



Hamilton

INFORMATION REPORT

TO:	Chair and Members Audit, Finance & Administration Committee
COMMITTEE DATE:	March 25, 2021
SUBJECT/REPORT NO:	Annual Assessment Appeals as of December 31, 2020 (FCS21012) (City Wide)
WARD(S) AFFECTED:	City Wide
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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 Report is as of December 31, 2020, and therefore is inclusive of any impacts the current covid-19 pandemic may have had on the City of Hamilton (City's) supplementary/omitted tax revenues or on the settling of outstanding appeals. At a high level, the pandemic did not appear to have a negative impact on the Municipal Property Assessment Corporation (MPAC)'s ability to capture growth or on the ability to proceed through the appeal process. The City, MPAC and the Assessment Review Board (ARB) were able to successfully adjust work processes in order to continue required tasks and avoid significant delays, while still adhering to Public Health guidelines. It is still unclear if the on-going pandemic will result in the significant increase of successful appeals for the 2020 and future taxation years, however, MPAC has publicly stated that any Request for Reconsideration received for the 2020 taxation year that specifically sites Covid-19 as the reason for a reduction in the property's value, would be rejected. The rationale being that any influence the Covid-19 pandemic may have on property values were not in effect on January 1, 2016, being the valuation date for the 2020 taxation year.

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.

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.

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

	12/31/2020	12/31/2019	12/31/2018	12/31/2017	12/31/2016
Supplementary/Omitted Revenues	\$13,093,600	\$10,525,700	\$10,394,300	\$11,211,100	\$7,915,400
Loss due to Appeals	-\$8,460,200	-\$5,462,200	-\$3,888,500	-\$7,229,500*	-\$9,799,900
Net – Supplementary Revenues less Appeals	\$4,633,400	\$5,063,500	\$6,505,800	\$3,981,600	-\$1,884,500

*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, when considering the offsetting losses due to appeals.

The five-year average for supplementary/omitted municipal property tax revenue is approximately \$10.6 million. This revenue is contingent on the volume of new development, the type of development, the length of construction, and ultimately MPAC's ability to timely reflect the new development on the assessment roll. As shown above, the 2020 supplementary/omitted revenues of \$13.1M is the highest over the last five years.

Although MPAC offices closed in March 2020 due to the pandemic, MPAC continued to conduct business remotely which included updating property information, capturing new assessment, analyzing sales, completing tax applications and managing Requests for Reconsideration (RfR's) and Appeals. Considering access restrictions, MPAC introduced new functionality that allowed municipal staff to submit electronic building plans through MPAC's Municipal Connect platform which provided important information required in order to assess new construction and generate new assessment growth through Supplemental and Omitted assessments. It is important to note that prior to this, a process had already been established allowing for the electronic exchange of building plans between the City and MPAC, in addition to in-person viewing of building

plans. Under new Public Health guidelines and practices, MPAC resumed *exterior* property inspections on June 15th in Hamilton. Although, these were exterior inspections only, it provided MPAC the opportunity to validate data that could not be collected through other means.

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**

	12/31/2020	12/31/2019	12/31/2018	12/31/2017	12/31/2016
Loss due to Appeals	-\$8,460,200 ³	-\$5,462,200	-\$3,888,500 ²	-\$19,842,700 ¹	-\$9,799,900
Taxes Lost by Property Type					
Commercial	-\$2,593,800 30.7%	-\$3,384,600 62.0%	-\$1,573,200 ² 40.5%	-\$4,095,000 20.6%	-\$1,946,600 19.9%
Taxable to Exempt	-\$586,800 6.9%	-\$164,000 3.0%	-\$41,600 1.1%	-\$12,646,400 ¹ 63.7%	-\$1,024,900 10.5%
Farm/Managed Forest	-\$526,600 6.2%	-\$247,400 4.5%	-\$266,400 6.9%	-\$217,000 1.1%	-\$305,400 3.1%
Industrial	-\$1,898,900 22.4%	-\$560,400 10.3%	-\$1,019,000 26.2%	-\$1,506,500 7.6%	-\$5,176,400 52.8%
Residential	-\$2,854,100 ³ 33.7%	-\$1,105,800 20.2%	-\$988,400 25.4%	-\$1,377,800 6.9%	-\$1,346,600 13.7%

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

³ inclusive of \$1.1M loss due to retirement of roll number for large residential development (this amount was offset through Supplementary/Omitted tax revenue).

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 the reduction of assessment values is budgeted annually (2020 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

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Amended Notices (PRAN) and *Municipal Act* tax applications (under section 357/358 of the *Municipal Act*) equates to approximately \$6.9 million per year, or just over 0.7% of the 2020 Municipal tax levy. This 5-year average municipal property tax revenue loss is exclusive of the anomalies noted on Table 2 (being the City Housing exemptions processed in 2017, the Flamboro Downs positive settlement processed in 2018 and the retirement of the roll for the large development fully offset by supplementary/omitted tax revenue in 2020).

