



INFORMATION REPORT

TO:	Mayor and Members Committee of the Whole
COMMITTEE DATE:	June 3, 2020
SUBJECT/REPORT NO:	Annual Assessment Appeals as of December 31, 2019 (FCS20044) (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

INFORMATION

Introduction

This staff report is intended to keep Council apprised of the trends in assessment appeals over the last five years. The information in this staff report is as of December 31, 2019 and therefore prior to the current covid-19 pandemic. Any impacts the current pandemic may have on supplementary/omitted property tax revenues or on the possible delay in settling arrears are not known at this time and will therefore be captured in the next annual report as of December 31, 2020.

Appeals of assessment value and tax classification have a large impact on the Municipality's annual budgeted tax revenue. As property taxes are calculated by multiplying an assessment value by a tax rate, any reduction in the assessment value or change in classification (from a class with a higher tax rate to a class with a lower tax rate) will have a negative impact on the Municipality's property tax revenues.

Assessment Base Growth

Assessment growth is the change in the assessment base due to addition of new developments, as well as changes in the assessment of existing properties. Positive net

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assessment growth from 2019 has a positive impact on 2020 taxation by generating additional property tax revenue.

Table 1 below 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).

Table 1
Five Year Analysis of Supplementary / Omitted Tax Revenues

	12/31/2019	12/31/2018	12/31/2017	12/31/2016	12/31/2015
Supplementary/ Omitted Revenues	\$10,525,700	\$10,394,300	\$11,211,100	\$7,915,400	\$15,017,000
Loss due to Appeals	-\$5,462,200	-\$3,888,500	-\$7,229,500*	-\$9,799,900	-\$7,680,900
Net – Supplementary Revenues less Appeals	\$5,063,500	\$6,505,800	\$3,981,600	-\$1,884,500	7,336,100

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

The above table shows that the City of Hamilton (the City) 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. Year-end assessment growth is reported yearly during the budget process (2019 Assessment Growth (FCS20019) – General Issues Committee, March 2, 2020).

The five-year average for supplementary/omitted municipal property tax revenue is approximately \$11.0 million. This revenue is contingent on the volume of new development, the type of development, the length of construction, and ultimately the Municipal Property Assessment Corporation (MPAC) ability to timely reflect the new development on the assessment roll. Taxation staff are pro-active in ensuring that large developments are assessed as quickly as possible, while also looking for areas where the tax classifications and assessed values for new developments may be incorrect.

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

- Construction value does not equate to assessed value – discussed in detail in staff report “2019 Assessment Growth (FCS20019)”;

- The current value assessment determined by MPAC can be challenged and subsequently reduced if the appeal/request for reconsideration is successful;
- Institutional/Government development may ultimately be exempt from taxation;
- Alterations, plumbing, and sewage building permits that increase building permit construction value may not affect the assessed value;
- Demolition permits increase the overall construction value, while having the opposite effect, for the most part, on assessed value; and
- Timing – total construction value reported for one year (i.e. \$1,264,757,129 and \$1,408,521,764 for 2018 and 2019 respectively) will not be added all at once to the assessment roll – MPAC will only assess the development (if it affects assessed value) when occupancy is granted which could be anywhere between 1 and 3 years from the day the first building permit for the development is issued.

Assessment Base Erosion

Assessment base erosion is the depletion of the assessment base due to assessment appeals, requests for reconsideration and *Municipal Act* tax applications.

The figures reflected in Table 2 are municipal property tax reductions from the following processes: Assessment Review Board (ARB) appeals, MPAC Request for Reconsideration (RfR), Post Roll Amended Notices (PRAN) and *Municipal Act* tax applications (under section 357/358 of the *Municipal Act*).

Table 2
5 Year Analysis of Appeals/Tax Reduction by Property Type

	12/31/2019	12/31/2018	12/31/2017	12/31/2016	12/31/2015
Loss due to Appeals	-\$5,462,200	-\$3,888,500 ²	-\$19,842,700 ¹	-\$9,799,900	-\$7,680,900
Taxes Lost by Property Type					
Commercial	-\$3,384,600 62.0%	-\$1,573,200 ² 40.5%	-\$4,095,000 20.6%	-\$1,946,600 19.9%	-\$3,982,500 51.8%
Taxable to Exempt	-\$164,000 3.0%	-\$41,600 1.1%	-\$12,646,400 ¹ 63.7%	-\$1,024,900 10.5%	-\$315,600 4.1%
Farm/Managed Forest	-\$247,400 4.5%	-\$266,400 6.9%	-\$217,000 1.1%	-\$305,400 3.1%	-\$330,400 4.3%
Industrial	-\$560,400 10.3%	-\$1,019,000 26.2%	-\$1,506,500 7.6%	-\$5,176,400 52.8%	-\$1,136,800 14.8%
Residential	-\$1,105,800 20.2%	-\$988,400 25.4%	-\$1,377,800 6.9%	-\$1,346,600 13.7%	-\$1,915,600 24.9%

¹ inclusive of \$12.6M loss due to City Housing exemption (via Municipal Capital Facility by-law)

² inclusive of \$550,000 benefit due to the settlement of the City's appeal of Flamboro Downs

Trends continue to show that appeals have off-set, in part, the growth of the City's assessment base. Through the budget process, the City recognizes that assessments will be challenged and lost. Expected loss of property tax revenue due to reduction of assessment values is budgeted annually (2019 budget = \$7.3 million), with additional allowances set aside for more significant multi-year appeals. The five-year average municipal property tax revenue loss due to the combined impacts of Assessment Review Board (ARB) appeals, MPAC Request for Reconsideration (RfR), Post Roll Amended Notices (PRAN) and *Municipal Act* tax applications (under section 357/358 of the *Municipal Act*), exclusive of the City Housing exemptions processed in 2017 and Flamboro Downs positive settlement processed in 2018, equates to approximately \$6.9 million per year. This represents just under 0.8% of the Municipal tax levy.

