



INFORMATION REPORT

TO:	Chair and Members Audit, Finance & Administration Committee
COMMITTEE DATE:	March 24, 2022
SUBJECT/REPORT NO:	Annual Assessment Appeals as of December 31, 2021 (FCS22010) (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 Report is as of December 31, 2021, 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 appeals. It should also be noted that the appeals processed in 2021 would have commenced well before the City started taking a more active role in appeals. The appeals in which the City is now actively participating in are in the early stages of the appeals process.

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 Assessment Review Board (ARB)'s ability to proceed through the appeal process. The City, MPAC and the ARB were able to successfully adjust work processes to continue required tasks and avoid significant delays, while still adhering to Public Health guidelines. However, the pandemic does appear to have some impact on appeals being filed (where the property owner is seeking relief due to covid) and supplementary / omitted revenues (projects taking longer to complete due to the lack of readily available materials and labour).

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 the 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 the prior two years (referred to as omitted taxes).

**Table 1
Five Year Analysis of Supplementary / Omitted Tax Revenues**

	12/31/2021	12/31/2020	12/31/2019	12/31/2018	12/31/2017
Supplementary/Omitted Revenues	\$10,831,700	\$13,093,600	\$10,525,700	\$10,394,300	\$11,211,100
Loss due to Appeals	(\$15,831,800)	(\$8,460,200)	(\$5,462,200)	(\$3,888,500)	(\$7,229,500)*
Net – Supplementary Revenues less Appeals	(\$5,000,100)	\$4,633,400	\$5,063,500	\$6,505,800	\$3,981,600

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

The five-year average for supplementary/omitted municipal property tax revenue is approximately \$11.2 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 \$13.1 million are the highest over the last five years. The supplementary/omitted revenues in 2021 of \$10.8 million were significantly lower than 2020, and more in line with revenues recognized in 2017-2019.

Typically, Residential assessment growth accounts for most of the overall revenue, however, that was not the case in 2021. Had it not been for a few large non-residential developments captured by MPAC in late 2021, the 2021 supplementary/ omitted revenues would have been the lowest in the last five years. The ongoing pandemic could be seen as an influencing factor. Staff report 2021 Assessment Growth (FCS22014) (February 25, 2022, General Issues Committee), cited the following for the lower growth seen in the Residential property class for 2021: "*Construction activity, not only in Hamilton but across the country, has been affected by the COVID-19 pandemic resulting in a lack of readily available materials (reduced output, delays in deliveries) and labour (required social distancing, reduced workforce) which has led to project delays of several weeks.*"

To further impact the overall net 2021 position, was a significant number of large appeals processed in 2021. The above table shows that in 2017-2020, the City's

supplementary and omitted tax revenues has resulted in a net positive increase in municipal property taxes when considering the offsetting losses due to appeals. However, that was not the case in 2021, which, on the contrary, resulted in a net loss of \$5 million. The significant amount of appeals processed in 2021 far exceeded the revenue from supplementary and omitted billings in the same year.

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**

	12/31/2021	12/31/2020	12/31/2019	12/31/2018	12/31/2017
Loss due to Appeals	-\$15,831,800	-\$8,460,200 ³	-\$5,462,200	-\$3,888,500 ²	-\$19,842,700 ¹
Taxes Lost by Property Type					
Commercial	-\$9,893,400 62.5%	-\$2,593,800 30.7%	-\$3,384,600 62.0%	-\$1,573,200 ² 40.5%	-\$4,095,000 20.6%
Taxable to Exempt	-\$321,400 2.0%	-\$586,800 6.9%	-\$164,000 3.0%	-\$41,600 1.1%	-\$12,646,400 ¹ 63.7%
Farm/Managed Forest	-\$490,500 3.1%	-\$526,600 6.2%	-\$247,400 4.5%	-\$266,400 6.9%	-\$217,000 1.1%
Industrial	-\$3,605,000 22.8%	-\$1,898,900 22.4%	-\$560,400 10.3%	-\$1,019,000 26.2%	-\$1,506,500 7.6%
Residential	-\$1,521,500 9.6%	-\$2,854,100 ³ 33.7%	-\$1,105,800 20.2%	-\$988,400 25.4%	-\$1,377,800 6.9%

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

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).

