



## STAFF REPORT ACTION REQUIRED

### Approval to Initiate and Participate in Assessment Review Board Appeals and Respond to other Assessment Matters

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| <b>Date:</b>             | January 26, 2007                                    |
| <b>To:</b>               | General Government Committee                        |
| <b>From:</b>             | Treasurer   |
| <b>Wards:</b>            | All Wards   |
| <b>Reference Number:</b> | P:\2007\Internal Services\Rev\gg07006Rev (AFS 2875) |

#### **SUMMARY**

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This report identifies those properties where, as a result of review and analysis, Revenue Services staff, on behalf of the Treasurer, have launched assessment appeals at the Assessment Review Board (ARB) and are now seeking authorization to proceed with those appeals. In addition, staff are requesting authorization to actively participate in various taxpayer (owner) initiated appeals in order to protect the City's assessment base. The report also seeks authority to delegate authority to the Director of Revenue Services, in consultation with the City Solicitor to respond to assessment appeals and court applications based upon the Council approved criteria, including authority to execute settlement documentation.

If the recommendations in this report are adopted, Revenue Services and Legal Services staff will prepare the City's position on a case-by-case basis.

#### **RECOMMENDATIONS**

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**The Treasurer recommends that:**

1. appeals initiated by Revenue Services staff, as identified in Appendix A to this report, be authorized by Council;

2. City participation in the assessment appeals initiated by taxpayers, as identified in Appendix B to this report, be authorized by Council and actions taken to-date by Revenue and Legal Services staff in respect to these appeals be approved;
3. authority be delegated to the Director of Revenue Services, in consultation with the City Solicitor, to take all steps appropriate to deal with the appeals identified in this report including authority to withdraw appeals filed by the City or end its participation or execute Minutes of Settlements or other settlement documentation on behalf of the City;
4. authority be delegated to the Director of Revenue Services in consultation with the City Solicitor, to initiate and/or participate in appeals and execute Minutes of Settlement on behalf of the City where due to special circumstances, staff are not able to obtain authorization from Council before participating in and/or initiating the appeal;
5. authority be delegated to the Director of Revenue Services, in consultation with the City Solicitor, to execute Minutes of Settlement that resolve disputes between taxpayers and MPAC that the City has not actively participated in;
6. authority be delegated to the Director of Revenue Services, in consultation with the City Solicitor, to respond to court proceedings dealing with municipal assessment and taxation matters, including authority to execute settlement documentation;
7. the appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

## **Financial Impact**

The fees paid to the Minister of Finance for filing appeals with the ARB, as listed in Appendix A to this report, are estimated to be \$2,775 (\$150.00 for each non-residential assessment appeal application and \$75.00 for each residential appeal).

There are no fees for those properties appealed by the taxpayer (owner) and where the City has decided to participate. However, costs could be incurred to retain professional services (such as appraisers, planners, economists or other experts) to provide opinion evidence at the ARB in support of the City's position. Funds for these professional services are included in the 2007 Preliminary Operating Budget Estimates, Non-Program account entitled "Assessment Function".

At this time, staff cannot estimate what the financial impact to the City will be from either the appeals the City initiates or participates in; however, the expectation is that the City's taxation revenue will increase.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

At its meeting of May 17, 2005, in considering Clause No. 4 of Report No. 5 of the Policy and Finance Committee, "City Initiated Assessment Appeals under Section 40 of the *Assessment Act* for the 2005 Taxation Year," City Council delegated authority to the Treasurer or his designate to initiate assessment appeals with the ARB on behalf of the City, subject to the subsequent approval of Council.

To view this report online please follow the hyperlink:

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060131/pof1rpt/cl003.pdf>

At its meeting of January 31, February 1 and 2, 2006, Council adopted Policy and Finance Committee Report 1, Clause 3, "Criteria, Methodology and Costs of Examining Assessment Appeals and Participation in the Appeal Hearings" which proposed criteria to determine when the City will initiate appeals before the Assessment Review Board and when the City will participate in appeals filed by taxpayers. The recommendations in this report are made in accordance with these criteria.

