

FINANCIAL MANAGEMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

SUBJECT: ASSESSMENT APPEAL COSTS

RECOMMENDATION:

1. THAT the Mayor, on behalf of City Council, write to the BC Minister of Finance, with a copy of all Metro Vancouver municipalities, and Burnaby Members of the Legislature, requesting a review of the assessment appeal process and respective legislation, as outlined in Section 4 of the report.

REPORT

The Financial Management Committee, at its meeting held on 2021 February 17, received and adopted the attached report providing an update on the assessment appeal costs impacting City finances in 2020, and recommending that the Mayor call on the Minister of Finance to conduct a review of the assessment appeal process.

Respectfully submitted,

Mayor M. Hurley
Chair

Councillor S. Dhaliwal
Vice Chair

Copied to:	City Manager Director Finance Director Corporate Services Director Planning and Building
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TO: CHAIR AND MEMBERS
FINANCIAL MANAGEMENT COMMITTEE **DATE:** 2021 February 11

FROM: DIRECTOR FINANCE **FILE:** 7800-01

SUBJECT: ASSESSMENT APPEAL COSTS

PURPOSE: To update Council on the assessment appeal costs impacting City finances in 2020 and call on the BC Minister of Finance to conduct a review of the assessment appeal process.

RECOMMENDATION:

1. **THAT** the Mayor, on behalf of City Council, write to the BC Minister of Finance, with a copy to all Metro Vancouver Municipalities, and Burnaby Members of the Legislature, requesting a review of the assessment appeal process and respective legislation, as outlined in Section 4 of this report.

REPORT

1.0 INTRODUCTION

The 2020 year has been a difficult year for municipalities trying to manage finances during the COVID-19 pandemic. Revenues, other than property taxation, were vulnerable to the pandemic circumstances, confirming a municipality's reliance on property taxation to function. Any risk to property taxation can bring a municipality's financial sustainability into question.

Recently, the City of Burnaby and many other municipalities have been impacted by significant assessment appeal costs, reflecting multi-year charges, resulting from supplementary roll adjustments from BC Assessment (BCA), which further affected City finances and ultimately property taxation. The City has incurred over \$6.4 million in the form of current and prior year appeal costs, and related interest charges. Other authorities have incurred \$7.8 million (primarily comprised of school taxes at \$6.5 million) for a total of \$14.2 million in appeal costs related to City of Burnaby property appeals in 2020 alone.

Annually, BCA provides municipalities with a Risk to Roll report outlining all outstanding appeals. However, critical information required to accurately assess appeal risk is not factored in; the timing of settlements, in some cases multi-year settlements, and the actual settlement amounts of the appeals are unknown, with many appeals not advancing to payment. While municipalities have the ability to budget for appeal risk or set aside reserves for potential payments, these payments can change drastically from year to year. Any unbudgeted appeal costs in excess of the budget can significantly affect year-end operating results and ultimately impacts the taxpayer.

The purpose of this report is to update Council on the assessment appeal costs impacting City finances in 2020 and outline concerns with the appeal process around the increasing number of appeals, transparency in appeal decisions, instability in assessment values and property valuation and use. The proposed recommendation is that a letter be sent to the Minister of Finance requesting a review of assessment appeal processes and legislation, to address the respective concerns, thereby mitigating any future impacts on property taxation revenue.

2.0 POLICY SECTION

Goal

- A Dynamic Community
 - Economic opportunity – Foster an environment that attracts new and supports existing jobs, businesses and industries
- A Thriving Organization
 - Financial viability – Maintain a financially sustainable City for the provision, renewal and enhancement of City services, facilities and assets

3.0 BACKGROUND

Attachment 1 of this report provides an overview of the assessment appeal process, how property taxes are determined with property assessments provided by BCA and the impacts of maintaining an assessment appeal reserve.

While the City has grown accustomed to the variable nature of appeal costs, the costs incurred in 2020 were well beyond what was anticipated. This is despite the provision of regular information from BCA on pending appeals and recent decisions, and in the case of Burnaby, a good working relationship with the corporation. Like the City of Burnaby, many municipalities are now struggling to understand how best to manage appeal costs going forward.

