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# HALDIMAND COUNTY

Report FIN-04-2025 Section 356 Apportionment Billing - 64 Main St N,  
Hagersville



For Consideration by Council in Committee on February 25, 2025

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## OBJECTIVE:

To apportion \$141,781.71 in outstanding property taxes for 64 Main St N, Hagersville, to the newly created parcels in accordance with Section 356 of the Municipal Act.

## RECOMMENDATIONS:

1. THAT Report FIN-04-2025 Section 356 Apportionment Billing – 64 Main St N, Hagersville be received;
2. AND THAT in accordance with Section 356(1), Haldimand County divide and apportion \$141,781.71 in unpaid taxes among the tax rolls as detailed in Attachment 1 to Report FIN-04-2025.

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**Reviewed by:** Tareq El-Ahmed, Treasurer

**Respectfully submitted:** Mark Merritt, CPA, CA, General Manager, Financial & Data Services

**Approved:** Cathy Case, Chief Administrative Officer

## EXECUTIVE SUMMARY:

The combination of a recent process change by MPAC and unprecedented new types of development within Haldimand County, has necessitated the use of Section 356 of the Municipal Act to apportion unpaid taxes, in the amount of \$141,781.71, amongst parcels that were created/severed from the original parcel, which has since been inactivated due to the severances. Taxes remain unpaid on this inactivated roll despite normal collection efforts.

This amount is primarily composed of taxes representing supplemental and omitted assessments for taxation years 2022 and 2023 levied against the parent roll. These particular taxes represent the value of the specific units occupied prior to the official registration of the condominium plan, which encompass 68 of the 77 total units. These 68 units are recommended to be apportioned an average of \$2,071.01. Those 9 units that were occupied after registration have already received their individual supplemental/omitted assessment & associated taxes and are recommended to be apportioned an average of \$105.17 related to their share of the property taxes on the land assessment only.

Notice of this report, in accordance with Section 356, has already been provided to the property owners in question. After a Council decision, property owners may appeal the decision to the Assessment Review Board within 35 days. Staff are of the opinion that the method in which these unpaid taxes are apportioned are fair and equitable despite the time that has elapsed since the registration in December 2022.

## BACKGROUND:

In 2022, the developer owning 64 Main St. N., Hagersville constructed a mid-rise residential condominium with units beginning occupation on October 26, 2022. However, the condominium plan was not officially registered until December 20, 2022. While this practice is not atypical across the province, it does pose some logistical problems for property tax departments.

Beginning in 2019, MPAC revised the process on issuing Property Assessment Change Notices (PACNs) on new residential condominiums as a result of an ARB decision in 2018. This change was implemented to comply with existing legislation to issue PACNs to the owner of the land. For a condominium, the owner of the land is the developer until the Condominium Plan is officially registered with the Land Registry Office. Staff were unfamiliar with this new process and its associated ramifications with the lack of condominium development occurring within Haldimand County. Through consultations with MPAC and other municipalities, staff have finalized the timeline of events, which are summarized below, and the required next steps.

## Timeline

1. January 1, 2022 - Single roll number ("Parent Roll") represented the entire property with a value of \$290,000 in the CXN (Commercial Vacant Land) assessment class.
2. October 26, 2022 - Units began occupation.
3. December 20, 2022 - Condominium plan was officially registered.
4. January 1, 2023 – Returned roll value for property remained at \$290,000 CXN.
5. February 13, 2023 - SCIF (Severance & Consolidation Information Form) provided to Haldimand County by MPAC. This form converted the land value from CXN to RT (Residential) on the parent roll and split it amongst the 77 applicable units, the "children rolls". This was not actioned by Haldimand County in accordance with our standard operating procedures (SOPs) in place at that time. These SOPs have since been refined to account for this scenario.
6. April 3, 2023 - MPAC notified Haldimand County of Supplemental and Omitted Assessments to be billed for taxation years 2022 & 2023 related to this property and issued PACNs as follows:
  - a. To the developer for the first occupied units (2) – effective October 26, 2022.
  - b. To the developer for the remaining units occupied (66) between October 26, 2022 and the registration date. The effective date on this PACN represents the average occupancy date of these units – November 21, 2022.
  - c. To the individual units that began occupation after the registration date, effective on their respective occupation date.
7. April 3, 2023 – MPAC provided a developer report to the developer/owner of the parent roll. This developer report outlines the information required to collect those taxes from the individual units.
8. August 2023 – Staff issued supplemental/omitted bills to the values and dates corresponding to the PACNs above.
9. January 1, 2024 – Parent roll inactivated.

