

CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Treasury Services Division (Taxation)

TO: Chair and Members Audit, Finance and Administration Committee	WARD(S) AFFECTED: WARD 11
COMMITTEE DATE: January 18, 2012	
SUBJECT/REPORT NO: Treasurer's Write-Off of Taxes Proposal for Newport Marina, Under Section 354 of the Municipal Act, 2011 (FCS12006) (Ward 11)	
SUBMITTED BY: Antonio D. Tollis Treasurer Corporate Services Department	PREPARED BY: Larry Friday 905-546-2424 ext 2425
SIGNATURE:	

RECOMMENDATION

That taxes in the amount of \$260,209 be written off under Section 354 of the Municipal Act, 2011 for 239 properties known as the Newport Marina upon sale of the marina to new owners, currently intended to be known as the Newport Yacht Club – Stoney Creek , subject to the following conditions, namely;

- (i) that all the subject properties be merged and consolidated into a single ownership with a single PIN, and
- (ii) that the new owner of the subject lands agree, in a form satisfactory to the City Solicitor, to indemnify and hold harmless the City from any liability or damages to the City arising in any way as a result of the implementation of this recommendation.

EXECUTIVE SUMMARY

Section 354(4) (b) allows Council to write-off taxes, as uncollectible, if the recommendation of the Treasurer includes a written explanation of why conducting a tax sale would be ineffective

or inappropriate. Currently the City is owed \$520,548 in back taxes for the 240 properties (238 Boat slips plus the lake bed and Land Parcel). The Historical Background Section to this report offers the explanation for properties hereby known as the Newport Marina. The potential purchasers of the Marina are referred to as the residents. They will be incorporated as the “Newport Yacht Club – Stoney Creek” and will also be making a presentation before committee. As outlined in Table 1 of this report, the City will likely have to write off over \$475,000 if we attempted to recover funds through a tax sale. The offer by the current owner and residents will reduce the write off to approximately \$260,209 (\$520,548 less \$160,339 for the Land taxes, \$50,000 from the residents and \$50,000 from Rosart Properties) and should result in the continuation of the Marina and additional taxes going forward. Staff is recommending that the sale to the residents go forward as it would appear to be the best option for the City.

TABLE 1

Properties	Owner	Annual Taxes	OPTION 1 - TAX SALE					OPTION 2 - HOME OWNER TAKEOVER			
			Total Taxes Owning	Cost of Tax Sale	Proceeds of Tax Sale	Net Write Off	Future Annual Taxes	Total Taxes Owning	Payment Offer	Net Write Off	Future Annual Taxes
Boat Slips (238)	Rosart Properties	44,773	278,636	115,200	-	393,836	-	278,636	(100,000)	178,636	22,387
Boat Slips (2)	Private	375	-	-	-	-	375	-	-	-	188
Lake Entrance (3)	Private	252	-	-	-	-	252	-	-	-	252
Lake Bed (1)	Rosart Properties	16,769	81,573	400	-	81,973	-	81,573	-	81,573	8,384
Land (1.44 Ac) (1)	Rosart Properties	38,502	160,339	-	(160,339)	-	38,500	160,339	(160,339)	0	19,251
Total (245)		100,671	520,548	115,600	(160,339)	475,809	39,127	520,548	(260,339)	260,209	50,462

Alternatives for Consideration – See Page 6

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: Total taxes to be written off are \$260,209 of which \$70,171 would be charged back to the various Boards of Education, while \$111,680 would be charged to HAMTN 12040 000100 (Tax Write-offs) and \$78,358 would be charged to HAMTN 52167-252009 (Penalty and Interest)

Staffing: None

Legal: None

HISTORICAL BACKGROUND (Chronology of events)

The properties in question consist of 238 boat slips, a parcel of land and the lake bed, known as the Newport Marina. The marina and boat slips are owned by three numbered companies controlled by Rosart Properties. Tax staff has been involved in collection efforts on these lands since 2007. For the years 2007, 2008 and 2009 the current owner has paid the third year in arrears, keeping the properties out of the tax registration process. In 2010, when it became apparent the owners would not pay the third year in arrears, tax liens were placed on three boat slips and the marina lake bed to elicit a response. In early 2011, Rosart Properties contacted the Tax Department and explained the situation with this marina and why they had decided not to pay the taxes.

