



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Approval to Initiate and Participate in Assessment Appeals

Date:	June 10, 2009
To:	Government Management Committee
From:	Acting Treasurer and City Solicitor
Wards:	All Wards
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City.
Reference Number:	P:\2009\Internal Services\rev\gm09021rev (AFS# 8964)

SUMMARY

This report identifies those properties where, as a result of staff review and analysis, the Acting Director of Revenue Services has initiated assessment appeals at the Assessment Review Board (ARB) and is now seeking authorization to proceed with these appeals. The appeals are intended to correct assessment values that have been incorrectly classified, under-valued, or wrongly returned on the 2008 supplementary and omitted assessment rolls and the 2009 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.

This report also makes recommendations to Council in respect of a number of appeals initiated by the Toronto Parking Authority. Staff's recommendations are outlined in Confidential Attachment 2.

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

RECOMMENDATIONS

The Acting Treasurer and City Solicitor recommend that:

1. the assessment appeals initiated by Revenue Services staff, as identified in Appendix A of this report, be authorized;
2. City participation in the assessment appeals initiated by the taxpayer, as identified in Appendix B to this report, be authorized and actions taken to-date by Revenue and Legal Services staff in respect to these appeals be approved;
3. authority be delegated to the Acting Director of Revenue Services and/or their Designee, in consultation with the City Solicitor, to take all steps appropriate to deal with the assessment appeals identified in this report, including retroactive authority to file assessment appeals already initiated by the Acting Director; authority to withdraw any appeal filed by the City; authority to initiate or end the City's participation in any appeal; authority to execute Minutes of Settlement or other settlement agreements related to any appeal;
4. Council adopt the recommendations contained in Confidential Attachment 2;
5. Council authorize the public release of the confidential information and recommendations contained in Confidential Attachment 2, at the discretion of the City Solicitor; and
6. 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 \$22,725 (\$150.00 each for 143 non-residential assessment appeals, and \$75.00 each for 17 residential appeals).

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 2009 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/2005/agendas/council/cc050517/pof5rpt/cl004.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 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.

To view this report online please follow the hyperlink:

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

ISSUE BACKGROUND

The Revenue Services Division’s Assessment Analysis Unit currently conducts a detailed analysis of the annual assessment roll and supplementary/omitted rolls to identify those properties that are significantly under-valued, misclassified, missing, or otherwise incorrectly assessed (e.g., due to a recent severance or consolidation, zoning change or a change in use). These inconsistencies or errors are further categorized by type and 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 they can initiate corrections. Where MPAC indicates that they cannot correct errors, Revenue Services 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. The City is a statutory party to every assessment appeal that is filed with the ARB pursuant to section 40 of the *Assessment Act*. In general, the City does not appear and participate in each and

every appeal that is filed, as to do so would require significant financial 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.

Revenue Services staff, in conjunction with the City Solicitor, are requesting authorization by Council to participate in appeals initiated by the Toronto Parking Authority. The Toronto Parking Authority has outstanding assessment appeals on approximately 221 properties going back to the 1998 taxation year to the present. These appeals are primarily about how the properties are to be valued. Details regarding the Toronto Parking Authority's position and the recommendations of staff are contained in Confidential Attachment 2.

COMMENTS

Appeals Initiated by the City of Toronto

Given the vast number of properties in the City (over 675,000), and the limited time and resources available to conduct a review of the full assessment roll, not all property accounts returned on the 2009 assessment roll were reviewed. Instead, Revenue Services staff focussed their efforts on non-residential accounts where the sales history details indicated that the property was under-valued. Revenue Services staff also focussed their efforts on reviewing planning applications, zoning by-laws, and building permit data to identify properties that have changed but the assessment value and/or classification was not revised accordingly.

Furthermore, Revenue Services staff conducted a year-over-year assessment analysis. The year-over-year assessment analysis was a comprehensive review of changes that occurred on the assessment roll compared to the previous year's assessment roll. Since 2009 was a year of re-assessment, Revenue Services staff concentrated their efforts on reviewing those properties that experienced significant change (i.e. increases/decreases of 50% or greater). Where staff detected issues/errors, discussions ensued with MPAC to determine whether corrections could be initiated by them. Where MPAC indicated that the errors identified could not be corrected, staff initiated third party appeals on behalf of the City under section 40 of the *Assessment Act*. In total, staff have initiated 160 appeals, as identified in Appendix A. The appeals under section 40 of the *Assessment Act* are summarized as follows:

- (i) Fifty-One (51) properties were identified to be coded incorrectly with respect to their tax classifications i.e. properties that are rezoned may be subject to a change in classification;
- (ii) Ninety-Four (94) properties were identified to be under-valued;
- (iii) Six (6) properties were identified as being both under-valued and coded incorrectly with respect to the tax classification;

- (iv) Nine (9) properties are owned by the Toronto Port Authority and have been appealed to protect the City's interests pending the outcome of a judicial review application before the federal court of the Dispute Advisory Panel's decision.

It should be noted that the column in Appendices A and B entitled "Reason to Appeal" is based on staff's preliminary review. Often, other errors or omissions are detected which are also raised in the pleadings prepared by the City.

Revenue Services have also initiated 32 appeals to ensure continuity with appeals launched in previous years where the initial appeal has not yet been heard by the ARB.

The Province of Ontario changed the *Assessment Act* for taxation 2009 by authorizing MPAC to issue a Post Roll Amended Notice (PRAN) in accordance with section 32 (1.1) of the *Assessment Act*. A PRAN is to correct errors in the assessment and/or classification of a property provided the error was the result of incorrect factual information (but not a change in opinion of the current value of the property). Such factual errors may be corrected at any time during the taxation year. The property owners who receive a PRAN and object to its issuance can file an appeal to the Assessment Review Board within 90 days of mailing of the notice.

Revenue Services staff view the introduction of the PRAN as a possible mechanism to address some of the issues detected in this year's assessment review. Revenue Services has initiated appeals for 2009 to protect the City's interests pending clarification of how the PRAN will actually work. Revenue staff will monitor the appeals and take appropriate action such as withdrawing those appeals, if the City's interests are resolved through a PRAN and the taxpayer has not launch an appeal to the ARB.

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

Appendix B to this report contains two hundred and eighty nine (289) properties all of which require the City's participation in order to ensure that its interests are protected.

Included in Appendix B are properties where staff are seeking authority to extend the City's participation in those cases where Council had previously granted authority to participate and now there are additional years under appeal, but the appeals have not yet been heard by the ARB.

Among the properties listed in Appendix B are properties that are owned by the City of Toronto and operated by the Toronto Parking Authority. These Toronto Parking Authority appeals are the subject of the Confidential Attachment 2.

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SIGNATURE

SIGNATURE

Giuliana Carbone
Acting Treasurer

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ATTACHMENTS

- 1. Appendix A – Appeals initiated by the Treasurer**
- 2. Appendix B – Appeals filed by the Owner(s) requiring City Participation**
- 3. Confidential Attachment 2**