

Authority: Item 15, Planning and Economic
Development Committee Report
06-019 (PED06422)
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Bill No. 321

CITY OF HAMILTON

BY-LAW NO. 06-321

A By-Law To Freeze Municipal And Education Taxes for 349, 401, 437, 443 Woodward Avenue

WHEREAS By-Law No. 05-087, being a by-law to designate “Environmental Remediation and Site Enhancement (ERASE) Community Improvement Plan”, as community improvement project area, pursuant to Section 28(2) of the Planning Act, was passed by Council on April 11, 2005;

AND WHEREAS By-Law No. 05-087, being a by-law to adopt the community improvement plan for “Environmental Remediation and Site Enhancement (ERASE) Community Improvement Plan” was passed by Council on April 11, 2005;

AND WHEREAS Lowe’s Companies Canada, ULC, the registered owner of the Eligible Property known as 349, 401, 437, 443 Woodward Avenue applied to the City of Hamilton to freeze the property taxes for this property, in accordance with the Community Improvement Plan and section 365.1 of the Municipal Act, 2001 ;

AND WHEREAS the Eligible Property is located within the Community Improvement Project Area and is eligible for Tax Assistance pursuant to section 365.1 of the Municipal Act, 2001;

AND WHEREAS the Minister of Finance has approved this by-law as required by section 365.1 of the Municipal Act, 2001.

NOW THEREFORE the Council of the City of Hamilton, pursuant to Section 28 of the Planning Act, R.S.O. 1990 and section 365.1 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, ENACTS AS FOLLOWS:

1. In this By-law,

- a) "Development Period" means, with respect to the Eligible Property, the period of time starting on the date the Rehabilitation Period ends and ending on the earlier of,
 - i) the third anniversary of the passage of the by-law, or
 - ii) the date that the Tax Assistance provided for the Eligible Property equals the Remediation Costs;
 - b) "Eligible Property" means 349, 401, 437, 443 Woodward Avenue;
 - c) "Owner" means Lowe's Companies Canada, ULC, the owner of the Eligible Property;
 - d) "Rehabilitation Period" means, with respect to the Eligible Property, the period of time starting on the date that Tax Assistance begins to be provided under this By-law for the property and ending on the earliest of,
 - i) the date that is 18 months after the date that the Tax Assistance begins to be provided or,
 - ii) the date that a record of site condition for the property is filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act, or
 - iii) the date that the Tax Assistance provided for the property equals the Remediation Costs;
 - e) "Remediation Costs" means the cost of any action taken to reduce the concentration of contaminants on, in or under the Eligible Property to permit a record of site condition to be filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act and the cost of complying with any certificate of property use issued under section 168.6 of the Environmental Protection Act, and as further specified in the Community Improvement Plan;
 - f) "Tax Assistance" means the freezing of taxes over the base rate for municipal and school purposes levied on the Eligible Property after the Development Period as a result of re-valuation by the Municipal Property Assessment Corporation (MPAC) following project completion.
2. Municipality shall provide Tax Assistance for the Eligible Property subject to the provisions of this By-law and subject to confirmation that the Owner has paid all property taxes owing with respect to the Eligible Property for all years prior to the year in which this By-law is passed.

