





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

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	March 23, 2023
SUBJECT/REPORT NO:	Use of External Services for Tax Assessment & Appeals (FCS20005(b)/LS21047(a)) (Outstanding Business List Item) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Maria Di Santo (905) 546-2424 Ext. 5254 Susan Nicholson (905) 546-2424 Ext. 4707
SUBMITTED BY:	Shelley Hesmer Acting Director, Financial Services and Taxation and Corporate Controller Corporate Services Department
SIGNATURE:	
SUBMITTED BY:	Lisa Shields City Solicitor, Legal and Risk Management Services Corporate Services Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That costs for the use of external legal counsel, if required, to supplement internal legal resources and use of Assessment & Appraisal consultants / Expert Witnesses to actively participate in Assessment Appeals be funded from the existing Appeals operating budget (52108-252013);

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.

- (b) That staff report on the financial impacts of the City of Hamilton's active participation in Assessment Appeals through the Annual Assessment Appeals Report; and;
- (c) That as a result of this report, the item representing Use of External Services for Tax Assessment & Appeals will be considered complete and removed from the Audit, Finance and Administration Committee outstanding business list.

EXECUTIVE SUMMARY

As reported annually by means of the Annual Assessment Appeals Report, challenges to the Municipal Property Assessment Corporation's (MPAC) assessed values continue to exist and ultimately result in significant negative impacts on a municipality's assessment base and resulting property tax revenues. The City of Hamilton (City) loses millions of dollars annually to Assessment Appeals. In recognition of this, staff report "Criteria for Participation in Assessment Appeals (FCS20063(a))" was approved by Council in December 2020, laying out the framework on how and when the City will actively participate in Assessment Appeals.

In order to actively participate in Assessment Appeals, a further staff report "Use of External Services for Tax Assessment & Appeals (FCS20005(a)/LS21047)", was approved by Council in December 2021, and gave authority to temporarily fund the following from the Tax Stabilization Reserve (Account number 110046) up to April 30, 2023:

- Hiring of one temporary solicitor and one temporary legal support;
- Use of external legal counsel, if required, to supplement internal legal resources;
- 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); and
- 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.

The intent of this staff report is to provide Council with information on the outcome of the City's active participation in Assessment Appeals and, due to its success, recommend that this participation become permanent. In doing so, a sustainable funding source is required. The funding requirement being proposed is nominal in comparison to the financial success of this program. Mitigating the municipal tax losses from one large appeal more than offsets the annual costs.

As identified in Appendix "A" to Report Use of External Services for Tax Assessment & Appeals (FCS20005(b)/LS21047(a)), the City's active participation in Assessment

Appeals has been very successful. In 2022, the City participated in 66 Assessment Act and Municipal Act appeals, of which 33 appeals were closed in 2022, while 33 remain open.

In 2022, 33 appeals were filed with a total estimated potential municipal property tax loss of \$9.8 M. The results from the appeals are as follows:

- 6 appeals resulted in a municipal tax loss being settled totalling \$808,000.
- 1 appeal resulted in a municipal tax increase being settled totalling \$5,000.
- 26 appeals resulted in no municipal tax loss.
- Total external costs incurred totaled \$109,000.
- Net of the external costs, \$8.9M (or 91%) of the total estimated potential municipal tax loss was mitigated.

The financial benefits identified above are understated for appeals in which the City is not able to quantify the municipal tax loss mitigated due to the appeal being withdrawn prior to the issuance of the Statement of Issues, which identifies the assessment reduction being sought by the appellant. In addition, these figures do not include further mitigation for the 2023 taxation year (assessment value settled for 2022 carried to 2023). As such, the \$8.9M in mitigated municipal tax loss for 2022 is the minimum amount achieved.

Furthermore, actively participating in appeals also helps preserve the City's assessment base and thereby mitigates potential tax shifts to the Residential property class. The majority of the properties in which the City is actively participating in, have large assessed values and are in the Commercial and/or Industrial property classes. Reductions in the non-residential assessment base shifts the tax burden onto the Residential property class. Actively participating in Assessment appeals helps preserve the non-residential assessment base, which in turn mitigates this potential tax shift.

In total, \$254,000 was funded from the Tax Stabilization Reserve in 2022 for external costs. Of this amount, \$109,000 was incurred to support the 33 appeals that closed in 2022, while the remaining \$145,000 (exclusive of \$3,000 incurred in 2021) was incurred on appeals that are still open. The total external cost of \$254,000 is a small fraction of the total municipal tax loss that was, and is expected to be, mitigated. This was possible due to the hiring of one temporary solicitor and one temporary support staff which minimized the amount of external legal counsel required. The use of external legal counsel was primarily used early in the past year, prior to the hiring of the temporary solicitor and support staff. Approximately 73% of the total \$254,000 external costs incurred were for Assessment and Appraisal Services/Expert Witnesses. There are currently 33 open Assessment Appeals, and these represent a minimum total estimated potential municipal tax loss of \$17.4M, to be settled some time in 2023 or

future. This estimated potential municipal tax loss will increase once the assessment reduction being sought is identified for ones yet to be determined, when the additional assessment year (2023) under appeal is captured and as additional appeals meeting the City's criteria for participation are put forward. In order to mitigate as much of this potential municipal tax loss as possible, it is imperative that the City continue its active participation in Assessment Appeals, thereby requiring a sustainable funding source to support the program. With the upcoming (yet to be announced) reassessment, the amount of appeals and potential municipal tax loss will grow substantially. Favourably positioning the City as an active participant in appeals will be beneficial in future appeals.

