SUBJECT: ERASE Redevelopment Grant Application (ERG-06-05) – Lowe’s Companies Canada, ULC, 349, 401, 437, 443 Woodward Ave, Hamilton (PED06422) (Ward 4)

RECOMMENDATION:

a) That ERASE Redevelopment Grant Application ERG-06-05, submitted by Lowe’s Companies Canada, ULC, owner of the property at 349, 401, 437, 443 Woodward Ave, to receive the ERASE Redevelopment Grant Program (ERG) and the ERASE Tax Assistance Program (TAP), be approved.

b) That combined ERASE Redevelopment Grant Program (ERG) and ERASE Tax Assistance Program (TAP) assistance shall not exceed $850,800 payable to Lowe’s Companies Canada, ULC. over a maximum of five (5) years.

c) That a By-Law (Appendix C) be approved by Council for the freezing of property taxes for educational and municipal purposes for a maximum of three (3) years effective after the development period and as a result of re-valuation by the Municipal Property Assessment Corporation (MPAC) following project completion.

d) That the City enter into an ERASE Redevelopment Agreement with Lowe’s Companies Canada, ULC regarding the terms and conditions governing the payment of an ERASE Redevelopment Grant (ERG) for, and redevelopment of, 349, 401, 437, 443 Woodward Ave, with such agreement to be satisfactory to the City Solicitor.
EXECUTIVE SUMMARY:

An Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant Application was submitted by Lowe's Companies Canada, ULC for redevelopment of the property at 349, 401, 437, 443 Woodward Ave (Appendix A). The application qualifies for the ERASE Redevelopment Grant Program (ERG) and the ERASE Tax Assistance Program (TAP), as a result of required environmental site remediation, building demolition and on-site infrastructure upgrading in order to permit construction of a 140,000 square foot, one storey commercial home improvement store (Lowe's). The Grant application is for $850,800 in eligible environmental site remediation, building demolition and on-site infrastructure upgrading costs. This is the first application to participate in the ERASE TAP which utilizes the Province's Brownfields Financial Tax Incentive Program (BFTIP).

Under the ERASE Redevelopment Grant Program and the ERASE TAP, there is no actual loss of tax revenues to the City. The annual grant paid by the City to the owner is actually paid out of increased taxes generated by the development taking advantage of the ERASE Program. Refer to Appendix B for a summary of the estimated/actual financial impact of this program to date (inclusive ERASE applications contained in this report).

This application meets the grant criteria specified in the 2005 ERASE Community Improvement Plan (CIP). This redevelopment will result in the physical enhancement of this industrial site via environmental site remediation leading to the development of the proposed facilities and will result in a significant long-term increase in assessment and property tax revenues to the City. The City, under the terms of the ERASE program will need to enter into a Redevelopment Agreement with the owner, as specified in the ERASE CIP.

BACKGROUND:

Site History

The following site history was identified in the Phase II ESA Report as prepared by Soil-Mat Engineers & Consultants Ltd. for Lowe's Companies Canada, ULC. The site occupies the lands at the northwest corner of Woodward Street and Barton Street in Hamilton, Ontario. As detailed in the environmental reports, both soil and ground water have been assessed across this site. Impacted soil has been identified and delineated both vertically and aerially. Identified parameters affecting soil at this site are limited to beryllium, cobalt, petroleum hydrocarbons, and benzo(a)pyrene. There have been no concentrations on any of the analyzed parameters identified in the ground water at the locations sampled. Historical property uses of concern are a former retail fuel outlet at 349 Woodard Avenue, which was most recently an automotive repair facility, and underground storage tanks (UST's) located in the north central and north western areas of 401 Woodward Avenue.
ERASE Applications

The application for an ERASE Redevelopment Grant submitted by the owner of the property at 349, 401, 437, 443 Woodward Ave, Lowe's Companies Canada, ULC., qualifies for an ERASE Redevelopment Grant as a result of required environmental site remediation. The application involves the site remediation to remove elevated levels of petroleum hydrocarbon impact to subsurface soils on the western portion of the Site in order to permit the construction of 140,000 square foot, one storey commercial home improvement store (Lowe's), plus an approximate 32,000 square foot outdoor garden area. The development also includes associated loading, staging and paved parking area. Estimated project construction costs are $3.92 million. The costs eligible for the ERASE Redevelopment Grant Program (ERG) assistance and the ERASE Tax Assistance Program (TAP) are estimated as follows:

