



COUNTY OF WELLINGTON

COMMITTEE REPORT

To: Chair and Members of the Administration, Finance and Human Resources Committee
From: Ken DeHart, County Treasurer
Date: Tuesday, June 20, 2017
Subject: **Assessment Review Board: Managing the Future of Assessment Appeals**

Background:

The purpose of this report is to provide the Committee with additional information surrounding the new rules of practice and procedure related to the Assessment Review Board (ARB) and assessment appeals in Ontario. In May, a report was brought forward outlining the new rules and the inevitable impacts on the County and member municipalities. This report offers suggestions on managing the changes and implementing a plan to organize the future case load of appeals.

Managing Caseloads and Scheduling of Events

The ARB reports that 80% of appeals filed within an assessment cycle are filed in year one. In order to manage this volume, the ARB will be working to distribute the caseload evenly over the four year cycle.

Schedule A is an information sheet sent from the Board that summarizes the tasks that are required of municipalities at the present time. In relation to priority properties, each municipality is required to identify which cases they deem 'sensitive' in nature and wish to have scheduled earlier in the cycle. For example, for those properties with the largest assessment value at risk, it may be in the best interest of the County, member municipality and taxpayers to have any potential reduction and refund effect only one tax year and not carry over into two or three appeal years. Submissions must be made by September 1st, 2017 in order to be considered by the Board.

The Municipality's priority list will be provided to the other parties, and considered by the Board when setting the commencement day for an appeal. Once appeals have been scheduled, the Board will send out a commencement date for each case along with the subsequent schedule of events to all parties. The schedule of events must be adhered to or parties risk losing any standing throughout the remainder of the proceeding.

Appointing Representatives for the County and Member Municipalities

Schedule A also outlines that it is now a requirement for municipalities to have an appointed appeal representative and a complaints representative in relation to all proceedings.

The appeal representative will be the main contact for the Board, MPAC, property owners, tax agents, and any other parties to an appeal. They will receive all disclosure documents, statement of issues (SOI) and respond to the statement of issues (RSOI) on behalf of the County and member municipalities. The appeal representative will work closely with all parties to the appeal, external consultants, legal counsel as well as internal staff regarding evidence that may be pertinent to any particular case. They will attend building inspections, settlement meetings, mediations and settlement conferences. That being said, the appeal representative can be changed at any time if the Board and other parties are given notice of the change. For example, in cases where the proceedings become such that legal counsel is required, a lawyer may become the appeal representative for that particular case.

In the past, excessive adjournments and motions had been filed due to parties not being prepared or because they had not received critical documents. The complaints representatives' role would be to help alleviate these issues. They will be available to receive and investigate complaints from other parties regarding the conduct of the Municipality's appeal representative with a view to resolve the complaints within 1 to 2 days, without the Boards involvement.

In keeping in line with the Assessment Base Management (ABM) programme, it is recommended that the Assessment Base Management Coordinator or designate (when necessary) be appointed the appeal representative and that the County Treasurer be appointed the complaints representative, both of whom will act on behalf of the County and member municipalities regarding all appeals.

The County has prepared draft by-laws shown in **Schedule B and Schedule C**. The first by-law will be provided to each member municipality to delegate the rights, responsibilities, powers and duties related to assessment from the member municipality to the County. The second by-law outlines that the County accepts the delegation.

Benefits to the Member Municipalities

Delegation to the County to act as representation on behalf of all member municipalities brings many benefits:

- Member municipalities no longer need to track the progress and status of each appeal
- They are not required to be present at settlement meetings and/or hearing events.
- They do not need to read any statement of issues or prepare a response to the statement of issues
- They do not need to attend building inspections
- They can be confident that all appeals within the thresholds identified in the ABM standard operating procedures are being looked at and defended by the County

The main objective of the ABM programme is to ensure the assessment base is correct, fair and protected from potential loss. By taking an active role in the appeal process, we are furthering the likelihood that we can meet this goal.

