



STAFF REPORT INFORMATION ONLY

Assessment Appeal Provision for Business Improvement Areas

Date:	August 25, 2008
To:	Economic Development Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2008\Internal Services\Rev\ed08018rev (AFS#6880)

SUMMARY

This report provides information on the City's current policy and practices with respect to the requirement that Business Improvement Areas (BIAs) set aside sufficient funds to offset the estimated impact of outstanding assessment appeals, and examines alternatives to reduce the need for such provisions.

Financial Impact

There are no financial impacts associated with the receipt of this report. However, should Council decide to alter its current policies and practices with respect to providing for the estimated cost of outstanding assessment appeals on BIA levies, any alternative approach would result in some additional implementation and administration costs to the City. In this event, the Deputy City Manager and Chief Financial Officer would need to assess and report back on the financial and operational impacts of any proposed changes.

DECISION HISTORY

In December 2001, Council adopted, as amended, recommendations contained in a joint report (October 12, 2001) from the Commissioner of Economic Development, Culture and Tourism and the Acting Chief Financial Officer respecting the harmonization of practices and procedures regarding Business Improvement Areas (BIAs); and amended Toronto Municipal Code Chapter 19, "Business Improvement Areas" to reflect the harmonized practices and procedures adopted by Council (re: Clause 21 of the Policy and Finance Committee Report No. 16 titled "Harmonization of Business Improvement Area Practices and Procedures"). The link to the Council decision and staff report is:

<http://www.toronto.ca/legdocs/2001/agendas/council/cc011204/pof16rpt/cl021.pdf>

In February 2003, Council received a report (December 20, 2002) from the Chief Financial Officer and Treasurer providing information on the implications that assessment appeals have on BIAs and the process that the Revenue Services Division undertakes to assess and estimate the financial impact of outstanding assessment appeals on BIAs (re: Clause 14[e] of Report No. 2 of the Economic Development and Parks Committee). The link to this report is:

<http://www.toronto.ca/legdocs/2003/agendas/committees/edp/edp030107/it015.pdf>

Subsequently, at a Special Meeting held on June 11, 2007, Council considered a report (March 19, 2007) from the General Manager of Economic Development, Culture and Tourism regarding the adoption of a new City of Toronto Municipal Code, Chapter 19 – “Business Improvement Areas”, and adopted a recommendation to dissolve all existing Business Improvement Area Boards and re-establish them as City boards under section 141 of the *City of Toronto Act, 2006* (re: Clause EX8.10 of Executive Committee Meeting 8 titled “New Municipal Code Chapter 19 – Business Improvement Areas”). The Council Decision Document and associated reports are available at:

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-06-11-cc09-dd.pdf>

Most recently, in a letter dated January 18, 2008 to the Deputy City Manager and Chief Financial Officer, Councillor Rae requested a report to the Economic Development Committee on possible opportunities and suggestions to re-visit the existing City policy on assessment appeal provisions for BIAs.

ISSUE BACKGROUND

Business Improvement Areas (BIAs) are geographic zones that are established to promote designated areas as business or shopping locales. BIAs may undertake projects to improve, beautify and maintain City-owned land or structures within the boundaries of the BIA, and thus provide benefits to the member property owners and businesses, as well as adjacent residential neighbourhoods. BIAs are governed by a Board of Management and established by by-law. The operations of a BIA are funded through an annual levy, which is billed and collected in a similar manner to property taxes, on all commercial and industrial property owners (i.e. business properties) within the BIA.

The City of Toronto has over sixty BIAs, with several new BIAs currently being considered. As City boards, BIAs are governed by the provisions of section 141 of the *City of Toronto Act, 2006* and Chapter 19: *Business Improvement Areas* of the City of Toronto Municipal Code. These provisions govern the establishment and operation of BIAs, including BIA levies and financial requirements and procedures.

