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FILE NUMBER: 112529-00001

VIA EMAIL (CLERK@HAMILTON.CA)

Chair and Members
 Audit and Finance Administration Committee
 Hamilton City Hall
 71 Main Street West
 Hamilton, ON L8P 4Y5

Dear Sirs/Mesdames:

**Re: Property Tax Arrears - Scenic Trails Ltd.
 1 Redfern Avenue, Hamilton, ON ("Property")
 Roll No. 2518-081-081-0417-60000**

Introduction

We are writing to request a waiver of penalties and interest assessed to Scenic Trails Ltd. ("**Scenic**") in relation to property tax assessed on the condominium property at the municipal address of 1 Redfern Avenue, Hamilton, ON, for the taxation year ("**Taxation Year**") beginning on January 1, 2021.

Pursuant to the Assessment Scenic was assessed and billed for the full amount of property tax on the Property despite the fact that it no longer had an ownership interest in any of the individual condominium units at the Property for most of the Taxation Year. All such units were sold to individuals in April, May and June of 2021. However, contrary to Scenic's reasonable expectations that property tax would be adjusted to apportion appropriate amounts to individual condominium unit owners, no amount of the tax was adjusted and penalties and interest were subsequently assessed to Scenic in respect of unpaid amounts.

The circumstances are manifestly unfair and Scenic requests that the Audit and Finance Committee ("**Committee**") exercise its discretion to waive interest and penalties related to the Assessment.

Background

By letter dated November 15, 2021, Scenic's legal counsel advised the city of Hamilton ("**City**") Tax Department that it had registered a condominium at the municipal address of the Property on April 10, 2021, creating 145 individual condominium units and that ownership of all of the condominium units was transferred to individual owners in the months of April, May and June of 2021.

As a result of conversations and correspondence between legal counsel and employees with the City Tax Department, Scenic reasonably believed that property tax assessed would be adjusted to re-apportion

appropriate amounts of the tax assessed to Scenic to the individual condominium unit owners. Such conversations took place between City Municipal Services Centre and Scenic's legal counsel throughout 2021. It was clear from those conversations that Scenic's concerns about re-apportioning the property tax bills to individual owners was shared by other developers, and was an issue being considered by the City. City officials mentioned the possibility of having internal legal counsel review the matter.

Scenic's expectations that the City would re-apportion amounts of tax to individual unit owners was also based on its years of experience as a condominium developer in the city of Hamilton. Scenic's specific experience was that the City has made such adjustments in the past for other condominium projects that it developed. Therefore, its expectations were reasonable. Scenic did not believe there was a need to appeal the Assessment and did not adjust for proportionate tax assessed on closing the sales of the condominium units to individual owners, as it's experience was that those amounts would be re-apportioned by the City.

Ultimately Scenic's representatives met with City officials to discuss the Assessment in April 2023. At that meeting the City advised Scenic that it was required to collect tax as assessed by the Municipal Property Assessment Corporation ("**MPAC**") without the City charging proportionate amounts to new condominium unit owners. Scenic committed to collect individual condominium owners' share of property tax assessed under the Assessment. Through those efforts Scenic has paid down \$490,541.19 to date.

As noted this was contrary to Scenic's specific experience. However, in the April, 2023 meeting City officials suggested that the City was now bound by a change in MPAC administrative policy. City officials provided Scenic with a copy of a letter from MPAC dated April 18, 2019 describing a change in the process by which MPAC would issue Property Assessment Change Notices ("**PACN**"), going forward.

In particular, MPAC advised that it would issue all PACNs to condominium developers for units that are occupied before the condominium declaration is registered, to reflect current ownership at the time of assessment. Once the condominium declaration was registered, individual units would be created and assigned an assessment roll number. When the units were occupied MPAC would then issue a PACN notice to each unit owner.

MPAC advised that its update was to comply with legislation to issue a PACN to the *owner* of the land, as established in a recent Assessment Review Board decision.¹ It also advised that municipalities would issue property tax bills based on the new occupancies and assessments.

In the past, MPAC relied upon the occupancy date provided by developers as a reasonable guide to ascertain when new construction became assessable to the ultimate unit owners. However, this sometimes resulted in unit owners being assessed property tax for dates that they did not yet own the property.

MPAC pointed out that the *Condominium Act, 1988*² permitted owners to collect occupancy fees for units occupied prior to registration of the condominium development.

