

FINANCIAL MANAGEMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

SUBJECT: ASSESSMENT APPEAL COSTS – UPDATE

RECOMMENDATION:

1. THAT Council receive this report for information.

REPORT

The Financial Management Committee, at its meeting held on 2021 November 17, received and adopted the attached report updating Council on correspondence received from the BC Minister of Finance in regard to the assessment appeal process.

Respectfully submitted,

Mayor M. Hurley
Chair

Councillor S. Dhaliwal
Vice Chair

Copied to:	Chief Administrative Officer Deputy CAO/CFO Director Planning and Building
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TO: CHAIR AND MEMBERS
FINANCIAL MANAGEMENT COMMITTEE **DATE:** 2021 November 10

FROM: DEPUTY CHIEF ADMINISTRATIVE
OFFICER & CHIEF FINANCIAL OFFICER **FILE:** 7800-02

SUBJECT: ASSESSMENT APPEAL COSTS - UPDATE

PURPOSE: To update Council following correspondence received from the BC Minister of Finance with regards to the assessment appeal process.

RECOMMENDATION:

1. **THAT** the Financial Management Committee recommend Council receive this report as information.

REPORT

1.0 INTRODUCTION

On 2021 February 25, Mayor Hurley wrote to the honourable Selina Robinson, BC Minister of Finance, on behalf of Burnaby City Council, to request that an urgent review of BC Assessment processes, including the implication and timing of appeal decisions on property taxation, be undertaken. This followed the imposition of significant appeal costs of over \$6.4 million in 2020, on the City of Burnaby, in the form of current and prior year appeal costs, and related interest charges. A follow up letter was subsequently sent by Mayor Hurley on 2021 June 10, following no response to the original letter.

This report provides a summary of the response from the Minister, dated 2021 October 8. A copy of the letter is provided as Attachment 1.

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

Table 1 provides a summary of assessment appeal charges incurred by the City of Burnaby over the past six years to date:

Table 1 - Annual Appeal Expenses:

Expenses	2016	2017	2018	2019	2020	2021 *
Current Year Appeal Board Decisions	94,938	1,330,747	372,203	(166,514)	708,415	13,912
Prior Year Appeal Board Decisions	172,080	712,513	782,669	472,359	5,617,091	865,402
Prior Year Interest on Refunds	1,180	10,132	13,511	12,429	118,553	8,523
Total	\$268,198	\$2,053,392	\$1,168,383	\$318,274	\$6,444,059	\$887,837

* As at 2021 October 29.

4.0 CITY OF BURNABY CONCERNS

The minister has provided a response to each of the following concerns as raised by the City of Burnaby:

- The number of appeals;
- Transparency in appeal decisions;
- Instability in assessment values; and,
- Property Valuation / Prescribed Classes of Property Regulation.

4.1 Number of Appeals

Recent significant appeal costs incurred by the City of Burnaby highlighted a trend in recent years of property value assessment appeal numbers growing on an annual basis. Such appeals are difficult to manage in terms of their implications on municipal finances, given the uncertain nature of their outcome and timing. These concerns were raised by the City of Burnaby in the February correspondence to the minister.

In responding to the City's concerns, the minister noted that the Attorney General's office has responsibility for the Property Assessment Appeal Board (PAAB), and that discussions will be held between their office and BC Assessment (BCA) to identify any joint actions that could be undertaken to address the appeal backlog.

Staff are pleased to report that recent data would seem to suggest that for the North Fraser Region, there has been a slowdown in new appeal activity, and that BCA is starting to make some headway in clearing the backlog of appeals, with all appeals prior to 2018 now resolved or withdrawn. Staff will continue to monitor these numbers and work with BCA to ensure the authority has the most relevant and timely information to make the most accurate assessment valuations going forward. Table 2 lists appeals for the past six years to date.

