



**STAFF REPORT
ACTION REQUIRED**

Theatre Passe Muraille – City Acquisition of 16 Ryerson Avenue

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| Date: | June 20, 2007 |
| To: | Economic Development Committee |
| From: | Sue Corke, Deputy City Manager |
| Ward: | Trinity-Spadina - Ward 20 |
| Reference Number: | |

SUMMARY

Theatre Passe Muraille (TPM), Canada’s oldest alternative theatre devoted to the development and production of original Canadian work, is facing financial difficulties that are seriously compromising its ability to produce plays. The theatre company is housed in a 105-year old designated heritage building which TPM has owned since 1975.

In addition to being a home to Theatre Passe Muraille, the building has acted as an incubator for many other theatre companies and projects that includes work by Michael Ondaatje as well as plays such as the Drowsy Chaperone (first professional production at TPM of the musical and is currently playing on Broadway); The Drawer Boy (the most widely produced play in North America last year); Da Kink in My Hair and the AfriCanadian Playwrights Festival.

Based on past City policy and practices, City staff recommends the acquisition and retention of the building as a City-owned performing arts centre and the execution of a below-market lease from the City to Toronto Artscape Inc. who would property manage the operations with Theatre Passe Muraille as the sub-tenant.

There will be no capital or operating costs to the City arising from this lease. A Reserve Fund held by the City, will be set up to hold \$200,000 from the proceeds of the sale of the building which will serve as security to the City concerning any future Capital costs. The Theatre Passe Muraille building is in a state of good repair according to a recent Building Condition Assessment.

RECOMMENDATIONS

The Deputy City Manger responsible for Economic Development, Culture and Tourism recommends that:

1. City Council grant authority to enter into an Agreement of Purchase and Sale for the property currently owned by Theatre Passe Muraille at 16 Ryerson Avenue as a one-time special acquisition to support the ongoing viability of Theatre Passe Muraille and protect this affordable and sustainable cultural space in the City on the terms outlined in Attachment 1 to this report, in a form acceptable to the City Solicitor;
2. should Council authorize the purchase of 16 Ryerson Avenue and amend the 2007 Economic Development, Culture and Tourism Capital budget accordingly, as the Corporate Land Acquisition Reserve Fund is depleted, the only funding source available on a one-time extraordinary basis is the Capital Financing Reserve Fund;
3. the City deposit \$0.200 million of the proceeds from the sale of the building into a City Reserve Fund to provide security against any future failure to comply with the capital maintenance requirement during the tenancy and the Deputy City Manager, Chief Financial Officer report the details in the upcoming Report on Reserve Funds;
4. the building at 16 Ryerson Avenue be retained as a City-owned performing arts centre in the Economic Development, Culture and Tourism portfolio of cultural properties without any ongoing capital or operating costs to the City;
5. the City Solicitor be authorized to complete these transactions on behalf of the City including making payment of any necessary expenses, and amending the closing date and other dates to such earlier or later dates and on such terms and conditions as she may from time to time consider reasonable;
6. subject to City Council approving Recommendation No. 1, City Council grant authority to enter into a 10 year lease with two five-year renewal options with Toronto Artscape Inc., who would property manage the operations of the building on a cost recovery basis with Theatre Passe Muraille as occupants at 16 Ryerson Avenue based on the criteria of the City-Owned Space at Below-Market Rent Policy, including provision for the occupants to assume responsibility for all capital and operating costs, for the purpose of a performing arts facility, substantially on the terms and conditions outlined in Attachment 2 to this report in a form acceptable to the City Solicitor, such grant by way of below market rent being in the interest of the municipality;
7. the Chief Corporate Officer be authorized to administer and manage the lease agreement including the provision of any consents, approvals, notices and notices of termination provided that the Chief Corporate Officer may, at any time, refer

consideration of such matters (including their content) to City Council for its determination and direction; and

8. the appropriate officials be authorized to take the necessary action to give effect thereto.

FINANCIAL IMPACT

The cost to the City to implement this report as per Attachment 1 includes the initial \$1.2 million purchase price, which is subject to the usual closing adjustments, and the cost of entering into a below market rent lease with TPM. The financial impact of this transaction approximately totals \$1,262,175.00.

