

Property Tax Considerations for B.C. Developers

February 26, 2009

James D. Fraser
Partner, Lawson Lundell LLP

INTRODUCTION

Discussion in 3 Parts:

- ◆ Overview of property assessment and taxation scheme
- ◆ Overview of critical property tax considerations for developers
- ◆ Tax Planning Considerations

PROPERTY ASSESSMENT AND TAXATION SCHEME

Basis of Property Taxes:

- ◆ **Municipal Taxes** = Assessed Value x Municipal Tax Rate for Class of Property – Exemptions
- ◆ **Provincial School Taxes** = Assessed Value x Provincial Tax Rate for Class of Property – Exemptions
- ◆ **Other Taxes** (BCTFA, Hospital, BC Assessment, etc.) = Assessed Value x Tax Rate Set by Taxing Authority for Class of Property – Exemptions
- ◆ **Band Taxes** = Assessed Value x Tax Rate Set by Band for Class of Property – Exemptions

PROPERTY ASSESSMENT AND TAXATION SCHEME

Classification (based on *actual use*):

- ◆ Class 1 – *Residential (usually lowest tax rate)*
- ◆ Class 2 – *Utilities*
- ◆ Class 3 – *Supportive Housing (new for 2009)*
- ◆ Class 4 – *Major Industry (usually highest tax rate)*
- ◆ Class 5 – *Light Industry (usually lower tax rate than Class 4 rate)*
- ◆ Class 6 – *Business & Other (“catch all”, usually lower than Class 4 or than Class 1 rate)*
5, higher
- ◆ Class 7 – *Managed Forest Land*
- ◆ Class 8 – *Recreational / Non Profit*
- ◆ Class 9 – *Farm*
- ◆ Class 10 – *Split Classification (only available for clear demarcation of uses)*

PROPERTY ASSESSMENT AND TAXATION SCHEME

Municipalities

- ◆ Municipal tax rates represent some $\frac{2}{3}$ to $\frac{3}{4}$ of tax bill for property in municipality (*Vancouver Charter, Community Charter, Local Government Act*)
- ◆ Tax rates for each property class set by May 15 based on budgeted amount of tax allocated to each class for fiscal year divided by total taxable assessment in that class
- ◆ Changes in assessment base that occur before tax rates are set simply cause adjustment in tax rates, not changes in taxes collect

PROPERTY ASSESSMENT AND TAXATION SCHEME

Municipalities (cont'd)

- ◆ Changes in assessment base that occur after tax rates are set result in refunds of tax or payments of additional tax based on the original tax rates (no adjustment to rates once set). Municipalities can wholly or partially recover tax refunds by simply raising tax rates the following year.
- ◆ Often what matters most is relative rates between classes, and how competitors within same class are assessed relative to one another (equity)
- ◆ *Community Charter* now requires publication of basis for allocation of tax burden amongst classes

PROPERTY ASSESSMENT AND TAXATION SCHEME

Provincial Government

- ◆ Sets:
 - ★ *Rural tax rates (Taxation (Rural Area) Act)* representing majority of taxes paid for property outside municipalities
 - ★ *School tax rates* applicable to all properties in Province
- ◆ Unlike municipal rates which are set on local budgets and assessments, school tax rates are set on province-wide basis in each class and do not change in response to changes in local assessment base
- ◆ Therefore assessment reductions generally result in direct reductions or increases in school tax

PROPERTY ASSESSMENT AND TAXATION SCHEME

Indian Bands

- ◆ Bands have 3 options for taxation of non-Indian occupation of reserve lands:
 - ★ *Independent Taxation (Band implements its own property tax system, Province vacates its taxing authority)*
 - ★ *Concurrent Taxation (Band and local government share taxation)*
 - ★ *Indian District Taxation (Band becomes equivalent to municipality)*

PROPERTY ASSESSMENT AND TAXATION SCHEME

Indian Bands (cont'd)

- ◆ To avoid double taxation under the parallel provincial and Band taxation regimes for property occupied by non-Indians on a reserve:
 - ★ *Indian Bands may create their own assessment and taxation regime under bylaws (often equivalent to, or adopt by reference, provincial assessment rules). To displace provincial taxation Band must notify Province who issues certificate vacating provincial authority*
 - ★ *Non-Indians occupying reserve land that is not taxed by an Indian taxation bylaw is subject to provincial assessment and taxation*
 - ★ *Provincial assessment and taxation of non-Indians may continue, with provincial levies adjusted to reflect that part of taxes being levied by Band*

PROPERTY ASSESSMENT AND TAXATION SCHEME

Other Taxing Authorities

- ◆ *Regional Districts / Regional Hospital Districts:*
 - ★ Requisition funds for local services for rural areas and municipal and rural areas where services provided most economically on joint basis (eg. fire, water). Taxes collected by municipalities or rural tax collector on behalf of regional district.

