



**CITY OF HAMILTON**  
**FINANCE AND CORPORATE SERVICES DEPARTMENT**  
**Financial Services and Taxation Division**  
**and**  
**Legal and Risk Management Services**

<b>TO:</b>	Chair and Members Audit, Finance and Administration Committee
<b>COMMITTEE DATE:</b>	December 09, 2021
<b>SUBJECT/REPORT NO:</b>	Use of External Services for Tax Assessment & Appeals (FCS20005(a)) (LS21047) (Outstanding Business List Item) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Michael Kovacevic (905) 546-2424 Ext. 4641 Maria Di Santo (905) 546-2424 Ext. 5254
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Stephen Spracklin City Solicitor, Legal and Risk Management Services Corporate Services Department 
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Rick Male Director, Financial Services and Taxation and Corporate Controller Corporate Services Department 

**RECOMMENDATIONS**

- (a) That the cost to hire one temporary solicitor and one temporary legal support staff for the City's active participation in assessment appeals be funded from the Tax Stabilization Reserve (Account number 110046) up to April 30, 2023;

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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- (b) That the use of external legal counsel, if required, to supplement internal legal resources to actively participate in assessment appeals, be funded from the Tax Stabilization Reserve (Account number 110046) up to April 30, 2023;
- (c) That the cost of Assessment & Appraisal consultants from Roster for Consultancy Services for the Provision of Assessment Based Management, Property Assessment & Taxation Appeals, Appraisal & Expert Witnesses (C2-01-21) continue to be funded from the Tax Stabilization Reserve (Account number 110046) up to April 30, 2023;
- (d) That the licensing cost to obtain an Appeals Management System, to be used by both Taxation and Legal staff to efficiently manage and track all active appeals, be funded from the Tax Stabilization Reserve (Account number 110046) up to April 30, 2023; and
- (e) That staff report back on actual consulting, legal and software licensing costs incurred up to April 30, 2023, to determine if a sustainable funding source is required for 2023 and future.

**EXECUTIVE SUMMARY**

Staff report "Use of External Services for Tax Assessment & Appeals (FCS20005)" approved by Council in January 2020 gave authority to establish a roster for the use of external Assessment & Appraisal Services. These external services complement internal Taxation resources in order to be able to more actively participate in assessment appeals. The report required staff to report back on actual costs incurred in 2020, in order to determine a sustainable funding source for 2021 and future.

Due to workloads and other priorities as a result of COVID-19, the set up the roster was delayed and not established until June 2021. As such, use of the roster only commenced in the last quarter of 2021. The number of appeals meeting Council's approved criteria for actively participating in appeals ("Criteria for Participation in Assessment Appeals" (FCS20063(a))), has also highlighted the fact that existing Legal resources are not adequate. Legal resources are an integral part of any appeal, and as such, lack of adequate legal resources jeopardizes the City's ability to meet Council's approved criteria for active participation in appeals. To date, the City currently has 29 appeals which will require active participation. Without adequate Legal resources, the City can not participate in this number of appeals.

Although staff report "Use of External Services for Tax Assessment & Appeals (FCS20005)" did identify that the current internal Legal resources may not be sufficient for the expected increase in workload as a result of the City's greater participation, it

was not until staff started reviewing Statement of Issues and formulating the list of appeals that met the criteria, that it becomes more apparent the need for additional Legal resources. With the large volume of appeals, an Assessment Management System is also warranted to effectively track, manage and determine appropriate resources for each appeal, in order to ensure the City adheres to all of the Assessment Review Board (ARB) deadlines. As there are strict deadlines under the ARB rules, requiring adherence to ARB established dates within set Schedule of Events, the need for additional Legal resources and an Assessment Management tool is immediate. The use of the Tax Stabilization Reserve would facilitate this, allowing time for the determination of a sustainable funding source for the 2023 operating budget.

