward. They will be dealt with in due course through various other ministries and different processes that will unfold. Thank you.

Mr. Chairperson: Thank you very much, Mr. Poetker, for your presentation and your patience.

Before we get excited here, in case you do not know, we are moving to room 254 to reconvene. The House says we must reconvene at 7 o'clock, but we may not have a quorum until 7:30. It has been suggested that we leave by this door seeing as there is a large crowd at the other door there. Any questions? [interjection] 7:30 [interjection] At seven, but we may not have a quorum until 7:30.

COMMITTEE ROSE AT: 6:33 p.m.