



**CITY OF HAMILTON**  
**CORPORATE SERVICES DEPARTMENT**  
*Financial Planning and Policy Division*

<b>TO:</b>	Chair and Members Audit, Finance and Administration Committee
<b>COMMITTEE DATE:</b>	September 12, 2016
<b>SUBJECT/REPORT NO:</b>	52 Cannon Street West - Outstanding Development Charges (DCs) Deferral Agreement and Property Taxes (FCS16075) (City Wide) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Lindsay Gillies (905) 546-2424 Ext. 2790
<b>SUBMITTED BY:</b>	Mike Zegarac General Manager Finance & Corporate Services Department
<b>SIGNATURE:</b>	

**RECOMMENDATIONS**

- (a) That the General Manager of Finance and Corporate services be authorized to reverse penalties and interest on tax roll 2518 020126500700000 (52 Cannon Street West) by an amount of \$8,447.49 effective September 1, 2016;
- (b) That the General Manager of Finance and Corporate Services be authorized to enter into a Development Charge Payment Agreement in a form satisfactory to the City Solicitor in the amount of \$131,088.51 which effectively extends Development Charge Deferral Agreement #108 (52 Cannon Street West) according to the terms outlined in Table 5 of Appendix "B" to Report FCS16075;
- (c) That the General Manager of Finance and Corporate services be authorized to remove \$146,686.02 from tax roll 2518 020126500700000 (52 Cannon Street West) representing the DC liability from DC Deferral Agreement #108 and reduction in penalties and interest effective as of September 1, 2016, after the new payment agreement from recommendation (b) is registered against the property and whereby the removal of the amount will result in the property no longer being registered for tax sale;
- (d) That the subject matter respecting "52 Cannon Street West - Outstanding Development Charges Deferral Agreement and Property Taxes" be identified as complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.

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*OUR Vision: To be the best place to raise a child and age successfully.*

*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

*OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.*

## **EXECUTIVE SUMMARY**

At the August 10, 2016 Audit, Finance and Administration Committee meeting, the Committee received and referred to staff, a letter dated July 4, 2016 from Huan (Jessy) Vu (refer to Appendix "A" to Report FCS16075), requesting that Council waive the DCs and related penalties and interest related to 52 Cannon Street West. The request letter included rationale such as the fact that the property is now within the expanded Downtown Community Improvement Project Area (CIPA), there was no direct need for increased infrastructure, increased property tax revenues to the City through developed land and an opinion that the 15% interest rate charged on outstanding property taxes is too high.

The August 10, 2016 request has been included as Appendix "A" to Report FCS16075

The owner of the property had deferred the DC liability through a five year DC Deferral Agreement (#108). At the expiration of the agreement, after attempts to collect through the City's Accounts Receivable department, the amount plus accumulated interest was transferred to the property tax roll in accordance with the agreement terms.

As at September 1, 2016 the tax roll for 52 Cannon Street West (2518 020126500700000) will have an outstanding balance of \$368,428.09. Of this total, \$170,835.34 represents the DC amount levied (\$106,939.19) plus accumulated penalties and interest (\$63,896.15).

The decision to waive or enforce the City DC's has a city wide impact since the funds are used to fund growth related projects in all areas of the city.

Staff is not recommending the solution proposed by the owner. A retroactive application of the Downtown CIPA borders would set precedence for numerous other developers to request the same treatment which could lead to millions in refunded DC revenues. This scenario would directly impact the City's ability to proceed with growth projects

Staff Recommendations would provide a reduction in the total amount owing to the City of Hamilton of \$48,194.32.

- A reduction of \$8,447.79 in penalties and interest related to property tax instalments.
- A reduction of \$39,746.83 in penalties and interest related to the DC liability levied on the tax roll.

Staff is proposing a solution which attempts to balance the financial needs of the owner with the need to apply fair and consistent policies. Specifically, staff is recommending retroactively assuming a DC Deferral Agreement extension, which has been provided in

similar circumstances (Countrywide Recycling FCS15038). This assumed agreement would result in reduction to the tax roll in the amount of \$155,133.51, along with a payment agreement whereby a reduced DC liability of \$131,088.51 would be paid off in 12 equal monthly instalments. Appendix "B" to Report FCS16075 outlines the Recommended payment schedule.

