INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	April 17, 2019
SUBJECT/REPORT NO:	Annual Assessment Appeals as of December 31, 2018 (FCS19030) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Maria Di Santo (905) 546-2424 Ext. 5254 David Janaszek (905) 546-2424 Ext. 4546
SUBMITTED BY: **SIGNATURE:**	Rick Male Director, Financial Services and Taxation & Corporate Controller Corporate Services Department

INFORMATION

Appeals of assessment value and classification have a large impact on the Municipality's annual budgeted tax revenue. As property taxes are based on an assessment value multiplied by a tax rate, any reduction in the assessment value or classification (primarily a class change to a lower taxed property class) will have a negative impact on the Municipality's property tax revenues. Recent years have shown a continued trend in large commercial and industrial appeals that result in significant property tax reductions.

This report is intended to keep Council apprised of the trends over the last five years. Trends continue to show large industrial and commercial appeals that have off-set, in part, the growth in these property classes. Through the budget process, the City of Hamilton (City) recognizes that assessments will be challenged and lost. As such, an annual budget is approved (2018 budget = $7.3 million) for regular, on-going losses due to appeals, requests for reconsideration and Municipal tax applications. In addition to this, an allowance is set up where there is a potential for a significant loss of assessment that covers multiple years.

The five-year average Municipal loss due to the combined impacts of Assessment Review Board (ARB) appeals, requests for reconsideration and Municipal tax applications equates to approximately $8.1 million per year. This considers the lower than expected reductions processed in the 2018 taxation year. This is not an indication that there has been a decrease in the number of appeals filed or that property owners have been unsuccessful with their appeals, but rather, it reflects the reduced amount of resolved appeals in 2018 resulting from the scheduling delay of changes implemented by the Board in 2017.

The Assessment Review Board introduced new Rules of Practice and Procedure which came into effect on April 1, 2017. The changes impact all parties in the process, including Municipalities, and were introduced to streamline the property tax appeal process and promote fairness and efficiency. The new rules will help to ensure that appeals, both old and new, will commence within the current four-year cycle and be completed on a timely basis. Under the new rules, a commencement date is assigned to each appeal. This commencement date is when work is expected to begin as the appeal proceeds through the schedule of events spanning up to 2 years. This is a robust and rigid schedule that must be complied with. An appeal would exceed 2 years should the parties be unable to resolve the appeal(s) and a full hearing before the ARB is required.

Although the new rules came into effect on April 1, 2017, the first commencement date scheduled by the ARB was November 15, 2017 with additional appeals commencing once a month thereafter throughout the current 4-year cycle. Given the first commencement date and the 2-year timeline associated with the schedule of events, it was not expected that many appeals would be resolved within 2018.

Unfortunately, the process which led up to the scheduling of appeals under the new rules resulted in a delay of the appeal process in 2017 and impacts the following years. Municipalities were asked to provide the ARB with a short list of sensitive and priority properties which the Board would consider in the scheduling process. Taxation staff provided a list of properties to the ARB in August 2017. When compiling the list, Taxation staff considered factors such as political sensitivity, age of appeal, quantity of appeals for a property and properties with significantly high assessment value. MPAC and other industry representatives were also provided an opportunity to review the listing of appeals and provide their input and preferences towards scheduling commencement dates for the appeals.

Assessment appeals are not unique to the City of Hamilton. The issue of the loss of commercial and industrial assessments is province-wide. As the Municipal Property Assessment Corporation (MPAC) is responsible for the property valuations, Municipal property tax revenues hinge on how well their valuations hold up when challenged by taxpayers and highly trained appraisal consultants. Further complicating matters is the fact that large province-wide appeals are being delayed due to their complexity and the time it takes to be heard at the Assessment Review Board (ARB). An appeal that takes five to seven years for a decision can lead to a significant cumulative Municipal property tax revenue loss if a reduction in assessment value is warranted.

