




# INFORMATION REPORT

<b>TO:</b>	Chair and Members Audit, Finance & Administration Committee
<b>COMMITTEE DATE:</b>	March 23, 2023
<b>SUBJECT/REPORT NO:</b>	Annual Assessment Appeals as of December 31, 2022 (FCS23022) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
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<b>SIGNATURE:</b>	

## INFORMATION

### Introduction

This staff report is intended to keep Council apprised of the trends in assessment growth and offsetting assessment appeals over the last five years for the City of Hamilton (City). Both assessment growth and appeals vary significantly year over year. The 2022 taxation year saw the most favourable net benefit (municipal property tax revenue due to assessment growth compared to municipal property tax loss due to assessment appeals) over the last five years.

It should be noted, that although most of the appeals processed in 2022 would have commenced well before the City started taking a more active role in appeals, favourable outcomes of the City's recent active participation have been realized in 2022. Actual municipal tax revenue losses due to appeals would have been significantly higher, had the City not initiated its program to actively participation in appeals. Staff report "Use of External Services for Tax Assessment & Appeals (FCS20005(b)) / (LS21047(a))" highlights the success seen in mitigating municipal tax loss revenues through the City's active participation in appeals.

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### **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**

	12/31/2022	12/31/2021	12/31/2020	12/31/2019	12/31/2018
Supplementary/Omitted Revenues	\$14,059,800	\$10,831,700	\$13,093,600	\$10,525,700	\$10,394,300
Loss due to Appeals	(\$6,503,100)	(\$15,831,800)	(\$8,460,200)	(\$5,462,200)	(\$3,888,500)
Net – Supplementary Revenues less Appeals	\$7,556,700	(\$5,000,100)	\$4,633,400	\$5,063,500	\$6,505,800

The five-year average for supplementary/omitted municipal property tax revenue is approximately \$11.8 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)'s ability to timely reflect the new development on the assessment roll. As shown above, the 2022 supplementary/omitted revenues of \$14.1 million was the highest over the last five years. The on-going postponement of the Province-wide general reassessment may have had some positive impact, allowing MPAC staff more time to concentrate on growth. The Province has not yet announced when the general reassessment will take place. The City typically experiences a reduction in supplementary/omitted revenue the year prior to the reassessment, when MPAC resources are focussed on reassessing properties.

In addition to the higher supplementary/omitted revenues, further benefiting the 2022 results were lower losses due to appeals. This resulted in the most favourable overall net benefit experienced over the last five years, being an overall net gain of \$7.6M.

### **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.

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The figures reflected in Table 2 are municipal property tax revenue losses resulting 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**

	12/31/2022	12/31/2021	12/31/2020	12/31/2019	12/31/2018
Loss due to Appeals	-\$6,503,100	-\$15,831,800	-\$8,460,200 <sup>2</sup>	-\$5,462,200	-\$3,888,500 <sup>1</sup>
<b>Taxes Lost by Property Type</b>					
Commercial	-\$4,180,700 64.3%	-\$9,893,400 62.5%	-\$2,593,800 30.7%	-\$3,384,600 62.0%	-\$1,573,200 <sup>1</sup> 40.5%
Taxable to Exempt	-\$84,000 1.3%	-\$321,400 2.0%	-\$586,800 6.9%	-\$164,000 3.0%	-\$41,600 1.1%
Farm/Managed Forest	-\$212,500 3.3%	-\$490,500 3.1%	-\$526,600 6.2%	-\$247,400 4.5%	-\$266,400 6.9%
Industrial	-\$1,245,900 19.1%	-\$3,605,000 22.8%	-\$1,898,900 22.4%	-\$560,400 10.3%	-\$1,019,000 26.2%
Residential	-\$780,000 12.0%	-\$1,521,500 9.6%	-\$2,854,100 <sup>2</sup> 33.7%	-\$1,105,800 20.2%	-\$988,400 25.4%

<sup>1</sup> inclusive of \$550,000 benefit due to the settlement of the City's appeal of Flamboro Downs

<sup>2</sup> 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 (2022 budget = \$7.5 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*) equates to approximately \$7.9 million, or 0.8% of the 2022 Municipal tax levy. This 5-year average municipal property tax revenue loss considers the higher-than-normal amount of appeals processed in 2021 and is exclusive of the anomalies noted in Table 2 (being 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

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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.

