

Approval to Initiate and Participate in Assessment Appeals

Date:	May 14, 2007
To:	Government Management Committee
From:	Treasurer
Wards:	All Wards
Reference Number:	P:\2007\Internal Services\rev\gm07017rev (AFS 3324)

SUMMARY

This report identifies those properties where, as a result of staff review and analysis, the Director of Revenue Services has launched assessment appeals at the Assessment Review Board (ARB) and is now seeking authorization to proceed with those appeals. The appeals are intended to correct assessment values that have been incorrectly classified, under-valued, or wrongly returned on the 2007 assessment roll. In addition, staff are requesting authorization to actively participate in taxpayer (owner) initiated appeals in order to protect the City's assessment base.

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

RECOMMENDATIONS

The Treasurer recommends that:

1. the assessment appeals initiated by Revenue Services staff, as identified in Appendix A of this report, be authorized by Council;
2. City participation in the assessment appeals initiated by the taxpayer, 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 Settlement or other settlement documentation; and
4. 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 of this report, are estimated to be \$16,275 (105 at \$150.00 for each non-residential assessment appeal application, and 7 at \$75.00 for each residential appeal).

There are no fees required for those properties appealed by the property owner and where the City will become a full participant. However, costs could be incurred in disputing these assessments to retain specialized professional services (such as appraisers, planners, economists) to provide expert opinion/evidence at the ARB as required. Funds to cover the cost of retaining such professional services are included in the 2007 Approved Operating Budget, Non-Program account entitled "Assessment Function".

At this time, staff cannot estimate what the financial impact to the City will be from these appeals; however, we anticipate that the City's taxation revenue will increase as a result of the appeals initiated by the City.

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/cl004.pdf>

At its meeting of January 31, February 1 and 2, 2006 Council considered 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 in order to determine when the City will initiate appeals before the Assessment Review Board and when the City will actively participate in appeals filed by taxpayers. The recommendations put forward in this report have been guided by the criteria set out in the report noted above.

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ISSUE BACKGROUND

The Revenue Services Division’s Assessment Analysis Unit currently conducts a detailed analysis of the annual assessment roll and supplementary/omitted rolls and other data (i.e., comparable property data provided under section 331 of the *Municipal Act, 2001* or 294, of the *City of Toronto Act, 2006*), to identify those properties that are significantly under-valued, misclassified, missing, or otherwise incorrectly assessed (e.g., due to a recent severance or consolidation). These inconsistencies or errors are further categorized by type, property class, and sorted in order of descending Current Value Assessment (CVA) magnitude. Efforts to date have focussed primarily on non-residential properties with large assessment values.

Where staff detect issues and/or errors, these are identified to the Municipal Property Assessment Corporation (MPAC) to determine whether corrections can be made via Minutes of Settlement or supplementary /omitted assessments. Where MPAC indicates that the errors cannot be corrected, staff may initiate third party appeals on behalf of the City under section 40 of the *Assessment Act*.

It is necessary to draw a distinction between those cases where staff initiate an assessment appeal to correct an error (i.e., with the City as the appellant), and those cases where the City intends to participate as a full party to owner filed appeals. Pursuant to section 40 of the *Assessment Act*, the City is a statutory party to every complaint (appeal) that is filed with the ARB. In general, the City does not appear and participate in each and every appeal that is filed, as to do so would require very significant resources and would duplicate the activities of MPAC, for which the City already pays. There are, however, certain situations where it may be appropriate and prudent for the City to take an active role in an appeal in order to support the position taken by MPAC.

In accordance with section 294 of the *City of Toronto Act, 2006 (COTA)*, the City of Toronto receives from MPAC up to six 6 comparables which are used to determine the level of taxation for a property that is either newly constructed or is reclassified. The Revenue Services Division's Assessment Analysis Unit also reviews such comparables to ensure their correctness and validity. When an error or anomaly is detected, staff initiate appeals to bring forward improved comparables.

COMMENTS

Appeals Initiated by the City of Toronto

Given the vast number of properties in the City (over 650,000), and the limited time and resources available to conduct a review of the full assessment roll, not all property accounts returned on the 2007 assessment roll were reviewed. Instead, Revenue Services staff focussed their efforts on non-residential accounts where sales history details indicated that the property was under-assessed. Revenue Services staff also focussed their efforts on reviewing planning applications, zoning by-laws, and building permit data where the data indicated that the property may be under-assessed or misclassified.