¹ In the decision of *Sabourin v. MPAC*, File No: WR 153192, ("**Sabourin**") issued on June 26, 2018, the Assessment Review Board confirmed that unit owners who occupied a condominium under a license to occupy the unit before they became owners, were not assessable for the period of time before they became owners even though the land itself was assessable at the time that they first occupied the unit.

² SO 1998, c 19

Discussion

Before sending the invoice to Scenic that related to the Assessment, the City did not explain how the change in MPAC policy would lead to its own procedural changes. In fact, the MPAC administrative policy does not prevent the City from adjusting proportionate amounts of property tax to individual condominium owners in the taxation year that ownership is transferred to them. There is no doubt that under the Assessment Scenic was incorrectly assessed for tax on condominium units for the periods of time in the Taxation Year that Scenic had no ownership interest in those units. This conclusion flows from the legislation and from the *Sabourin* decision that is cited as the basis for MPAC's policy change. Therefore, apportioning tax to actual unit owners would seem to be most consistent with the law and MPAC's new administrative policy.

The *Sabourin* decision is based on a plain reading of the *Assessment Act*.³ The assessments under appeal in that case were not assessable against the Sabourins for the period of time that they were not yet the owners of their unit, even though the land itself was assessable on the date that the Sabourins occupied the unit. Therefore, the Assessment Review Board held that that assessments issued in that case were incorrect because they covered parts of the taxation year where ownership had not yet transferred to the Sabourins.

Similarly, in the present case the Assessment is incorrect because it covers periods of the Taxation Year in which Scenic is *no longer* the owner of condominium units.

Moreover section 80 of the *Condominium Act* does not assist in our case. Section 80(2) of the Act provides that if a purchaser of a condominium unit assumes interim occupancy the purchaser can be charged a monthly occupancy fee which can include an amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit. However, interim occupancy ends at the time of transfer of ownership of the condominium unit to the purchaser.

In fact the change in MPAC administrative policy and the *Sabourin* decision both support the conclusion that in our case the Property should have been reassessed, based on updated property tax rolls that reflected new ownership of the condominium units as of April, May and June of 2021.

Scenic understood that in certain cases involving condominium developments tax rolls will not always reflect actual unit ownership for the entire taxation year in which a condominium is registered at a property. Scenic's historical experience was that administrative practice will often adjust property tax bills to account for changes in ownership. The City has never considered itself unable to make such adjustments because of the manner in which MPAC issued an assessment. Therefore, Scenic has ended up liable to the City for amounts of tax that for periods in 2021 that it no longer had an ownership interest in any of the individual condominium units at the Property.

There is also another issue arising from the Assessment that has unfairly impacted Scenic. For at least one of condominium units at the Property MPAC has, in subsequent taxation years, adjusted the fair market value of individual condominium unit because it was later discovered that MPAC had recorded excessive square footage for this unit. For taxation years after 2021 property tax assessments have reflected fair market value that are based on the correct square footage of the units. However, for 2021 Scenic is without recourse to petition for an adjustment of property tax to reflect the accurate fair market value of those same unit.

³ RSO 1990, c A.31

As noted, Scenic has committed to collection of outstanding tax amounts from the owners of the units to pay down the amounts assessed under the Assessment. It is endeavouring to do so at its own expense as quickly as possible and is directing amounts collected to the City to pay down remaining property tax liability for the Property.

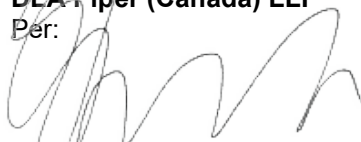
Conclusion

In the present circumstances Scenic is collecting significant amounts of property tax that it was incorrectly assessed because the ownership of the condominium units was transferred in the Taxation Year. It is also without recourse to seek corrections of excessive fair market value relied upon by MPAC for portions of the Assessment. As a result of reasonably believing that the bills from the City for amounts owing under the Assessment would be adjusted to apportion appropriate amounts of tax to new condominium units owners, penalties and interest arose on unpaid amounts.

It is particularly unfair that Scenic should be liable to pay penalties and interest on the property tax assessed under the Assessment. The City is benefitting from recovery of amounts in excess of the amounts it would have collected if the Assessment been correctly issued to all owners of the Property in the Taxation Year. These circumstances support the Committee's exercise of discretion to waive penalties and interest on amounts owing under the Assessment.

Thank you for your consideration of this request.

Sincerely,
DLA Piper (Canada) LLP
Per:



Dan Misutka
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