3. The Tax Assistance shall commence as of the date this By-law receives council approval and shall be effective after the Development Period as a result of re-valuation by the Municipal Property Assessment Corporation (MPAC) following project completion. In no event shall the Tax Assistance continue past the third anniversary of the commencement of tax assistance unless there are exceptional circumstances and the City Of Hamilton has outlined these to the Ministry of Finance.
4. The Tax Assistance available shall be 80% of the increment following re-assessment.
5. Where Tax Assistance is provided for a portion of any year, or where Tax Assistance represents only a portion of the taxes levied on the Eligible Property, the Owner is responsible for payment of all property taxes levied during the portion of the year when Tax Assistance is not provided, and for all taxes not subject to Tax Assistance.
6. As of the date of passing of this By-law, the City of Hamilton may,
 - a) refund the taxes to the extent required to provide the Tax Assistance in the year this By-law is passed, if the taxes for the Eligible Property have been paid; or
 - b) credit the amount to be refunded to an outstanding tax liability of the Owner with respect to the Eligible Property, if the taxes have not been paid in the year that this By-law is passed.
7. The Treasurer shall alter the tax roll in accordance with the Tax Assistance to be provided for the Eligible Property.
8. The Owner shall, within 18 months of the anniversary of the commencement of Tax Assistance (or such later date agreed to in writing by the City of Hamilton and the Minister of Finance), file a record of site condition with respect to the Eligible Property in the Environmental Site Registry under section 168.4 of the Environmental Protection Act. The owner shall, within 30 days, notify the City of Hamilton of the filing. Within 30 days after receiving the notice from the Owner, the City of Hamilton shall advise the Minister of Finance of the filing.
9. (1) The Owner shall provide to the City of Hamilton an annual report within thirty (30) days of the anniversary of the commencement of Tax Assistance for each year or part thereof that Tax Assistance is provided. The annual report shall include:
 - a) An update of the concentration and location of contamination on the Eligible Property;

- b) The status of remediation work completed to date;
 - c) Costs expended to date and an estimate of costs not yet incurred; and
 - d) Time estimates to complete the remedial and redevelopment work.
- (2) Within 30 days of receiving the report from the Owner, the City of Hamilton shall provide a copy to the Minister of Finance.
- 10.(1) Tax Assistance shall be suspended, and either or both the municipal and school portions of it may be terminated, where any one of the following occurs:
- a) The Owner is in default of any obligation pursuant to this By-law;
 - b) The Owner is in default of any provision of the Brownfield Site Agreement entered into between the Owner and the City of Hamilton and attached as a Schedule to this By-law.
 - c) The Owner fails to commence or ceases remediation for any reason.
- (2) The municipal portion of the Tax Assistance shall be suspended, and may be terminated, where any one of the following occurs:
- a) The Eligible Property is severed, subdivided or all or any portion of the property is conveyed;
 - b) Tax Assistance has been provided for three (3) years.
- (3) The education portion of the Tax Assistance shall be terminated where any one of the following occurs:
- a) The Eligible Property is severed, subdivided or all or any portion of the property is conveyed;
 - b) Tax Assistance has been provided for three (3) years.
- (4) The Tax Assistance shall be terminated where the Remediation Costs equal or exceed the Tax Assistance.
11. The Owner shall notify the City of Hamilton forthwith if any of the events in sections 10(1), 10(3) (a) or 10(4) occur. The City of Hamilton shall then forthwith notify the Minister of Finance.
12. If Tax Assistance has been suspended under subsections 10(1) or 10(2), the City Of Hamilton may:
- a) Provide the Owner with notice that the Tax Assistance is terminated; or

- b) Provide the Owner with notice that it may cure the default within such period and on such terms as the City of Hamilton specifies in writing, and that the failure to do so will result in termination of the Tax Assistance.
13. A notice under clause 12(b) is not effective with respect to education taxes unless it has been agreed to in writing by the Minister of Finance.
14. (1) In the event that Tax Assistance is terminated pursuant to section 10 or 12 above, the City of Hamilton shall provide notice to the Owner under subsection 365.1(3.1) of the Municipal Act, 2001 that the conditions under this By-law have not been met and order the Owner to repay all of the education taxes which were subject to the Tax Assistance, and all or a portion of the municipal taxes which were subject to the Tax Assistance.
- (2) Where the City makes an order under subsection (1), interest is payable on the taxes which become payable under the order calculated at the standard rates of the Municipality, as if the Tax Assistance had not been provided.
15. In the event that the Tax Assistance provided pursuant to this By-law exceeds the actual Remediation Costs for the Eligible Property, the amount that the Tax Assistance exceeds the Remediation Costs shall be repaid by the Owner, failing which the amount to be repaid shall be added to the Assessment Roll for the Eligible Property and collected as property taxes.
16. This by-law shall come into force and take effect on its passing.

PASSED and ENACTED this 25th day of October, 2006.

MAYOR



CLERK

