



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Services Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	August 15, 2018
SUBJECT/REPORT NO:	Toronto Tank Lines – Property Tax Arrears (FCS18076) (Ward 5) (Outstanding Business List Item)
WARD(S) AFFECTED:	Ward 5
PREPARED BY:	Maria Di Santo (905) 546-2424 Ext. 5254 David Janaszek (905) 546-2424 Ext. 4546
SUBMITTED BY:	Rick Male Director, Financial Services, Taxation and Corporate Controller Corporate Services
SIGNATURE:	

RECOMMENDATIONS

- (a) That no adjustments to the taxes levied and/or penalty and interest charges incurred on roll number 051.493.00030.0000 (804 BEACH BLVD) be made until the pending assessment appeals are settled, and only if the pending assessment appeals result in a reduction to the property’s assessment.
- (b) That staff initiate discussions to establish a process that would ensure that the Municipal Property Assessment Corporation (MPAC) and the City of Hamilton (City) be provided timely notification and access to all development activity occurring on Federal lands, specifically the Hamilton Port Authority lands.
- (c) That staff investigate the possibility of any regulatory or legislative changes to require the Federal government to comply with the Ontario Building Code with respect to the application for a municipal building permit for all development activity occurring on its lands.
- (d) That the item identified as “Staff Report Respecting Supplemental Taxes and Assessment Complaints Respecting 500 Eastport Blvd” be removed from the Audit Finance & Administration Committee’s Outstanding Business List.

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EXECUTIVE SUMMARY

Audit, Finance & Administration Committee, at its meeting on January 22, 2018 approved the following:

“That staff be directed to review the correspondence from Steve M. Pocrnic, President & CEO of Pocrnic Realty Advisors Inc., respecting 500 Eastport Blvd., Hamilton, supplemental taxes for 2013-2015; and, assessment complaints 2013-2018 (attached hereto), and report back to the Audit, Finance & Administration Committee with recommended options as to how to resolve the matter.”

The purpose of this Report is to provide Committee with staff recommendations to address this outstanding item. As a result of this Report, the item “Staff Reports Respecting Supplemental Taxes and Assessment Complaints Respecting 500 Eastport Blvd” (Toronto Tank Lines – Property Tax Arrears) will be considered complete and removed from the Audit, Finance & Administration outstanding business list.

Toronto Tank Lines (TTL) is a tenant of the Hamilton Port Authority (HPA) and has leased land from the HPA since 2004 for its’ business operations. TTL is currently in property tax arrears of \$387,927.44 which stems predominately from supplementary/omitted property taxes levied in 2015. These supplementary/omitted property taxes were for additional assessment resulting from the construction of a maintenance facility/building and 15 large storage tanks. Although the maintenance building has existed since 2003 (as indicated by TTL’s representative) and the storage tanks constructed at various stages between 2003 and 2010, these structures were not assessed by the Municipal Property Assessment Corporation (MPAC) for taxation purposes until 2015.

A building permit was issued in 2003 for TTL’s truck wash and maintenance facility/building, however no building permits were issued for the 15 storage tanks. MPAC has advised that they do not have any record of the 2003 building permit (which at that time the City provided only paper copies to MPAC), and as a result, were unaware of the structures. This resulted in the structures not being assessed for taxation purposes.

Regardless of the omission, the structures were constructed during the period of 2003 – 2010 and therefore subject to assessment and ultimately taxation (Appendix C to Report FCS18076 provides aerial maps identifying these additional structures constructed over this time period). The *Assessment Act*, however, only allows MPAC to assess omissions in the current year and a maximum of two prior years. As such, since the building and tanks were not assessed until 2015, the municipality can only levy taxes back to 2013 (two prior years). As a result, the City has foregone property tax revenue for these structures for 2012 and applicable prior years.

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Considering the forgone taxation revenue that would have been realized had the structures been assessed for the full duration of their existence, estimated to be approximately \$300,000 to \$400,000, staff are not recommending any adjustments to reduce the current tax arrears or penalty/interest accrued.