<table>
<thead>
<tr>
<th>Eligible Works</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Disposal/Soil Treatment Cost**</td>
<td>$445,000</td>
</tr>
<tr>
<td>Environmental Consulting Fees**</td>
<td>30,000</td>
</tr>
<tr>
<td>Building Demolition</td>
<td>232,100</td>
</tr>
<tr>
<td>On-Site Infrastructure Upgrading</td>
<td>143,700</td>
</tr>
<tr>
<td>**TOTAL</td>
<td>$850,800</td>
</tr>
</tbody>
</table>

*GST is not included in the above.
** Eligible for ERASE Tax Assistance Program (TAP) only

Staff review of the proposed works against the eligibility criteria contained in the ERASE CIP show that all costs that have been applied for under the grant are eligible. Therefore, staff recommends approval of this ERASE Redevelopment Grant Application.

Planning Status

The Development and Real Estate Division advised that on November 30, 2005, Site Plan Application DA-05-159 was deemed to be approved by the Manager of Development Planning to permit the construction of a 13,150 square metre home improvement centre with a 2,942 square metre garden centre and associated parking, landscaping and access. The applicant is in the process of fulfilling the conditions of approval.

ANALYSIS/RATIONALE:

The ERASE Redevelopment Grant Program (ERG) and the ERASE Tax Assistance Program (TAP) are a component of the Council approved ERASE CIP. This application meets the criteria for approval.

Current 2006 Market Value Assessment (MVA) for 349 Woodward Ave. is $173,000, for 401 Woodward Ave. is $590,000, for 437 Woodward Ave. is $426,000 and for 443
Woodward Ave. is $221,000 for a grand property total of $1,410,000 in MVA. Commercial (CTN) tax classifications are applied to 349, 401 and 437 Woodward Avenue and a Residential (RT) tax classification is applied to 443 Woodward Avenue. Current 2006 property taxes (which are current (paid in full)) for the entire parcel is approximately $56,860.18 broken down as follows:

Municipal Levy = $34,793.89  
Education Levy = $21,822.10  
Tax Cap Adjustment = $244.19  
Total = $56,860.18

Based on site plan drawings and information submitted in support of the ERASE application, staff have estimated that once the project is complete, the property, including all buildings, will have an estimated MVA of approximately $7,000,000, classed as Commercial (CTN). This new MVA is estimated to increase total annual property taxes over the present $56,860.18. The City’s share of this increase is estimated to be approximately $153,241 in municipal taxes. The Province’s share of this increase is estimated to be approximately $103,216 in educational taxes.

For 2006, the City has budgeted approximately $100,000 in foregone tax revenues with respect to the ERASE program. This figure includes approximately $67,000 for previously approved ERASE applications and $33,000 for future applications (includes this application). Note: ERASE tax revenue increase starts only when construction completed and occupancy occurs.

**ALTERNATIVES FOR CONSIDERATION:**

The grant application meets the eligibility criteria and requirements of the program. In the event the project is not considered for the program, the application should be referred back to staff for further information on any possible financial or legal implications.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial Implications:

As per the ERASE Redevelopment Grant Program (ERG) and the ERASE Tax Assistance Program (TAP), the municipal share of this property tax increase (municipal tax increment) will be approximately $153,241, of which 80%, or approximately $122,593 would be frozen (not collected) for a maximum of three (3) years initially and an annual grant back thereafter (total tax bill will be collected and then granted back provided the provisions of the ERASE Redevelopment Agreement are followed). The educational share of this property tax increase (educational tax increment) will be approximately $103,216, of which 80%, or approximately $82,573 would be frozen for a maximum of three (3) years only and then will be collected in full as the Provincial contribution to the program will cease. The combined program assistance will be for
three years whereas the City’s assistance will continue for five (5) years or total grants equal $850,800. At that time, the City will begin to collect and retain the full municipal portion of the tax increment.

The City will retain 20% of the municipal tax increment, approximately $30,648.20 a year for approximately five (5) years, totalling approximately $153,241.02. These monies will be deposited into the Brownfields Pilot Project Account to be used by the City for its Municipal Property Acquisition, Investment and Partnership (MPAIP) Program. This program, as approved in the ERASE CIP, involves the City acquiring key brownfield sites, cleaning up and redeveloping property it already owns, or participating in public/private partnerships to redevelop brownfield properties.

Staffing Implications:

Administration of this application under the terms of the program can be accommodated by staff of the Economic Development Division and the Corporate Services Department.