Table 2 – North Fraser Region Appeals - as at 2021 October 29:

Status	2016	2017	2018	2019	2020	2021
Appeals	245	424	663	1,264	938	539
Resolved	245	424	653	1,191	818	174
Outstanding	0	0	10	73	120	365
Outstanding %	0%	0%	1.5%	5.8%	12.8%	68%

4.2 Information Sharing and Transparency

In writing to the Minister, Council expressed concern that readily accessible information is not available during all stages of the appeal process. This includes a lack of information relating to appeals heard by the Property Assessment Review Panel (PARP), which precedes possible escalation to PAAB, and is the first level of appeal for property assessments in British Columbia, whereby complainants who have filed an appeal complaint with BCA are awarded a 30 minute hearing before a panel to state their case (currently in person hearings are on hold due to COVID-19). In addition, the information made available on the PAAB website does not provide an adequate explanation for each appeal decision. As such, municipalities must reach out to contacts at BCA for additional information including adjustments in assessment values or classifications.

The Minister conveyed to the City that work will be carried out with BCA regarding timely and complete data sharing. It was noted that consideration will be given to approaching PAAB to revisit how they communicate their decisions to local government. City of Burnaby staff welcome any potential improvement in data sharing at the PAAB stage of the appeal process, but note that improvements in reporting are very much needed very early on in the appeal process, namely from initial submission through to completion of PARP hearings. Therefore, given that members of a PARP receive their appointments from the Minister of Finance, it is feasible that the Province has the ability to completely reconfigure the PARP process. This should involve not only reporting on cumulative appeals to date, as well as withdrawn, settled and rejected appeals, but also on PARP membership, with greater transparency on who is appointed to the panel.

With assessment appeal information only coming to the City after June each year, staff do not have figures for the number of appeals that are withdrawn or settled outside of a formal setting from early January through to late April. Therefore, the true number of appeals being lodged could in theory be much greater than those listed in Table 2. It is therefore felt that continued vocalization of municipal concerns to the Province is warranted until appropriate measures can be put in place to improve transparency in the appeal process.

4.3 Instability in Assessment Values/Property Taxation Revenue

The next area of concern expressed by Council was the implications a successful appeal can have on the assessment roll. It is not uncommon for multiple outcomes to transpire. 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. A change to the current process was suggested to lessen the impact of appeal costs on the tax base.

The province has responded by noting that work has commenced on the Property Assessment Strategic Review, focusing on a long-term property tax mitigation strategy for commercial tenants. As part of this review, the Province is considering two alternatives: The first is the potential for a split classification and the second is to prescribe statutory changes to triple net lease arrangements - which would require an amendment to the Commercial Tenancy Act. City staff welcome such a review, but would like to remind Council that such roll instability also has a significant impact on residential properties, with a cyclical pattern playing out from year to year, with assessment related tax shocks shifting between business and residential classes and back again.

4.4 Property Valuation / Prescribed Classes of Property Regulation

The Prescribed Classes of Property Regulation, B.C. Reg. 438/81 (the "Regulation") provides that land should be classified as Class 6 Business and Other, unless it falls into another class. A property can be Class 1 Residential if it is used for residential purposes (Section 1(1) (a) of the Regulation) or if it has no present use and is specifically zoned for residential, non-business uses (Section 1(1)(c) of the Regulation).

Where such a classification was not provided in the assessment roll by BCA, various entities sought an appeal through PAAB. Initially, PAAB concluded that the classification of the property should be amended to include the split classification. This was appealed by BCA, but ended in a determination by the BC Supreme Court that the PAAB decision was correct. Following the decision, there were several additional assessment appeals, resulting in additional appeal costs for many municipalities. Attempts to overturn the decision of the BC Supreme Court continue, and it is currently unclear how the Prescribed Classes of Property Regulation is being applied in practice. The City's concerns on this matter were raised to the Province in the Mayor's letter dated 2021 February 25.

To: Financial Management Committee
From: Deputy Chief Administrative Officer & Chief Financial Officer
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In their response, it is noted that the Property Assessment Strategic Review will look to address the conflicting decisions on how to split the classification of unbuilt density. City staff are awaiting the results from this review. At this time, a clear timetable, terms of reference, and membership details of the Property Assessment Strategic Review have not been provided to the City.