Appeals of TTL's supplementary/omitted assessments, as well as annual appeals for subsequent tax years, have been filed with the Assessment Review Board (ARB) and are scheduled to commence in April 2019. Considering these pending appeals, staff are recommending that this property be treated similar to other properties under appeal, whereby any adjustments to the tax roll account are deferred until the assessment appeal is finalized. Any awarded assessment reduction will be processed through Minutes of Settlement or a Decision of the ARB. If the taxpayer has incurred penalty/interest on the tax roll account, the penalty/interest will be adjusted at that time to reflect the revised property taxes.

With respect to the delay in reflecting the development activity on the assessment roll, it should be noted that as of 2010, the City of Hamilton now provides MPAC with electronic listings of building permits, which greatly reduces the risk of missing permits. Unfortunately, however, there is no building permit requirement for development activity on Federal lands. Considering the foregone taxation revenue resulting from developments not being assessed within the allowable timeframe, staff are recommending the review of improved processes that may assist in protecting the City's financial interests.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The estimated foregone property tax revenue pertaining to the non-assessment of TTL's maintenance facility and storage tanks from 2003 to 2012 is estimated at approximately \$300,000 to \$400,000. As such, staff are not recommending any relief for the current tax arrears as a result of the November 2015 supplementary/omitted tax billing, which under the Assessment Act, only allowed the taxation for these structures back to 2013. As the property owner has appealed the property's value, it is also prudent to allow the appeal process to run its course. Once the appeals are settled, staff will proceed to adjust the tax roll account if any reduction in the property's value is awarded. It is expected that TTL will settle the arrears once the appeal process is complete.

It should be noted that if the arrears are not eventually paid, the City cannot exercise powers of collection under Part XI Sale of Land for Tax Arrears of the *Municipal Act*, as TTL leases the land it occupies from the HPA, which is a Federal property. The City's option with respect to collection of the property tax arrears would be through the use of Bailiff services. It is not likely that the City would need to resort to this measure, as it is expected that

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failure to settle the arrears may lead to the lease termination by the HPA. If such action occurs, the City would then submit a request to the HPA for payment of these arrears. Unfortunately, however, there is no guarantee as to how much of the arrears the HPA would agree to pay.

Staffing: Not Applicable

Legal: Not Applicable

HISTORICAL BACKGROUND

The Municipal Property Assessment Corporation (MPAC) is responsible for assessing and classifying all properties in Ontario in compliance with the *Assessment Act* and regulations set by the Government of Ontario. Property taxes are determined and billed by municipalities, using the property's assessment as determined by MPAC.

Property assessment notices are mailed by MPAC and it is the responsibility of the property owner or assessed person to ensure the accuracy of their property assessment. The assessment notices also contain all of the necessary information to obtain the assessment valuation details for the property. The available options for review or appeal of the assessment are also included should the accuracy of the assessment be in question.

As a tenant of the Hamilton Port Authority (HPA), Toronto Tank Lines (TTL) has been subject to property assessment and property taxes since 2004. The history of land leased and the property assessment and taxation history is summarized in Appendix "B" ("Land Lease and Property Assessment and Tax History - Toronto Tank Lines") to Report FCS18076.

TTL is currently in property tax arrears which stems from supplementary/omitted property taxes levied in November 2015 pertaining to taxation years 2013-2015. These property taxes were in addition to the property taxes originally billed for the 2013-2015 tax years and were based on supplementary/omitted assessments issued by MPAC which increased their property's assessed value. The increase to the assessed value was based on the assessment for an additional 2.46 acres of land leased and the assessment of TTL's maintenance facility/building, 15 large storage tanks, a weigh scale and asphalt. The construction of TTL's building began in 2003, while the 15 large storage tanks were constructed in various stages over a number of years as can be seen in Appendix "C" ("Aerial Maps") to Report FCS18076. Although the construction of the building was completed sometime in 2003 (as indicated by TTL's representative), while the 15 tanks were completed in stages between 2003 and 2010, these structures had not been assessed by MPAC for taxation purposes until 2015.

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The HPA provides listings to both MPAC and the City several times per year to inform of new leases/tenants, changes to existing tenant areas (additions or reduction in space for existing tenants) and lease terminations/expiries. These listings do not identify or advise of new construction or improvements on HPA lands. These listings are used to generate the appropriate assessment and property tax changes where applicable. An increase of 2.46 acres in land leased by TTL was included on a listing provided by HPA. It was at this time, when MPAC was preparing the assessment of the additional leased land, that the omission of structures was identified, triggering the eventual supplementary/omitted billings in November 2015.

