REALpac
Real Property Association of Canada | Association des biens immobiliers du Canada

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November 18, 2015

Councillor Michael Thompson
100 Queen Street West, Suite B24
Toronto, ON M5H 2N2

Dear Councillor Thompson and members of the Economic Development Committee,

Re: Re-designing the Vacant Commercial and Industrial Tax Relief Program to Stimulate Economic Growth

The Real Property Association of Canada (REALpac) is the national industry voice of the real estate development and investment community, representing public and private companies, pension funds, banks, and real estate investment trusts (REITs). **We are writing to encourage the City's Economic Development Committee to receive item ED8.5: Redesigning the Vacant Commercial and Industrial Tax Relief Program - Activity Update.**

We are concerned that a proposal to eliminate or modify the Commercial Vacancy Rebate Program could affect the competitiveness of Ontario's real property sector and the economics of investment in the City of Toronto.

REALpac is included in the Ministry-led consultations with business stakeholders, and looks forward to participating in future consultations as they are held. We believe that the conversations were useful in identifying possible constructive program changes and various other ways in which the programs could better serve the real estate and development industries, while assisting Ontario to meet its goals of encouraging economic growth. We believe the City's role at this time should be to support the Ministry effort which is presently unfolding.

Ontario Vacant Unit Rebate Program

The Vacancy Rebate Program was implemented in 2001 in order to compensate non-residential property owners for the property tax increase on vacant building premises caused by the amalgamation of business and realty tax into a single realty tax. Under the previous pre-reform system, business tax was charged directly to tenants of business properties based on rates of 25% - 140% of the property assessment depending on the type of business activity. No business tax was levied to property owners on vacant premises and the property tax rate on the assessed value of vacant premises was 15% lower than the rate applied against occupied premises. A property owners' tax liability on vacant premises was on average 42% lower than occupied premises. Under property tax reform, commercial landlords in Ontario were threatened with huge tax increases without this relief.

The Vacancy Rebate Program allows for a partial rebate of the taxes paid on vacant space, if vacant for 90 days or more, of 30% for commercial property and 35% for industrial property. Although the rebate program does not compensate landlords to the 42% tax reduction based on real time vacancy of the pre-reform system, it does provide a tax reduction applicable to vacant premises as the pre-reform system had done.

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Potential amendments to the program would have negative consequences for property owners that are making efforts to lease their premises. REALpac tracks large City taxes coast to coast and has done so for many years. The City of Toronto (where a significant portion of properties which apply for the rebate) has one of the highest commercial property tax rates in Canada compared to residential. Toronto has double Land Transfer Tax. It is the only jurisdiction in Canada (we are aware of) to do so. Elimination or reduction in vacancy rebate totals would only make the tax burden more severe for Toronto and Ontario real estate businesses.

If the high property tax regime is considered alongside development charges, Section 37 payments, parkland cash in lieu, parking cash in lieu, art contributions and the all too typical appeal to the Ontario Municipal Board, it becomes clear that the industry is positioned within a high cost, high risk economic environment.

The vacancy rebates are meant to offset the higher property tax imposed on business property as a result of a legislative change made in 1998, and must be considered as part of the larger property tax reform package implemented at that time. We believe that the Ministry should not only maintain the program but consider how it can be strengthened and made more reflective of the increased tax burden imposed on property owners. We believe that the existing program should be enhanced:

- Eliminating the 90 day threshold period,
- Increasing the rebate to a minimum of 42% to better reflect the actual impact of the business tax amalgamation and
- Legislating that municipalities pay vacancy rebates on all premises under construction as long as no business is being conducted and no rent is being paid.

Analysis of the 2014 City Proposal to "Redesign" the Vacant Commercial and Industrial Tax Relief Program

With respect, we believe the entire proposed vacancy rebate removal plan, and the connection between increased taxation and urban renewal, to be ill-conceived, and the "problem" ("underperforming lands" and "chronically vacant retail stores"), to the extent it exists at all, should be more appropriately addressed (unless it is desired "C" space), by creating an economic environment more conducive to change; by reducing taxes (not raising them) and removing barriers to and costs of redevelopment.

The Development Industry is already overtaxed and underserved in the City
The City of Toronto has one of the highest commercial property tax rates in Canada compared to residential, typically in the top 3. REALpac tracks large City taxes coast to coast and has done so for many years. The policy initiative started by Mayor Miller to start reducing the gap between commercial and residential tax rates would be set back by this initiative. The City has double Land Transfer Tax. It is the only jurisdiction in Canada (we are aware of) to do so.

Based on our 2012 Canada Wide Development Process Survey Report, the City is in the top three highest fees in the country for a zoning bylaw amendment, and the top 2 for a plan of subdivision or condominium, while at the same time having amongst the slowest times for processing an Official Plan Amendment, Zoning Bylaw Amendment, Plan of Subdivision, or a Site Plan. Add in Development

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Charges, Section 37 payments, parkland cash in lieu, parking cash in lieu, art contributions and the all too typical appeal to the Ontario Municipal Board, and we have in the City a high cost, high development risk (long development timeline) municipality. Not a good place to be relative to other cities competing for jobs and investment.

