



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**Golf Courses - Assessment Review Board Appeals**

<b>Date:</b>	January 16, 2012
<b>To:</b>	Government Management Committee
<b>From:</b>	Treasurer and City Solicitor
<b>Wards:</b>	2, 3, 4, 7, 11, 25, 26, 34, 36, 42, and 43
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City.
<b>Reference Number:</b>	P:\2012\Internal Services\rev\gm12001rev (AFS14612)

**SUMMARY**

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This report provides information on the status of assessment appeals currently before the Assessment Review Board (ARB) for golf course properties in the City of Toronto, and recommends a settlement of the appeals as outlined in Confidential Attachment 3.

**RECOMMENDATIONS**

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**The Treasurer and City Solicitor recommend that:**

1. Council adopt the confidential instructions to staff in Attachment 3;
2. Council authorize the public release of the confidential information and recommendations contained in Confidential Attachment 3 at the discretion of the City Solicitor and,
3. The appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

## **Financial Impact**

There are nineteen (19) golf courses in Toronto listed in Attachment 1 of this report:

- Five (5) are owned and operated by the City of Toronto and as such are exempt from property taxation;
- One (1) is owned by the Toronto Conservation Authority (TCA) and leased to a private operator;
- One (1) is owned by the Ontario Realty Corporation (ORC), managed by the City and leased to a third party, making it subject to a Payment in Lieu of Taxes; and,
- Twelve (12) are privately owned. Of these twelve (12), nine (9) are subject to fixed assessment agreements under the *Assessment Act* entered into by the former municipalities of Etobicoke, North York, Scarborough, Toronto and York. The difference between the annual property taxes paid (based on the “fixed assessment”), and the taxes that would otherwise be payable (if no fixed agreement existed), is deferred each year together with an annual interest charge. Attachment 2 provides additional information on the Fixed Assessment Agreements.

Attachment 1 provides a listing of all the golf courses in Toronto, information about ownership and whether they are subject to a fixed assessment agreement.

Attachment 2 provides background information regarding the golf courses that are subject to fixed assessment agreements.

Details regarding financial impacts resulting from the recommendations in this report are disclosed in Confidential Attachment 3.

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

## **DECISION HISTORY**

At its meeting held on June 14, 15 and 16, 2005, while considering Clause 10 of Policy and Finance Committee Report 6 titled "Municipal Property Assessment Corporation, Request for Further Information", Council directed that "the City of Toronto become an active participant in the golf course assessment appeals". To view the Council decision, follow the hyperlink below:

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050614/pof6rpt/cl010.pdf>

## ISSUE BACKGROUND

The assessment of golf courses has been the subject of concern for the National Golf Course Owners Association (NGCOA), the individual golf club owners across the Province, and Ontario municipalities since 2001 when the Municipal Property Assessment Corporation (MPAC) changed its approach to valuing these properties. Prior to 2001, golf courses in Ontario had been valued on a cost approach, where the land value plus the cost of building and/or structures minus depreciation was used to derive the Current Value Assessment (CVA) value (i.e. the value the property would sell for in an open market). In 2001, MPAC changed the way it valued golf courses to an income approach, which resulted in increased assessments and higher taxes for most golf course properties across the Province. MPAC changed its valuation approach because the sale of some golf courses in the Greater Toronto Area (GTA) seemed to indicate that the assessment values derived using the cost approach were too low in comparison to actual sales.

Although the income approach to valuing income producing properties is the most reliable and commonly used approach, golf course owners believed that MPAC had over assessed their properties by incorrectly including a business value component. The *Assessment Act* requires MPAC to value real property *only* excluding the business itself.

Provincially, approximately 500 of the 850 golf courses have appealed their assessments since 2001. Many of the Toronto golf courses also launched assessment appeals beginning in 2001, which the City is participating in.

In addition, per Council's direction, the Director of Revenue Services has initiated assessment appeals on all nineteen (19) of the golf course properties located within the City (including City-owned golf courses) for the taxation years 2006 through to 2011. By consistently filing appeals on all the City's golf courses (including those that are City-owned), the City has ensured that it will be able to correct any assessments that are incorrect or misclassified, to ensure equity amongst all of these properties.

In 2003, in an effort to manage the large volume of assessment appeals, the ARB created a "Central Issue" file for golf course assessment related issues, directing that the assessment appeals for ten (10) representative golf courses from across the Greater Toronto Area would be heard as a group, and all other golf course appeals would be put on hold pending the outcome of the appeal process. None of Toronto's golf courses were included in the "Central Issue" file.

By February 2005, the ARB abandoned the "Central Issue" approach, and allowed each golf course appeal to be heard and decided on individually.