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 2020 loss of \$8.5 million is the second highest in the last five years. This is not an indication there has been an increase in the number of appeals filed or that property owners have been successful with their appeals, but rather, it reflects high number of resolved appeals with high assessed values which result in having a larger impact on the tax revenue. It should be noted that the 2020 amount is inclusive of \$1.1M loss due to the retirement of a single roll number for vacant land. This roll number was later replaced with 475 new roll numbers through issuance of omitted assessments by MPAC to reflect all the existing units in the new residential condominium development resulting in \$1.27M in municipal tax revenue, a net gain of \$170k. Exclusive of this amount (as it is fully offset by supplementary/omitted revenues), the 2020 loss would be \$7.4 million.

Some of the more significant ARB appeals resolved in 2020 include Smart Centres Stoney Creek (for taxation years 2017-2019); Shopping Plaza anchored by the former Target store in Waterdown (for taxation years 2017-2020); Flamborough South Centre Shopping Mall (for taxation years 2014-2015); Eastgate Square (for taxation years 2013-2014); and Nova Steel Processing in Stoney Creek (for taxation years 2017-2020).

In 2019, City Council approved By-law 19-098 “Delegation of Authority to the Treasurer and Deputy Treasurers with Respect to the Adjustment of Taxes and Payments In lieu of Taxes” which delegated authority to staff to hold meetings, provide notice and make decisions for the adjustment of property taxes pertaining to Municipal Act Appeals (Section 357 and 358 of the Municipal Act) and Apportionments (Section 356 of the Municipal Act). Due to the pandemic, City staff were able to proceed with these meetings virtually.

Municipal Act Appeals (Section 357 and 358):

In 2020, staff held three virtual meetings, resulting in the processing of 233 tax applications under section 357/358 of the *Municipal Act*. These applications resulted in a total loss of \$1.5M, of which \$1 million was the Municipal portion and \$500,000 being the Education share. This \$1 million reduction in municipal taxes is included in the 2020 appeal loss of \$8.5 million in Table 2 of this Report. It is important to note that some of the assessment reductions under section 357/358 of the *Municipal Act* may in turn lead to assessment growth. Where a property's 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.

Apportionments (Section 356):

Current assessment, and therefore the resulting property taxes levied, may not recognize that a property has been subject to a land severance. The apportionment of land taxes levied for a particular year(s) may need to be apportioned amongst newly created parcels of land. Section 356 of the *Municipal Act, (2001)* permits such an apportionment. When original blocks of land are severed into newly created lots, there is no overall financial impact or property tax loss to the City, as taxes owing against the original parcel of land are transferred to the new parcels. MPAC produces severance information forms for the assessment originally levied on the original parcels of land and identifies the split of assessment amongst the newly created lots.

In 2020, staff held five virtual meetings for the approval of tax apportionments, resulting in the processing of 129 tax apportionments into 753 newly created rolls (inclusive of the originating roll). Although there is no financial impact to the City, following this process, property taxes often increase for the newly created parcels resulting from an increase in the property's assessment due to new construction or development that has occurred.

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 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 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 the older appeals are dealt with by 2021.

As a result of Covid-19, there were several changes that occurred at the ARB during 2020. The Appeal deadline was ultimately extended from the original deadline of March 31st to May 29th. The six per cent application fee increases for ARB Appeal filings which were scheduled to increase on April 1st were deferred to July 1st. All in-person hearings were initially converted to telephone conference calls and all full hearings were conducted either in writing, by telephone, by video conference or a combination thereof. The Schedule of Events (SOE's) which set out and identify the requirements and deadlines through various stages of the appeal process were suspended from March 16th to May 29th. Any appeals that had a commencement date that began as of April or May 2020, were re-adjusted as of June 1, 2020.

The Board continues to focus on improving service delivery by continuous enhancement to the Rules of Practice and Procedure and processes.

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

	2020- 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	8,613,267,574	431,491,689	213,072,502	0
# of properties by taxation year ¹	1,183	42	14	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 can 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

Staff are currently working on developing a Proactive Assessment Base Management Program and creating a roster of assessment professionals, as per approved recommendations in staff report “Use of External Services for Tax Assessment & Appeals (FCS20005)”. This roster will be used to help manage the City’s assessment

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base in conjunction with existing Taxation staffing resources. The Request for Proposal will be open to all interested parties in March – April 2021. It is expected that the roster formation will be completed by the end of the June 2021.

When fully developed, the Proactive Assessment Base Management Program, will include, 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, in adherence to approved staff report “Criteria for Participation in Assessment Appeals (FCS20063(a))” - review and discussion the reasons for any assessment reductions with MPAC, respond to statement of issues, attend settlement meetings between MPAC and property owners and/or their agents, etc.
- Tracking of building permit, draft plans of subdivision, condo plans and severances
- Review of City owned properties
- Initiate appeals to the ARB for issues that cannot be addressed by other means

APPENDICES AND SCHEDULES ATTACHED

None

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