Recommendation:

That staff be directed to prepare the necessary by-laws delegating the rights, responsibilities, powers and duties related to assessment to the County; and

That the Assessment Base Management Coordinator or designate and the County Treasurer be named as the appeal representative and complaints representative respectively on behalf of the County and member municipalities; and

That the Assessment Review Board: Managing the Future of Assessment Appeals report be received for information.

Respectfully submitted,



Ken DeHart, CPA, CGA
County Treasurer



ASSESSMENT REVIEW BOARD NEW RULES AND PRACTICES FOR PROCESSING APPEALS IN THE 2017 TO 2020 ASSESSEMENT CYCLE

INFORMATION SHEET IMPORTANT REQUIREMENTS FOR MUNICIPALITIES

INTRODUCTION

The Assessment Review issued new Rules of Practice and Procedure effective April 1, 2017. These Rules were developed in consultation with Board stakeholders, which included representatives from both small and large Municipalities, and members of the executive of OMTRA.

The purpose of this Information Sheet is to alert Municipalities to some of the important practice changes and new administrative requirements that will affect Municipalities.

Municipal Associations (AMO, OMAA, MFOA, AMCTO, OMTRA) have advised the Board that they are developing a shared education strategy for Municipalities regarding the ARB's new Rules of Practice and Procedure. Their objective is to collaboratively develop and deliver a comprehensive suite of information and educational materials that clearly define the roles, responsibilities, available tools and information protocols for Municipalities as part of Ontario's assessment appeal process.

REQUIREMENTS THAT A MUNICIPALITY MUST CURRENTLY ADDRESS

- 1. Provide the Board with a list of properties that the Municipality would prefer be heard earlier rather than later in the current assessment cycle (2017-2020).**

Municipal stakeholders have identified that a Municipality may prefer that appeals respecting "sensitive" properties be heard earlier rather than later in the assessment cycle.

Municipalities may develop their own criteria to determine what they consider to be a "sensitive" property. The Board has not specified a limit on the number of properties that can be identified. However, the Board requests that Municipalities provide the Board with a "short list" of its top priority properties. MPAC and Municipal Associations have advised the Board that they will provide assistance to Municipalities to help them in this process.

Under the new Rules, the Board will assign a "Commencement Day" for each appeal, which is the day on which the parties to that appeal must begin working on it. To help everyone manage their resources effectively, it is the Board's intention to evenly distribute the processing of appeals over the four year cycle. (For example, if the Board receives 48,000 new appeals to be scheduled over 48 months, this means that the Board would schedule 1,000 appeals to start each month.) Once a Commencement Date is set, the work on the appeal starts and it proceeds through the steps (or "Schedule of Events") outlined in the Board's Rules. This is a robust and rigid schedule that must be complied with by the parties.

At the beginning of this current assessment cycle, the Board will engage in administrative meetings with the parties to decide when the processing of each appeal will commence within the current four year cycle. *It is imperative that, early in the current assessment cycle, each Municipality provide the Board with its list of “sensitive” properties, so that the Board can consider a Municipality’s preferences when scheduling appeals.* Please note that, while the Board will attempt to accommodate a Municipality’s preference, there are a number of factors to be considered in determining when an appeal will be scheduled. The final determination regarding scheduling remains with the Board.

The Board will set a due date for Municipalities to file their list of sensitive properties with the Board. The Board currently anticipates that the due date will be September 1, 2017, but will consult with Municipal stakeholders before confirming the due date. The Board cannot guarantee that submissions filed after the due date will be considered.

What the Municipality is required to do right now:

Each Municipality must immediately commence their review of the properties under appeal before the Board (both new appeals filed in respect of the current cycle, and outstanding appeals from previous cycles that have not yet been scheduled to a hearing), to prepare its priority list of sensitive properties.