Alternatives for Consideration – Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: External costs incurred in 2022 to actively participate in appeals totalled \$254,000. Based on this, and the expected increase in the number and/or complexity of Assessment Appeals, it is estimated that annual external costs will be approximately \$300,000 (depending on the number of and complexity of appeals). It is recommended that this be funded from the existing \$7.5M operating budget for appeals.

Staffing: Legal resources are an integral part of any appeal. If the City wishes to continue to actively participate in appeals, Taxation's access to dedicated, internal legal resources is essential to address the large volume of Assessment Appeals. This is supported through a business case put forward as part of the 2023 operating budget submission, which recommends that the existing temporary solicitor and temporary support staff be made permanent (annualized budget of \$315,376; 2 Full Time Employees "FTE" s).

Legal: The City has participated in 66 appeals in 2022 (half of which remain open) and this figure is expected to grow. Prior to 2021, City Legal staff's involvement in Assessment Appeals amounted to acting on only two appeals over a twelve-year period and providing sporadic advice to Taxation staff. Assessment Appeals require a significant investment of legal staff time. Before the appeals are heard, many 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 and potential full hearings if settlement not reached;
- (g) Review of expert reports; and
- (h) Extensive consultation with Taxation staff and retained experts.

All the above needs to be completed within a strict timeline (schedule of events) mandated by the Assessment Review Board (ARB). In addition, the ARB is somewhat inflexible in respect of requests to alter its schedule of events for any appeal. The ARB hearing process is more like a Court litigation process as opposed to an Ontario Land Tribunal hearing process.

HISTORICAL BACKGROUND

Appeals on a property's value is a constant risk to the City's assessment base. In order to mitigate the erosion of the assessment base and resulting municipal tax loss, it is imperative that the City be an active participant in Assessment Appeals. However, due to the high volume of appeals, it would not be financially prudent to participate in all appeals. As such, the Council approved criteria ensure that the City participates in appeals with the highest risk of municipal tax revenue loss.

In order to assist internal resources, a Roster for Consultancy Services for the Provision of Assessment Based Management, Property Assessment & Taxation Appeals, Appraisal & Expert Witnesses (C2-01-21) was established in June 2021 for a three-year term. Use of the Roster affords City staff with access to required external resources to supplement the City's participation in appeals. Once the term of the existing Roster expires (May 31, 2024), staff will evaluate the continued use of a Roster for access to the required consultants and appraisers.

Due to the significant amount of legal resources required to actively participate in Assessment Appeals, it was determined at the early stages of this program, that two temporary FTEs would be hired to more efficiently handle the appeals and reduce the amount of external legal counsel required.

The intent of reporting back to Council after a full year of active participation in appeals was to allow enough time to measure the success of the program before recommending its continuation. It also allowed staff to obtain a better indication of the annual costs the City would expect to incur should the program be made permanent. Continuing to actively participate in Assessment Appeals would require adequate resources,

recommended via this staff report and the business case included in the 2023 operating budget submission.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Council approved By-law 13-064 “Delegation of Authority to the Treasurer and Deputy Treasurers for Assessment Appeals”.

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

The results of the 2022 active participation in appeals clearly shows that actively participating in appeals makes a difference. The City’s involvement in just one year, successfully mitigated \$8.9M (or 91%) of the total estimated potential municipal tax loss, even when considering the external costs. If the City wishes to continue to mitigate the annual municipal tax losses experienced each year and continued erosion of the assessment base as a result of assessment appeals, it is imperative that the active participation in appeals program be made permanent. Approving a sustainable funding source for this program will allow the City to continue to actively participate in the current 33 open appeals and new appeals as they are filed.

Staff will continue to update Council via the Annual Assessment and Appeals Report, providing the opportunity for modifications to the City’s participation, should Council at any time wish to increase participation further or scale back the City’s participation should the additional costs exceed the benefits.

ALTERNATIVES FOR CONSIDERATION

The City can cease to actively participate in appeals and require MPAC to defend their assessed values. This would result in no added costs, however would result in the City continuing to experience significant municipal property tax losses due to appeals. It would also result in the City no longer continuing with the current 33 open appeals, thereby jeopardizing our ability to mitigate the current potential municipal tax loss of \$17.4M.

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

Appendix “A” to Report FCS20005(b)/LS21047(a) - 2022 Assessment & Municipal Act Appeals Property Listing”