Table 1 provides a summary of assessment appeal charges incurred by the City of Burnaby over the past five years.

Table 1 - Annual Appeal Expenses:

Expenses	2016	2017	2018	2019	2020
Current Year Appeal Board Decisions	94,938	1,330,747	372,203	(166,514)	708,415
Prior Year Appeal Board Decisions	172,080	712,513	782,669	472,359	5,617,091
Prior Year Interest on Refunds	1,180	10,132	13,511	12,429	118,553
Total	\$ 268,198	\$ 2,053,392	\$ 1,168,383	\$ 318,274	\$ 6,444,059

The City of Burnaby has been affected by the following 2020 appeal decisions outlined in Table 2.

Table 2 – 2020 Appeal Decisions and Associated Costs:

Decision	Sum of Current Year Tax	Sum of Prior Year Tax	Sum of Interest General	Total
Decrease Land Value	457,777	596,853	9,102	1,063,733
Decrease Improvement Value	18,909	613,143	17,603	649,655
Decrease Land and Improvement Value	32,482	31,425	777	64,684
Change Classification/Status	41,016	287,696	655	329,367
Exemption	119,002	213,979	5,481	338,461
Multiple Grounds	39,228	1,158,526	24,166	1,221,919
Split Assessment	-	2,715,470	60,770	2,776,239
Total	\$ 708,415	\$ 5,617,092	\$ 118,554	\$ 6,444,059

The City of Burnaby has not set aside a separate reserve for appeal costs, but does budget for appeal costs based on average expenditure from the prior years and based on discussions with BCA on the progression of appeals. Budgets have increased over the past five years due to larger than anticipated payouts. Due to the significant appeal payouts in 2020, staff have now budgeted for the probable risk to roll appeals costs of \$3.1 million, based on appeals outstanding as of late 2020 November, to be funded from the operating surplus reserve. Since then however, multiple appeals have been settled or withdrawn. As a result, the appeal risk has now reduced to \$1.9 million for 2021 as outlined in Table 3 and will be reflected accordingly during the annual budget process.

Table 3 - Active Outstanding City of Burnaby Appeals:

Appeal Year	Sum of General Taxes	Sum of Other Taxes	Sum of Combined
2015	2,372	1,942	4,314
2016	4,065	3,324	7,389
2017	3,978	7,879	11,857
2018	159,553	137,730	297,283
2019	1,021,173	915,749	1,936,922
2020	670,071	344,486	1,014,557
Total	\$ 1,861,212	\$ 1,411,110	\$ 3,272,322

4.0 APPEAL CONCERNS

The significant appeal costs in 2020 have brought to light numerous concerns regarding the appeal process as follows:

- The number of appeals;
- Transparency in appeal decisions
- Instability in assessment values; and,
- Property Valuation and Use.

4.1 Number of Appeals

Data available from Assessment Link BC (BCA website) for the North Fraser Region suggests an increasing number of appeals being submitted to Property Assessment Review Panel (PARP) on an annual basis. Table 4 shows the roll year within which the appeal was submitted to the Property Assessment Appeal Board (PAAB). As illustrated below, there was a significant jump in the number of appeals in 2019.

Table 4 - North Fraser Region Appeals:

Status	2015	2016	2017	2018	2019	2020
Resolved	220	243	422	635	1,069	449
Outstanding	2	2	2	28	194	480
Total Appeals	222	245	424	663	1,263	929

The significant increase in the number of appeals over the last six years helps to explain why expenses for prior year appeals keep increasing. Based on appeal costs experienced by the City and other municipalities, it would suggest that a majority of appeals are not resolved in the year in which they are submitted.

The 2019 Annual Report of the PAAB confirms the unprecedented number of appeals across many jurisdictions in 2019 as an overarching challenge for the organization’s resources, which have been unchanged for over 20 years. It is clear that the PAAB does not have the necessary resources to meet the increase in appeals. Appeals are often highly complex and can require a significant amount of resources and time to resolve, especially those of a non-residential nature. The growing number of appeals can result in a backlog of complex cases, which in turn could result in the PAAB reaching decisions that it would otherwise not have done so if volumes were not as high.

