

Approval to Initiate and Participate in Assessment Appeals

Date:	June 7, 2012
To:	Government Management Committee
From:	Treasurer
Wards:	All
Reference Number:	P:\2012\Internal Services\rev\gm12018rev (AFS15277)

SUMMARY

This report identifies those properties where, as a result of staff review and analysis, the Director of Revenue Services has initiated assessment appeals at the Assessment Review Board (ARB) and is now seeking authorization to proceed with those appeals. The appeals are intended to correct property assessments that have been incorrectly classified, under-valued, or wrongly returned on the 2012 assessment roll. Staff are also requesting authorization to actively participate in appeals initiated by property owners in order to protect the City's interests.

Additionally, this report seeks authority to file appeals for certain federally owned properties with the Federal Dispute Advisory Panel.

RECOMMENDATIONS

The Treasurer recommends that:

1. City Council authorize the Treasurer or designate to proceed with the assessment appeals identified in Table 1 of Appendix A of this report.
2. City Council authorize the Treasurer or designate to file appeals with the federal Dispute Advisory Panel for the properties identified in Table 2 of Appendix A of this report.
3. City Council authorize the Treasurer or designate to participate in the assessment appeals initiated by property owners, as identified in Appendix B to this report,

and approve the actions taken to date by Revenue and Legal Services staff in respect to these appeals.

4. City Council authorize the Director of Revenue Services and/or designate, in consultation with the City Solicitor, to take all steps appropriate to deal with all of the appeals identified in this report, including authority to withdraw appeals filed by the City or end its participation or to execute Minutes of Settlement or other settlement agreements.
5. City Council authorize the City Solicitor, based on consultation and instructions from the Director of Revenue Services and/or his designate, to take all steps appropriate to deal with all of the appeals identified in this report including authority to withdraw appeals filed by the City or to end its participation or to execute Minutes of Settlement or other settlement agreements.

Implementation Points

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 for each appeal on a case-by-case basis.

Financial Impact

The total fees paid to the Assessment Review Board, as listed in Appendix A of this report, is \$7,800 (\$150.00 each for 34 non-residential properties, and \$75.00 each for 36 residential/residential development properties). These fees were a planned expenditure and funded through the 2012 Approved Operating Budget for Office of the Treasurer – Revenue Services.

There are no fees for the City's participation in appeals brought by the property owner. However, costs could be incurred to retain specialized professional services (such as appraisers, planners, or economists) to dispute these assessments, and to provide expert opinion or evidence at the ARB as required. Funds to cover the cost of retaining such professional services are included in the 2012 Non-Program Approved Operating Budget account entitled "Assessment Function."

Staff cannot estimate at this time the financial impact to the City resulting from these appeals; however, it is anticipated 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 17-19, 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 a 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 link below:

<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 Clause No. 3 of Report No. 1 of the Policy and Finance Committee: “Criteria, Methodology and Costs of Examining Assessment Appeals and Participation in the Appeal Hearings” which proposed criteria to determine when the City would initiate appeals with the Assessment Review Board and when the City would actively participate in appeals filed by property owners. This report is available at the following link:

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

The recommendations put forward in this report have been guided by the criteria adopted by Council in 2006.

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). 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 are unable to correct the assessments, Revenue Services staff may initiate third party appeals to correct the errors under section 40 of the *Assessment Act*.

It is necessary to distinguish 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 participate in each and every appeal that is filed, since 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.

The federal *Payments in Lieu of Taxes Act* establishes the Dispute Advisory Panel for municipalities across Canada to appeal errors in the assessments of properties owned by the federal government or federal crown corporations. Federally owned properties by law cannot be appealed to the ARB.

COMMENTS

Section 40 Appeals Initiated by the City of Toronto

Given the vast number of properties in the City (over 720,000), and the limited time and resources available to conduct a review of the full assessment roll, not all properties returned on the 2012 assessment roll were reviewed. Instead, Revenue Services staff focussed their efforts primarily on non-residential properties where the sales history indicates that the property was under-valued. 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. Although many of the properties selected to be appealed are classified residential on the assessment roll, these properties have been appealed because their classification and/or assessment is deemed to be incorrect.

Revenue Services staff also complete a comprehensive review of changes that occurred on the assessment roll compared to the previous year's assessment roll. Where staff identify issues or errors, a request is made to MPAC to make corrections via supplementary or omitted assessments. Where MPAC is unable to make corrections, staff have initiated third party appeals under section 40 of the *Assessment Act* in those cases.

In total, 70 appeals, as identified in Table 1 of Appendix A, were initiated as follows:

- i. Thirty-three (33) properties were identified with incorrect tax classifications (e.g., properties that are rezoned may be subject to a change in tax classification);
- ii. Two (2) properties were identified as under-valued;
- iii. Thirty-five (35) properties were identified as being both under-valued and incorrectly classified.

The column in Appendix A entitled "Reason for Appeal" is based on the staff's preliminary review. Often, during the preparation of the City's formal Statement of Issues, other errors or omissions are detected which are also raised in the pleadings prepared by the City.

Appeals Filed by Owners Requiring City Participation

Pursuant to section 40 of the *Assessment Act*, the City is a statutory party to every appeal that is filed with the ARB. In general, the City does not appear and participate in each and every appeal that is filed given the resources that would be required. In determining whether the City should participate in the various appeals launched by the property owner, staff followed the criteria adopted by City Council in 2006.

Appendix B to this report lists three (3) appeals initiated by the property owner where it is recommended that the City participate. Staff are requesting Council authority to participate in the appeals due to the potential loss in revenue, and the precedent setting implications.

City Applications to the Federal Dispute Advisory Panel

Also included in Table 2 of Appendix A are properties owned by federal crown corporations that are subject to the federal *Payments in Lieu of Taxes Act*, (*PILT Act*) and the *Crown Corporation Payments Regulations*.

Under the *PILT Act*, a municipality may apply to the Federal Dispute Advisory Panel (DAP) when it disagrees with the property value or tax rate applied by a federal crown corporation to the payments in lieu of taxes made by the federal crown corporation to the municipality.

City Council has authorized City staff to appeal the property values used for payments in lieu of taxes (PILTs) made by Parc Downsview Park, and the property value the CBC applies for PILTs for its building at 250 Front Street West/39 John Street to the federal Dispute Advisory Panel. City Council has authorized appeals for 2008 for Downsview Park and for the years 2004 to 2007 for the CBC building. While there are ongoing efforts to resolve these appeals through settlement, it is recommended that Council authorize the City Solicitor, in consultation with the Director of Revenue Services, to file appeals of Downsview Park's properties for 2009 and all subsequent years, and for the CBC building for 2008 and all subsequent taxation years, should a settlement not be reached.

CONTACT

Casey Brendon, Director, Revenue Services

Phone: (416) 392-8065, Fax: (416) 696-3778, E-mail: cbrendo@toronto.ca

SIGNATURE

Giuliana Carbone
Treasurer

ATTACHMENTS

Appendix A – Appeals Initiated by the Treasurer

Appendix B – Appeals Initiated by Property Owners in which the City will fully participate