

MUNICIPAL GOVERNMENT BOARD

ANNEXATION BULLETIN NO. 1 – 2005

Date: October 1, 2005

ANNEXATION CONDITIONS RELATING TO ASSESSMENT AND TAXATION

INTRODUCTION

Two issues having the most direct concern to potentially affect individual landowners and municipalities in the course of an annexation proposal is the change in the manner and scope of the assessment and the taxation of the affected properties proposed for annexation. In the past, municipalities involved in an annexation proposal have addressed this issue by any number of alternatives, but generally by a request to include specific assessment and taxation conditions in the Order in Council approving the annexation. More recently, there has been a tendency or desire to resolve this issue by agreement between the two affected municipalities or directly with the landowner, without seeking the sanction of the Lieutenant Governor in Council in the Order in Council approving of the annexation. Because the method of assessment and manner of taxation are prescribed in the *Municipal Government Act* (Act), annexations have experienced substantial delays because it must first be determined if an assessment and/or tax agreement between two municipalities or an agreement with a landowner can effectively set the assessment and tax rate for newly annexed lands in a manner different from that prescribed in the Act.

This Bulletin addresses:

- The normal evolution of assessment and taxation upon annexation.
- The authority of the Lieutenant Governor in Council to address assessment and tax concerns.
- If municipal agreements with landowners can modify legislated assessment and tax provisions contained in the Act.
- Procedures for addressing assessment and taxation concerns.
- Communicating with landowners the possible solutions as well as any limitations on a municipality's ability to address potential concerns related to assessment and taxation.

This Bulletin does not address other relevant issues arising from an annexation and is solely focused on the issue of assessment and taxation.

IMPACT OF ANNEXATION

The assessment of an agricultural operation's farm buildings is impacted by annexation of land to a city, town, village or summer village. Section 298(1)(y) of the Act, states that "*No assessment is to be prepared for the following property: farm buildings, except to the extent prescribed in the regulations.*" Section 5(2) and (3) of the *Matters Related to Assessment and Taxation Regulation AR 220/2004* (Regulation) then states in subsection (2) that "*For the*

purpose of section 289(1)(y) of the Act, an assessment must be prepared for any farm building located in a city, town, village or summer village.” and in subsection (3) it further states that “In preparing an assessment for a farm building, the assessor must determine its value based on its use for farming operations.” Thus, when a farm building is annexed into an urban municipality there is a change in its assessment status.

Annexation may also impact non-farm property by virtue of an increase or decrease in market value or more importantly a change in the tax rate applicable to one or more classes of property as a result of being annexed to another municipality.

The municipal assessor has a mandatory duty to classify property into classes. Section 297 of the Act states in subsection (1) that *“When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:*

- (a) class 1 - residential;*
- (b) class 2 - non-residential;*
- (c) class 3 - farmland;*
- (d) class 4 - machinery and equipment.”*

A municipality may by bylaw establish subclasses of property in accordance with section 297(2).

“A council may by bylaw

- (a) divide class 1 into sub-classes on any basis it considers appropriate, and*
- (b) divide class 2 into the following sub-classes:*
 - (i) vacant non-residential;*
 - (ii) improved non-residential*

and if the council does so, the assessor may assign one or more sub-classes to a property. The municipality must then apply tax rates to each class or sub-class of property according to the Act.”

Section 354(1) of the Act states *“The property tax bylaw must set and show separately all of the tax rates that must be imposed under this Division to raise the revenue required under section 353(2).”* Section 354 further states in subsections (2) and (3) that *“A tax rate must be set for each assessment class or sub-class referred to in section 297.”* and *“(3) The tax rate may be different for each assessment class or sub-class referred to in section 297.”*

The Act lists specific types of property for which an assessment is not to be prepared and lists those specific properties that are exempt from taxation. There is no provision in the Act to exempt newly annexed lands from assessment and taxation.

As a result, the annexing municipality has a legislative duty to impose taxes equitably on all property within each class as required by the Act. The Act provides no provision for a municipality on its own to set a different tax rate or different assessment procedure for newly annexed lands or for specific types of property in the newly annexed lands.

AUTHORITY OF THE LIEUTENANT GOVERNOR IN COUNCIL

The Lieutenant Governor in Council is the only entity that has been given statutory authority to include conditions in the order annexing land to a municipality relating to the assessment and taxation of the annexed lands that modify the provisions of the Act.

Section 127(c) of the Act states that *“An order to annex land to a municipal authority may*

(c) deal with any of the matters referred to in section 89.

Section 89 of the Act, in subsection (2)(d) states that the order *“may specify or describe by reference, any provisions that are to be added to or replace the provisions of this or other enactments.”*

Further, the general provisions for annexation part of the Act, in section 137(1)(a) and (e) states *“An order of ... annexation ... may, in respect of any municipal authority affected by the order, contain provisions dealing with the following:*

(a) assessment and taxation;

(e) the application, addition, change or substitution of this or another enactment to give effect to the order.”

AUTHORITY OF COUNCIL

Section 347 of the Act does provide the municipality with the ability to provide for a refund, reduction, cancellation or deferral of taxes.

“(1) If a Council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:

(a) cancel or reduce tax arrears;

(b) cancel or refund all or part of a tax;

(c) defer the collection of a tax.

Although section 347 of the Act provides a Council with the ability to provide for a refund, reduction, cancellation or deferral of taxes it is held that this authority can only be exercised on an annual basis because property assessment and taxation is in itself an annual event. Accordingly, the only time the provisions of the Act relating to taxation can be modified for a period of time greater than one year is by a specific provision in an annexation order.

