


Report

Date	December 4, 2019	File:
To	Council	
From	Ted Swabey, Chief Administrative Officer	Endorsed: 
Subject	VIMC Claim for Damages and Property Tax Implications	

Purpose

To provide information regarding potential property tax increase scenarios based on a successful claim by Vancouver Island Motorsport Circuit (VIMC) against the Municipality of North Cowichan.

Background

We have been put on notice that VIMC will seek damages for \$60+ million in the event we do not issue a development permit for phase 2 of its project. Up until this point, we have provided staff's best efforts to ensure Council understands the legal risks associated with how the VIMC approvals have been handled and the implications of decisions surrounding the comprehensive zoning application. We have also provided comprehensive advice on the process and implications of not mitigating the liability of this issue.

At the Special Closed meeting held October 16, 2019, Council passed the following resolution:

That Council direct staff to prepare a report on establishing a liability reserve fund related to VIMC and (in consultation with our Solicitor) the report should recommend an annual amount to be included in this reserve for the next five years or until the extent of a claim is managed.

This report provides an overview of this issue and a recommendation respecting how to address the budget allocation related to a successful claim by VIMC. It is also an opportunity to provide an update for Council respecting staff's discussion with our insurer and to provide the tax implication scenarios related to paying for a successful claim made by VIMC.

Discussion

As Council is aware, staff believe we have significant budget challenges facing us over the next number of years. Without adjustments to the work expectations (i.e. projects), service levels (i.e. reduction) or major increases to our revenues (i.e. development approvals, forestry harvesting, etc.), we will be faced with 5%+ tax increases for the foreseeable future. These challenges are related to the following budget drivers, which are known issues for us at this point:

- New RCMP detachment
- Loss of forestry revenue
- Safer Community Plan implementation and increasing bylaw enforcement issues

- Loss of revenue from land sales
- New strategic priorities
- Asset management
- Crofton Fire Hall replacement
- Operations Building replacement

The potential liabilities associated with the VIMC claims for damages cannot be ignored and have potentially devastating implications over the next ten plus years.

Options

If a judgement of \$60 million were awarded against the District, there would be two options:

1. One time tax increase.
2. Borrow some or all of the judgement and repay over time. A major constraint on how we fund a claim of this size is our Liability Servicing Capacity Available, which is only \$7.3 million. This is the amount of debt servicing available to borrow, \$34 million over five years and \$70 million over ten years. To serve a debt of \$40 million; we would have to pay it out over ten years. This means we will incur large interest charges of approximately \$5.7 million.

A judgement of \$60 million insured (net \$40 million) would result in a one-time tax increase of 133%.

- This would equate to a one-time increase of \$2,164 for an average home and \$8,134 for an average business.
- Borrowing over 10 years would result in annual loan payments of \$4.6 million per year, equating to a 15% tax increase.
 - Average home \$250 increase for 10 years (\$2,500 total)
 - Average business \$930 increase for 10 years (\$9,300 total)
 - Total interest paid \$5.7 million

In addition to these tax increases an additional tax increase of 3% (best guess) would be required to pay for our insurance premiums during these ten years.

Schedule A identifies the tax implications described above, including other lesser scenarios ranging from a \$10 million dollar liability (better case scenario) to a \$60 million dollar liability (worst case scenario).

Implications

The tax ramifications for any judgement in the range of \$40 to \$60 million are staggering. At \$40 million, this is equivalent to two RCMP buildings or two Aquatic Centres. Borrowing would make increases slightly more palatable but would use up a large portion of the District's borrowing power and cost millions in interest. The opportunity costs of this expenditure would be the tax room used up that could have been used to advance Council's priorities.

North Cowichan's insurance brokers have difficulty quantifying the magnitude of an increase in insurance premiums that a claim of this magnitude would have.

Summary

As noted in this report, we have a potential liability that is beyond our means to address fully.

Our current premiums are approximately \$300,000 per year, and our insurance claims vary year to year (but have not exceeded \$160,000 in recent years). This notwithstanding, we have historically had several larger settlements paid out at between \$1 to \$3 million, and it only takes one significant claim to clear out any settlement reserve we create.