***Alternatives for Consideration – See Page 7***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:**

Staff is recommending retroactively assuming a DC Deferral Agreement extension and moving forward with a payment agreement whereby the reduced DC liability would be paid off in 12 equal monthly instalments.

By retroactively assuming a DC Deferral Agreement extension, the penalties and interest on the property tax roll decreases because payments which were applied to the DC liability portion would have been applied to property tax instalments.

The DC liability would be reduced as a result of the difference in interest rates and compounding period between the tax roll (15%, no compounding) and the assumed DC Deferral Agreement (5%, semi-annual compounding).

Staff Recommendations have the following financial impacts:

- Reduction of \$8,447.49 in penalties and interest revenue related to property tax instalments on tax roll for 52 Cannon Street West (2518 020126500700000) as at September 1, 2016.
- Reduction of \$146,686.02 related to DC liability (\$106,939.19 original balance plus calculated reduction of \$39,746.83 in penalties and interest) on tax roll for 52 Cannon Street West (2518 020126500700000) as at September 1, 2016.
- Monthly inflows of \$11,225 related to the new agreement Recommended to cover the adjusted DC liability of \$131,088.51 currently sitting on the tax roll for 52 Cannon Street West (2518 020126500700000) commencing October 1, 2016.
- Reduced future penalties and interest revenue estimated at \$1,212 monthly as a result of the above reductions.

The owner would be required to pay a \$750 application fee in order to cover the administrative costs associated with entering into a new payment agreement for the DC liability portion. The owner would also be required to enter into a payment agreement in a form satisfactory to the City Solicitor and be responsible for the costs outlined in the

agreement such as the cost of registering the agreement as a mortgage on the property.

Staffing: N/A

Legal: A new payment agreement for the DC liability portion will need to be executed, and it will be required to be registered as a mortgage on the property.

The payment agreement will be made with terms mirroring the DC Deferral Agreements. These agreements contain provisions that would transfer any balance outstanding after the agreement expiry to the property tax roll. There are also other provisions which would trigger the amount to be transferred to the property tax roll at an earlier date such as the applicant declaring bankruptcy, a mortgage becoming enforceable against the property, or the property being registered for tax sale. Deferral Agreements are required to be registered against the property to protect the City in the event that an agreement holder were to sell the property. By registering the agreement on the property, the property could not be transferred without the agreement balance being cleared.

## **HISTORICAL BACKGROUND**

Jan 2007      Applicant applies for a building permit (07-272285) for a 12,304 square foot commercial building located at 52 Cannon Street West (tax roll 2518 020126500700000).

At this time 52 Cannon Street West is opposite from the Downtown CIPA which receives a 100% exemption from City DCs.

March 2007    Applicant enters into DC Deferral Agreement #108 to defer the City DCs of \$88,535.28 for a period of up to 5 years.

Jan 2008      City of Hamilton staff is instructed to look at the feasibility of expanding the Downtown CIPA.

June 2009     The expanded Downtown CIPA borders are adopted into the DC By-law 09-143.

As a result of the border change, 52 Cannon Street West is now within the Downtown CIPA which receives a 100% exemption from City DCs. Staff advise applicant that the exemption is not retroactive.

March 2012    DC Deferral Agreement #108 expires and is transferred to Accounts Receivable. The balance including accrued interest is \$105,765.63

June 2012      The balance of \$106,939.19 (including interest accrued while with Accounts Receivable) is transferred to the property tax roll as required by the terms of DC Deferral Agreement #108.

April 2015      The property is registered for tax sale. A property is registered for tax sale once taxes in arrears exceed 3 years.

As at September 1, 2016, even if the DC Deferral Agreement had not been levied on the tax roll, the 2013 property taxes would still not be paid in full with the payments that have been made on the roll.

Aug 2016      The applicant requests that The City of Hamilton forgive the DC's and all accumulated interest.