Table 1 below shows the number of properties with outstanding ARB appeals by CVA (Current Value Assessment) Cycle:

Table 1

Outstanding appeals by Assessment Value and Number

	2018- 2017 Assessment Cycle (2016 CVA)	2016 – 2013 Assessment Cycle (2012 CVA)	2012 – 2009 Assessment Cycle (2008 CVA)	2008 – 2006 Assessment Cycle (2005 CVA)
CVA under Appeal	8,943,989,251	3,203,029,098	974,633,303	8,185,920
# of properties by taxation year[1]	1,290	272	73	2

[1] a property will be identified multiple times if the appeal extends multiple taxation years

Table 1 highlights the magnitude of the number of current outstanding appeals for properties within the City of Hamilton. The assessment values in Table 1 are the cumulative property values under appeal. Some of these appeals will be withdrawn or settled for no reduction, while others may be settled anywhere from a loss of 1% to 30% of the value, leading to a loss in Municipal property tax dollars. Currently, the largest appeals are in the big box category, along with the neighbourhood shopping plaza category. Many of these appeals are province-wide appeals as to the valuation issues being challenged, and are cumbersome due to the number of owners, Municipalities and tenants involved.

The actual loss of Municipal property tax dollars over the last five years because of successful appeals, requests for reconsiderations and Municipal tax applications is highlighted in Table 2. Expected loss of property tax revenues due to challenges to assessment values is budgeted annually, with additional allowances set aside for more significant multi-year appeals. As legislation permits the challenge of a property's assessment, and as there are several highly trained appraisal consultants, it is inevitable that adjustments will be made to property values that inevitably reduce the City's property tax revenues. For business properties, it is common practice for their appraisal consultants to automatically file appeals, regardless of the value returned by MPAC. As the valuation of business properties is complex, with multiple variables, appraisal consultants simply need to prove the inaccuracy of one of these multiple variables, which, in most cases, may ultimately warrant some type of reduction in the assessed value returned by MPAC. Some of these variables which are challenged may include external factors such as the economy and the functional obsolescence of a process.

Table 2

5 Year Analysis of Appeals/Tax Reduction by Property Type

	12/31/2018	12/31/2017	12/31/2016	12/31/2015	12/31/2014
Loss due to Appeals	-$3,888,500	-$19,842,700	-$9,799,900	-$7,680,900	-$11,404,300
Taxes Lost by Property Type					
Commercial	-$1,573,200[2] 40.5%	-$4,095,000 20.6%	-$1,946,600 19.9%	-$3,982,500 51.8%	-$958,500 8.4%
Taxable to Exempt	-$41,600 1.1%	-$12,646,400[1] 63.7%	-$1,024,900 10.5%	-$315,600 4.1%	-$58,700 0.5%
Farm/Managed Forest	-$266,400 6.9%	-$217,000 1.1%	$305,400 3.1%	-$330,400 4.3%	-$145,900 1.3%
Industrial	-$1,019,000 26.2%	-$1,506,500 7.6%	$5,176,400 52.8%	-$1,136,800 14.8%	-$8,705,500 76.3%
Residential	-$988,400 25.4%	-$1,377,800 6.9%	-$1,346,600 13.7%	-$1,915,600 24.9%	-$1,535,700 13.5%

[1] primarily due to City Housing properties now exempt from taxation (via Municipal Capital Facility by-law)
[2] inclusive of $550,000 benefit due to the settlement of the City's appeal of Flamboro Downs

The figures reflected in Table 2 are Municipal property tax reductions that have resulted through a variety of processes including ARB appeals, MPAC Request for Reconsideration (RfR's), and Municipal tax applications (under section 357/358 of the Municipal Act). As can be seen from Table 2, the actual loss in Municipal property tax dollars can vary widely from year to year and by property class. As such, it is difficult to predict annual losses, as the loss would depend on when the appeal/request for reconsideration is ultimately settled. The longer it takes to settle, the more significant the potential loss (due to multiple years) when it is settled. An increase in the Municipal property tax revenue loss is typically experienced in the year in which significant multi-year appeals are settled. As stated previously, to account for this volatility, funds are also set aside in an allowance account where staff feel the potential for a higher than average reduction may be warranted, or where an appeal for a group of properties is on-going for several years.