This resulted in the vast majority of the assessment related to this development billed to a tax roll which legally has been severed to the new owners of the occupied units. Despite regular collection efforts, such as sending arrears letters, the amount remains unpaid.

Since the parent roll is no longer active and has been subdivided, Haldimand County has limited recourse (i.e., Public Tax Sale) to collect on amounts outstanding without completing an apportionment of unpaid taxes.

## Section 356 of the Municipal Act

The Municipal Act, 2001, SO 2001, c 25, S.356 (The Act) provides for a method of collecting unpaid taxes on land that has been legally severed. In order to collect the amount outstanding of \$141,781.71 on the parent roll, staff are recommending to utilize this section of The Act.

Section 356 of The Act states:

*(1) Upon application by the treasurer of a local municipality or to the treasurer by an owner of land, the local municipality may,*

*(a) divide, for the purposes of this section, land which is assessed in one block into two or more parcels;*

*(b) apportion the unpaid taxes on the land among the parcels,*

*(i) in proportion to their relative value at the time the assessment roll for the year in which the application is made was returned, or*

*(ii) if council is of the opinion that an apportionment under subclause (i) is not appropriate due to special circumstances, any other manner.*

This section and its applicable timeline are very similar to a S. 357 adjustment (Cancellation, Reduction, Refund of Taxes) whereby property owners can apply to the Treasurer/Council under specific conditions to have their property's assessed value (and therefore taxes) reduced/changed. Staff bring forward a report under this section four times per year, most recently on November 19, 2024 under "FIN-18-2024 Application for Assessment and Tax Adjustments – Sections 357, 358, 359 Municipal Act as of October 2024".

In order for staff to properly apportion the supplemental/omitted taxes, in accordance with the Act, MPAC provided a statement of the relative value of the parcels via a "Condo Plan Information Form" (CPIF). This statement is conclusive and cannot be appealed.

This CPIF closely resembles the developer report that was provided to the developer. The intention of this report is that since the supplemental/omitted taxes are billed against the parent roll for units occupied prior to registration, they are the responsibility of the developer who now has a breakdown of how to allocate those taxes amongst the purchased units. Municipalities across the provinces have expressed concerns on this process to MPAC as it relies on the developer to take action (bill the units accordingly) but the experience has been they often do not. MPAC's hands are however tied based on the aforementioned 2018 ARB ruling. If the developer does not collect and remit those taxes, municipalities have extremely limited recourse. In the future, staff will be cognizant of the timing and information received from MPAC to allow us to process the severances on newly occupied condominiums as they occur. This will avoid any delays in apportionment of the property taxes or the need to use S. 356 of the Act to do so.

Section 356(4) of The Act continues to state the process by which this application must follow:

*(4) On or before September 30 of the year following the year in which the application is made, council shall,*

*(a) hold a meeting at which the applicants and owners of any part of the land may make representations to council;*

*(b) notify the applicants and owners of the meeting by mail sent at least 14 days before the meeting; and*

*(c) make its decision.*

Staff mailed letters on February 11<sup>th</sup>, 2024 in accordance with this timeline and outlined the entire process for the property owners. Within 14 days after making its decision, staff will notify the owners of the decision.

Of important note, similar to S.357 applications, this decision may be appealed to the Assessment Review Board (ARB) within 35 days after Council makes its decision (S.356(6) of The Act). However, an appeal in this case can only be made under clause (1)(b) above, namely how Council decides.

After a decision of Council, or the Assessment Review Board if that decision is appealed, the Treasurer of Haldimand shall adjust the tax roll as decided. A supplemental tax bill will be issued and will be payable in 2 instalments due a minimum of 30 days and 90 days from the bill date in accordance with Haldimand County procedures.

