

APPENDIX 1

The following is a summary of four issues regarding taxation and incentives with respect to brownfield properties, as identified in the meeting with the Minister of the Environment, the Honourable John Gerretsen (April 27, 2009):

1. Land Transfer Tax

In general, purchase and sale agreements for brownfield sites are typically on an “as is where is basis” that include any environmental deficiencies associated with the lands. Typically more sophisticated vendors request the purchaser to not only accept environmental deficiencies at their risk but also provide an environmental release and/or indemnity in favour of the vendor from the purchaser, preventing the purchaser or a third party from making an environmental claim against the vendor at some point in the future.

In a recent brownfield transaction within the province, where an environmental indemnity was provided by the purchaser to the vendor, the Ministry of Revenue Land Taxes Section insisted that the value of the indemnification must be included as part of the consideration the vendor received in addition to purchase price, and is therefore subject to Land Transfer Tax (LTT). Their interpretation of the indemnity meant the purchaser had to pay land transfer tax based on some assessment of site remediation costs over and above the purchase price for the lands which were sold on an “as is where is basis”.

In brownfield transactions the vendor receives a land transaction price commensurate with the environmental condition. With the environmental release and/or indemnity, the vendor would be protected from an environmental claim by the purchaser or a third party, and would not receive more, nor receive less, than the purchase price. In summary, the indemnification preserves the value of the contracted amount and should not be treated as additional consideration. If requested, the details of this example can be made available for further evaluation.

2. Realty Tax

The following considerations regarding realty taxes and the treatment of brownfields are discussed below. Representatives of the CBN are currently working with MPAC to explore policy solutions in these areas and would like your support.

a. Assessed Value

At this time, the Municipal Property Assessment Corporation (MPAC) does not have a specific procedure established to determine the impact of contamination on the assessed value of a property. Although contamination may negatively affect the ability of a landowner to occupy, lease or sell the property, there would likely be no reduction in the property assessment.

b. Tax Class

A brownfield property, in a vacant state, would likely have an Industrial Vacant tax class as it was most likely a previous industrial operation. The brownfield property would

remain in the Industrial Vacant tax class during the remediation process, only changing if a rezoning occurred which changed the permitted land uses. Upon rezoning, MPAC would immediately change the tax class (ie. to commercial or residential) whether or not those new uses would be able to locate on the property due to the on-site remediation work or lack of regulatory environmental site closure that prohibit the higher-order use from actually locating on the property.

c. *Greenfield versus Brownfield Development*

A Greenfield property remains in a low tax class (ie. farmland or Farmland Pending Development) with a low assessed property value, which results in low realty taxes charged until on-site construction works begin. In the brownfield redevelopment process, developers pay substantially higher realty taxes based on: the higher assessed land value and building; and the higher tax class. Developers of Greenfield properties may pay hundreds of thousands of dollars less in realty taxes than a brownfield developer undertaking the remediation/redevelopment process.

3. Assessment and Remediation Expenses

The Income Tax Act requires that, in many instances, remediation expenses are treated as improvements to real property and capitalised rather than treated as expenses that can be deducted from other income. This is particularly hard on smaller redevelopments and, as was originally pointed out in the NRTEE National Brownfield Remediation Strategy, remains as a significant barrier to redevelopment.

The CBN is considering an analysis of how other jurisdictions treat these expenses and will advise the Ontario Minister of the Environment of their findings and further recommendations.

4. Financial Incentives for Brownfield Remediation/Redevelopment

The structure of long term incentives, specifically Tax Assistance Programs such as Tax Increment Equivalent Grants (TIEGS), is difficult to monetize due to the timeframe in which they are provided. When the time value of money is considered, these grants provide significantly less value than the cumulative absolute amount of these grants.

TIEGs are based on the incremental difference between pre-redevelopment and post-redevelopment property taxes. As higher-order land uses pay higher property taxes, the TIEGS are really incentivizing a change in land use from Employment, particularly industrial, during the redevelopment process.

A letter dated May 2, 2008, was provided to Ministers Gerretsen and Watson outlining this difficulty in more detail. We would be pleased to provide you with a copy of this letter should you require it for your reference.