Legal Implications:

Upon Council approval of the staff recommendations a Redevelopment Agreement between the City and the applicant will be negotiated and executed in a form satisfactory to the Executive Director of Economic Development and the City Solicitor.

POLICIES AFFECTING PROPOSAL:

Report PED06422 relates to the processing of an application under the ERASE Redevelopment Grant Program and the ERASE Tax Assistance Program which is contained within the City’s Provincially-approved ERASE Community Improvement Plan.

RELEVANT CONSULTATION:

Comments from the Corporate Services Department (Taxation Division) the City Manager’s Office (Legal Services Division) and the Planning and Economic Development Department (Development and Real Estate Division) have been incorporated within Report PED06422.

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
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.

An underutilized and dilapidated site is now being converted into a commercial use.
Environmental Well-Being is enhanced. ☑ Yes ☐ No

Human health and safety are protected.

The rehabilitation of this site and it's development into a productive use makes efficient and effective use of City services as well as protecting human health and safety.

Economic Well-Being is enhanced. ☑ Yes ☐ No

Investment in Hamilton is enhanced and supported.

The ERASE programs lead to effective partnerships with community stakeholders and encourage redevelopment of contaminated and/or underutilized properties. Developers and property owners invest in Hamilton properties leading to property assessment increases.

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

Hamilton continues to lead initiatives related to brownfield redevelopment. Such initiatives are professionally stimulating and result in Hamilton being a choice for employment to those interested in bettering community life.

:CR
Attachs. (3)
<table>
<thead>
<tr>
<th>Property Address</th>
<th>Report #</th>
<th>Approval Date</th>
<th>Estimated / Actual Clean up costs</th>
<th>Current Municipal Levy</th>
<th>Estimated * / Actual Future Municipal Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 &amp; 60 Hatt St</td>
<td></td>
<td></td>
<td>$598,575</td>
<td>$2,942</td>
<td>$100,428</td>
</tr>
<tr>
<td>1067 Beach Blvd</td>
<td></td>
<td></td>
<td>$5,770</td>
<td>$4,616</td>
<td>$6,980</td>
</tr>
<tr>
<td>347 Centennial PKWY n</td>
<td>ERG 05-03</td>
<td></td>
<td>$316,405</td>
<td>$13,187</td>
<td>$49,000</td>
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<td>215 Cavell</td>
<td>ERG 05-04</td>
<td></td>
<td>$45,988</td>
<td>$792</td>
<td>$6,237</td>
</tr>
<tr>
<td>41 Oliver</td>
<td>ERG 05-01</td>
<td></td>
<td>$686,000</td>
<td>$7,337</td>
<td>$10,990</td>
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<tr>
<td>106 - 127 Burton</td>
<td>ERG 05-02</td>
<td></td>
<td>$470,000</td>
<td>$4,560</td>
<td>$58,000</td>
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<tr>
<td>422 - 456 Beach Blvd</td>
<td>ERG 06-02</td>
<td></td>
<td>$271,637</td>
<td>$10,252</td>
<td>$181,688</td>
</tr>
<tr>
<td>124 Walnut St</td>
<td></td>
<td></td>
<td>$31,610</td>
<td>$2,591</td>
<td>$20,940</td>
</tr>
<tr>
<td>349 - 443 Woodward Ave</td>
<td></td>
<td></td>
<td>$850,800</td>
<td>$34,794</td>
<td>$201,546</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td></td>
<td>$3,276,785</td>
<td>$81,071</td>
<td>$635,808</td>
</tr>
</tbody>
</table>