Should the City be forcing change?

The City seems to be concerned with vacant retail in selected areas, and derelict industrial in certain areas. These can be addressed more accurately with the enforcement of City bylaws as to maintenance standards, or more specific measures such as in Chicago, San Francisco or Winnipeg (as revealed in Appendix "B" to the Staff Report). The term "underperforming assets" itself is a misnomer - suggesting the City is the ultimate arbiter of and beneficiary of "performance"– and not the men and women making investments for their own living in real property. The desire to see more "C" type office space also contradicts this goal, as C space may indeed be seen as derelict currently.

Tinkering with the Vacant Commercial and Industrial Tax Relief Program to address these issues is indeed like shooting a fly with a shotgun. Too much collateral damage, too inaccurate a policy tool. It may just increase the burden on those types of properties, with no change in behavior.
We believe capital is trapped in underperforming lands given the tax, economic and regulatory barriers to change demonstrated above. Areas transition in their own time with the right incentives, and rushing transition by those unfamiliar with markets and demand is unwise.

What are alternative policy measures?

In our view, the business of the City should not be to force change but rather should be to create the right economic environment to enable it. Indeed, if the City was genuinely interested in incentives to bring back prolonged vacant areas to economic life, the following are a much more appropriate set of policy tools and incentives;

(i) Reduce property taxes, development charges, Section 37 charges, parkland cash in lieu charges, parking cash in lieu charges for areas in need of redevelopment, or City wide to spur economic activity and lower the overall costs of doing business and redeveloping land back to productive use;

(ii) Set and meet service timeline standards for municipal approvals applicable to rezoning, OPA and site plan applications so investors can predict and accurately schedule for approvals; slow processes at the City mean markets may be missed due to long approval delays, and capital accordingly becomes higher risk capital, thus more expensive;

(iii) Rezone and prezone lands consistent with current Official Plan policies now, rather than making applicants rezone at their expense (with the associated Section 37 payments, and long delays securing rezonings and site plan approvals) and then pay on a site by site basis for the probable appeal to the Ontario Municipal Board. Make the City (or even "underperforming lands"), investment ready.

(iv) Request the Province to amend the Assessment Act to eliminate property taxation on the basis of highest and best use ("HABU"). HABU assessment may currently rapidly increase the property taxes of successful existing businesses in established neighborhoods who MPAC believes are ripe for redevelopment, creating an economic punishment those existing owners, and forcing pre-development deterioration. A better approach would be to ask for the right to designate that properties be assessed on the base of existing use, not highest and best use, so as not to force change.

(v) The city has underutilized space within its own asset base. Perhaps it could consider providing its own space for incubators or start-ups if they are indeed believed by the City to be job creators and if indeed the proponents of those incubators can't find space. We are skeptical of such a

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demand for incubators and start up space that is unsatisfied in the current market. These uses should not be forced on landowners.

(vi) Support a 1031 Like Kind Exchange (Section 1031 of the US Internal Revenue Code) regime federally to allow owners to trade out of uneconomic assets up to new or better assets on a tax deferred basis so as to untrap capital facing high recapture and capital gain taxes upon sale.

Reducing property taxes and reducing the costs of and timelines for redevelopment would make all areas of the City more competitive and incent (iii) Rezone and prezone lands consistent with current Official Plan policies now, rather than making applicants rezone at their expense (with the associated Section 37 payments, and long delays securing rezonings and site plan approvals) and then pay on a site by site basis for the probable appeal to the Ontario Municipal Board. Make the City (or even "underperforming lands"), investment ready.

Recommendations:

REALpac anticipates a meaningful and timely response from the province on potential amendments to the Vacant Unit Rebate Program. We believe that City Council and the Economic Development and Culture Committee should allow completion of the Ministry's stakeholder consultations and review process before taking any further action on this file.

REALpac would like to make the following policy suggestions to both the City and Province, which we feel, would accomplish the stated economic goals, without the need to revisit the Vacant Unit Rebate program:

1. Do not proceed with any potential amendments to the Ontario Vacant Unit Rebate Program which would reduce its current benefit.
2. Execute a fulsome review of the barriers to redevelopment of underperforming assets.
3. Focus on lowering the costs of doing business in the City and Province, rather than adding to those costs.
4. Amend the current vacancy rebate program to add enhancements to assist owners with the high property tax burden of vacant premises.
5. Undertake a review of municipal bylaw tools which may address the stated property standards concerns with vacant store-front and ground level retail.

We hope that the Committee carefully consider this matter, and we look forward to any opportunity to work staff, in identifying and strategies that could strengthen property tax policy.

Respectfully submitted,

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