COMMENTS

Business Improvement Areas Levies

Once a BIA is established, the City of Toronto Municipal Code requires the City to raise each year an amount sufficient to meet the annual Council approved budget for the BIA.

This amount is raised by a levy on all taxable business properties within the business improvement area. Individual levies for each property within a BIA are calculated by dividing the total BIA levy requirement by the proportion of the Current Value Assessment (CVA, or assessed value) of each commercial/industrial property in relation to the total commercial/industrial CVA of all properties within the BIA. Current Value Assessments for all properties are established by the Municipal Property Assessment Corporation (MPAC), and are provided to the City annually in the form of the returned assessment roll, on which BIA levy calculations are based.

The annual levy amount is identified on property tax bills sent to property owners (who may then collect all or a portion of the BIA levy from tenants). The BIA levies are payable to and collected by the City in the same manner as property taxes, and are paid out to the BIA Boards of Management in accordance with Chapter 19 of the City's Municipal Code.

The Need for an Assessment Appeal Provision within BIA Budgets

Individual BIA levies are calculated based on the Current Value Assessment (CVA) of each property within the BIA. However, where the CVA value for a property is changed due to assessment appeals after BIA levies have been billed, the amount of the BIA levy payable by that property must be altered to reflect the revised assessed value for that year. Where the CVA of a property, or a number of properties, are reduced through assessment appeals, the associated reduction in the BIA levies could result in a shortfall in the required total levy needed to support the current year operating budget for the BIA. Depending on when assessment appeals are heard and decided upon, reductions in CVA values could impact the budgets for multiple years.

Given the possibility of assessment appeal reductions and related refunds of BIA levies, the City annually requires that a "provision" is built into a BIA's budget and sets aside the "provision" to cover the estimated cost of outstanding appeals within each BIA. This provision protects a BIA from fluctuating cash flows and revenue losses resulting from assessment appeal reductions that may be processed in future years. Any levy reductions resulting from assessment appeal reductions are applied against the provision and do not impact current year cash flows.

Each year, the Revenue Services Division reviews and analyses outstanding assessment appeals to estimate the potential financial impact of outstanding appeals on each BIA. Based on this analysis, the Division: i) estimates the amount required to provide for outstanding appeals; ii) compares the estimated provision amount required to the existing provision; iii) determines what adjustment, if any, is required to the existing provision; and, iv) provides this information to each individual BIA for inclusion in their following year's operating budget. The methodology that the Division uses in calculating the appeal provision for BIAs has been reviewed and approved by City's Internal Audit Division.

In the event that an existing provision is inadequate, the BIA will be required to increase their operating expenditure estimates to meet the shortfall in the appeal provision. If the

existing provision is in excess of the estimated requirement, the BIA will have a surplus that will be applied to offset the operating expenditure requirements for that year. Each BIA is notified of the provision requirement by mid-August of each fiscal year so that they have sufficient time to incorporate any provision adjustments in their operating budget submissions.

Rationale for Maintaining an Assessment Appeal Provision

As BIA Boards of Management are city boards, they are subject to the same stringent principles for fiscal accountability and transparency that govern the City itself. This includes the requirement to establish an annual budget that is approved by the municipal Council, and the requirement that no expenditures may be incurred unless identified within the budget for that year. Further, BIAs are prohibited from borrowing money other than from the City.

As municipal entities, BIAs must conform to General Accepted Accounting Principles (GAAP). These principles are endorsed by the Canadian Institute of Chartered Accountants (CICA), and form the basis of the Public Sector Accounting Board (PSAB) guidelines that apply to Ontario municipalities, and by extension to BIAs.

PSAB guidelines and Generally Accepted Accounting Principles require that any impending or known liability that may cause a financial impact must be provided for within the financial statements of an organization. Hence the establishment of an appeal provision to offset potential reductions in the annual operating budget of a BIA, as described in the preceding section, is both consistent with and necessary to meet GAAP and PSAB guidelines, as well as Chapter 19 of the Toronto Municipal Code.