**Alternatives for Consideration – N/A**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

- Financial:** Staff will report back in early 2023 on total costs incurred and funded from the tax stabilization reserve, as part of the Annual Assessment and Appeals report. It should be noted that appeals are typically not commenced and settled in one year. Depending on the nature of the appeal and the volume of appeals before the ARB, it is not uncommon that an appeal may be open for multiple years. As such, the actual costs incurred may not be an accurate reflection of the true annual costs expected to be incurred but should be sufficient to determine an appropriate and sustainable funding source as part of the 2023 operating budget.
- Staffing:** The Roster for Consultancy Services for the Provision of Assessment Based Management, Property Assessment & Taxation Appeals, Appraisal & Expert Witnesses (C2-01-21) will be used to complement existing staff resources within the Taxation Section. With respect to the required Legal resources, the addition of 2 temporary FTEs is being recommended in order to assist Taxation with the expected volume of appeals. Depending on how many active appeals the City will be actively participating on in any given time, there may be a need to supplement with additional external legal counsel from time to time.
- Legal:** As the criteria was approved in December 2020, Taxation staff have been applying the criteria to all Statement of Issues received as of January 1, 2021. To date, the City has 29 appeals that meet the Council approved criteria and the number of appeals that the City will participate in will only increase. Prior to December 2020 City Legal staff's involvement in assessment appeals amounted to acting on two appeals over a twelve-

year period and providing sporadic advice to Finance staff. Assessment appeals require a significant investment of legal staff time. Before the appeals are heard, a large number of documentary and procedural tasks need to be performed including but not limited to: (a) review of statements of issues; (b) preparation of responses to statements of issues; (c) review of disclosure of documents, (d) requests for further disclosure, (e) procedural motions for matters in dispute; (f) mandatory settlement meetings; (g) review of expert reports; and (h) extensive consultation with Taxation staff and retained experts, all within a strict timeline (schedule of events) mandated by the ARB. In addition, the ARB is somewhat inflexible in respect of requests to alter its schedule of events for any particular appeal. The ARB hearing process is more like a Court litigation process as opposed to an OLT hearing process. The legal staff time involved for each assessment appeal amounts to at least two to three weeks of staff time. Furthermore, assessment appeals are rarely resolved within their year of appeal and are carried forward. Accordingly, if 29 appeals are currently being dealt with for 2021, there will likely be an equivalent amount for 2022, with most of the 2021 appeals being unresolved. Assessment appeals require a significant investment of staff time.

The Legal Division currently only has one lawyer with experience in assessment appeals who is being assisted by a law clerk. He is currently responsible for providing legal services to Finance, Development Planning, Housing and Urban Renewal and was over capacity with work prior to the December 2020 approval by Council of FCS20063(a) Criteria for Participation in Assessment Appeals (FCS20063(a)). The law clerk assisting Legal Counsel also provides assistance to three other lawyers for various client departments including Planning and Finance. Legal's involvement in the ARB appeals has resulted in matters for other clients being delayed and has negatively impacted the level of service that needs to be provided to them.

## **HISTORICAL BACKGROUND**

As reported annually by means of the Annual Assessment Appeals Report, challenges to MPAC's assessed values continue to exist and ultimately result in a negative impact on the Municipality's property tax revenues.

In recognition of the continued negative impact on municipal property tax revenues, City Council approved staff report "Use of External Services for Tax Assessment & Appeals (FCS20005)" in January 2020. This report gave approval for the establishment of a

Roster for Assessment, Appeals and Appraisal consultants to complement existing Taxation resources. Due to staff vacancies, increasing development activity and the continued challenges to MPAC's values, these firms would allow for additional resources when needed. The extent to which these consulting firms would be engaged would depend on staff's current workload, the potential for significant revenue loss or gain, the complexity of the appeal and the number of appeals the City is an active participant.

Subsequent to this, staff report "Criteria for Participation in Assessment Appeals (FCS20063(a))" was approved by Council in December 2020, laying out the framework of how and when the City will actively participate in Assessment Appeals. Due to the high volume of appeals, it would not be financially prudent to participate in all appeals, however the Council approved criteria ensured that the City participates in ones with the highest risk of municipal tax revenue loss.

Unfortunately, due to disruptions brought on by the still ongoing pandemic and other competing priorities, the Roster for Consultancy Services for the Provision of Assessment Based Management, Property Assessment & Taxation Appeals, Appraisal & Expert Witnesses (C2-01-21) was not finalized until June 2021. In total there were four firms who submitted a response for the Assessment Appeals Services (all of which were qualified to be included in the roster) and six firms for the Appraisal and Expert Witness Services (all but one was qualified to be included in the roster). The Roster is for a term of three years (June 1, 2021 to May 31, 2024). The first assignment from the Roster was awarded in September 2021.