The marina was originally created in the 1980's and was meant to be tied into two condominium towers planned for that area, with 240 units in those towers. For every condominium unit, there would be a boat slip. That project eventually failed and the properties went into receivership. Various developers, over the years, have built condominium town homes in that area surrounding the marina. The marina was kept as a separate entity and no slips were tied into any of the homes. Each boat slip was also given its own Property Identification Number (PIN) through a part lot control plan at the time the marina was constructed. This makes registering tax liens on each piece a tedious and costly venture, as each lien would cost a minimum of \$400 (\$95,600), which is strictly hard costs, not including the staff time involved. Advertising costs, as required under the Municipal Act for a tax sale, would add a minimum of another \$20,000 in costs.

Due to the uniqueness of this marina which is in a residential area, it is not a full service marina in that there is no permanent club house, restaurant, fuel facility or boat ramp. The rents therefore charged are significantly less than other full service marinas in the area by approximately 60%. There is also an issue that the mouth of the marina silts up and has to be dredged every three years, at a cost of approximately \$100,000. This has limited the potential boat slip renters whereby any boat with a fixed deep keel will not risk renting a slip in this marina under fears of grounding or damaging their boat. In the last few years, they have only rented out approximately 90 slips (37.8%). A review of their 2009 Income Statement shows a net operating loss of \$143,400.

After years of substantial losses, Rosart Properties are looking to get out of the marina business and have been negotiating with a residents group who wish to keep this property running as a viable marina. We have had many meetings with this group which have included the local Councillor, the Municipal Property Assessment Corporation (MPAC), and the Planning Department. The residents group has looked at all angles to keep this running as a marina and have offers of purchase and sale on the marina, the boat slips, a 1.44 acre parcel of development land currently used as parking, as well as three pieces of land at the mouth of the marina needed to ensure access to dredging, currently held by a third party. The offer is contingent on having the tax arrears situation resolved.

Rosart Properties have also met with City staff and have expressed a desire to find a solution that transfers ownership over to the residents of the immediate community that have a vested interest in keeping this marina operational. Previous attempts to find a buyer for the marina have failed. Rosart is willing to sell all the pieces they control, including the 1.44 acre piece on the North Service Road. Without that piece, the marina becomes land locked and the outside renters would have no parking space to leave their cars while they were at the marina, further reducing the viability of the marina.

The residents group, who will be doing a presentation to committee, have developed a business plan to hopefully ensure the viability of running this marina into the future. They have begun the process of incorporating as a not-for-profit co-operative entity. They have held discussion meetings with the residents surrounding the marina (both boaters & non-boaters), as well as the outside renters of boat slips. They will speak as to their success in getting buy-in from all the parties who have an interest in the continuing operation of a marina.

In discussions with MPAC, the formation of a not-for-profit co-operative entity, will likely lead to all the lands being designated as residential, thereby immediately lowering their yearly tax liability by 40%. Currently the marina and boat slips are designated as commercial vacant land which is taxed at 100% of the commercial tax class, while the development land is designated as multi-residential. When combined with the education rates, the taxes would be approximately 40% lower. As the current occupancy is at approximately 38%, they will be looking to downsize the number of boat slips which should also lower their total assessment value and hence taxes.

Staff has contacted both the Hamilton Port Authority and the Hamilton Conservation Authority who both operate marinas. Both organizations had, in previous years, looked at the potential purchase of this marina and, at the time, could not make a business case to operate it. The Hamilton Conservation Authority, who operate Fifty Point Marina, agreed that setting this marina up as a non-profit co-operative versus a business entity would be the way to go to make it a viable entity and potentially attract more boaters. Both organizations, given the challenges faced by this marina and the tax liability outstanding, have stated they would have no interest in pursuing this marina should the City decide to pursue a tax sale.