As well, there is no authority for a municipality to alter an assessment procedure described in the Act or assessment regulations. Any modification of an assessment procedure can only be done within the annexation order pursuant to the authority given to the Lieutenant Governor in Council.

MUNICIPAL AGREEMENTS

Agreements between municipalities or with individual landowners cannot supercede the duty of the assessor to assess property according to the Act and the assessment regulations and the municipality's duty to tax property in the manner required by the Act. Only the Lieutenant Governor in Council has the authority in an annexation order to add to or replace the provisions of the Act respecting the assessment and taxation of property for a period of time. Therefore, any conditions of annexation relating to assessment and taxation altering any of the basic provisions of the Act or associated regulations must be included in the annexation order of the Lieutenant Governor in Council.

PROCEDURES

Municipalities initiating annexation must enter into negotiations with the municipality from which the land is proposed to be annexed. In addition, the municipality must consult with the landowners of the land proposed for annexation. As a result of both the negotiations and the consultation with the landowners, the future assessment and taxation of the annexed lands may become an issue and, in some cases, the only issue to be resolved as part of the support for the annexation.

In either case, if the annexing municipality is in agreement with the assessment and tax conditions, they should be incorporated within the report on negotiations. Care must be given in drafting the conditions to insure that it clearly sets out the objective of the condition(s) and that it fully address all the concerns of the parties related to assessment and taxation.

Upon submitting the report on negotiations, the report itself must clearly request that the Lieutenant Governor in Council include the specific assessment and tax conditions which alter the basic provisions of the Act and associated regulations within the annexation order.

COMMUNICATION

An annexing municipality should very clearly inform potentially affected landowners of the impact of annexation on the assessment and taxation of their property. For example, a municipality should provide information on how property is currently assessed, the assessment class within the annexing municipality and what the current tax rate is for each class or subclass of property. In addition, the property owner should be informed of the potential impact of annexation based on current use of the property and the municipality's appropriate tax rate and applicable assessment procedures.

Discussions relating to assessment and tax concerns must also include the type of events that would remove any land from special assessment and tax conditions and make them subject to the same assessment and taxation as other similar land in the annexing municipality. Generally speaking, these events relate to a change in use, which can be identified by amendments to the land use bylaw, issuance of development permits, actual change in use, or subdivision of individual parcels.

Once a municipality has informed the landowner of the most likely impact, the municipality should explore with the landowners various options to mitigate the financial impact of annexation. These options can include:

- Assessing the agricultural improvements in the same manner as if the land had remained in the other municipality for a specified period of time.
- Maintaining the tax rate of the municipality from which the land was annexed for a specified period of time.
- The length of time the assessment and taxation conditions would remain in effect.
- The type of events that would remove any of the annexed lands from the assessment and taxation conditions.

CONSIDERATIONS

Municipalities must be cognizant of the potential problems associated with special assessment and tax conditions respecting the annexed lands. Examples are conditions maintaining the tax rate of the previous municipality, which can be difficult to administer or ultimately have a negative effect on the landowner or create inequitable assessment and tax regimes in the municipality over the long term. Open-ended timelines can inhibit development or result in patchwork development or long-term inequitable treatment of landowners. Problems can develop when it is unclear when the conditions would lapse for each parcel. In addition, any condition relating to assessment and taxation must have a finite end point, otherwise, the Municipal Government Board would likely have concerns on recommending such an arrangement to the Minister and Cabinet. In some recent annexations timelines have ranged from five to 15 years. Justification of timelines greater than 15 years would require significant rationale.

The attached Appendix provides for typical conditions, including the type of development related events that would cause the conditions to lapse prior to the timelines identified.

SUMMARY

The annexation provisions of the Act do provide municipalities substantial freedom to solve local problems with local solutions, however, the assessment and taxation scheme is legislated to insure fairness in the taxation of property. Therefore, in defining a solution to assessment and tax issues arising from annexation, it is imperative that fairness be considered and the conditions be confirmed by the Lieutenant Governor in Council as part of the annexation order.

APPENDIX

Typical Example of Assessment and Tax Conditions of an Order of the Lieutenant Governor in Council

The following are typical assessment and taxation conditions. Please note the amount of detail necessary to give effect to the objectives of the conditions. In addition, consider the type and timing of the events that would remove any parcel from the protection provided by the conditions. You will note that these events are generally related to an anticipated or actual change in land use from a rural type environment or use to a more intensive or urbanized use.

Annexation Appendix

1. For taxation purposes in (year) and subsequent years, up to and including (year), the annexed land and the assessable improvements to it
 - (a) must be assessed by the *Town/City* on the same basis as if they had remained in the *County/MD*, and
 - (b) must be taxed by the *Town/City* in respect of each assessment class that applies to the annexed land and the assessable improvements to it using the tax rate established by the *County/MD*.

2. Where in any taxation year, a portion of the annexed land
 - (a) becomes a new parcel of land created as a result of subdivision or separation of title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner,
 - (b) is redesignated at the request of, or on behalf of the landowner under the *Town/City* Land Use Bylaw to another designation, orsection 1 ceases to apply at the end of that taxation year in respect of that portion of the annexed land and the assessable improvements to it.

3. After section 1 ceases to apply to a portion of the annexed land in a taxation year, that portion of the annexed land and the assessable improvements to it must be assessed and taxed for the purposes of property taxes in the following year in the same manner as other property of the same assessment class in the *Town/City* is assessed and taxed.