Again, in an effort to resolve the assessment appeals equitably and expeditiously, the ARB selected the Glen Abbey Golf Course located in Oakville to be an industry "test case" property. It was anticipated that the outcome of that hearing would provide direction and expedite the processing of assessment appeals for other golf courses in the

Province. The property owner, MPAC and the City of Oakville litigated the Glen Abbey appeal for a period of six weeks, starting in September 2009.

In February 2010, a settlement was reached with Glen Abbey which remains confidential due to the financial income information that was used to derive the assessment values. However, the settlement assisted in the development of a framework agreement which sets out terms and an assessment methodology for valuing all golf course properties in Ontario. The framework agreement, that was finalized on December 13, 2010, was negotiated between MPAC; the NGCOA along with their membership; industry officials; and tax agent representatives of the golf courses.

## **COMMENTS**

Confidential Attachment 3 provides details in respect to the framework agreement for golf course properties in Ontario and seeks instructions on responding to assessment appeals for golf course properties located in the City of Toronto.

## **CONTACT**

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## **SIGNATURE**

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Giuliana Carbone  
Treasurer

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Attachment 1: Summary of Appeals before the ARB for Golf Courses in Toronto  
Attachment 2: Fixed Assessment Agreements, Background Information  
Confidential Attachment 3: Golf Course Appeals in the City of Toronto

## ATTACHMENT 1

### Summary of Appeals before the ARB for Golf Courses in Toronto

	<b>Golf Course</b>	<b>Appeal Type</b>	<b>Tax Year (s)</b>	<b>Ownership</b>	<b>Private / Public Course</b>
1	Islington Golf & Country Club *	Assessment	2006 – 2011	Islington Golf Club Ltd	Private
2	Rosedale Golf & Country Club*	Assessment	2006 – 2011	Rosedale Golf Club Ltd	Private
3	Markland Wood Golf & Country Club *	Assessment	2001 – 2002 2006 – 2011	Markland Wood Country Club	Private
4	Oakdale Golf & Country Club *	Assessment	2001 – 2011	Oakdale Golf & Country Club	Private
5	Weston Golf & Country Club *	Assessment	2006 – 2011	Weston Golf & Country Club Ltd	Private
6	Toronto Hunt Club *	Assessment	2001 – 2011	The Toronto Hunt Golf Club	Private
7	Lambton Golf & Country Club*	Assessment	2002 – 2011	Lambton Golf & Country Club Ltd	Private
8	Scarborough Golf & Country Club *	Assessment	2003 – 2011	Scarborough Golf & Country Club Ltd	Private
9	St. Georges Golf & Country Club *	Assessment	2001 – 2011	St Georges Golf & Country Club	Private
10	Cedar Brae Golf & Country Club	Assessment	2001 – 2011	Cedarbrae Golf & Country Club	Private
11	Centennial Park Golf Centre	Assessment	2006 – 2011	Ontario Realty Corporation (ORC)	Public
12	Dentonia Park Golf Club	Assessment	2006 – 2011	City-Owned	Public
13	Don Valley Golf Course	Assessment	2006 – 2011	City-Owned	Public
14	Donalda Club	Assessment	2001 – 2011	Club Donalda	Private
15	Flemingdon Park	Assessment	2001 – 2002 2006 – 2011	1007454 Ontario Inc	Public
16	Humber Valley Golf Course	Assessment	2006 – 2011	City- Owned	Public
17	Royal Woodbine Golf Centre **	Assessment	2003 – 2011	Toronto Conservation Authority	Public
18	Scarlett Woods Golf Course	Assessment	2006 – 2011	City-Owned	Public
19	Tam O'Shanter Golf Club	Assessment	2006 – 2011	City-Owned	Public

\* Golf Courses with a legal “Fixed Assessment Agreement” in place with the City of Toronto.

\*\* Owned by Toronto Conservation Authority, and leased to a private operator

## Fixed Assessment Agreements

### Background Information

During the late 1950's and early 1960's, when Ontario was in the midst of an unprecedented development boom, there was serious concern that, as cities spread outwards, and suburban areas mushroomed, that land then occupied by golf courses would not be able to withstand the pressures of development. As a result, the *Assessment Act* was amended to include Section 31.

Under Section 31 of the *Assessment Act*, a municipality may enter into an agreement with the owner of a golf course for providing a fixed assessment for the land and premises occupied as a golf course that applies to taxation for general, school and special purposes, (but not including any local improvement levies).

The fixed assessment agreements have provided benefits and burdens to both parties, while relieving development pressures. To the City the benefits include:

- the benefit of green space maintained and insured at the expense of the respective golf courses;
- value-added component of lands adjacent to the golf courses (increased assessment values);
- publicity and exposure from various tournaments, in addition to contributing positive economic effects; and
- the ability to attract people to specific areas within the City as a place to reside.