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| Payments to Vendor: | | |
| | Purchase Price (less GST) | \$1,000,000.00 |
| | Holdback in Reserve Account | \$ 200,000.00 |
| | Total Purchase Price | \$1,200,000.00 |
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| City's Closing Costs: | | |
| | Land Transfer Tax – approx. | \$ 20,475.00 |
| | Registration Costs | \$ 100.00 |
| | Real Estate Staff Costs (50 hrs) | \$ 3,600.00 |
| | Appraisal | \$ 6,000.00 |
| | City Legal | \$ 11,000.00 |
| | Max. Environmental Testing Cost (Phase I & II - does not include clean up costs) | \$ 21,000.00 |
| Net Cost to City less GST | | \$1,262,175.00 |

The below market rent lease with Toronto Artscape Inc. will have no impact on the City's Capital or Operating Budgets. Facilities and Real Estate staff estimate that the below-market rent lease with Toronto Artscape Inc., including the capital improvements, represents a present value opportunity cost to the City of approximately \$610,000.00 over 20 year time period.

To protect the City from the risk of incurring future capital costs for this facility, \$200,000 of the proceeds from the purchase is to be deposited in a City Reserve Fund and the balance of the Reserve Fund shall remain at a minimum of \$200,000 for the duration of the tenancy. As a condition of the lease the tenant is to contribute a minimum of \$20,000 annually to this Reserve Fund. Such funds are to be applied to building maintenance through the Economic Development Culture and Tourism Capital Budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

DECISION HISTORY

In November 2006, Theatre Passe Muraille approached the City about the serious financial situation it is currently facing which is seriously threatening the theatre's ability to continue.

Further to discussions with the Mayor's office and staff in Culture and Finance, the Ward Councillor wrote a letter dated January 25, 2007 to Culture staff requesting that a report be submitted to Committee and Council including ways in which the City can assist this valuable community and cultural institution as the theatre restructures financially.

ISSUE BACKGROUND

A Leading Theatre Company:

Theatre Passe Muraille continues the proud tradition to develop and produce innovative and provocative Canadian theatre while nurturing new and established artists and companies. The theatre is located at 16 Ryerson Avenue which is east of Bathurst Street and north of Queen Street West.

Theatre Passe Muraille is nearly 40 years old and has created over 400 plays in a rich legacy of ground-breaking theatre that includes work by Michael Ondaatje as well as plays such as the Drowsy Chaperone (first professional production at TPM of the musical and is currently playing on Broadway); The Drawer Boy (the most widely produced play in North America last year); Da Kink in My Hair and the AfriCanadian Playwrights Festival.

The theatre has mentored burgeoning organizations which have become vital on their own artistic terms. Companies such as Newfoundland's CODCO, Toronto's Buddies in Bad Times, Nightwood Theatre and Necessary Angel Company, Saskatoon's Twenty-Fifth Street Theatre and the Blyth Summer Festival all drew their inspiration from Theatre Passe Muraille. In more recent years, several new generations of artists and small companies have found a place at Theatre Passe Muraille. They include DNA Theatre, Platform 9, Cahoots Theatre Projects, Bald Ego and Civilized Theatre amongst a host of others.

Theatre Passe Muraille is housed in a designated historical building. The building was the original home of the Nasmith Bakery and Stables.

Current Crisis:

Theatre Passe Muraille is burdened with a crippling debt that is seriously compromising the theatre's ability to produce plays. For many years, Theatre Passe Muraille has

struggled financially but has managed by re-mortgaging the building that they own. More recently, TPM has come to the realization that the solution of re-mortgaging their asset is not sustainable in the long term. For the current season, the company has significantly reduced the size of the program it typically presents; reduced its staff and made additional cuts to an already lean budget.

The situation is so serious that without extraordinary assistance and a plan in place almost immediately, Theatre Passe Muraille will have to shut down operations, thus ending an unbroken 40-year history of one of the country's most important incubators of Canadian theatre. If the building is sold to a third party, it will be lost to the cultural community as a cultural hub. This would undermine the objective in the Mayor's Platform (No. 53) to create affordable space for artists to pursue their craft and would be a serious blow to Toronto as a Creative City.

In November 2006, Theatre Passe Muraille approached the City about the financial difficulties it was facing. This situation continues to threaten the organization's ability to be a leading theatre in Toronto and Canada.

Further to discussions with the Mayor's Office and staff in Culture and Finance, the Ward Councillor, Adam Vaughan, wrote a letter dated January 25, 2007 to Culture staff requesting that a report be submitted to Committee and Council including ways in which the City can assist this valuable community and cultural institution as the theatre financially restructures.

Specifically, in order to be financially sustainable, Theatre Passe Muraille has proposed that the City purchase their building with TPM being able to remain in the theatre and with the funds from the sale of the property, at an agreed upon price, used to retire Theatre Passe Muraille's debts. Furthermore, the City will hold back \$200,000 of the \$1.2 M purchase price in a City Reserve Fund to provide for a reserve for capital maintenance stability of the property. The City would, in turn, ensure a valuable piece of arts and heritage infrastructure is secure.