2. Provide the Board with the contact information for the Municipality’s appeal representative.

The Board’s new Rules introduce the following important changes:

- The past administrative practice of using “waivers” to identify if a Municipality wishes to actively participate in appeal, has been eliminated. Instead, for each appeal proceeding, a Municipality must file a Statement of Response if it wishes to actively participate in an appeal. If a Municipality does not file a response, it is deemed not to oppose any settlement between the other parties to the appeal.
- Other parties will be required to serve the Municipality with all disclosure, Statements of Issue, Statement of Response, and Reply.
- Service of documents on other parties by email is permitted. All documents to be filed with the Board must be filed electronically.

Stakeholders have complained that, in the past, they have had difficulty identifying the legal representatives of other parties. In communicating with a Municipality, the Board’s default contact is the Clerk of the Municipality. However, the Board’s stakeholder’s have advised that, in some cases, communications would not be forwarded from the Clerk’s office to the legal representative who the Municipality has assigned to manage the appeal.

In light of the above, it is imperative that the Board and other parties know who the Municipality’s appeal representative will be. The Board will show this person as the legal representative for all

appeals before the Board. However, please note that the Board understands that a Municipality may subsequently wish to assign a different legal representative to take carriage of a particular appeal. In such cases, the Municipality may change its legal representative, provided that the Municipality first notifies the Board and all other parties of its change of representative.

As the Board may need to communicate with a Municipality regarding the scheduling of appeals, each Municipality must provide the contact information for its appeal representative to the Board by July 1, 2017. If a Municipality fails to provide this information by this date, the Board will assume the appeal representative is the Clerk of the Municipality, until such time as the Municipality advises the Board otherwise.

What the Municipality is required to do right now:

By July 1, 2017, each Municipality must identify who its appeal representative will be, and e-mail the Board (arb.registrar@ontario.ca *) with the appeal representative's name, e-mail address, business phone number, fax number and mailing address.

[* in RE: line of your email please state "Municipal Appeal Representative" followed by the name of your municipality]

3. Identify and provide the Board with the contact information for the Municipality's "complaints representative".

A Municipality's "complaints representative" is a person designated by the Municipality to receive and investigate a complaint from other parties to an appeal regarding the conduct of its legal representative, with a view to resolving the complaint within one or two days.

The rationale for requiring a complaints representative is as follows. The Board's stakeholders have identified that they have experienced difficulties with legal representatives failing to respond to communications from other parties. In order to avoid costly and time consuming motions before the Board to address such problems, the Board's stakeholders have agreed that MPAC, appellant representative firms, and Municipalities, should each identify one person within their organization to receive and investigate, and (hopefully) resolve any complaints, before Board intervention is required.

As the complaints representative will be reviewing the conduct of its legal representative, the complaints representative should be a different person than its legal representative.

What the Municipality is required to do right now:

By July 1, 2017, each Municipality must immediately identify who its complaints representative will be, and email the Board (arb.registrar@ontario.ca *) with the legal representative's name, e-mail address, business phone number, fax number and mailing address.

[* in RE: line of your email please state "Municipal Complaints Representative" followed by the name of your municipality]

SUMMARY

The intent of the changes introduced in the Board's new Rules and administrative practices is to promote fairness (which includes efficiency), to ensure that processing of all appeals is commenced within the four year cycle and that all appeals are completed on a timely basis.

The initiatives described above are just some of the changes introduced in the Board's new process. The Municipal Associations have advised the Board that their shared education strategy will also provide further education and communications regarding other important changes.

These changes are an integral part of the Board's new process. Each Municipality's co-operation in meeting these mandatory requirements will promote the timely resolution of all appeals filed with the Board.