- ◆ *Improvement Districts:*
 - ★ Can levy property taxes to provide local improvements like water, fire protection. Less common.

- ◆ *BC Assessment / Municipal Finance Authority*
 - ★ Levy taxes collected by municipalities or rural tax collector to meet annual operating budget. Property taxes fund assessments, including BC Assessment legal costs to defend them in appeals.

PROPERTY ASSESSMENT AND TAXATION SCHEME

Tax Exemptions

- ◆ Mandatory Exemptions include:
 - ★ Crown, Municipal, Band owned property exempt from taxation (occupiers taxable, exempt owners generally pay grants in lieu of taxes)
 - ★ Non-profit owned property used for benefit of community, recreational camp properties
 - ★ Churches, Hospitals, Libraries, Private Schools

PROPERTY ASSESSMENT AND TAXATION SCHEME

Permissive Exemptions Include:

- ◆ *Partnering Agreement*

- ★ Agreement between taxpayer and municipality to jointly provide “municipal services”
- ★ Exemption for term of years (renewable) of municipal portion of taxes must be approved by voters, enacted by bylaw
- ★ Has been used creatively – eg. to exempt taxes for refurbished pulp and paper mill

PROPERTY ASSESSMENT AND TAXATION SCHEME

Exemptions (cont'd)

◆ *Revitalization*

- ★ Agreement between taxpayer and municipality for taxpayer to provide services meeting “revitalization” goals of community, consistent with goals proclaimed by local government
- ★ Exemption for term of years (renewable) of municipal portion of taxes must be approved by voters, enacted by bylaw

PROPERTY ASSESSMENT AND TAXATION SCHEME

Valuation of Property:

- ◆ Value determined by BC Assessment as of July 1 of year prior to taxation (valuation date for appraisals)
- ◆ based on highest and best use at October 31 permitted by existing zoning or probable rezoning, for market value properties (Residential, Commercial, Major and Light Industry land)
- ◆ based on regulated rates for Linear Property (power lines, pipelines, railways), Major Industry plants and Managed Forest Land
- ◆ reduced to nominal value for Supportive Housing

PROPERTY ASSESSMENT AND TAXATION SCHEME

Assessment Cycle:

- ◆ Assessment notices prepared through fall (opportunities to discuss with Assessor), finalized late December and mailed early January
- ◆ Assessed and taxable owner is person registered on title at November 30
- ◆ Assessed Owner and any other person can appeal an assessment to Property Assessment Review Panel by January 31
- ◆ Taxes paid on assessment after review and revision by PARP (PARP review completed by March 16 - best to achieve as many reductions as can before this stage)
- ◆ Appeal from PARP decisions to Property Assessment Appeal Board (de novo) by April 30

PROPERTY ASSESSMENT AND TAXATION SCHEME

- ◆ Appeals to Board can be brought on any issue (value, classification, exemption, etc.). Appeal on any issues reopens entire assessment to reconsideration
- ◆ Appeals once brought cannot be unilaterally withdrawn. If Assessor objects, Board likely to proceed. **Ensure everything assessed at PARP before bringing appeal, to avoid unpleasant surprises.**
- ◆ Changes in assessment result in refunds or additional municipal taxes in addition to original taxes paid (eg. windfall to taxpayer or to municipality)
- ◆ If your property is most of the class (common for major and light industry in small towns) be aware that the municipality can recover much of your tax refund from you the following year by increasing tax rates. Best position is to be small fish in big pond (Class 1 or Class 6)
- ◆ Equity requires Board to ensure that taxpayer pays lower of correct amount of tax or amount of tax paid by other taxpayers with similar properties in same taxing jurisdiction (eg. neighbourhood)

PROPERTY ASSESSMENT AND TAXATION SCHEME

Impact of Special “Dual Roll” in 2009:

- ◆ 2009 assessments based on more favourable (eg. lower value) of assessment established at July 1, 2007 or July 1, 2008, as though in state and condition and with permitted uses at October 31, 2008
- ◆ Since no impediment on municipal tax rate setting, unless municipality maintains or reduces tax rate for particular class compared to 2008 rate, assessment “freeze” does not affect municipal taxes for 2009
- ◆ Provincial school taxes for 2009 reduced (through rebate) by 50% for Major and Light Industry. School taxes for remaining classes will remain unchanged compared to 2008 if Province does not change tax rates