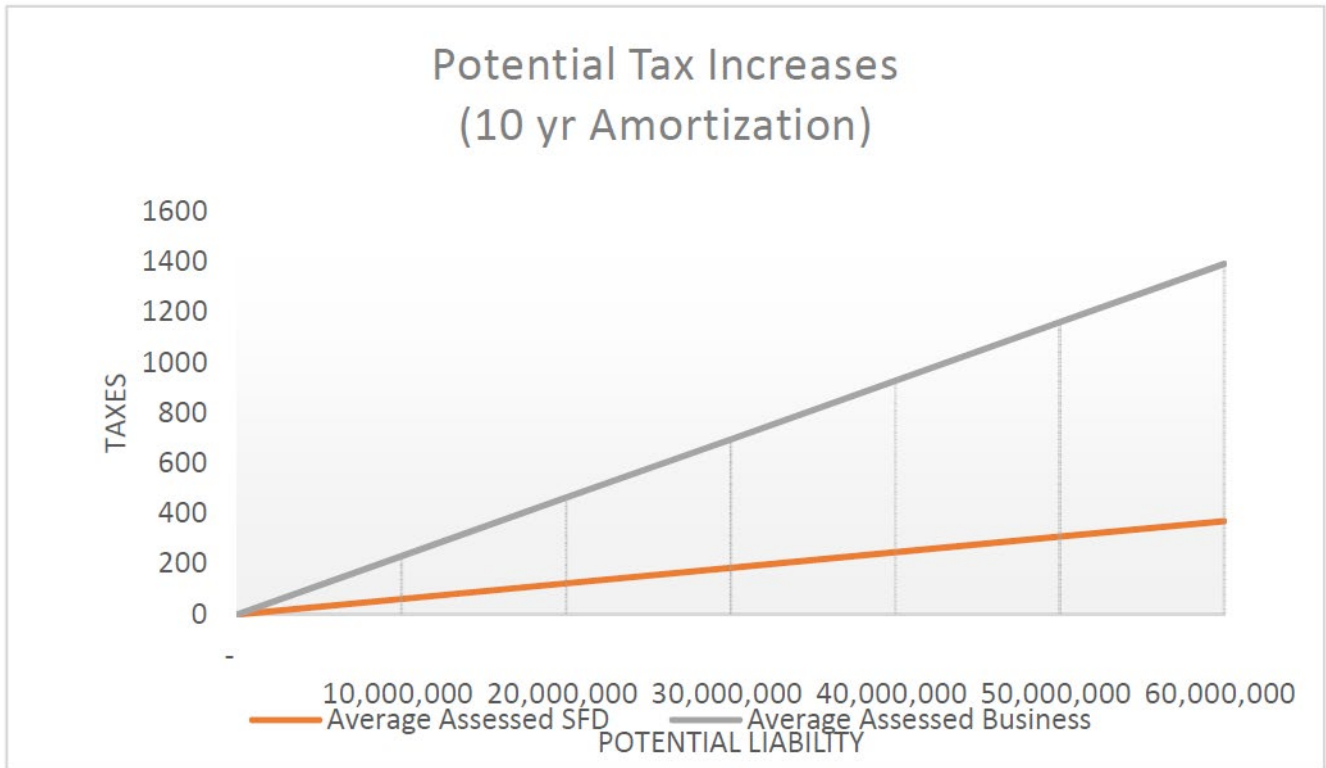
The scale of a potential claim would be known within three years, and we could not build enough of a reserve in that time to significantly address this issue without unprecedented tax rate increases.

This notwithstanding, this potential liability requires attention starting in the 2020 budget. To this end, staff recommend an ongoing 0.5% tax be allocated to a reserve for insurance purposes. This will provide approximately \$150,000 per year into a reserve account.

Staff recommend that this information be made public as part of the public hearing process to ensure transparency in Council's decision.

Attachment: Schedule A – Projected Tax Increases

SCHEDULE A



PROJECTED FIGURES DO NOT INCLUDE:

- Insurance Premium increases
- Legal fees (estimated \$1,000,000)