Appeals on a property's value is a constant risk to the City's assessment base. As such, through the budget process, the City recognizes that assessments will be challenged and lost. The expected loss of property tax revenue due to the reduction of assessment values is budgeted annually (2021 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

**SUBJECT: Annual Assessment Appeals as of December 31, 2020 (FCS22010)
(City Wide) - Page 4 of 8**

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*) equates to approximately \$8.1 million, or just over 0.8% of the 2021 Municipal tax levy. This 5-year average municipal property tax revenue loss takes into account the higher-than-normal amount of appeals processed in 2021 and is exclusive of the anomalies noted in 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). The 5-year average before 2021 (for 2016-2020) was significantly lower, at \$6.9 million.

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 2021 loss of \$15.8 million is the highest in the last five years, after adjusting the 2017 appeals to exclude the City Housing Exemption. Not only is 2021 the highest, but it is significantly higher than the prior four years (two to three times the loss in previous years). This reflects a large number of appeals resolved in 2021 with high assessed values and/or multiple assessment cycles, resulting in a larger impact on municipal tax revenue.

Some of the more significant ARB appeals resolved in 2021 include ArcelorMittal Dofasco (for taxation years 2017-2021); Centre Mall on Barton (for taxation years 2013-2021); SmartCentres Hamilton Southeast (Walmart) (for taxation years 2009-2021); Fortinos (Rymal Rd) (for taxation years 2009-2016 and 2018-2021); Mountain Shopping Plaza (for taxation years 2017-2020); Home Depot, Best Buy, Michaels etc (Stone Church Rd) (for taxation years 2017-2021); Eastgate Mall (for taxation years 2017-2020); Canada Bread (for Taxation years 2018-2021); South Hamilton Square (for taxation years 2013-2020) and Jackson Square (portion) (for taxation years 2017-2020). These 10 appeals alone (both due to the assessed value and/or the number of years that were settled) account for 55% of the total \$15.8 million municipal tax loss experienced in 2021. It should be noted that although the City is now more actively involved in appeals, the appeals process in 2021 commenced prior to the City's more active involvement. These would be the type of appeals the City would participate in moving forward.

The new Rules of Practice and Procedure ("Rules") introduced by the ARB in 2017, coupled with further changes to expedite appeals filed prior to 2017 (by adapting a new shortened 18-week timeline for the Schedule of Events ("SOE") to ensure most of the

older “Legacy” appeals were dealt with by 2021) may be one reason for the higher volume of appeals processed in 2021. In addition, the ARB implemented further revisions to the Rules and effective April 1, 2021, the SOE for appeals within the General stream, which consists of non-residential properties, was further reduced from 66 to 40 weeks which is also likely contributed to the closure of many outstanding appeals in 2021.

The extent to which the ongoing pandemic may result in the significant increase of successful appeals is unknown at this time, however, MPAC has publicly stated that any Request for Reconsideration received for the 2020 and 2021 taxation years that specifically sites Covid-19 as the reason for a reduction in the property’s value, would be rejected. The rationale is that any influence the Covid-19 pandemic may have on property values were not in effect on January 1, 2016, being the current valuation date. On the City’s part, numerous Municipal Act Appeals citing covid were received in 2021 and subsequently denied. Some of these have proceeded to appeal to the City’s rejection of the ARB. These appeals are pending.

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 about 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 2021, staff held six virtual meetings, resulting in the processing of 215 tax applications under section 357/358 of the *Municipal Act*. These applications resulted in a total loss of \$918,800, of which \$636,100 was the municipal portion. This \$636,100 reduction in municipal taxes is included in the 2021 appeal loss of \$15.8 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. Some of these losses also pertain to City acquired properties changing from taxable to exempt.