In 2019 staff processed 74 tax applications under section 357/358 of the *Municipal Act*. Total loss to tax revenue from these applications only accounted for \$251,900. Some of the assessment reductions under section 357/358 of the *Municipal Act* may in turn lead to assessment growth. Where assessment is reduced due to a fire or demolition, assessment subsequently may increase due to a renovation or new development ultimately leading to an increase in property taxes.

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 resolved. As appeals are typically filed for the same property every tax year, an increase in the municipal property tax revenue loss is typically experienced in the year in which significant multi-year appeals are settled.

The 2019 loss of \$5.5M is the second lowest in the last five years. This is not an indication 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 due to 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 resolved.

The 2017 total loss of \$19.8 million 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.

Some of the more significant ARB appeals resolved in 2019 include; Flamborough South Centre (for taxation years 2009-2019); Smart Centres Ancaster (for taxation years 2010-2019), Mondelez International (for taxation years 2017-2019) Clappison's Power Centre (2017, 2018) and Melvin Apartments (2015-2019).

Assessment Review Board New Rules of Practice

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 are intended to help ensuring 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 and from there on each appeal proceeds following a robust and rigid 2-year long Schedule of Events 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 regularly throughout the 4-year cycle. Given the first commencement date and the 2-year timeline associated with the schedule of events, there were fewer than usual number of appeals had been resolved within 2018. As we have seen more appeals approaching end of the regulated 2-year timeline in 2019, many of them were resolved and resulted in further losses to tax revenue this past year.

More recently, the ARB has made further changes to expediate appeals filed prior to 2017 by adapting a new shortened 18-week timeline for the Schedule of Events to ensure most of older appeals are dealt with by 2021.

Current State of Assessment Appeals at the City

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 assessment, municipal property tax revenues hinge on how well their assessment holds up when challenged by taxpayers and highly trained assessment consultants. It is a common practice for assessment consultants to automatically file appeals on business properties, regardless of the assessment returned by MPAC. As the assessment of business properties is complex, with multiple variables, assessment consultants simply need to prove the inaccuracy of one of these variables which, in most cases, may ultimately warrant some type of reduction in the assessed value.

Table 3 on the following page shows the number of properties with outstanding ARB appeals by CVA (Current Value Assessment) Cycle:

Table 3

Outstanding appeals by Assessment Value and Number

	2019- 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	9,013,689,682	1,811,441,681	472,928,559	0
# of properties by taxation year ¹	1,373	120	28	0

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

Table 3 highlights the magnitude of the number of current outstanding appeals for properties within the City of Hamilton. The assessment values in Table 3 are the cumulative property values under appeal. Since the same property could be appealed every year, it also includes assessed value of the same property for every year an appeal is filed (i.e. 4 times in the 4-year assessment cycle). 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 assessment, leading to a loss in municipal property tax dollars. Currently, the largest appeals are in the big box category (i.e. Walmart, Canadian Tire), 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.

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. The City sets an annual allowance for these potential significant reductions as part of the yearend process.

The Municipal Property Assessment Corporation along with the Province are working towards setting standards 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 property owners comprehensive guides that explain assessment methodology and how the methodology was applied to assess their property. The intent of this work is to ultimately reduce the number of appeals.

Proactive Assessment Base Management Program

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 and be proactive in managing assessment base. Staff are currently working on developing Proactive Assessment Base Management Program and creating a roster of assessment

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professionals, as per approved recommendations in staff report “Use of External Services for Tax Assessment & Appeals (FCS20005)”, January 16, 2020 Audit, Finance and Administration Committee. This roster will be used to help manage the City’s assessment base in conjunction with existing Taxation staffing resources.

Proactive Assessment Base Management Program when fully developed includes but is not limited to the following activities:

- Work with MPAC on proactively managing assessment base
- Analysis of the assessment roll with specific attention to exempt properties, annual changes, low value properties, and taxation classes
- Review of supplementary and omitted assessment
- Study of assessment to sale ratio
- Analysis of vacant land value and zoning
- Monitor assessment appeals initiated by taxpayers - review and discussion the reasons for any assessment reductions with MPAC; attend settlement meetings between MPAC and property owners and/or their agents
- Tracking of building permit, draft plans of subdivision, condo plans, and severances
- Review of the City owned properties
- Initiate appeals to the ARB for issues that cannot be addressed by other means

The City initiates assessment appeals for the increase in the assessment or for the change in the classification from the class with lower tax rate to the class with higher tax rate. Two recent examples of city-initiated appeals are:

- 1) The Flamboro Downs assessment appeal for taxation years 2013-2018 which resulted in a \$550,000 municipal property tax benefit to the City; and
- 2) The Stelco assessment appeal – a recently filed appeal as a result of MPAC’s significant reduction to Stelco’s assessed value for 2018 taxation year. MPAC’s reduction to Stelco’s assessed value translated into municipal tax revenue losses of over \$2 million. This appeal is currently in early stages of the process.

Taxation staff work diligently with the Hamilton Port Authority and the Airport to ensure all tenant movement is addressed on the assessment roll in a timely fashion. Taxation staff also work closely with the City’s Planning & Economic Development department and MPAC to ensure new developments are assessed by MPAC in a timely manner.

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City staff will continue to monitor and report back to Council annually on the state of assessment appeals in the municipality.

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