## ANALYSIS:

Attachment 1 – Apportionment Amounts Recommended attached to this report provides the details in which to apportion the unpaid \$141,781.71 to the respective 79 properties. Staff are of the opinion that utilizing S.356(1)(b)(ii) is appropriate for the following amounts:

- Apportion **\$3,779.30** in taxes to the 77 units outlined in the SCIF, provided by MPAC. This amount represents the nominal land value of the original (parent) and newly created (children) rolls. This tax amount to apportion represents the Council-Approved final RT rates between December 20, 2022 (the registration date) to December 31, 2023 multiplied by the assessed value (\$290,000).
- Apportion **\$134,182.60** in taxes to the 68 units that were occupied prior to the registration date, between October 26, 2022 and December 20, 2022. This tax amount to apportion represents the Council-Approved final RT rates between October 26, 2022 to December 31, 2023 multiplied by the assessed value (\$9,564,000). The individual assessments related to each unit were evaluated by MPAC and obtained by the County via the CPIF.
  - o The two units that were first occupied on October 26, 2022 have their apportioned taxes calculated with that effective date.
  - o The remaining 66 units have their apportioned taxes calculated using the average occupation date between October 26, 2022 and the registration date, in accordance with MPAC processes. This effective date is November 21, 2022.

The assessments used to prorate these amounts are outlined in Attachment 2 – Assessment Values Provided by MPAC. In effect, the amounts apportioned above could be thought of as supplemental/omitted taxes that were never billed (and therefore never paid) as the calculation the County would perform would be identical if MPAC provided a PACN to each individual unit owner as opposed to the developer/parent roll as they did prior to the process change in 2019. In addition, owners who occupied their units after registration already received their supplemental/omitted bills in 2023 so staff are of the opinion that this is a fair and equitable solution.

After the above apportionments, **\$3,819.27** would remain as unpaid taxes on the parent roll. This amount primarily is made up of unpaid 2022 taxes but also includes penalty and interest, user fees, and unpaid water & wastewater arrears that the developer never paid prior to registration. Staff are of the opinion that utilizing S.356(1)(b)(i) is appropriate for this amount, which apportions the balance between all 79 properties severed from the parent roll, the 77 units and 2 roll numbers representing the storage lockers and the parking lot. The value used to prorate these unpaid taxes is the 2025 assessed value for each property on the returned roll, in accordance with this section of The Act. On average, this apportioned amount equates to \$48.34 for each property.

In total, each property that was not yet billed supplemental/omitted taxes (68 - occupied pre-registration) will receive an average apportionment of property taxes totaling \$2,071. Properties who have already received supplemental/omitted taxes (11 – occupied post-registration) will receive an average apportionment of \$105. These apportionments will be billed similarly to the existing supplemental billing process; payable in two instalments where the due dates will be set a minimum of 30 days and 90 days from the bill date.

As mentioned, this recommendation/decision but more specifically the method of apportioning the unpaid taxes, can be appealed to the ARB by an owner. However, staff utilized either subsection (1)(i) (the relative value of the 2025 returned roll), or a conclusive report provided by MPAC under subsection (1)(ii) as the methodology. Both the SCIF and CPIF are statements provided by MPAC in accordance with Section 356(2) of The Act, and as such, these statements are conclusive and the statements themselves are not subject to appeal. Therefore, staff feel confident that all amounts apportioned are likely to hold up against a degree of rigour if appealed.

Staff are appreciative of the length of time that has passed since the timeline above, but careful time and consideration was required to recommend this action plan to Council, the public, and the affected property owners given that this is/was a brand-new process to the County.

Instances may occur where property owners are levied apportioned taxes on property which they currently own but did not own for the period this adjustment applies. As with other tax liabilities, the apportioned taxes are the responsibility of the new owner and any tax adjustments required between the current owner and a previous owner should be made through a readjustment of closing costs through the real-estate lawyers. Owners may also desire to seek compensation from the developer.

## **FINANCIAL/LEGAL IMPLICATIONS:**

Apportionment billing will not generate any additional revenue for the County but will give the County proper legal authority to apportion and ultimately collect on these unpaid taxes.

## **STAKEHOLDER IMPACTS:**

Not applicable.

## **REPORT IMPACTS:**

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

## **REFERENCES:**

None.

## **ATTACHMENTS:**

1. Apportionment Amounts Recommended
2. Assessment Values Provided by MPAC