The **Environment and Land Tribunals Ontario (ELTO)** includes the Assessment Review Board, Board of Negotiation, Conservation Review Board, Environmental Review Tribunal, Ontario Municipal Board, Niagara Escarpment Hearing Office and the Office of Consolidated Hearings. The Tribunals operate under specific legislative requirements and share resources and best practices. The Assessment Review Board hears appeals from persons who believe there is an error in the assessed value or classification of a property and also deals with some types of property tax appeals under the Municipal Act and City of Toronto Act. For more information contact us at:

Environment and Land Tribunals Ontario

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5
Telephone: (416) 212-6349 or toll free: 1-866-448-2248
Website: www.elto.gov.on.ca

THE CORPORATION OF THE TOWNSHIP OF _____

BY-LAW NO. _____

A By-Law to Appoint The Corporation of the County of Wellington to be the Corporation's Agent for Certain Matters Related to Assessment

WHEREAS the Council of The Corporation of the Township of _____ (the "Municipality") has the jurisdiction to: (i) request that the Municipal Property Assessment Corporation ("MPAC") reconsider assessment and taxation matters under the Assessment Act (Ontario), as amended; and (ii) appeal matters of assessment and taxation under the Assessment Act (Ontario), as amended (the "Assessment and Taxation Appeals");

AND WHEREAS the Municipality's jurisdiction under the Assessment Act (Ontario), as amended, includes the right to respond and actively participate in Assessment and Taxation Appeals initiated by taxpayers;

AND WHEREAS The Corporation of the County of Wellington (the "County of Wellington") has the same jurisdiction for Assessment and Taxation Appeals under the Assessment Act (Ontario), as amended;

AND WHEREAS the County of Wellington has developed an Assessment Base Management Policy whereby the County of Wellington will exercise its jurisdiction for Assessment and Taxation Appeals that meet specific criteria and thresholds as set out in the said Policy, which criteria and thresholds may be amended from time to time (the "County Assessment and Taxation Appeals");

AND WHEREAS the Council for the Municipality wishes to enact this By-Law to appoint the County of Wellington to act as its agent for the County Assessment and Taxation Appeals;

NOW THEREFORE the Council of the Municipality hereby enacts as follows:

1. The Municipality hereby appoints the County of Wellington to act as its agent for the purposes of the County Assessment and Taxation Appeals and, as such, the County of Wellington shall have full carriage of the County Assessment and Taxation Appeals which may be exercised by the County of Wellington in its sole and absolute discretion.

2. Without limiting the above, the Municipality hereby confirms that, under Section 1 herein, the Municipality has appointed the County of Wellington to exercise the following rights, powers, duties and responsibilities with respect to the County Assessment and Taxation Appeals:

(a) The exclusive right to prosecute, enter into negotiations, agreements or settle the County Assessment and Taxation Appeals, with any such agreements and/or settlements being binding on both the Municipality and the County of Wellington;

(b) The exclusive right to retain and instruct agents, experts, legal counsel and other representatives;

(c) The exclusive right to initiate appeals to the Assessment Review Board;

(d) The exclusive right to respond to and actively participate in County Assessment and Taxation Appeals initiated by taxpayers;

(e) The exclusive right to request that MPAC reconsider any permitted matters as prescribed under the Assessment Act (Ontario), as amended, or its Regulations;

(f) Take any other actions or decisions necessary in order to prosecute, settle, enter into negotiations or resolve the County Assessment and Taxation Appeals.

The County of Wellington's appointment as the Municipality's agent is granted on the basis that the County of Wellington shall pay all costs relating to the County Taxation and Assessment Appeals.

3. The Municipality hereby acknowledges that the scope of the County of Wellington's rights, powers, duties and responsibilities contemplated herein are limited to the County Assessment and Taxation Appeals. The Municipality confirms that the Assessment and Taxation Appeals that do not meet the criteria and thresholds set out in the County of Wellington's prevailing Assessment Base Management Policy, as amended from time to time, shall not be handled by the County of Wellington. Nothing in this By-Law shall be construed as an appointment for the County of Wellington to act as agent for the Municipality for any Assessment and Taxation Appeals other than the County Assessment and Taxation Appeals.

4. The Municipality hereby authorizes and directs the Mayor, the Clerk and staff to take such further actions and execute such documents that may be required for the due carrying out of the foregoing.

Read a FIRST, SECOND and THIRD time and finally passed this day of ,
2017.

