SUBJECT: Treasurer’s Write-off of Taxes under Section 354 of the Municipal Act, 2001 (FCS09034(b)) (Ward 14)

RECOMMENDATION:

That the Treasurer, under Section 354(3) of the Municipal Act (2001), write-off taxes as uncollectible due to a failed tax sale on seventeen properties known as 0 Highway 8 (seven properties) and 0 6th Concession Road West (ten properties) in the amount of $703,068.36, as set out in Appendix A to report FCS09034(b).

Antonio D. Tollis
Treasurer
Corporate Services Department

EXECUTIVE SUMMARY:

Section 354(3) of the Municipal Act, 2001 allows Council to write-off taxes as uncollectible upon the recommendation of the Treasurer after a failed tax sale. On November 13, 2008, the 17 properties were offered for tax sale due to non-payment of taxes. As these properties are considered non-buildable due to the Provincial Greenbelt legislation and Conservation Management legislation, there were no bids on the properties, which are now vested into the name of the City.
BACKGROUND:

In 1970 and 1971, a 134 acre parcel of land was split and title transfers registered to 23 lots in what is referred to as a checkerboard scheme. In this particular case, the vendor who created the transfers/deeds retained the power to appoint in adjoining lands. In 1971, the Court of Appeal determined that retaining the power to appoint in adjoining lands was not allowed under the Planning Act. No action was undertaken by the Town at the time to have the deeds ruled invalid. The Regional Assessment Commissioner, at the time, assessed the 23 lots as separate properties for which the Town began to assess and bill taxes. The Town, Region and now City Planning Department has never recognized these as separate lots, for the purposes of zoning by-law compliance, and therefore, has denied any attempts to get building permits, with the exception of the lot that contained the original home. The properties are also in the Provincial Greenbelt area, as well as, recognized under Conservation Management zoning.

The 23 lots were split into the names of 4 different parties who seem to be related. Over the years, those owners have managed to sell 9 of the parcels (including the only recognized parcel), while retaining the remaining 14 parcels. The only recognized parcel is the original parcel that contains the home and has changed hands a few times over the years. That lot was not included as part of the tax sale as the taxes are in good standing. Five of the purchasers of the checkerboard properties continue to pay their taxes, keeping the properties out of tax registration and potential tax sale. Three of the purchasers did not pay any property taxes putting them in significant arrears and were part of the tax sale. The taxes on the 17 lots in the tax sale date back to either 1971 or 1972.

According to older files retrieved from Flamborough upon amalgamation, the Town began to consider tax sales on these lots back in 1993. While legal opinion, at the time, verified the Town was within its rights to go after the tax sale of these separately assessed lots, there were concerns that any purchasers buying the lots would then establish them as legally recognized lots, in contradiction to the view taken by the Regional Planning Office. As such, no tax registration proceedings were commenced at that time. Upon amalgamation, the Taxation Division became aware of these lots. As the arrears continued to increase, it was recognized that the City would have to take action. As a result of discussions between the Planning, Legal Services and Taxation Divisions, it was decided to proceed with tax sales, on these lots, which took place on November 13, 2008. As there were no bidders, the 17 lots were vested to the City as one larger parcel comprising 100 of the original 134 acres.

ANALYSIS/RATIONALE:

By vesting the properties to the City as one property, we can now remove the uncollectible tax arrears from our books and recover any education taxes paid to the school boards over the years. Writing off the taxes also correctly reflects the true taxes receivable on our accounting ledgers. The funds have been budgeted for in the City’s Allowance for Doubtful accounts.
ALTERNATIVES FOR CONSIDERATION:

None.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

The amount to be written off is $703,068.36 of which $173,354.74 will be recovered from the various school boards and the remaining $529,713.62 to HAMTN 12034.000100 (Allowance for Doubtful Accounts). The funds have been budgeted in the allowance account for a number of years specific to these 17 accounts.

POLICIES AFFECTING PROPOSAL:

Municipal Act (2001), Section 354(3).

RELEVANT CONSULTATION:

Planning Division, Planning and Economic Development Department
Legal Services Division, Corporate Services Department
Economic Development & Real Estate Division. Planning and Economic Development Department.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. □ Yes ☑ No

Environmental Well-Being is enhanced. □ Yes ☑ No

Economic Well-Being is enhanced. □ Yes ☑ No

Does the option you are recommending create value across all three bottom lines? □ Yes ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? □ Yes ☑ No