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## **ISSUE BACKGROUND**

The Revenue Services Division's Assessment Analysis Unit currently conducts a detailed analysis of the assessment roll and supplementary/omitted rolls and other property data (i.e. comparable property data) to identify those properties that are significantly undervalued, misclassified, omitted, or otherwise incorrectly assessed. These inconsistencies or errors are further categorized by type, property class, and sorted in descending order of Current Value Assessment (CVA). Efforts to date have focussed primarily on non-residential properties with high current values.

Where staff detect incorrect assessments the Municipal Property Assessment Corporation (MPAC) is informed to determine whether corrections can be made through MPAC's regular in-year updates to the assessment roll, Minutes of Settlement or supplementary / omitted assessments. Where MPAC indicates that the assessments cannot be corrected through these mechanisms, staff may appeal on the City's behalf under section 40 of the *Assessment Act*, sections 33/34 of the *Assessment Act* and/or section 331 of the *Municipal*

*Act, 2001* which is continued under section 294 of the new *City of Toronto Act, 2006 (COTA)*.

Pursuant to section 40 of the *Assessment Act*, the City is a statutory party to every appeal (complaint) that is filed with the ARB. In general, the City does not appear and participate in every appeal that is filed, as to do so would require significant resources and would duplicate the activities and positions of MPAC, for which the City already pays. However, from time to time, the City does take an active role in appeals launched by taxpayers in order to protect its assessment base and/or to support the position taken by MPAC.

In addition, the City is a statutory party to various court proceedings dealing with assessment and municipal taxation matters. This includes leave to appeal motions and appeals from ARB decisions and applications under section 46 of the *Assessment Act* (often applications for an exemption from taxation). Similarly, the City does not actively participate in all of these matters due to resources and the fact the City would often be duplicating the activities and positions of MPAC.

## **COMMENTS**

### *2006 Appeals Initiated by the City of Toronto*

On March 30, 2006, the Government of Ontario passed legislation that extended the deadline to appeal assessments to June 30, 2006. The announcement, however, came after Revenue Services staff had reported to Council on the City's 2006 assessment appeals. The extension meant staff were able to continue their review of the assessment roll and initiated seven (7) additional appeals under section 40 of the *Assessment Act*. Each of these appeals was in respect of a distinct property: one (1) property was incorrectly classified; five (5) were under-assessed; and one (1) was under-assessed and incorrectly classified.

Furthermore, during the 2006 taxation year, the City received four supplementary/omitted assessment rolls under section 33 and 34 of the *Assessment Act* relating to the tax years 2004, 2005 and 2006. Staff reviewed these rolls and found 11 incorrect assessments. To fix these, the City's only option was to initiate 11 appeals because MPAC is unable to correct supplementary/omitted assessments.

Finally, staff initiated two (2) appeals under section 331 of the *Municipal Act, 2001*. This section determines taxes for certain properties using comparable properties. MPAC provides the comparable properties and these can be appealed by either the municipality or the taxpayer.

Appendix A to this report lists all of the 2006 appeals initiated by the Revenue Services Division after the appeal deadline was extended to June 30, 2006.

*Appeals Filed by Property Owner(s) Requiring City Participation*

During 2006, Revenue Services staff reviewed the assessments for properties where the taxpayers (owners) had initiated appeals under section 40 of the *Assessment Act* seeking lower assessments and/or changes to the classification for their property. In determining whether the City should participate in the various appeals launched by taxpayers, staff followed the criteria set out in the report referred to above entitled "Criteria, Methodology and Costs of Examining Assessment Appeals and Participation in the Appeal Hearings".

Appendix B to this report lists those taxpayer appeals where it is recommended that the City participate. The City is already participating in a few of these appeals which was necessary in order to comply with certain deadlines.

Of the 75 appeals identified in Appendix B, 66 are in respect of lands owned by the Government of Ontario and managed by the Ontario Realty Corporation. The properties listed, comprising approximately 79 acres of land, are referred to as the West Don Lands. The lands are in the eastern portion of downtown adjacent to the mouth of the Don River consisting of approximately 11 city blocks which are bounded on the north by Front Street East, Eastern Avenue, St Lawrence Street and King Street; to the west by Parliament Street, to the south by CNR Railway corridor and Mill Street, and to the east by the Bayview Avenue extension.

