



Hamilton

INFORMATION REPORT

**AFFECTS
WARD 3**

To:	Chair and Members Planning and Economic Development Committee Outstanding Business Item No. AA and Issue: BIOX PED06037(a)		
From:	Lee Ann Coveyduck General Manager Planning and Economic Development Department	Telephone: Facsimile: E-mail:	905 546-4339 905 546-4364 lcoveydu@hamilton.ca
Date:	February 27, 2006		
Re:	ERASE Redevelopment Grant Application (ERG-05-01) - BIOX Canada Ltd., 41 Oliver Street (PED06037(a)) (Ward 3) - Referred from Planning and Economic Development Committee of February 7, 2006		

Council Direction:

That staff be directed to report back addressing the following:

- a chronology of events leading to BIOX application and recommendation;
- whose responsibility is a clean-up of lands owned by the Federal Government and lands administered by the Port Authority;
- the concerns raised by the delegations, including but not limited to how a future clean-up of the site would be handled and paid for; the damage to residential homes; who is responsible and when will the money be forthcoming; the inappropriate method of demolition on the BIOX site; and,
- direction to staff to establish negotiations between the residents, Environment Hamilton, BIOX, City representatives, the Federal Government and any other appropriate agencies to make sure the issues raised, as noted above, are addressed.

Information:

- **A chronology of events leading to BIOX application and recommendation:**

The first "BIOX" report went to the Planning and Economic Development Committee on December 7, 2004. Councillor Merulla and Councillor McHattie made a motion not to endorse the application, which was carried by the Planning and Economic Development Committee. At the following Council meeting of December 15, 2004,

SUBJECT: ERASE Redevelopment Grant Application (ERG-05-01) - BIOX Canada Ltd., 41 Oliver Street (Ward 3) - Referred from Planning and Economic Development Committee of February 7, 2006 - Page 2 of 4

the BIOX report was referred back to the Planning and Economic Development Committee scheduled for January 6, 2005 along with a new section amended to support BIOX.

Both the Hamilton Port Authority and BIOX made a presentation to the Planning and Economic Development Committee on January 6, 2005. At this meeting, BIOX and the Hamilton Port Authority referenced that the property was contaminated and demolition and clean up would be necessary. However, staff do not recall any mention of an application to the ERASE program at that time. At the January 12, 2005 Council meeting, Mayor Dilanni and Councillor Kelly made a motion to support BIOX . Motion was carried.

In regard to the application, on August 16, 2004, Mr. Luc Piccioni of the Economic Development Department had initial discussions with representatives from the Hamilton Port Authority, BIOX and AMEC Earth and Environmental (environmental consultants retained by BIOX) prior to his departure from the City. Current Department staff was not aware of the application until it was submitted by BIOX on October 12, 2004.

The major issues that delayed this application were:

- 1) The completion of the environmental studies (Phase III reports from AMEC Environmental) to support the application was not received until July 28, 2005;
 - 2) Staff were waiting to determine if the Province would allow the educational portion of the Tax Incentive Fund (TIF) to be available for this project during the redevelopment phase (it was not allowed); and,
 - 3) Taxation issues related to the ownership of the subject property. Specifically, BIOX is the ERASE applicant but the Hamilton Port Authority remains as the property owner and the tax payer. At the time of submission of the application, and up until October 2005, the Hamilton Port Authority was still on record as the tax payer. According to the ERASE program criteria, the program's benefit must be payable to the tax payer. The delay was a direct result of BIOX receiving a tenant account and therefore, officially becoming the tax payer on the subject property.
- **Whose responsibility is a clean-up of lands owned by the Federal Government and lands administered by the Port Authority:**

The Port lands reside within the boundaries of the Council approved (2001) Community Improvement Plan (CIP) area.

The decision to include Port lands and the entire north end was because of the dominance of heavy industry and that much of the land was a result of fill containing a variety of materials and substances.

SUBJECT: ERASE Redevelopment Grant Application (ERG-05-01) - BIOX Canada Ltd., 41 Oliver Street (Ward 3) - Referred from Planning and Economic Development Committee of February 7, 2006 - Page 3 of 4

The company made application and met the established program criteria. Because the property resided in the CIP they were eligible to apply for the program.

To the best of our knowledge and in consultation with the Hamilton Port Authority there are no Federal programs for Brownfield clean up with the exception of the Federation of Canadian Municipalities (FCM) programs that require a municipal partner. The FCM Brownfield programs are only low interest loans and grants for Green Municipal Fund Feasibility Studies, Field Tests and Sustainable Community Plans.

- **The concerns raised by the delegations, including but not limited to; how a future clean-up of the site would be handled and paid for:**

Each ERASE Redevelopment Grant application when approved enters into an ERASE Redevelopment Agreement which includes a recontamination clause that effectively cancels the ERASE program if the new development contaminates the property during the term of the grant. As per section 6 of the ERASE Redevelopment Agreement:

6. PROVISIONS RELATING TO THE OWNER

- 6.17 The Owner covenants to the City that the Owner will require, as a term of every lease, that their tenants comply with this Agreement all municipal by-laws pertaining to use, and all applicable environmental laws.
 - 6.19 The Owner shall ensure that the property is maintained in its rehabilitated condition and not re-contaminated during the term of the Grant.
 - 6.31 The Owner shall not be entitled to a Grant payment unless and until they have met the conditions expected to be fulfilled by the Owner, and until all the conditions of this Agreement have been fulfilled satisfactory to the City.
 - 6.32 In the event that the Owner does not comply with any provision, requirement or other obligation of the Owner under this Agreement, the City may, in its own discretion terminate the conditional Grant, and the City may, by notice to the Owner, confirm such termination.
- **The damage to residential homes; who is responsible and when will the money be forthcoming; the inappropriate method of demolition on the BIOX site:**

A demolition permit was issued on October 4, 2004 to demolish the existing one-storey industrial building with approximately 587 square metres of gross floor area.

SUBJECT: ERASE Redevelopment Grant Application (ERG-05-01) - BIOX Canada Ltd., 41 Oliver Street (Ward 3) - Referred from Planning and Economic Development Committee of February 7, 2006 - Page 4 of 4

The Building Code requires that a professional engineer be retained by the owner to undertake general review of the project during the demolition where:

- (a) the building exceeds three (3) storeys in building height or 600 square metres in building area;
- (b) the building structure includes pre-tensioned or post-tensioned members;
- (c) it is proposed that the demolition will extend below the level of the footings of any adjacent building and occur within the angle of repose of the soil; and,
- (d) explosives or a laser are to be used during the course of demolition.

In this case, no engineer was required to review the demolition or to provide details on the method of demolition. Ultimately, it is the responsibility of the owner and contractor to ensure that they proceed with demolition and construction in accordance with all safety regulations and without adverse impact to abutting property owners.

This is potentially a civil matter and not within the parameters of the ERASE program. Any claims for damages would have to be addressed through the legal system.

- **Direction to staff to establish negotiations between the residents, Environment Hamilton, BIOX, City representatives, the Federal Government and any other appropriate agencies to make sure the issues raised, as noted above, are addressed:**

City staff does not become involved in dispute resolution between property owners on civil matters. However, Council could request that the General Manager of the Planning and Economic Development Department direct the appropriate staff to investigate the issues in more detail to determine if there are issues within our jurisdiction.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

:CR