* Estimated Calculations see Table 2

Table 2
Estimated Municipal Levy

<table>
<thead>
<tr>
<th>Address</th>
<th>Property Class</th>
<th>Estimated MVA Square Footage * $50.00</th>
<th>Municipal Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Appendix B to Report PED06422 Page 2 of 2
<table>
<thead>
<tr>
<th>Address</th>
<th>Type</th>
<th>Size</th>
<th>Value</th>
<th>Interest Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 &amp; 60 Hatt</td>
<td>Commercial Office Building (CT)</td>
<td>38,750</td>
<td>$1,937,500.00</td>
<td>2.51%</td>
</tr>
<tr>
<td></td>
<td>Residential (RT)</td>
<td>81,600</td>
<td>$4,080,000.00</td>
<td>1.27%</td>
</tr>
<tr>
<td>1067 Beach Blvd</td>
<td>Residential (RT)</td>
<td>9,600</td>
<td>$480,000.00</td>
<td>1.45%</td>
</tr>
<tr>
<td>41 Oliver</td>
<td>Industrial Large (LT)</td>
<td>4,000</td>
<td>$200,000.00</td>
<td>5.50%</td>
</tr>
<tr>
<td>422 - 456 Beach Blvd</td>
<td>Multi-Residential (MT)</td>
<td>91,200</td>
<td>$4,560,000.00</td>
<td>3.98%</td>
</tr>
<tr>
<td>124 Walnut St</td>
<td>Residential (RT)</td>
<td>28,800</td>
<td>$1,440,000.00</td>
<td>1.45%</td>
</tr>
<tr>
<td>349 - 443 Woodward Ave</td>
<td>Commercial (CT)</td>
<td>140,000</td>
<td>$7,000,000.00</td>
<td>2.88%</td>
</tr>
</tbody>
</table>
CITY OF HAMILTON

BY-LAW NO. __________

A By-Law To Freeze Municipal And Education Taxes for
349, 401, 437, 443 Woodward Avenue

PASSED:

WHEREAS By-Law No. 05-087, being a by-law to designate “Environmental Remediation and Site Enhancement (ERASE) Community Improvement Plan”, as community improvement project area, pursuant to Section 28(2) of the Planning Act, was passed by Council on April 11, 2005;

AND WHEREAS By-Law No. 05-087, being a by-law to adopt the community improvement plan for “Environmental Remediation and Site Enhancement (ERASE) Community Improvement Plan” was passed by Council on April 11, 2005;

AND WHEREAS Lowe’s Companies Canada, ULC, the registered owner of the Eligible Property known as 349, 401, 437, 443 Woodward Avenue applied to the City of Hamilton to freeze the property taxes for this property, in accordance with the Community Improvement Plan and section 365.1 of the Municipal Act, 2001;

AND WHEREAS the Eligible Property is located within the Community Improvement Project Area and is eligible for Tax Assistance pursuant to section 365.1 of the Municipal Act, 2001;

AND WHEREAS the Minister of Finance has approved this by-law as required by section 365.1 of the Municipal Act, 2001.

NOW THEREFORE the Council of the City of Hamilton, pursuant to Section 28 of the Planning Act, R.S.O. 1990 and section 365.1 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, ENACTS AS FOLLOWS:

1. In this By-law,
a) “Development Period” means, with respect to the Eligible Property, the period of time starting on the date the Rehabilitation Period ends and ending on the earlier of,
   i) the third anniversary of the passage of the by-law, or
   ii) the date that the Tax Assistance provided for the Eligible Property equals the Remediation Costs;

b) “Eligible Property” means 349, 401, 437, 443 Woodward Avenue;

c) “Owner” means Lowe’s Companies Canada, ULC, the owner of the Eligible Property;

d) “Rehabilitation Period” means, with respect to the Eligible Property, the period of time starting on the date that Tax Assistance begins to be provided under this By-law for the property and ending on the earliest of,
   i) the date that is 18 months after the date that the Tax Assistance begins to be provided or,
   ii) the date that a record of site condition for the property is filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act, or
   iii) the date that the Tax Assistance provided for the property equals the Remediation Costs;

e) “Remediation Costs” means the cost of any action taken to reduce the concentration of contaminants on, in or under the Eligible Property to permit a record of site condition to be filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act and the cost of complying with any certificate of property use issued under section 168.6 of the Environmental Protection Act, and as further specified in the Community Improvement Plan;

f) “Tax Assistance” means the freezing of taxes over the base rate for municipal and school purposes levied on the Eligible Property after the Development Period as a result of re-valuation by the Municipal Property Assessment Corporation (MPAC) following project completion.

2. Municipality shall provide Tax Assistance for the Eligible Property subject to the provisions of this By-law and subject to confirmation that the Owner has paid all property taxes owing with respect to the Eligible Property for all years prior to the year in which this By-law is passed.

3. The Tax Assistance shall commence as of the date this By-law receives council approval and shall be effective after the Development Period as a result of re-valuation by the Municipal Property Assessment Corporation (MPAC) following project completion. In no event shall the Tax Assistance continue past the third anniversary of the commencement of tax assistance unless there are exceptional circumstances.
circumstances and the City Of Hamilton has outlined these to the Ministry of Finance.