While the number of appeals are rising, so are the number of appeals being withdrawn. More developers and commercial properties are disputing development potential associated with land holdings. As well, tax appeals through agents that work on behalf of commercial property owners are increasing. With certain appellants there seems to be a trend of appealing a number of properties, being successful on a few and withdrawing the remaining appeals. Only a fulsome review by the Ministry on a wider scale will be able to determine if this trend stands true. Table 5 is based on data from the 2019 PAAB Annual Report and shows the increase in appeals between 2018 and 2019.

Table 5 - PAAB BC Stats - 2018 and 2019:

Appeals by Year		Appeals at Start of Period	Appeals at Dec 31	Appeals Completed Within Period	% Completed Within Period
2019	New Appeals	5191	2581	2610	50%
	Prior Year Appeals	1891	744	1147	61%
	Total	7082	3325	3757	53%
2018	New Appeals	3384	1309	2075	61%
	Prior Year Appeals	2363	582	1781	75%
	Total	5747	1891	3856	67%

An increase in appeals can in itself result in further increases in appeals, as resources are stretched and assessment decisions are made that do not always stand up to questioning. Such assessment decisions have resulted in errors. At times, staff and Councilors have questioned assessment values within the City of Burnaby where a property’s assessment is an anomaly amongst other properties in an area. After questioning by staff and review by BCA, the value of the property in question has been adjusted.

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Alternatively, there have also been situations where a blanket approach has been taken in valuing properties within an area due to nearby sales. When reviewing these assessments, certain properties within that area require adjustments through an appeal as the nearby sale does not translate to the value of the properties. The City and owners of such a property have worked with BCA to correct the assessment value; however, a correction of this sort subsequent to the revised roll has implications on city expenses. There may be other properties in this situation, however if there is no question or appeal, the valuation will stand.

Examples include:

7039 Winston Street - The property owner contacted the city to complain about their assessment and seek advice after the assessment value was increased in 2019 from \$7.9 million to \$25.8 million. No zoning or permit applications had been taken out to warrant the assessment increase, however, the recent purchase of the nearby Saputo site was a major factor in lifting the assessments in the area. A phone call with BCA soon clarified that the assessment was too high and that an adjustment would be forthcoming. The assessment value was subsequently reduced to \$17.2 million. No appeal was lodged. Fortunately, the adjustment occurred prior to the release of the revised roll.

6469 Selma Avenue - Assessed in 2020 at over \$3.4 million, the City identified that neighbouring properties, some larger, had values ranging from \$1 million to \$2 million. After discussion between the City and BCA, it was identified that this was an error, and the assessment value was subsequently lowered for 2021 to \$1.89 million. Unfortunately, this error was corrected subsequently to the revised roll being received by the City, affecting the City's financial results for this unbudgeted item.

In order to mitigate such situations, staff within the Revenue Services Division have now been assigned to evaluate the assessment data from BCA in an attempt to catch such anomalies sooner; however, this should be the remit of BCA. Any adjustments made prior to the revised roll will be absorbed in the tax base without further affecting the City's financial results for the year.

Another possible reason for the increase in appeals appears to be the low fee to file an appeal without any substantiation or justification. Whether a large developer/commercial or a residential property owner files an appeal, the cost is \$30 for an appeal application. The appeal process requires the appellant to file an appeal, however, the appellant at the time of filing the appeal is not required to submit substantiating information (i.e. maps, photos, sales information, property comparison information, financial pro-formas, etc.). The time spent on each appeal becomes problematic with the increase in appeals and lack of transparency from the appellant. Many appellants file an appeal without sufficient information in the hope that they will eventually substantiate their appeal, but then withdraw the appeal when justification cannot be achieved. However, during this time, BCA has also invested resources on such appeals.

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It is recommended that appeal fees be reviewed to differentiate between residential and commercial appeals (i.e. possibly a tiered fee reflective of assessment values) as well as the process be tightened to require sufficient information prior to an appeal being filed. A tiered fee would better reflect the possible resources required for an appeal.