The assessment appeal provision within BIA budgets is necessary to ensure that, where assessment appeals result in reductions to individual BIA levy amounts, the total levy raised within a BIA remains sufficient to meet the approved operating budget requirement. As part of their operations, BIAs may undertake multi-year capital projects, or commit to annual maintenance or service contracts, they cannot accommodate revenue shortfalls within any year, nor can they borrow money to offset shortfalls that may occur due to levy adjustments arising from assessment appeals. As a result, GAAP requires that BIAs must adequately provide for outstanding assessment appeals.

Alternatives that may reduce Assessment Appeal Provisions

While the *City of Toronto Act* provides Council with the power to determine the method of raising BIA levies, any alternatives considered (whether based on CVA or some other basis) must be fair and equitable, and must be defensible in the event of a court challenge. Currently, individual BIA members can appeal their property's assessment if they feel it is incorrect. Should Council decide to base BIA levies on something other than assessment values, individual BIA members must still be provided an opportunity to dispute and correct any potentially erroneous information used in the calculation of their BIA levy. As such, there will always be a requirement to provide for the financial impact associated with such disputes and/or appeals.

With this in mind, staff reviewed alternate approaches that may reduce the amount of provisional funds required. Some of the alternatives reviewed by staff continue to base BIA levies on the current value assessment (CVA) of properties within the BIA, while other approaches utilize methods other than CVA to establish BIA levies. All alternatives considered are based on the principle that the costs associated with operating each individual BIA (with the exception of capital cost sharing projects) should be fully funded by the individual BIA.

Each of the potential approaches reviewed has inherent advantages and disadvantages, which are summarized in detail in Appendix 1 to this report. Table 1, below, provides a description of each alternative.

Table 1: Summary of Alternatives that may Reduce Appeal Provisions for BIAs

	Alternative	Basis of BIA Levy	Description
1	BIA members waive their right to refunds/credits arising from appeals	Current Value Assessment (based on assessed value provided on the annual, supplementary and omitted assessment rolls)	BIA levies would continue to be based on assessments provided to the City by MPAC, including supplementary and omitted assessments. Property owners, however, would be requested to voluntarily waive their right to refunds/credits arising from appeals. Where assessments are reduced as a result of an appeal, the property owner would only receive a credit or refund with respect to their property taxes, but not their BIA levy.
2	Establish BIA levies as fixed percentage of BIA budget	Fixed percentage amount	BIA levies would be based on a fixed percentage amount of the total BIA budget, to be negotiated annually based on pre-determined factors or criteria.
3	Establish BIA levies based on physical property attributes	Various (e.g. building square footage, property frontage, site area) or combination of factors	BIA levies would be based on physical property attributes and some multiplier or rate (e.g. commercial gross floor area (GFA), front foot rates, lot area, etc.), with rates to be determined annually to raise the required levy.

Currently, the majority of costs related to BIAs are raised through direct levies on the BIA membership, including any necessary provisions for assessment appeals. The City incurs no direct costs related to BIA operations except for its cost sharing arrangements with respect to capital projects. To deviate from this principle would result in financial impacts for the City, which would most likely have to be funded through general revenues, and an increase in tax rates across all classes of property.

With respect to alternative 1, which requires property owners to forego refunds of BIA credits due to appeals, it is questionable whether a majority of BIA members would agree to such arrangements. There is no legislative means of forcing property owners to enter into contractual agreements to waive their right to a refund of BIA levies due to appeal reductions. As such, this alternative would involve establishing contracts/agreements between the BIA Board of Management and the individual property owners.

Where BIA levies are based on non-CVA measures such as Gross Floor Area, lot area, frontage, or on a fixed percentage (i.e. alternatives 2 and 3), the information needed to support these approaches may not be readily available, and may need to be compiled and maintained by City staff. While some property-related data may be available from MPAC, experience has indicated that information on square footages, site area, etc., is missing, inaccurate or out-of-date in many cases.