In the 1980's these properties were expropriated by the former City of Toronto to be redeveloped as "St. Lawrence Square" or "Ataritiri". However, because of soil and ground water contamination, redevelopment did not proceed and the properties became the responsibility of the ORC.

For most of the lands, the ORC has filed assessment appeals for the years 1998 – 2006 and seeks to have the assessed values reduced to \$1.00 for each of the properties and for each of the years under appeal. If the ORC is successful, the City stands to lose approximately \$12 million for all years under appeal. Staff have discussed the appeal with MPAC who advised, following a further review of the assessments, that the assessed values are correct and supportable. The West Don Lands appeal is one of the cases where staff and counsel from Legal Services are already participating.

In addition, staff seek authority to participate in the 2006 appeals for three (3) properties

whose owners had appealed in prior years and which Council has already authorized the City's participation. Also, authority is sought to participate in four (4) appeals where the City will be supporting MPAC's position because a result in favour of the owner will set a poor legal precedent. One of the two remaining properties has appeals that could have a significant financial impact for the City, if the outcome of the appeal is favourable to the taxpayer. The other property is the Toronto Island Airport.

Since the fall of 2006, staff and counsel from Legal Services have been preparing for the City's appeal before the Federal Disputes Advisory Panel (DAP) to resolve issues that the City has with the Toronto Port Authority (TPA) in respect of unpaid payments in-lieu of taxes. The preparations have included meetings and discussions with the TPA and MPAC. While the status of this hearing will be the subject of a future report to Council, at this point staff can report that the parties used these opportunities to meet to resolve a non-PILT tax billing issue. Specifically, for the tax years 2000 and 2001, MPAC made changes to the way the tenants of the Island Airport were assessed in each of those years that caused the City to prepare erroneous tax bills for 2001 forward. In essence, MPAC incorrectly assessed the tenants of the Island Airport when it should have assessed the TPA. Resolution of this problem is expected shortly on terms that protect the City's taxes.

It is expected that some of the appeals discussed in this report will be resolved through settlement discussions. In situations where the parties sign minutes of settlement, it will be unnecessary to proceed with the appeal to a full-hearing at the ARB. It is therefore recommended that authority be granted to the Director of Revenue Services, in consultation with the City Solicitor or her designate to withdraw any appeals, cease participation as appropriate, and/or execute Minutes of Settlement or other settlement documentation on behalf of the City as necessary.

The City is also served with various court proceedings dealing with assessment and taxation matters. The City does not actively participate in all of these matters due to resources and the fact that the City would often be duplicating the activities and positions of MPAC. Currently, Revenue Services and Legal Services reviews these court materials and makes a decision to actively participate based on the same Council approved criteria for assessment appeals. It is recommended that this procedure continue and that the Director of Revenue Services, in consultation with the City Solicitor, be delegated authority to respond to court proceedings where appropriate based upon the Council approved criteria, including authority to execute settlement documentation.

As discussed above, even though under the *Assessment Act* the City is a party to all section 40 appeals in the municipality, the City does not exercise its right to participate in each one. Nevertheless, from time-to-time the parties to an assessment appeal (i.e. the taxpayer (owner) and MPAC) will request that the City endorse Minutes of Settlement that have been reached between the parties. Often the City is contacted at the last minute where for example, a property sale is about to close, pending the resolution of the outstanding appeal. To deal with these situations, authority is sought for the Director of

Revenue Services, in consultation with the City Solicitor, to sign Minutes of Settlement that resolve disputes between taxpayers and MPAC that the City has not actively participated in. In all cases when these situations arise, Revenue and Legal Services staff will review the matter and be satisfied that the settlement will have no negative financial and/or legal consequences for the City.

This report has been prepared in consultation with the City Solicitor's office.

## **CONTACT**

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## **SIGNATURE**

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Cam Weldon  
Treasurer

## **ATTACHMENTS**

Appendix A - Appeals Initiated by the Treasurer  
Appendix B - Appeals Initiated by Taxpayer in Which the City will Fully Participate