4.2 Transparency in Appeal Decisions

Throughout the appeal process, once an appeal has gone to PAAB, a municipality can partake in appeal proceedings by applying to be an intervener. The PAAB will decide on whether to accept the municipality's application or to deny it. The City does not currently partake in this process as this option requires considerable time and resources in the form of lawyers and market expertise to make a case during the appeal process. The City, as per most other municipalities, therefore relies upon the risk to roll reports provided mid-year by BCA and any advanced information issued by BCA for pending appeal decisions.

Accessing appeal decision information, however, is a challenge. Many appeals are settled through PARP and therefore do not make it to PAAB. While individual appeals can be searched for on the PAAB website, the PARP does not have a website to refer to. General statistical reports are available through Assessment Link BC, but there is no means by which a municipality or member of the public can look up a PARP appeal for the initial appeal reason or PARP decision. While appeals escalated to PAAB do provide limited data, even then, visibility of the original appeal submission is not provided. In addition, the information made available on the PAAB website does not provide an adequate explanation for each appeal decision. Municipalities must reach out to contacts at BCA for additional information including adjustments in assessment values or classifications.

Due to a lack of information from the PAAB, city staff have worked with BCA to obtain a set of categories for appeal decisions that provide relevant information to the City. While this is helpful, it would be advantageous for such a breakdown to be openly available on the PAAB website where it is obtainable by members of the public without having to access BCA. Property owners and municipalities should have access to view the arguments and supporting information submitted by the appellant and their agent to attain complete transparency of the process. Furthermore, by providing the public with an understanding of the appeal process, people will be able to see how the process of undertaking an appeal is not isolated or a rare event.

There are many instances where searches of the appellant on the PAAB website show multiple records for prior and current appeals for multiple properties spanning several years and jurisdictions. Often the appellant is supported by an agent who acts on their behalf, lodging multiple appeals and working through the appeal system to achieve the maximum possible reduction in taxation for their clients. While it makes sense for private, for-profit companies to try and reduce their tax burden, what is not evident from a user of the PAAB website is the impact on municipal and other taxing authority finances from this action.

Additional information on appeal reasons and outcomes would aid the municipality to keep on top of outstanding appeals and decisions as well as ensure sufficient and relevant information is received. This information would need to include all appeals raised throughout the year within comparable categories, including all stages of the appeal, providing transparency on the process and subsequent decisions.

4.3 Instability in Assessment Values/Property Taxation Revenue

A successful appeal for an appellant can result in a number of outcomes; a classification change, exemption status change, or a reduction in the value of land and/or improvement. It is not uncommon for multiple outcomes to transpire. As previously noted, successful appeals, after the revised roll, results in the provision of a supplementary roll adjustment by BCA. This will result in a revision to the levy for the current year or prior year(s). If the levy is reduced, and the property owner has paid their property taxes, then a refund for the overpayment, plus applicable interest is due. The city's portion of the refunds and interest costs is funded by general revenue, with a budget allocation set aside each year. This budget allocation forms part of the overall tax levy required and as such the cost of funding this allocation is spread across all property taxpayers. However, when actual cost exceeds budget, as they have done in five out of the last six years, the extra cost is borne by the City and ultimately the taxpayers.

The net expenditure budget for current and prior year appeals in 2020 was \$1.4 million, compared to actuals of \$6.4 million. In order to recover the \$5 million loss, the City could seek to recover funds by raising the tax rate for 2021, with an additional increase of 1.8%, over and above the current property tax increase. As the City has no ability to control these appeal costs, and given that in a majority of cases it is larger organizations appealing assessments rather than residential or small business owners, recovery of costs across general levy would appear unfair.

Assessment appeals come throughout the year and as experienced in 2020, may relate to appeals generated several years in the past. The City can only estimate when appeal costs and their value are likely to arise, and is reliant on timely and clear information from BCA. BCA provides a risk to roll report mid way through each year, but this does not indicate when assessment appeals are likely to be finalized.

The risk to roll report is also not reliable from the lack of information available at times on claims when the report is distributed. For example, if a claim is submitted without sufficient information, BCA may only assess the probability of the claim at 10% of the assessed value. As more information is received/researched, this potential claim could increase drastically and the municipality would be unaware until the claim is settled and the adjusted assessment value appears on a supplemental roll reflecting an unanticipated payout or a more accurate claim amount is reflected on the following years risk to roll report.