Like previous years, the commercial property class continues to experience the greatest amount of municipal tax losses, followed by the industrial class. These property classes tend to have high assessed values and most commonly file assessment appeals. These are the property classes where staff is mostly concentrating on when deciding on which appeals to actively participate in, as they would result in the greatest potential municipal property tax losses.

The top ten most significant ARB appeals resolved in 2022 include: Fortinos, Mall Rd (for taxation years 2013-2021); Stackpole International (for taxation years 2017-2022); Fortinos, Country Fair Plaza, Wilson St (for taxation years 2011-2021); Stone Church Square shopping centre (for taxation years 2017-2021); Iron Workers Local Union, Osprey Dr (for taxation years 2017-2022); Winners, Rymal Rd E (for taxation years 2017-2022); Fortinos, Dundurn St (for taxation years 2017-2022); Fortinos, Main St W (for taxation years 2009-2012 and 2021); FedNav Ltd, tenant of the Hamilton-Oshawa Port Authority (for taxation years 2019-2021) and Rygiel Supports for Community Living (for taxation years 2019-2022). All the above appeals commenced prior to the City's active participation in assessment appeals. Just these ten appeals alone (both due to the assessed value and/or the number of years that were settled) account for almost 40% of the total \$6.5 million municipal tax loss experienced in 2022.

#### Municipal Act Appeals (Section 357 and 358):

In 2022, staff held seven virtual meetings, resulting in the processing of 140 tax applications under section 357/358 of the *Municipal Act*. These applications resulted in a total loss of \$422,800, of which \$320,600 was the municipal portion. This \$320,600 reduction in municipal taxes is included in the 2022 appeal loss of \$6.5 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. Some of these losses also pertain to City acquired properties changing from taxable to exempt.

In 2021 and 2022, 35 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 proceeded

to appeal the City's decision to the ARB, to which the City actively participated on. These appeals were subsequently withdrawn in 2022, resulting in no loss to the City.

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 2022, staff held four virtual meetings for the approval of tax apportionments, resulting in the processing of 60 tax apportionments into 261 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.

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 2022 resulted in a minimal \$15,500 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**

	<b>2022-2017 Assessment Cycle (2016 CVA)</b>	<b>2016 – 2013 Assessment Cycle (2012 CVA)</b>	<b>2012 – 2009 Assessment Cycle (2008 CVA)</b>	<b>2008 – 2006 Assessment Cycle (2005 CVA)</b>
CVA under Appeal	3,633,576,013	0	0	0
# of properties by taxation year <sup>1</sup>	187	0	0	0

<sup>1</sup> a property will be identified multiple times if the appeal extends multiple taxation years

Table 3 highlights the number of current outstanding appeals for properties within the City of Hamilton, a significant reduction from prior years. 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). For the first time, all appeals in prior Assessment Cycles have been resolved, leaving only appeals for the current (2016) Assessment Cycle to resolve.

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 (mainly 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 will 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 early results of the City's active participation have been favourable and would suggest to significantly assist in mitigating future impacts. Although the City commenced a more active role in the appeal process in early 2021, it was not until 2022 when appropriate resources were assigned to be able to fully participate in the appeal process.

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 is used to supplement existing Taxation staffing resources and provide the required expert

reports where the City does not have the expertise to do so. The Roster term expires in May 2024.

As identified in staff report “Use of External Services for Tax Assessment & Appeals (FCS20005(b)) / (LS21047(a))” the active participation in assessment appeals was very successful in 2022, resulted in the mitigation of \$8.9M (or 91%) of the potential municipal tax loss being sought by appellants.

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**

N/A

MD/DJ/dw