4. The Tax Assistance available shall be 80% of the increment following reassessment.

5. Where Tax Assistance is provided for a portion of any year, or where Tax Assistance represents only a portion of the taxes levied on the Eligible Property, the Owner is responsible for payment of all property taxes levied during the portion of the year when Tax Assistance is not provided, and for all taxes not subject to Tax Assistance.

6. As of the date of passing of this By-law, the City of Hamilton may,
   a) refund the taxes to the extent required to provide the Tax Assistance in the year this By-law is passed, if the taxes for the Eligible Property have been paid; or
   b) credit the amount to be refunded to an outstanding tax liability of the Owner with respect to the Eligible Property, if the taxes have not been paid in the year that this By-law is passed.

7. The Treasurer shall alter the tax roll in accordance with the Tax Assistance to be provided for the Eligible Property.

8. The Owner shall, within 18 months of the anniversary of the commencement of Tax Assistance (or such later date agreed to in writing by the City of Hamilton and the Minister of Finance), file a record of site condition with respect to the Eligible Property in the Environmental Site Registry under section 168.4 of the Environmental Protection Act. The owner shall, within 30 days, notify the City of Hamilton of the filing. Within 30 days after receiving the notice from the Owner, the City of Hamilton shall advise the Minister of Finance of the filing.

9. (1) The Owner shall provide to the City of Hamilton an annual report within thirty (30) days of the anniversary of the commencement of Tax Assistance for each year or part thereof that Tax Assistance is provided. The annual report shall include:
   a) An update of the concentration and location of contamination on the Eligible Property;
   b) The status of remediation work completed to date;
   c) Costs expended to date and an estimate of costs not yet incurred; and
   d) Time estimates to complete the remedial and redevelopment work.

   (2) Within 30 days of receiving the report from the Owner, the City of Hamilton shall provide a copy to the Minister of Finance.
10. (1) Tax Assistance shall be suspended, and either or both the municipal and school portions of it may be terminated, where any one of the following occurs:

   a) The Owner is in default of any obligation pursuant to this By-law;

   b) The Owner is in default of any provision of the Brownfield Site Agreement entered into between the Owner and the City of Hamilton and attached as a Schedule to this By-law.

   c) The Owner fails to commence or ceases remediation for any reason.

(2) The municipal portion of the Tax Assistance shall be suspended, and may be terminated, where any one of the following occurs:

   a) The Eligible Property is severed, subdivided or all or any portion of the property is conveyed;

   b) Tax Assistance has been provided for three (3) years.

(3) The education portion of the Tax Assistance shall be terminated where any one of the following occurs:

   a) The Eligible Property is severed, subdivided or all or any portion of the property is conveyed;

   b) Tax Assistance has been provided for three (3) years.

(4) The Tax Assistance shall be terminated where the Remediation Costs equal or exceed the Tax Assistance.

11. The Owner shall notify the City of Hamilton forthwith if any of the events in sections 10(1), 10(3) (a) or 10(4) occur. The City of Hamilton shall then forthwith notify the Minister of Finance.

12. If Tax Assistance has been suspended under subsections 10(1) or 10(2), the City Of Hamilton may:

   a) Provide the Owner with notice that the Tax Assistance is terminated; or

   b) Provide the Owner with notice that it may cure the default within such period and on such terms as the City of Hamilton specifies in writing, and that the failure to do so will result in termination of the Tax Assistance.

13. A notice under clause 12(b) is not effective with respect to education taxes unless it has been agreed to in writing by the Minister of Finance.

14. (1) In the event that Tax Assistance is terminated pursuant to section 10 or 12 above, the City of Hamilton shall provide notice to the Owner under subsection 365.1(3.1) of the Municipal Act, 2001 that the conditions under this By-law have not been met and order the Owner to repay all of the education taxes which were
subject to the Tax Assistance, and all or a portion of the municipal taxes which were subject to the Tax Assistance.

(2) Where the City makes an order under subsection (1), interest is payable on the taxes which become payable under the order calculated at the standard rates of the Municipality, as if the Tax Assistance had not been provided.

15. In the event that the Tax Assistance provided pursuant to this By-law exceeds the actual Remediation Costs for the Eligible Property, the amount that the Tax Assistance exceeds the Remediation Costs shall be repaid by the Owner, failing which the amount to be repaid shall be added to the Assessment Roll for the Eligible Property and collected as property taxes.

16. This by-law shall come into force and take effect on its passing.

PASSED and ENACTED this day of , 200.

__________________________________________
MAYOR

__________________________________________
CLERK