In 2021, 27 Municipal Act Appeal applications were received citing covid under “Damaged by Demolition or otherwise - 357(1) (d) (ii)”. Consistent with the documentation received by MPAC and the Province, all these applications were denied by the City. The rationale is that damage due to covid is not physical, which is the intent of the relevant section of the Municipal Act. Some of the applications denied have proceeded to appeal the City’s decision to the ARB. These appeals are pending however the City will be actively participating in these appeals.

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 2021, staff held three virtual meetings for the approval of tax apportionments, resulting in the processing of 11 tax apportionments into 39 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. The volume of tax apportionments processed in 2021 was significantly lower than 2020, as the large volume in 2020 was due to the clean-up of prior years' backlog.

Portions of properties that become public roadways are processed under the apportionment process as Land, not Assessed. These have a minimum dollar impact. Apportionments processed as Land not Assessed in 2021 resulted in a minimal \$14,500 municipal tax loss.

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

Table 3

Outstanding appeals by Assessment Value and Number

	2021- 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	4,298,800,473	54,608,282	0	0
# of properties by taxation year ¹	420	6	0	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 the 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.

Due to the significant amount of appeals processed in 2021, these figures have declined significantly compared to prior years. Currently, the largest appeals pertain to retail properties, shopping centres/plazas and industrial properties.

Due to the Province postponing the reassessment, current property values are still based on a valuation date of January 1, 2016. This has facilitated settled appeals carrying the settled (lower) value onward to future years and therefore, for the most part, subsequent appeals are not filed. This will change once the next reassessment occurs, as it is expected most large non-residential properties would file an appeal, regardless of the outcome of the appeal on the 2016 value. To date, the Province has not announced when the next reassessment will occur or the valuation date in which properties will be valued.

Proactive Assessment Base Management Program

As approved by Council, the City is more actively participating in appeals. This unfortunately does not mitigate appeals already settled or commenced, however will hopefully mitigate future impacts. The City commenced a more active role in the appeal process for significant appeals where Statement of Issues was received in early 2021.

The roster of assessment professionals, as per approved recommendations in the staff report “Use of External Services for Tax Assessment & Appeals (FCS20005)”, was established in June 2021, with the first assignment issued in late 2021. This roster will be used to help manage the City’s assessment base in conjunction with existing Taxation staffing resources. The external costs incurred in 2021 were minimal (\$3,100)

**SUBJECT: Annual Assessment Appeals as of December 31, 2020 (FCS22010)
(City Wide) - Page 8 of 8**

simply due to the late start. It is expected these costs will increase significantly in 2022. Staff will continue to report on the external costs incurred, resulting from the City's more active participation, in the annual assessment appeals report.

As reflected on Appendix "A" to Report FCS22010 ("Listing"), effective January 1, 2021, the City is actively participating in Assessment Act appeals for 26 properties, representing a total estimated potential municipal tax loss of \$15,836,000. The City's more active participation in these appeals is intended to mitigate this potential municipal tax loss as much as possible, and in some cases, where the City is, in turn, seeking an increase to the value returned by MPAC, a potential gain. As shown in Appendix "A", these appeals are primarily for commercial and industrial properties. Two of the appeals were withdrawn and closed in 2021, thereby mitigating 100% (or \$456,000) of their respective estimated potential municipal tax loss.

In addition, Appendix "A" to Report FCS22010 ("Listing") also identifies four Assessment Act appeals that the City was actively participating in prior to January 1, 2021, two of which were resolved through settlement, thereby mitigating the estimated potential municipal tax loss by \$1,385,000. Included in this list is the Assessment Act appeal for the Stelco property which was initiated by the City in early 2018. This appeal progressed to a full hearing in February 2022. It is anticipated that the ARB will release its decision for the Stelco appeal in the latter half of 2022.

Actively participating in appeals is just one component of protecting and growing the assessment base. Once fully developed, the Proactive Assessment Base Management Program will also 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, under-assessed properties, and property tax classifications
- Review of supplementary and omitted assessment
- Study of assessment to sale ratio
- Analysis of vacant land value and property tax classification to zoning
- Tracking of building permits, 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

Appendix "A" – Assessment Act ARB Appeals Property Listing ("Listing")

MD/dw