The 2018 loss of $3.9M is the lowest in the last five years. This is not an indication that there has been a decrease in the number of appeals filed or that property owners have been unsuccessful with their appeals, but rather, it reflects the reduced amount of resolved appeals resulting from the scheduling delay in the changes implemented in 2017 by the Assessment Review Board. Because of this delay, any allowance set up for significant appeals will simply be carried forward until the pending appeals are settled.

The more significant ARB appeals settled in 2018 include; Costco (for taxation years 2009-2016), Walmart (for taxation years 2010-2016), Shoppers Drug Mart (for taxation years 2013-2018) and No Frills (for taxation years 2013-2016). The more significant reductions through MPAC's request for reconsideration and Municipal tax applications in 2018 include Superior Boiler Works (for 2014-2018 tax years), Former Football Hall of Fame (for 2016-2018 tax years), Costa's Wine Country (for 2015-2018 tax years), the former Bishop Ryan Secondary School property (for the 2018 tax year), the former James St Baptist church property (for 2015-2016 tax years), a Multi-Residential Apartment building on Rebecca St (for the 2018 tax year) and a Union Gas Transmission Pipeline (for 2016-2018 tax years).

It's important to note that the resolution of the Flamboro Downs assessment appeals filed by the City of Hamilton for taxation years 2013-2018 resulted in a $550,000 Municipal property tax benefit to the City. This amount is included in the 2018 net loss of $3.9M. Exclusive of this benefit, the 2018 loss is closer to $4.4M.

The 2017 total loss identified in Table 2 is skewed due to City Housing properties being made exempt from taxation. Exclusive of the City Housing exemptions, the 2017 total Municipal loss due to appeals would equate to approximately $7.2 million. The five-year average Municipal loss due to the combined impacts of ARB appeals, requests for reconsideration and Municipal tax applications (factoring out the 2017 exemption of City Housing properties and the 2018 gain due to the settlement of the City's appeal of Flamboro Downs) equates to approximately $8.1 million per year. In recognition that many appeals were not resolved in 2018 due to ARB scheduling logistics, the four-year (2014-2017) average equates to $9.0M. This annual loss represents approximately 1% of the Municipal tax levy.

With the new ARB rules, the Municipal Property Assessment Office, along with the Province, are continuing to work towards setting some standard rules and procedures around assessment methodologies that hopefully will take some of the volatility out of the assessment challenges the City has seen to date. MPAC has committed to providing the larger property holders comprehensive guides that explain assessment methodology and how the methodology was applied to value their property, as well as the detailed information used to value the property. MPAC have made this data available in mid-2016, and then through consultations with those taxpayers, hopefully will have agreed upon values before issuing the final assessment roll to the City. If MPAC gets the co-operation of the other parties, future returned assessment rolls should hopefully be accurate with less appeals of significant value. City staff will continue to monitor and report back to Council annually.

Considering Council's concerns with respect to the volatility of the assessment base, resources within the Taxation section were realigned in 2017 to dedicate more time both protecting the City's interests within ARB proceedings and holding MPAC more accountable to defend their values, as well as ensuring MPAC captures new growth within acceptable timelines.

It had been anticipated that more staff time would be allotted in 2018 to closely monitor the outstanding appeals and ensure a more active role with the larger commercial and industrial appeals. Unfortunately, staff involvement was limited because of staff vacancies experienced at various times throughout 2018. Staffing in this area has proven to be more difficult than originally anticipated, due to the level of assessment and valuation knowledge required in the position. Currently one Assessment and Appeals Advisor position continues to be vacant, to hopefully be successfully filled by the second quarter of 2019.