The owner has secured financing to pay \$116 K on the property tax roll.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

DC By-Law 14-153 (previously 09-143, 06-174, 06-173, 04-145) permits Finance to enter into a DC Deferral Agreement for a term not to exceed five years. Therefore, any extension (or deemed extension) past the 5 year term would require Council approval.

There is precedent for extending a DC Deferral Agreement by five years which was set through Council's approval of FCS15038 at its meeting of June 8, 2015 in which a five year extension was provided for DC Deferral Agreement #122 (Countrywide Recycling).

The Recommendation to retroactively assume a DC Deferral Agreement extension and move forward with a payment agreement whereby the reduced DC liability would be paid off in 12 equal monthly instalments commencing October 1, 2016 effectively exceeds the five year extension precedence by a few months.

## **RELEVANT CONSULTATION**

Corporate Services Department – Taxation Division staff provided the adjusted calculation of the property tax balance had the DC liability never been placed on the tax roll.

Corporate Services Department – Taxation Division staff have reviewed this report and are supportive of the Recommendations.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The analysis and rationale focused on attempting to balance the need for consistent and fair policies with the financial struggles of the owner.

The owner's requests for relief included rationale such as the fact that the property is now within the expanded Downtown CIPA, there was no direct need for increased infrastructure, increased property tax revenues to the City through developed land and an opinion that the 15% interest rate charged on outstanding property taxes is too high.

Staff cannot recommend relief by retroactively applying the expanded Downtown CIPA border because this would set precedence for numerous other developers to request the same treatment which could lead to millions in refunded DC revenues. This scenario would directly impact the City's ability to proceed with growth projects

Staff cannot recommend relief based on direct infrastructure requirements because the City's DC By-law and background study are based on an urban vs rural model; with only Dundas/Waterdown and Binbrook having area special area charges in addition to the citywide charge and the CIPA receiving a partial exemption. To provide a reduction for a specific address would set precedent for assessing DCs on a basis other than what the study was based on and would make the background study and DC By-law redundant.

Staff have reviewed the request and precedence set by Council for previous DC related matters. Staff recommend relief in the form of separating the treatment of the DC liability from the property tax instalments.

Staff is recommending that Council treat the property tax on the tax roll as if the DC liability had never been added; resulting in forgiveness of \$8,447.49 in penalties and interest.

Precedent exists for extending a DC Deferral Agreement by five years (Countrywide Recycling FCS15038). Staff calculated what the liability would have been on DC Deferral Agreement #108 as at September 1, 2016 had a similar extension been granted. Assuming semi-annual compounding at 5%, the balance would have accumulated to \$131,088.51. The calculated balance yields a liability that is \$39,746.83 less than what accumulated while on the tax roll.

Staff is proposing moving forward with an agreement whereby the owner agrees to pay off the reduced balance through 12 equal monthly instalments starting October 1, 2016 with interest accumulating at 5%, compounded monthly since July 31, 2016. The proposed payment schedule is detailed in Appendix "B" to Report FCS16075.

The total reduction in liability to the owner as of September 1, 2016 being Recommended in this report amounts to \$48,194.32.

## **ALTERNATIVES FOR CONSIDERATION**

Alternatively Council could:

1. Enforce the full amount as currently owed on the property tax roll.

This option would result in the greatest revenue to the City.

Staff is not recommending this option as the property is registered for tax sale and the owner is making progress in reducing the liability owed. Without any relief the tax sale will likely occur and the owner will lose his property.

2. Waive the DC portion owed of \$170,835.34 by retroactively applying the change in the Downtown CIPA borders.

This option would solve the owner's financial constraints.

Staff is not recommending this option because this would set precedence for numerous other developers to request the same treatment which could lead to millions in refunded DC revenues. This scenario would directly impact the City's ability to proceed with growth projects.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

### **Economic Prosperity and Growth**

*Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

### **Built Environment and Infrastructure**

*Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.*

**Our People and Performance**

*Hamiltonians have a high level of trust and confidence in their City government.*

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report FCS16075 – Owner's request to Council, letter dated July 4, 2016

Appendix "B" to Report FCS16075 – Recommended Payment Schedule for adjusted DC liability related to 52 Cannon Street West