PROPERTY ASSESSMENT AND TAXATION SCHEME

Impact of Special “Dual Roll” in 2009 (cont’d):

- ◆ Impact of 2009 measures on relative burden of taxes within and between classes remains to be seen
- ◆ Taxpayers with 2008 appeals outstanding should consider whether appeal 2009 assessment to roll any tax reductions in 2008 into 2009
- ◆ Increased complexity for Board who must find value both for 2008 and 2009 to resolve value appeals for 2009

SPECIAL CONCERNS FOR DEVELOPERS

Classification:

- ◆ Development properties attract property tax during holding and development stages
- ◆ Best case (residential subdivision) would be 100% Residential Class at lowest tax rates
- ◆ Next best case (mixed use development) would be split class based on % to be developed as Residential and % to be developed as Commercial

PARTICULAR CONCERNS FOR DEVELOPERS

Classification (cont'd):

- ◆ Class 1 – Residential not available until:
 - ★ “Used” for residential purposes (eg. Actual occupancy of units)
 - ★ Vacant, unused, and not zoned or held for business, commercial or industrial uses (where most of the cases lie)
 - Leading BC cases (*Bosa Developments*, *Intracorp*) preclude residential classification for vacant unused properties with comprehensive zoning for multiple concurrent uses including residential and non-residential (eg. CD-1)
 - Commitment through land use plans and registered covenants does not matter if zoning permits non-residential use. “ 1% taints the whole”

PARTICULAR CONCERNS FOR DEVELOPERS

Classification (cont'd):

◆ Exceptions:

- ★ Where zoning bylaw specifically allocates residential use to identifiable portion of parcel to exclusion of all other uses
- ★ Where developer demonstrates irreversible commitment to residential development such as subdivision and commencement of construction. Exploratory or preparatory work that could be converted to commercial use does not qualify“
- ★ Where commercial use is “interim” or “ancillary” to residential use
- ★ Challenge pending before Court of Appeal to usual practice of classifying property en bloc rather than parcel by parcel (*Weyerhauser*)

PARTICULAR CONCERNS FOR DEVELOPERS

Valuation:

- ◆ Generally accepted approaches to valuing phased mixed use development property are
 - ★ direct comparison approach
 - ★ subdivision development / land residual approach
- ◆ Subdivision development approach determines present value of net proceeds of phased development (gross revenue less development hard and soft costs)

PARTICULAR CONCERNS FOR DEVELOPERS

Valuation (cont'd):

- ◆ Key considerations include
- ◆ Development timeframe
- ◆ Unit mix (zoning / OCP / highest and best use)
- ◆ Projected revenues
- ◆ Development costs
- ◆ Reclamation / remediation costs
- ◆ Developer's profit
- ◆ Discount rate

PARTICULAR CONCERNS FOR DEVELOPERS

Special Note re Fractional Interests:

- ◆ eg. quarter interests in rental units
- ◆ Fact that rental unit held in quarter shares does not preclude use of actual sales of $\frac{1}{4}$ shares as basis for direct comparison approach to valuing entire unit (*Crown Isle Developments*)
- ◆ Appropriate to base rental unit value on total of individual quarter share sales

SOME TAX PLANNING CONSIDERATIONS

- ◆ Though hindsight is perfect, some tax planning in advance can help to avoid hard lessons learned by developers who for relatively little marginal cost might have structured things differently to significantly reduce property taxes over long periods of time
- ◆ Beneficial classification and value are key considerations
- ◆ Pay particular attention in planning phase to wording of OCP and zoning bylaws
- ◆ Eg. try to avoid blanket comprehensive zoning of holding properties where specific residential zoning can be achieved

TAX PLANNING CONSIDERATIONS (cont'd)

- ◆ Else ensure that specific residential zoning is achieved as early in the development as possible
- ◆ Where comprehensive zoning is necessary, try to limit non-residential uses to specific areas in each parcel
- ◆ Try to ensure that ancillary uses (parking etc.) do not end up being the “tail that wags the dog”
- ◆ Establish and demonstrate irrevocable commitment to residential use as early as possible in development Hindsight is perfect.
- ◆ Investigate exemptions based on revitalization or partnering agreements with municipality

TAX PLANNING CONSIDERATIONS (cont'd)

- ◆ Track costs. In particular, obtain comprehensive and substantiated remediation cost estimates, and document actual expenditures.
- ◆ Be aware that appraisals obtained and bids gathered or made during acquisition or financing are produceable by law to Assessor.
- ◆ Talk to Assessor. Talk to City council. Be proactive.