CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Taxation Division

TO: Chair and Members
Audit, Finance and Administration Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: March 25, 2013

SUBJECT/REPORT NO:
Delegated Authority By-Law for Assessment Act Appeals (FCS13030) (City Wide)

SUBMITTED BY:
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Acting General Manager
Finance & Corporate Services

PREPARED BY:
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SIGNATURE:

RECOMMENDATION

That Appendix “A” to report FCS13030 “By-Law with respect to delegating authority to the Treasurer and Deputy Treasurers for: Section 40 Assessment Act Appeals and Dispute Advisory Panel Assessment Appeals under Section 11.1 of the Payment in Lieu of Taxes Act (Canada)” be passed.

EXECUTIVE SUMMARY

Sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraph 3 of subsection 10(2) authorizes by-laws respecting the financial management of the municipality.

Tax agents and the Assessment Review Board (ARB) are increasingly challenging municipalities for appeals, filed by the municipality, that have not received formal City Council approval. The attached By-Law (refer to Appendix “A” to report FCS13030) provides the necessary approval to the Treasurer and/or Deputy Treasurers to file
protective appeals, participate in appeals to protect the municipality and to approve settlement of appeals agreed to by all parties.

**Alternatives for Consideration – See Page 4.**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONATIONS** (for Recommendation(s) only)

**Financial:** None.

**Staffing:** None. **Staff in the Taxation Division** already participate in larger appeals and sign-off and process appeals reached either by an ARB ruling or agreed to in Minutes of Settlement by all parties.

**Legal:** None.

**HISTORICAL BACKGROUND** (Chronology of events)

Assessment appeals can seriously impact a Municipality's revenue and budget projections. Any party can file an assessment appeal challenging the value, classification, school support and/or classification proportions that the Municipal Property Assessment Corporation (MPAC) has applied to a property. Generally, there are three parties with rights in any assessment appeal i.e., the property owner, the municipality, and MPAC. Many property owners are also represented by Property Tax Agents. On rare occasions, an independent party can also file an appeal on a property that they do not own.

Historically the Taxation Division of the Corporate Services Department have monitored assessment appeals, participated in appeals and have occasionally initiated appeals both in regards to Section 40 Appeals of the Assessment Act and Payment-in-Lieu-of-Taxes appeals under Section 11.1 of the Payment-in-Lieu-of-Taxes Act (Canada).

There have been recent challenges by Tax agents on the Authority of Treasury/Finance staff in other Municipalities to file appeals, on property, without the authorization of that municipality’s Council.

**POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS**

Sections 8, 9 and 10 of the municipal Act, 2001.
RELEVANT CONSULTATION

Legal Services Division, City Manager’s Office
Finance staff of the Cities of Brampton, Burlington, Oshawa, Ottawa, Peterborough, Sudbury and Vaughan, as well as, the Towns of Milton and Oakville who have created similar by-laws.

ANALYSIS / RATIONALE FOR RECOMMENDATION

Formalizing the Delegated Authority of the City Treasurer and Deputy Treasurers to represent the City’s interest, in any assessment appeals, ensures the City’s rights are protected to initiate appeals, participate in appeals and approve settlements on appeals in a timely and cost-effective manner.

On average, the City processes 2,000 assessment appeal transactions a year and participates in 100 or larger appeals on commercial and industrial properties. On rare occasions, the City has filed appeals and the most recent one in 2005 being the new Federal Building. New construction is monitored to ensure it is selected, on a timely basis, by MPAC and the values are reasonable. City initiated appeals can be costly as the City would be challenging MPAC and the taxpayer often requiring guidance by legal counsel and outside experts. Even with a delegated authority by-law, staff would obtain proper Council approvals for any appeal expenditures requiring unbudgeted financial expenditures.

MPAC is responsible for assessing every property in Ontario and is funded by municipalities. The City of Hamilton’s share of costs to MPAC in 2012 was approximately $6.2m. It is MPAC's responsibility to then defend their values at the ARB. Municipalities, however, are parties to all appeals and the City generally is involved on large commercial and industrial appeals to ensure that any settlement is fair and based on correct assessment principles. That being said, it is important that staff have the ability to initiate, participate and sign-off on appeals, which this by-law will formalize.

When a significant appeal settlement is forthcoming, City Council is updated as to the ramifications (e.g., Golf Course settlement and reductions on any major industrial properties).
ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

City Council would need to approve any City initiated appeals on properties and approve, via committee and council reports, all settlement agreements before the ARB and/or minutes of settlement between property owners and MPAC. There would be no financial, staffing or legal concerns with this. It would require more reports to committee and lead to delays from the taxpayer’s perspective of receiving any settlement refund.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #2
Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective
2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

APPENDICES / SCHEDULES

Appendix A to report FCS13030 – Delegation of authority to the Treasurer and Deputy Treasurers for Assessment Appeals.
CITY OF HAMILTON

BY-LAW NO. __________

Delegation of authority to the Treasurer and Deputy Treasurers for Assessment Appeals

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes and, in particular, paragraph 3 of subsection 10(2) authorizes by-laws respecting the financial management of the municipality;

AND WHEREAS section 40 of the Assessment Act authorizes a municipality to appeal to the Assessment Review Board:

(a) on the basis that:
   (i) the current value of the person’s land or another person’s land is incorrect;
   (ii) the person or another person was wrongly placed on or omitted from the assessment roll;
   (iii) the person or another person was wrongly placed on or omitted from the roll in respect of school support;
   (iv) the classification of the person’s land or another person’s land is incorrect;
   (v) for land, portions of which are in different classes of real property, the determination of the share of the value of the land that is attributable to each class is incorrect; or
(b) on such other basis as the Minister may prescribe.

AND WHEREAS a taxing authority may make an application to review to the Payments-in-Lieu-of-Taxes Dispute Advisory Panel, established under s. 11.1 of the Payment-in-Lieu-of-Taxes Act (Canada), if the taxing authority is in disagreement with a Payment-in-Lieu-of-Taxes it has received;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. In this By-law, “proceedings” means any proceedings related to:
   
   (a) an appeal to the Assessment Review Board under section 40 of the Assessment Act including a review or appeal of an Assessment Review Board decision; or
(b) an application to review to the Payments-in-Lieu-of-Taxes Dispute Advisory Panel established under s. 11.1 of the *Payment-in-Lieu-of-Taxes Act* (Canada) including a review or appeal of a Payments-in-Lieu-of-Taxes Dispute Advisory Panel decision.

2. The Treasurer and the Deputy Treasurers are delegated the authority to commence, maintain and settle proceedings on behalf of the City of Hamilton, subject to such direction as may be given by Council or the appropriate Standing Committee of the City of Hamilton from time to time.

3. The Treasurer's and the Deputy Treasurers' authority to commence, maintain and settle proceedings includes but is not limited to the authority to:

   (a) initiate proceedings or participate in proceedings initiated by another party;
   (b) negotiate and execute Minutes of Settlement; and
   (c) withdraw from proceedings.

4. The Treasurer and the Deputy Treasurers shall use the most efficient combination of staff and external resources, as required, when exercising their delegated authority under this By-law, and, in so doing, may make further delegations.

5. The Treasurer's and the Deputy Treasurers' exercise of their delegated authority under this By-law shall be reported to Council or the appropriate Standing Committee of the City of Hamilton at least once in a calendar year.

6. This By-Law comes into force on the date of its passing.

   PASSED this day of , 2013.

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R. Bratina     R. Caterini
Mayor      City Clerk