One of the primary roles of the Assessment and Appeals Advisors is to review and discuss the reasons for any reductions with MPAC to ensure there are valid reasons for the reductions before appeals are signed off on any Minutes of Settlement. Advisors also attend many of the settlement meetings between MPAC staff, property owners and/or their agents, to ensure the reasons for an appeal are valid, and to challenge any potential settlements based on facts.

It should be noted that some of the assessment reductions identified in this report, may in fact eventually lead to potential assessment growth. In some cases, there may be losses on a property due to an appeal or demolition, only to then have growth on the same property due to development of the property reflected in supplementary assessments and ultimately increase in property taxes.

On the industrial side, while the City may experience losses due to tenants or structures at the Port Authority, gains are then realized through supplementary revenues with new tenants moving in and new buildings being built to accommodate larger tenants. Taxation staff work closely with the Hamilton Port Authority and the Airport to ensure all tenant information is correct and picked up on a timely basis by MPAC. Taxation staff also work closely with the City's Planning & Economic Development department and MPAC to ensure developments are picked up through MPAC's supplementary/omitted assessment process or updated for inclusion on the assessment roll for the following tax year.

Table 3 shows the positive gains over the last five years due to supplementary/omitted billing revenues. Under the *Assessment and Municipal Acts*, assessments and property taxes can be retroactively billed after the final roll is returned for the current year (referred to as supplementary taxes) and prior two years (referred to as omitted taxes). Taxation staff are pro-active in ensuring that large developments are picked up as quickly as possible, while also looking for areas where the tax classifications and values for new developments may be incorrect.

Table 3

Five Year Analysis of Supplementary / Omitted Tax Revenues

	12/31/2018	12/31/2017	12/31/2016	12/31/2015	12/31/2014
Supplementary/ Omitted Revenues	$10,394,300	$11,211,100	$7,915,400	$15,017,000	$12,096,000
Loss due to Appeals	-$3,888,500	-$7,229,500*	-$9,799,900	-$7,680,900	-$11,404,300
Net – Supplementary Revenues less Appeals	$6,505,800	$3,981,600	-$1,884,500	7,336,100	691,700

*Exclusive of City Housing properties exemption from property taxes in 2017 (Municipal Capital Facility by-law)

The above table shows that the City's supplementary and omitted tax revenues have, for the most part, resulted in a net positive increase in Municipal property taxes. This increase is further supplemented by growth, only reflected on the year-end assessment roll return, which is not part of this report, and is reported yearly during the budget process.

The five-year average for supplementary/omitted Municipal property tax revenue is approximately $11.3 million. Like the appeals, this revenue is also difficult to predict accurately. This revenue is contingent on the volume of new development, the type of development (due to the different valuation methods and tax rates depending on the property tax class), the period of construction (length of time between building permit and occupancy) and ultimately when MPAC reflects the new development on the assessment roll.

In recent years, the City of Hamilton has experienced record building permit revenues which unfortunately do not always translate into increased assessments and property taxes. Some of the factors in reconciling building permits to assessment growth include:

- Construction value does not equate to assessed value – property taxes are calculated based on current value assessment (not construction value). Depending on the type of development, the difference between the two can be significant. This also does not consider that the current value assessment determined by MPAC can then be challenged and subsequently reduced if the appeal/request for reconsideration is successful.
- Institutional/Government development may ultimately be exempt from taxation
- Alterations, plumbing, sewage building permits that increase construction value may not affect the assessed value
- Demolition permits increase the over construction value, while having the opposite effect, for the most part, on assessed value.
- Timing – total construction value reported for one year (i.e. $1,364,145,418 and $1,264,757,129 for 2017 and 2018 respectively) will not be added all at once to the assessment roll – MPAC will only pick up the development (if it affects current

value) when occupancy is granted. As such, it is more of a staggered increase over a period of 1 – 3 years.

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