In order to calculate BIA levies on a fixed percentage basis (alternative 2), the BIA Board of Management and the City would have to reach agreement on the percentages or methodology to apportion BIA levies among the various members. If all BIAs could not agree on the same methodology, the City could conceivably have to administer varying methods of calculating BIA levies.

It must be noted that any alternative approach to establishing BIA levies would result in additional costs to the City and may take two or more years to fully implement, given the need to consult and obtain member approval. Potential costs include the requirement for additional staff resources to develop new methods and/or rates to determine BIA levies; compile and maintain property-based information on which billings are based; negotiate contracts where necessary and program administration. It is also likely that extensive reprogramming of the current tax system would be required, or a new billing system developed, to support alternative billing methods and to automate the billing process, involving technical resources, continuing I/T support costs, and potential hardware and software upgrade costs.

Additionally, the costs associated with the establishment and administration of a dispute mechanism will vary depending on the number of dispute/appeal requests received, the need to develop guidelines/criteria for disputes, the body which hears the dispute (e.g. Government Management Committee, or Community Council), and the staff time required to review the dispute and to administer the hearing process and outcomes.

Public consultation and review of legal implications

Any change to the current method of determining BIA levy charges designed to reduce or eliminate the assessment appeal provision would require extensive consultation with BIA Boards of Management, the BIA membership, and other business property owners. City staff will be required to plan, organize, develop and provide impact information, and attend the consultation session(s). The costs to the City relating to the public consultation will depend on the number of BIAs that may potentially be affected, and the number of sessions required.

Additionally, any proposed changes would have to be reviewed by the City's Legal Services Division, in order to ensure that any new approach to levy BIA charges is consistent with and permissible under current legislation. Any change to existing procedures would require Council to enact a by-law to amend the current provisions of Chapter 19 of the City's Municipal Code.

Evaluating Alternative Approaches

As a first principle, any change to the method of determining BIA levies or determining the required provision for disputes and appeals should not result in additional costs or new financial obligations for the City.

Alternative approaches to BIA levies should also not require extensive City resources to implement. The current method of basing BIA levies on current value assessment is widely accepted by the business community and relatively straightforward to administer. It is based upon assessments determined by third parties (MPAC and the Assessment Review Board), and applies to all BIA levies. It provides fairness to BIA members as it allows for appeals to assessed values. Furthermore, the assessment appeal process is administered entirely by the Assessment Review Board and MPAC, and is well-established and understood by property owners. From an operational perspective, the Revenue Services Division's tax system has fully automated the refund process for assessment appeals, requiring minimal or no manual processing. New approaches may involve significant City resources to compile the information necessary to support a new billing method, and the development of new systems or extensive reprogramming to bill and collect BIA levies.

Given that any approach to establishing BIA levies must incorporate some form of dispute/appeal mechanism to provide for fairness to BIA members, it is not possible to entirely eliminate the need for a budgetary provision to offset adjustments arising from such disputes. The extent to which each alternative may reduce the magnitude of the provision cannot be determined in advance, but may be influenced by factors including the availability/reliability of the information used to determine BIA levies, and/or the methodology used to determine fixed percentage amounts. Even where an alternative approach is implemented, there will be a continued need to identify an annual provision during the implementation period, to ensure that recent assessment appeals that are pending decisions before the Assessment Review Board are adequately provided for.

In view of the above considerations, it is not recommended that the City initiate changes to the current methodology for establishing assessment appeal provisions within BIA budgets.

CONTACT

Giuliana Carbone, Director, Revenue Services, 416-392-8065, gcarbone@toronto.ca

SIGNATURE

Joseph P. Pennachetti, Deputy City Manager and Chief Financial Officer

ATTACHMENTS

Appendix 1: Alternatives for Establishing BIA Assessment Appeal Provisions