SUBJECT: Hamilton Ballet Youth Ensemble Tax Appeal Under Section 357 and 358 of the Municipal Act, 2001 (FCS09118) (Ward 2)

RECOMMENDATION:

(a) That City Council approve a tax classification change from Commercial Taxable to Exempt for the Hamilton Ballet Youth Ensemble (HBYE) regarding 108–112 James Street North (Tivoli Theatre) under Section 357 of the Municipal Act, 2001;

(b) That the 2006 to 2008 tax classification also be changed from Commercial Taxable to Exempt under Section 358 of the Municipal Act, 2001; and

(c) That full tax exemption remains in force until such time as the property is sold or the intended use of live ballet is discontinued.

EXECUTIVE SUMMARY:

Sections 357 and 358 of the Municipal Act allows the taxpayer, through the Treasurer’s Office, to submit an application to cancel, reduce or refund all or part of the taxes levied on the land in the year in respect of which the application is made as a result of a change of use, in this case, damage to a property rendering it totally unusable.
BACKGROUND:

In September of 2006, the HBYE was given the property at 108-112 James Street North, known as the Tivoli Theatre. In 2004, the property was part commercial and mostly exempt due to live theatre performances. In 2004, a collapse of the front portion of the property rendered the property unusable and led to an emergency demolition of the collapsed portion. The theatre portion of the property was saved and the former owner transferred title over to HBYE effective September 6, 2006. It is the intention of the HBYE to perform live ballet performances and to use the property for teaching, training and practicing. At this time, due to the state of the property and the funds required, no live performances can be held at the site.

The Municipal Property Assessment Corporation (MPAC), upon notice of the ownership change, issued supplementary assessment notices on the property, effective September 6, 2006, in the value of $417,500 at the commercial tax class. This then led to supplementary tax bills being issued for 2006, as well as, tax bills for 2007, 2008 and 2009. For 2007 and subsequent years, MPAC agreed to lower the property value to $284,000 but would not amend the commercial tax class. An attempt by the property owners to have the property declared exempt, as the use is intended for live performances, was denied by MPAC. The basis of their denial was that there are currently no live performances taking place. As the property is currently unusable, live performances, at this time, could not take place. It should be noted that MPAC did not change the tax class from exempt to commercial at the time live performances had to cease in 2004. It was only upon the change of ownership that MPAC then changed the assessment class.

City Council, through Sections 357 and 358 of the Municipal Act, have the authority to declare the property exempt given the state of the property currently being unusable and its intended use to show live performances.

ANALYSIS/RATIONALE:

It is the intent of the current owners to continue using the Tivoli property for live performances, training and teaching. The HBYE also plan on reaching out to other cultural and arts groups to make the facility a multi-use site, as well as, partnering with the Hamilton Philharmonic Orchestra for their performances. The HBYE have also identified HECFI as the operator of choice to manage the front office, including ticket sales, door staff, ushers and technical staging.

Staff’s recommendation is that the current owners should not be penalized due to the collapse of part of the building that then had MPAC amend the tax class. The building, as it currently remains, is unusable. The HBYE are raising funds and have applied for stimulus funding through the Federal and Provincial Governments, as well as, working with the City’s Downtown Renewal staff to revitalize the building and property. Putting the site back to productive use will be a benefit to the area, leading to increased activity, that should provide an economic boost when live ballet performances are held.
**Alternatives for Consideration:**

Deny the full tax exemption but allow a class change from a commercial use to a residential tax class. As a non-profit owner of a property, the HBYE would be entitled to taxes at the residential tax class versus the current commercial tax class.

**Financial/Staffing/Legal Implications:**

The taxes that will be written-off under Section 357 and 358 based on an exempt tax classification total $45,142, of which, $16,218 will be charged back to the local school boards. The City portion of $28,924 will be charged to the operating budget (HAMTN 52108-211025).

If the alternative is chosen, then the taxes that will be written-off under Section 357 and 358 based on a residential tax classification total $29,604, of which, $12,935 will be charged back to the local school boards. The City portion of $16,669 will be charged to the operating budget (HAMTN 52108-211025).

There are no legal or staffing implications.

**Policies Affecting Proposal:**

Section 357 and 358 of the Municipal Act 2001.

**Relevant Consultation:**

Corporate Services Dept., Legal Services Division
Economic Development & Planning Dept., Downtown Renewal Division

**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

An unusable derelict building will be put back to use offering live ballets. The property will also be used as a teaching and practice facility for youth learning ballet.

Environmental Well-Being is enhanced.  ☐ Yes  ✔ No
Economic Well-Being is enhanced. ☑ Yes ☐ No

The area in and around the Tivoli should see enhanced economic activity due to the patrons attending live ballet performances, on such activities as restaurants, parking, etc.

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