POLICY IMPLICATIONS

Municipal Act (2001), Part XI, Section 354.

RELEVANT CONSULTATION

Councillor Johnson, Ward 11

Development Planning, Planning and Economic Development Department
 Municipal Property Assessment Corporation
 Hamilton Port Authority
 Hamilton Conservation Authority

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Staff are bringing this forward to Council for their decision as this situation is truly unique. All parties have worked in co-operation to try and find a mutually satisfactory solution. The current owners are selling for less than they could probably obtain on the North Service Road lands. The residents group will be paying substantial start-up cost and will also assume responsibility of operating the marina. The City is being asked to write-off taxes. From a truly business perspective, it makes sense to evaluate this proposal based on the facts presented.

As per Table 1 below, there is \$520,548 owing in outstanding taxes on the 238 boat slips, the land and the lake bed that we are at risk of not being able to collect. To register liens and eventually tax sale, the slips and lake bid will add another \$115,200 in costs, which would bring the total amount to be written off to \$475,810. As the tax lien and sale process takes a minimum of one year before the City could legally tax sale these pieces, another \$110,000 in taxes and penalties and interest will have accumulated. By the time a tax sale in the Spring of 2013 occurred, the potential loss to the City would be estimated at \$585,810. It is highly likely that a tax sale would fail as the Rosarts would not allow the development lands (that currently serve as parking), to be a part of any tax sale. The marina would then be landlocked and that, along with the large tax liability and challenges the marina currently has, would more than likely end up in a failed tax sale.

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It should be noted that the Rosarts have been co-operating in this process and could easily sell the development land and walk away from the marina. They are willing to sell the development land to the residents group for substantially less than the Current Market Value of \$1.3m, with the sale being in the \$400,000 range. The 238 boat slips, land parcel and lake bed is being handed over to the residents group, along with \$50,000, as the Rosarts have agreed to match the funding the residents group are providing, being \$50,000. The City therefore will recover \$260,399 in unpaid taxes comprised of \$100,000 for the marina plus \$160,399 for the 1.44 acre parcel of land. This would result in the amount to be written off of \$260,209.

The residents group will start to pay taxes for 2012 going forward. While, that more than likely will be less than it currently is taxed at, (see Table 1 above) it will be at a more realistic and affordable amount. To ensure that the City is not in such a vulnerable position, should the residents' group face the same financial challenges, we would recommend a condition be attached before any write-off that all the lands be consolidated under one PIN. This will ensure that, should the City ever have to enter a tax lien in the future, it would be on one PIN and that land would have value as development land for the 1.44 acre piece that fronts onto the North Service Road. The residents have indicated that, that is their intention as they wish to also ensure that all the lands are kept as one.

The residents' group have put a lot of time and effort in working on a plan to keep this marina operating into the future, and have a vested interest in operating a viable marina for the community in which they live. Through their presentation to Committee, they will expand on their efforts and present a business case of how they plan to ensure they have sufficient operating revenues to cover yearly costs. In order to ensure a boating season for 2012, they have to dredge the mouth of the harbour by March 31, 2012, leaving them with an immediate cost of \$100,000 on top of the land purchase price. They also have negotiated the purchase of 3 other pieces of land from a third party to ensure they have easy access to the dredging of the mouth of the marina.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Council could decide to simply follow the tax sale process on these lands in the hope that we could collect all that is owed. If that was the case, and the marina sold at tax sale, we would not write-off \$260,209. If, however, the tax sale is unsuccessful, the write-off could be at least \$585,810. At that time, a decision would have to be made as what to do with the marina which, due to the current silting problem, would more than likely not be functioning as a marina.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ◆ Financially Sustainable City by 2020

APPENDICES / SCHEDULES

None.