Furthermore, Revenue Services staff conducted a year-over-year assessment analysis. The year-over-year assessment analysis was a comprehensive review of all the changes that occurred on the assessment roll compared to the previous year's assessment roll.

Where staff detected issues/errors, discussions ensued with MPAC to determine whether corrections could be made via supplementary/omitted assessments. Where MPAC indicated that the errors identified could not be corrected via the supplementary/omitted assessment process, staff initiated third party appeals on behalf of the City under section 40 of the *Assessment Act*. In total, staff have initiated 112 appeals, as identified in Appendix A. Of these, 1 was appealed under section 294 of the *COTA* which deals with properties eligible for comparable tax treatment and 111 accounts were appealed under section 40 of the *Assessment Act* largely due to the following:

- (i) Thirteen (13) were identified to be coded incorrectly with respect to their tax classifications;
- (ii) Sixty seven (67) were identified to be under-assessed;
- (iii) Twenty nine (29) were identified as being both under-assessed and coded incorrectly with respect to the tax classification; and,
- (iv) Two (2) were identified to be returned on the assessment roll in error (i.e. the properties identified should be consolidated).

It should be noted that the column in Appendix A and B entitled “Reason to Appeal” is based on the staff’s preliminary review. Often, errors or omissions are detected in the assessment in addition to these reasons that are then raised in the City’s pleadings for these appeals.

Among the 112 properties for which an assessment appeal has been initiated, it should be noted that two (2) are used for educational purposes. One (1) is owned by the Toronto District School Board and one (1) is owned by Prom-Edu-Val Society. In addition, one (1) other property is owned by the City of Toronto.

Although the properties owned by the schools are currently exempt from taxation, the assessment value assigned to those properties is too low and/or the properties are misclassified and the assessment value does not reflect the property’s highest and best use and/or zoning. If the values are not updated correctly for 2007, the City will suffer revenue losses, if the property is sold and converted to taxable during the current taxation year. This is due to the fact that although the *Assessment Act* permits the MPAC to change a property from exempt to taxable when a change takes place in-year, the *Act* restricts MPAC from up-dating the assessment value at the same time. Given that rezoning applications have either been filed or approved for these properties, their sale and redevelopment is anticipated to occur shortly. Therefore, notwithstanding the current exempt status of the property, the City has an interest in ensuring that the assessment is accurate as it will form the basis for calculating the taxes that would be payable after the sale.

The one (1) property that is owned by the City of Toronto is currently operated as a pay parking lot and subject to payment in lieu of taxes. As is the case of the properties owned by the schools, noted above, this property’s assessment has also been appealed in anticipation of its redevelopment during 2007. Since the assessment value currently does not reflect the property’s highest and best use, the City will suffer revenue losses when the property is sold and converted to taxable during the current taxation year, if the value is not correctly up-dated. Again, although the *Assessment Act* permits MPAC to change the property from exempt to taxable when a change takes place in-year, the assessment value cannot be updated at the same time. The City has an interest in ensuring that the assessment value is accurate as it would form the basis for calculating the rateable taxes that are payable after the sale.

Although staff do not initiate third party appeals on residential properties, it should be noted that there is one (1) residential property that has been appealed in 2007 due to a gross error in the assessment value stemming from a keying error (i.e. the last digit of the assessment value was missing).

Appeal(s) Filed by Owner(s) Requiring City Participation

Appendix B to this report contains one (1) property (although different roll numbers have been applied in respect to this property in the various years) where it is recommended that the City participate due to the precedent setting implications of the appeal. The owner of this property has appealed the classification of his property and is advancing an argument that the classification assigned is incorrect. Should the ARB be persuaded, the precedent set could have implications on other similar properties resulting in significant revenue losses for the City.

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

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SIGNATURE

Cam Weldon
Treasurer

ATTACHMENTS

Appendix A- Appeals Initiated by the Treasurer
Appendix B- Appeals Initiated by Taxpayers in which the City Will Fully Participate