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Challenging Local Improvement Taxes

by Alvin Kosak, Partner

Under section 393 of the *Municipal Government Act*, a municipality may propose and implement a local improvement, which is defined as a project that is of greater benefit to a particular area of the municipality than to the municipality as a whole. A local improvement must be proposed by the municipality's council, either on its own initiative or in response to a petition received from affected landowners. Once proposed, the municipality is required to prepare a local improvement plan which, among other things, must provide certain basic information, such as a description of the project, its scope, its anticipated cost, and how that cost is to be financed.

As a local improvement, by definition, does not benefit all areas of the municipality uniformly, it must be at least partially funded by those landowners who specifically benefit from the project. This is achieved through the imposition of a local improvement tax, which is levied by the municipality against each parcel of land within the benefitting area. The details of the local improvement tax must be set out in the local improvement tax bylaw, which a municipality is required to pass in respect of each local improvement. While the tax must be uniform, the municipality has some discretion as to the basis on which the tax is imposed, and may choose between the options of taxing on a per-parcel basis, on the basis of the size of the parcel (either total area or frontage), or on the basis of the parcel's assessed value.

Complaints about the Local Improvement Tax

Section 460 of the *MGA* provides landowners on whom a local improvement tax has been imposed with a right of complaint. Such a complaint must be brought before a local assessment review board, which, pursuant to section 460.1(1)(b) of the *MGA*, may hear a complaint about any tax notice other than a property tax notice. That this provides local assessment review boards with exclusive jurisdiction over local improvement tax complaints was confirmed in the decision of *Debut Development Inc. v. the Town of Redcliff*.

The right to complain about a local improvement tax is narrow in scope and time frame. A complaint must be made within one year after the tax is imposed (s. 460(8)). In more than one decision, the Municipal Government Board has held that there are only two grounds on which a local improvement tax complaint can be made. The first ground is where an aspect complainant's property was improperly calculated for the purpose of the local improvement tax. This might arise in the case where the local improvement tax is imposed on the basis of the size of each benefitting parcel. If the municipality miscalculates the size of a particular parcel, and

taxes the landowner on the basis of the miscalculated area, then that would give rise to a complaint under Section 460.

The second acceptable ground of complaint is where the local improvement tax was imposed on the taxpayer's property in a manner inconsistent with the terms of the local improvement tax bylaw. As touched upon earlier, the bylaw must provide certain information regarding the tax to be imposed, such as the manner in which each parcel is to be taxed. If the bylaw states that the tax is to be applied on a per-parcel basis, and the tax is actually imposed on the basis of assessed value, then the taxpayer would be entitled to make a complaint pursuant to section 460.

Several implications follow from the fact that a complaint can only be made on these two grounds. Firstly, the restricted scope of complaint prevents a taxpayer from challenging the validity local improvement tax bylaw itself. A challenge to the validity of the bylaw can only be made through an application to the Court of Queen's Bench. It must be noted, however, that the scope of such an application is itself limited. Whereas the taxpayer may argue that the bylaw is unauthorized, or that municipality failed to comply with the appropriate procedures in passing the bylaw, the policy merits of the bylaw are generally not reviewable.

Secondly, a taxpayer cannot complain about the tax rate. This limitation not only follows from the acceptable scope of complaint as defined in the caselaw, but also is explicitly stated in section 460(6) of the *MGA*. The fact that a complaint cannot be made about the tax rate prevents the taxpayer from challenging the basis on which the tax rate is imposed. For example, if a municipality elects to tax on a per-parcel basis, a landowner cannot bring a complaint under section 460 on the grounds that the tax ought to have been imposed on some other basis.

Avoiding and Defeating Complaints

As the taxpayer's ability to complain about or otherwise challenge a local improvement tax is limited, a careful review of a local improvement tax complaint needs to be completed immediately upon receipt of a complaint. In this regard, there are several details of the local improvement tax that a municipality can verify. Firstly, the applicable procedures set out under the *MGA* must be carefully followed when initiating a local improvement. This would entail ensuring that the local improvement plan and tax bylaw are properly proposed and approved, that the plan and bylaw contain all required information and otherwise comply with the applicable statutory requirements, and that all taxpayers receive proper notice of the plan in accordance with the *MGA*.

Secondly, in implementing the tax, the importance of strictly complying with the local improvement plan and bylaw cannot be overstated. A municipality should confirm that the amount indicated in the tax notice corresponds and is consistent with the amount dictated by the local improvement tax bylaw. Moreover, all relevant information regarding the taxpayer's property should be verified as correct.

Finally, a legal review of the complaint should be done by legal counsel that is experienced in the area of property assessment and taxation.

Should you have any questions regarding the above or require any assistance in the area of property assessment and taxation, including any questions regarding local improvement taxation or the handling of property assessment and taxation complaints, please contact Alvin R. Kosak at 780-497-4882 or at akosak@brownleelaw.com or any of the following members of our Assessment and Taxation Team: Barry A. Sjølie, Q.C., Alifeyah Gulamhusein or Mark W. Henderson.