Mayor

Clerk

4540899.1

THE CORPORATION OF THE COUNTY OF WELLINGTON

BY-LAW NO. _____

A By-Law to Accept Member Municipalities Delegation of Rights, Responsibilities,
Powers and Duties Related to Assessment

WHEREAS the Council of The Corporation of the Township of _____ (the "Municipality") has the jurisdiction to: (i) request that the Municipal Property Assessment Corporation ("MPAC") reconsider assessment and taxation matters under the Assessment Act (Ontario), as amended; and (ii) appeal matters of assessment and taxation under the Assessment Act (Ontario), as amended (the "Assessment and Taxation Appeals");

AND WHEREAS the Municipality's jurisdiction under the Assessment Act (Ontario), as amended, includes the right to respond and actively participate in Assessment and Taxation Appeals initiated by taxpayers;

AND WHEREAS The Corporation of the County of Wellington (the "County of Wellington") has the same jurisdiction for Assessment and Taxation Appeals under the Assessment Act (Ontario), as amended;

AND WHEREAS the County of Wellington has developed an Assessment Base Management Policy whereby the County of Wellington will exercise its jurisdiction for Assessment and Taxation Appeals that meet specific criteria and thresholds as set out in the said Policy, which criteria and thresholds may be amended from time to time (the "County Assessment and Taxation Appeals");

AND WHEREAS the Municipality has by By-Law No. _____ (the "Municipality's By-Law") delegated its authority and appointed the County of Wellington to act as its agent for the County Assessment and Taxation Appeals;

AND WHEREAS the Council for The Corporation of the County of Wellington wishes to enact this By-Law to confirm its agreement to act as the Municipality's agent for the County Assessment and Taxation Appeals;

NOW THEREFORE the Council of the County of Wellington hereby enacts as follows:

1. The County of Wellington hereby accepts its appointment as the Municipality's agent for the Municipality for the County Assessment and Taxation Appeals and, as such, shall have full carriage of the County Assessment and Taxation Appeals which may be exercised by the County of Wellington in its sole and absolute discretion.

2. Without limiting the above, the County of Wellington hereby confirms its agreement to fulfill the following rights, powers, duties and responsibilities with respect to the County Assessment and Taxation Appeals;

(a) The exclusive right to enter into negotiations, agreements or settle the County Assessment and Taxation Appeals, with any such agreements and/or settlements being binding on both the Municipality and the County of Wellington;

(b) The exclusive right to retain and instruct agents, experts, legal counsel and other representatives;

- (c) The exclusive right to initiate appeals to the Assessment Review Board;
- (d) The exclusive right to respond to and actively participate in County Assessment and Taxation Appeals initiated by taxpayers;
- (e) The exclusive right to request that MPAC reconsider any permitted matters as prescribed under the Assessment Act (Ontario), as amended, or its Regulations;
- (f) The County of Wellington shall pay all costs relating to the County Taxation and Assessment Appeals; and
- (g) The County of Wellington shall take any other actions or decisions necessary in order to prosecute, settle, enter into negotiations or resolve the County Assessment and Taxation Appeals.

3. The County of Wellington hereby acknowledges that the County of Wellington's role as the Municipality's agent is limited to the County Assessment and Taxation Appeals. The County of Wellington confirms that the Assessment and Taxation Appeals that do not meet the criteria and thresholds set out in the County of Wellington's prevailing Assessment Base Management Policy, as amended from time to time, shall not be handled by the County of Wellington. Nothing in this By-Law shall be construed as an acceptance by the County of Wellington to act as agent for the Municipality for any Assessment and Taxation Appeals other than the County Assessment and Taxation Appeals.

4. The County of Wellington hereby authorizes and directs the Warden, the Clerk and staff to take such further actions and execute such documents that may be required for the due carrying out of the foregoing.

Read a FIRST, SECOND and THIRD time and finally passed this day of ,
2017.

Warden

Clerk

4540895.1