City records confirm that building permit 03-204896-000-00 I3 was issued in June 2003 for construction of a 3,201-sq. m. truck wash and maintenance facility. This building permit reflected an agreed upon construction cost of \$2,500,000. No building permits were issued for any of the 15 storage tanks that were constructed.

MPAC relies on Municipalities to provide information pertaining to municipal building permits issued so that they are apprised of physical changes occurring on properties, which in turn may result in changes to a property's assessment and property taxes. The City of Hamilton currently provides MPAC with electronic listings of building permits issued monthly. Prior to 2010, this process was manual in that the City provided MPAC with paper copies of building permits issued. Unfortunately, there is no system in place to track what was provided to MPAC prior to the electronic building permit submissions.

As the 2003 building permit issued for the truck wash and maintenance facility/building was during the period where paper copies of permits were provided to MPAC, staff cannot confirm that a copy of the building permit was in fact forwarded to MPAC. MPAC has advised that they are unable to locate a copy of the building permit and are unable to confirm that a copy was ever received. Regardless of the omission, the structures were constructed during the period of 2003 – 2010 and therefore subject to property assessment and ultimately taxation, within the time limitations of the Assessment Act.

Currently, a municipal building permit application is not required as it pertains to development or construction occurring on Federal lands. As such, in absence of a building permit, no formal process exists to notify municipalities or MPAC of any construction or development activity taking place on Federal lands.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

MPAC determines a property's current value assessment in accordance with the Assessment Act. Taxpayer's have a right to appeal the value determined by MPAC either through a Request for Reconsideration or through a formal appeal with the Assessment Review Board (ARB). Similar to the treatment of other properties under appeal, any adjustments to the tax roll account are deferred until such as at the

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assessment appeal is finalized. Any awarded assessment reduction will be processed through Minutes of Settlement or a Decision of the ARB.

Property taxes are levied and collected by the municipality in adherence to the Municipal Act, 2001.

Penalty and Interest charges incurred for non-payment or late payment of property taxes are in adherence to City of Hamilton by-law 13-136 “A BY-LAW TO IMPOSE LATE PAYMENT CHARGES FOR THE NON-PAYMENT OF TAXES”.

RELEVANT CONSULTATION

- The Municipal Property Assessment Corporation (MPAC)
- Planning Department - Building Division

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Regardless of the delay in adding the structures to the assessment roll, they were constructed during the period of 2003 – 2010 and therefore subject to property assessment and ultimately taxation. Given the size and value of the improvements, TTL should have reasonably expected to experience substantial assessment and property tax increases as construction of the additional structures were completed.

Although the property was assessed and taxed beginning in 2004, the assessed value for taxation years 2004 - 2012 ranged from just 268,400 to 588,700. As the 2003 building permit for the maintenance facility reflected a construction value of \$2,500,000, this should have triggered TTL to question why the property was assessed substantially less than the construction value. This is contrary to correspondence from TTL’s tax agent (Appendix “A” to Report FCS18076 “Correspondence from Steve Pocrnic, Pocrnic Realty Advisors – 500 Eastport Blvd, Hamilton.”), whereby it is stated that “6) *Notwithstanding the assessability of these improvements TTL had always been under the assumption and understanding that they were assessed the appropriate CVA of their lands including all improvements.*” Due to the significant discrepancy between the construction value and the assessment, it is reasonable to assume that the assessment used for taxation purposes may in fact not have considered the newly constructed buildings and tanks.

MPAC relies on Municipalities for building permit information so that it is aware of physical changes occurring on properties which may result in changes to a property’s assessment and ultimately, property taxes. As a municipal building permit application is not required for development or construction occurring on Federal lands, there is no formal process to notify Municipalities or MPAC of any development activity taking place. Through this report, staff are therefore recommending a review to improve the

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current process to mitigate delays in new developments being assessed for taxation purposes.

ALTERNATIVES FOR CONSIDERATION

Staff are not recommending any alternatives.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

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

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” - Correspondence from Steve Pocrnic, Pocrnic Realty Advisors – 500 Eastport Blvd, Hamilton

Appendix “B” – Land Lease and Property Assessment & Tax History - Toronto Tank Lines

Appendix “C” - Aerial Maps

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