5.0 RECOMMENDATION

An inter-municipal committee through the Metro Vancouver Regional Finance Advisory Committee (RFAC) continues to meet monthly to understand where the Province is with regards to this policy area. The committee has reached out to the Province to request that municipal government representation be at the table during the Property Assessment Strategic Review. The committee is following up with the Province regularly on this request and the status of the review. Further information will be shared with Council as it is received.

It is recommended that the Financial Management Committee recommend Council receive this report as information.



Noreen Kassam, CPA, CGA
DEPUTY CHIEF ADMINISTRATIVE OFFICER
& CHIEF FINANCIAL OFFICER

NK:RR / md

Attachment: Letter from Selina Robinson - dated 2021 October 08

Copied to: Chief Administrative Officer
Director Planning & Building



October 8, 2021

480386

His Worship Mike Hurley, Mayor
City of Burnaby
mayor@burnaby.ca

Dear Mayor Hurley: *Mike,*

Thank you for your thoughtful letter sent on February 25, 2021, and follow up letter of June 10, 2021 regarding your concerns with property assessment processes and appeals. I appreciate you taking the time to share your ideas and feedback with me. The staff report attached to your letter was also useful in providing focus on the issues you raised.

I apologize for the delay in responding, but I wanted to provide Ministry of Finance (Ministry) staff with the opportunity to fully review your correspondence. In addition, I wanted staff to review your concerns within the context of input received from other municipalities on assessment processes and appeals.

This review has now been completed and I offer the following comments on the four major concerns you raised with the assessment processes and appeals:

The number of annual appeals:

- In response to concerns with the increasing appeals to the Property Assessment Board (PAAB) and the time to resolve them, the Ministry will endeavor to facilitate discussions with the Ministry of Attorney General, which has responsibility for the oversight of PAAB, and with BC Assessment (BCA), to identify any joint actions that could be undertaken to address appeal backlog issues.

.../2

Information sharing and transparency:

- The Ministry will work with BCA on confirming timely and complete data sharing regarding the progress of property assessment appeals and decisions, and potential impacts on municipal revenues and financial planning.
- Consideration may be given to approaching PAAB to revisit how they communicate their decisions, in the context of local government needs. However, PAAB is a quasi-judicial tribunal that delivers its adjudications and decisions completely independent of government. The Ministry will need to consider the independence of PAAB when engaging with them.

Assessment fluctuations and roll instability:

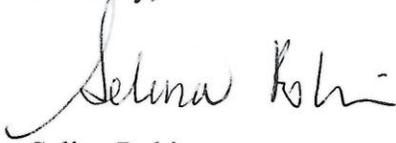
- The unprecedented volatility in the real estate market has impacted the assessment roll and taxation base stability to some extent.
- The Ministry has commenced work on the Property Assessment Strategic Review (Review) which will focus on a long-term property tax mitigation strategy for commercial tenants, particularly small businesses and non-profits, with triple-net leases.
- The Review will include consideration of two approaches: an indirect approach which would reduce tax burden on tenants without altering the triple-net lease structure and tax model (e.g., split classification/exemption/subclass), and a direct approach which would prescribe statutory changes to the triple-net lease tax model (e.g., amend the *Commercial Tenancy Act*).

Application of the Prescribed Property Regulation:

- The regulation allows qualified vacant properties with development potential to be split classified between residential and commercial classes. The purpose of the regulation was to reduce the property tax on these properties (residential taxes rates are substantially lower than commercial).
- The application of this regulation was open to subsequent PAAB and BC Supreme Court decisions, which has resulted in somewhat conflicting decisions on how to split-class development properties with unbuilt density. The Review will consider the issue of split classification and its application, including criteria.

Thank you again for taking the time to write. Your confidence in the assessment and appeal processes are important to us and I appreciate your input on how we can improve it and build a better British Columbia.

Sincerely,

A handwritten signature in black ink that reads "Selina Robinson". The signature is written in a cursive style with a large, sweeping initial 'S'.

Selina Robinson
Minister

cc: Honourable David Eby, Attorney General