The original staff report "Use of External Services for Tax Assessment & Appeals (FCS20005)" as approved by Council in January 2020, recommended the use of the Tax Stabilization Reserve and that staff "report back on actual consulting costs incurred in 2020, to determine if a sustainable funding source is required for 2021 and future". The intent being that a full year of active participation in appeals would give a clearer indication of the consulting costs the City would expect to incur on an annual basis to assist in determining an adequate level of funding and an appropriate funding source. Due to delays in establishing the roster, no costs were incurred in 2020 and as such a Motion was approved by Council in November 2020 to revise the original recommendation to instead read that staff "report back on actual consulting costs incurred in 2021, to determine if a sustainable funding source is required for 2022 and future".

Although the establishment of the Roster allows Taxation to supplement internal resources, Legal resources continue to be a challenge. Legal resources are an integral part of any appeal, and as such lack of adequate legal resources jeopardizes the City's ability to meet Council's approved criteria for active participation in appeals. As the

criteria was approved in December 2020, Taxation staff have been applying the criteria as of January 1, 2021 to all Statement of Issues received. To date, the City has 29 appeals that meet the Council approved criteria and the number of appeals that the City will participate in will only increase. Prior to December 2020 City Legal staff's involvement in assessment appeals amounted to acting on two appeals over a twelve-year period and providing sporadic advice to Taxation staff. The Legal Division only has one lawyer with experience in assessment appeals who is being assisted by a law clerk. He is currently responsible for providing legal services to Finance, Development Planning, Housing and Urban Renewal and was over capacity with work prior to the December 2020 approval by Council of FCS20063(a) Criteria for Participation in Assessment Appeals (FCS20063(a)). The law clerk assisting Legal Counsel also provides assistance to three other lawyers for various client departments including Planning and Finance. Legal's involvement in the ARB appeals has resulted in other matters for other clients being delayed and has negatively impacted the level of service that should be provided.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Use of the Tax Stabilization reserve to fund the resources required, until such time as a sustainable funding source can be determined in the 2023 operating budget process is being recommended. Under the Budgeted Complement Control Policy, General Managers are authorized to hire temporary resources up to 24 months without Council approval. However, as these additional costs may result in a deficit in the Corporate Services Department, use of the Tax Stabilization Reserve is being recommended and Council approval is required to use reserves.

## **RELEVANT CONSULTATION**

Financial Services & Taxation and Legal & Risk Management Services staff worked in partnership with staff in Procurement (to establish the Roster) and Budgets & Financial Policy to address the required resources and funding.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATIONS**

City staff started tracking Statement of Issues in January 2021 shortly after the criteria for participation was approved by Council. Ten months into the year, staff already have a list of 29 appeals that meet the Council approved criteria. It is expected that by the end of 2021, this list can grow to 35 to 40 appeals. Current internal Legal resources are not adequate to address this level of appeals. The approval of additional internal Legal resources, coupled with the ability supplement with external Legal counsel, when required, is essential in ensuring Council's direction. An Assessment Management tool

will also be essential to efficiently manage and track the growing number of appeals and ensuring the City adheres to the ARB strict deadlines.

As no funds have been used from the Tax Stabilization Reserve to date, it is expected that staff will soon be required to start accessing the services of external resources (to supplement both Taxation and Legal internal resources). As such, it is necessary to extend the use of the Tax Stabilization Reserve until April 30, 2023, thereby allowing for a full year to determine an appropriate funding source for 2023 and future. At that time, staff will be in a better position to establish an appropriate budget and sustainable funding source for 2023 and future. Staff will also continue to update Council via the Annual Assessment and Appeals report, providing the opportunity for modifications to the City's participation, should Council support these costs and possibly increase participation further or scale back the City's participation should the additional costs exceed the benefits.

#### **ALTERNATIVES FOR CONSIDERATION**

N/A

#### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

##### **Economic Prosperity and Growth**

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

##### **Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

#### **APPENDICES AND SCHEDULES ATTACHED**

None

MK/MD/dw