These agreements establish a “fixed assessment” for the golf course properties, on which the annual property taxes payable are based. Under the fixed agreements, these properties are required to pay property taxes annually, with the taxes payable each year based on the fixed assessment amount stipulated in the agreement (and subject to adjustment each year to reflect any increase in the annual municipal levy- section 23 (9&10) of the *Assessment Act*, R.S.O. 1990.).

The difference between the annual property taxes paid (based on the “fixed assessment”), and the taxes that would otherwise be payable (if no fixed agreement existed), is deferred each year under the terms of the agreement, together with an annual interest charge.

Under the *Assessment Act*, the municipality is required to:

- 1) calculate each year what the taxes would have been on the golf course if it did not have a fixed assessment (including the application of the commercial and industrial cap, and applicable Council approved residential phase-in programs);

- 2) keep a record of the difference between the taxes paid each year (under the fixed agreement) and the taxes that would have been paid if the golf course did not have a fixed assessment;
- 3) debit the golf course with this amount each year;
- 4) add to the debit on the 1<sup>st</sup> day of January in each year the agreed upon interest upon the aggregate amount of the said debit on that date; and
- 5) register each fixed assessment agreement in the Land Registry/Land Titles office in which the golf course is located.

### **Golf Courses in Toronto Subject to a Fixed Assessment Agreement**

Between the years of 1956 and 1970, the former Cities of Etobicoke, North York, Scarborough, Toronto and York, under the authority of the *Assessment Act*, entered into legal agreements with nine (9) private golf courses, providing a fixed assessment for lands and premises occupied as a golf course.

- Rosedale Golf Association Limited, dated June 16, 1956 (supplementary agreement dated April 3, 1984);
- Toronto Hunt, dated October 18, 1956;
- Islington Golf Club Limited, dated January 11, 1958;
- Scarborough Golf and Country Club Limited, dated September 22, 1960;
- Lambton Golf and Country Club, dated May 10, 1961
- St. George's Golf and Country Club Limited, dated December 2, 1963;
- Oakdale Golf and Country Club, dated February 24, 1965 (supplementary agreement dated May 17, 1994);
- Weston Golf and Country Club, dated November 8, 1966; and
- Markland Wood Country Club, dated November 16, 1966.

The Oakdale Golf and Country Club's supplemental fixed assessment agreement was negotiated in conjunction with Public Works Canada (Transport Canada) and the former Corporation of the Township of North York in 1994, for the sale of land to establish a new Outer Marker Non Directional Beacon (NDB) for Pearson Airport; and to increase the square footage of the premises occupied as golf course, without altering or causing termination of the fixed assessment agreement.

The Rosedale Golf Association's 1984 supplemental fixed assessment agreement was renegotiated with the former City of North York Council, therein increasing the fixed assessment value on the premises occupied as part of the golf course.

These agreements were designed to create a disincentive for development and in that regard they have fulfilled their purpose.

Pursuant to subsection 2(6) of the *City of Toronto Act, 1997*, the City of Toronto (City) is bound by all contractual obligations of the former area municipalities. Consequently, the

rights and obligations of the former area municipalities under the fixed agreements are the rights and obligations of the City.

**Legal Opinions on Renegotiation and/or Termination of the Fixed Assessment Agreements:**

Under the terms of the fixed assessment agreements, no termination rights are provided to the City and there are no provisions for renegotiation of any terms, and thus do not provide the City with a means by which to compel the golf course(s) to renegotiate. Only if the parties to the fixed agreements are mutually willing can the terms of the agreement(s) be amended. All nine of the agreements are terminable in the following events:

- 1) On the 31<sup>st</sup> of December in any year, upon the owner of the golf course giving six month's written notice of termination to the municipality; and
- 2) In the event that the land in respect of which the fixed assessment is given or any portion thereof ceases to be occupied for the purposes of a golf course.

In the past, the City Solicitor's Office, in consultation with the Chief Financial Officer and Treasurer, has provided legal opinion that the legislation makes clear that termination rights rest with the clubs, and that there is no option available to the municipality or ability to compel the golf course to terminate the agreements. Further, if the legislation were to be amended, it would have to be retroactive, thereby questioning the legality of the agreements which were entered into good faith, thereby rendering them null and void.

When an agreement is terminated (in whole or part) by the golf course owner, said owner shall:

- i. pay to the municipality that portion of the amount debited against the golf course, including the amounts of the interest debited under the terms of the agreement; or
- ii. require the municipality to purchase the golf course (in whole or part) for an amount equal to the fixed assessment on the whole or that part.