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A change to the current process that would help avoid significant funding shortfalls would be to delay assessment appeal adjustments until the next calendar year, and have them incorporated into the completed and revised assessment roll for that year. Any adjustments subsequent to the revised roll would then be layered into the next years completed roll without the need for supplementary roll adjustments. In this proposal, there would no longer be a tax refund to appellants, however, it would provide for certainty in the levy and limit the impact of an assessment reduction to the classification given to the property, thus eliminating the burden for the municipality to budget for such costs or setting aside respective reserves.

No longer would refunds and interest costs be incurred, nor year-end complications between municipalities and other taxing authorities trying to account for high value appeal costs. The appellant would not benefit as they do today but would still enjoy lower taxes in the coming year. Such a change would require the revision of existing legislation.

What has been suggested is a go forward strategy however any consideration from the Province such as limiting the number of years prior year appeals are paid out (i.e. maximum of 2 years) as well as limiting the assessment adjustments to +/- 10% of the original assessment would also aid in stabilizing appeal payments.

4.4 Property Valuation and Use

Under the Assessment Act, BCA is charged with assessing properties at market value, which is supported by the principle of Highest and Best Use. This means that while a property might have zoning permitting a mix of residential and commercial units, BCA will base its assessment calculation on a property's current use, which could be Class 6 Business. In 2014 an appeal was lodged by the Amacon Group regarding the assessment given to properties on nine lots in the 1000 block of Seymour Street in Vancouver. BCA had assessed the properties as Class 6 Business in the 2013 and 2014 assessments, including portions of the properties earmarked as future residential space. The appellant appealed on the grounds that the Assessment Act specifies that "A property can be Class 1 residential if it is used for residential purposes Section 1 (1) a) of the Prescribed Classes of Property Regulation, or if it has no present use, and is specifically zoned for residential, non-business uses Section 1(1) c) of the Regulation".

The City is supportive of split assessments, with the possibility of alternative rates within classes (i.e. current use vs development potential) where applicable, at the City's discretion. Property Owners have often raised concern that residential portions of potential developments are treated by BCA as Class 6, and therefore incur a Class 6 tax rate, which is higher than that given to Class 1 Residential.

Amacon Group sought to have the assessment split between classes 6 and 1 on the grounds that a portion of the Property had no present use and was specifically zoned for residential, thus meeting the requirements of Section 1(1) c) of the Regulation which permitted split assessments. BCA on the other hand argued that there was a present use for the property, and that the residential portion being air space was not land, and therefore that Section 1(1) c) of the act did not apply. Ultimately the PAAB concluded that the classification of the property should be amended to include the split classification applied for. This case was then appealed to the Supreme Court by BCA. The Supreme Court case concluded in February 2016 that PAAB was correct in its ruling and that it did not error in its interpretation of key areas of the Prescribed Classes of Property Regulation. As such the decision of the PAAB was upheld.

Following this decision, the City had been made aware of an increasing number of appeals raised on the basis of the Amacon decision, however from Table 2, it is clear that the impact of this decision is not transparent. The City of Burnaby is seeking that appeal decisions made based on the Amacon ruling for other appellants is clearly shown in PAAB data, and that the Minister review the volume of such appeals being submitted. If these appeals are growing in number, then this poses a significant potential risk to the city. It needs to be established if BCA are now undertaking assessments based on this ruling or waiting for appellants to lodge an appeal. If the latter, then this poses a risk to the roll that should not rest with municipalities and other taxing authorities. If the Province did not intend for the regulation to be interpreted in this way, it is further recommended that the Minister considers a review of Section 1(1) c) of the Prescribed Classes of Property Regulation for any unintended consequences.

Any adjustments based on re-assessments between Class 6 and Class 1 further shifts the burden of property taxation to the rest of the property tax base. As a municipality needs to raise enough property taxes to balance the budget, lower taxes raised by one class shifts the burden of taxation to other classes.

5.0 CONCLUSION

It is anticipated that the number of appeals will continue to grow and hence, the amount assigned to the City's property taxation risk as per the latest risk to roll has been provisioned for \$3.1 million (equivalent to 1.1% property tax increase) in the 2021 budget to be funded from the surplus operating reserve. This reserve traditionally funds one-time operating projects that would otherwise have to be funded from property taxation.

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6.0 RECOMMENDATION

It is requested that Council recommend the Mayor write a letter to the Minister of Finance, with a copy to all Metro Vancouver Municipalities, and Burnaby Members of the Legislature, requesting a review of the assessment appeal process and respective legislation.



Noreen Kassam, CPA, CGA
DIRECTOR FINANCE

NK:RR / md

Attachment: 1 – BC Assessment – Supplementary Information

Copied to: City Manager
Director Planning and Building

BC ASSESSMENT – SUPPLEMENTARY INFORMATION

BC Assessment (BCA) is as an independent, provincial Crown corporation, governed by a Board of Directors and is accountable to the Government of B.C. The mandate of BC Assessment is to establish and maintain uniform real property assessments throughout British Columbia in accordance with the Assessment Act. The Act also requires that BC Assessment produce annual rolls by the end of the year with assessments at market value as of July 1 of that year.

The Property Assessment Review Panel (PARP) and the Property Assessment Appeal Board (PAAB) are independent of BCA.

1.0 ASSESSMENT APPEAL PROCESS

Notices of Assessments for the prior year are issued by BCA for all properties in BC in early January. When a property owner disagrees with the assessment value assigned by BCA, they may raise their concern with BCA to discuss the assessment value. If the property owner still feels that an appeal of their assessment is justified, they have until January 31 to file a complaint (appeal), to the Property Assessment Review Panel (PARP).

The PARP will conduct a 30 minute hearing with the complainant to hear their arguments. Those filing an assessment appeal must provide the panel with information that compares their property type with similar properties in the same area. Maps, photos and sales information must be provided in support of these hearings, all of which are open to the public. Where the complainant receives an unfavourable decision from the PARP, their next course of redress is to submit an appeal to the Property Assessment Appeal Board (PAAB). The deadline for submission is normally April 30, however this deadline was extended in 2020 to June 1 due to the pandemic. The PAAB hears appeals throughout the year. In extreme cases, appeals involving application of the law may be escalated to the BC Supreme Court.

In most cases, the decisions of the appeal process will result in an amendment of the assessment roll by BCA. This can take the form of a change in assessment classification, or an increase or decrease in assessed value. In most cases, appeals involve a decrease in assessed value, thereby reducing property taxes. The amendment comes to the City in the form of a supplemental roll adjustment.

2.0 PROPERTY TAXATION PROCESS

In late December/early January, the City receives a Completed Roll, which provides all assessment values of properties within the City. The City is able to use the Completed Roll to project property taxation revenues.

At the end of March, BC Assessment sends a Revised Roll to the City. The Revised Roll takes into account any known assessment adjustments at that time. The Revised Roll is used by the municipality to calculate and bill for property taxation. If the Revised Roll is very different from the Completed Roll, municipalities that have not approved their budget by this time have an opportunity to adjust ahead of the May 15 legislated deadline, in accordance with the Community Charter. Alternatively, property tax rates may be increased to cover the additional costs if the budget cannot be adjusted. These options are not available to cities who have approved their budgets by the previous year end. As a result of this process, if BCA sends a supplemental roll adjustment after distribution of property taxation bills, the municipality will need to secure funds to cover the reduced property taxation revenue/appeal payments (i.e. through reserves, cutting costs, deferring programs/projects, etc.).

3.0 ASSESSMENT APPEAL RESERVE

Some municipalities set up a reserve which can hold funds amounting to the entirety or a percentage of the potential claims on the risk to roll information. The uncertainty on timing of potential appeal payments however creates pressures on appeal reserves. The opportunity cost should be considered as these funds could potentially have been used towards other city priorities and programs. Alternatively, insufficiency of funds within an appeal reserve would require the municipality to borrow or take funds from other reserves that were set aside for other operating purposes.