COMMENT

While Theatre Passe Muraille has managed their operations at a reasonable level for the last five seasons despite revenues not keeping pace with fixed costs, the company experienced a crippling deficit in 2006. The deficit was partly the result of revenue not increasing in line with fixed costs and partly due to Theatre Passe Muraille effectively subsidizing other artists and groups that use the venue.

As such, Theatre Passe Muraille is currently faced with a situation whereby they are being forced to sell their building and given the development pressures in the Queen West neighbourhood, this would result in a devastating blow to the cultural community.

City Policy supporting the Acquisition of 16 Ryerson Avenue:

From policy perspective, retaining this important building is paramount to Toronto continuation as a creative city.

The City of Toronto has a long history of acquiring heritage buildings that in turn operate as City-owned theatres such as the Buddies in Bad Times Theatre, Lorraine Kimsa Theatre for Young People and the CanStage's Berkeley Street Theatre Complex. The City also has a long history of entering into below market rent tenancy with not only theatres but other cultural organizations such as Toronto Artscape in order to provide affordable and sustainable creative space within Toronto without the City incurring any ongoing operating costs.

From a policy perspective, acquiring the Theatre Passe Muraille building is in keeping with the following:

- *Culture Plan for the Creative City;*
- *Imagine a Toronto...Strategies for a Creative City;*
- Mayor's Platform on development of affordable & sustainable creative space in Partnership with Toronto Artscape (No. 53);
- Policy for City-Owned Space Provided at Below-Market Rent; and
- City Council's efforts to protect heritage properties.

The following is a more detailed discussion of the existing City policies supporting the City acquisition of cultural property that is of heritage value. Specifically, acquiring the Theatre Passe Muraille property at 16 Ryerson Avenue is in line with the promotion by City Council of:

(a) *Culture Plan for the Creative City:*

Recommendation No. 10 of the Culture Plan states that the City should develop partnerships with the private and non-profit sectors and with other levels of government to foster culture through renovated, expanded and new cultural facilities.

Recommendation No. 11 states the Culture Division should implement Council's policy to provide the arts and cultural community with access to City-owned facilities and properties for use as venues, in education and training programs and as studio, rehearsal, storage and administrative space.

Recommendation No. 44 states that the City should recognize the vital role played by not-for-profit arts groups in the social and economic life of Toronto and reinvest in the arts and culture sector.

(b) *Imagine a Toronto...Strategies for a Creative City:*

"Imagine a Toronto....Strategies for a Creative City" was the product of a year-long partnership between Toronto (Canada) and London (U.K.) to develop

specific strategies to enhance the growth and development of the “creative economy” in both cities.

The report presents trends in the local and regional economy, the most current research and best practices occurring in Toronto and other international cities and recommendations on how to further develop and enhance Toronto’s creative sector for both economic and cultural benefits for the city and province.

The report specifically states that Toronto should take a systematic, co-ordinated and strategic approach to ensuring an adequate and stable supply of affordable creative spaces and advocates for Toronto Artscape’s involvement.

(c) *Mayor Miller’s Platform (No. 53) on Affordable and Sustainable Creative Space in Partnership with Toronto Artscape:*

Mayor Miller’s platform specifically speaks to creating affordable space for Toronto’s artists to pursue their craft. Mayor Miller promotes working with Toronto Artscape to increase the amount of space available to artists, so that Toronto can attract and retain the brightest talent.

As such, Toronto Artscape has been invited by Theatre Passe Muraille to oversee the property management of the Theatre Passe Muraille building to ensure that it is well maintained and that capital reserves are in place to assure the long-term sustainability of the venue.

(d) *Below-Market Tenancy:*

The City has a long history of supporting the community-based service sector and cultural organizations through the provision of space for administrative and program delivery purposes.

The provision of City-owned space at below-market rent is a form of partnership with and investment in community and cultural organizations that helps the City serve its stakeholders and residents. These organizations, in turn, provide community benefits that complement City-mandated programs and services.

“Below-market rent city space” is a term referring to arrangements between the City and outside organizations, where:

- (i) the organizations have exclusive use of City-owned space, such as entire buildings or an assigned space within a building, and
- (ii) the organizations have use of the space over an extended period of time, and
- (iii) the space is provided at a cost less than the full market rental rate of the space.

Theatre Passe Muraille qualifies for below market rent from the City since they meet the eligibility criteria (i.e. TPM is incorporated as a not-for-profit with charitable status; its activities support City objectives and serve City residents as well as the organization's mandate is not the responsibility of senior levels of government).

Other cultural organizations such as Buddies in Bad Times Theatre, CanStage, Lorraine Kimsa Theatre for Young People and Toronto Artscape Inc. enjoy similar privileges as per the "Policy for City-Owned Space Provided at Below-Market Rent" report, as adopted by City Council at their meeting held in October 2002.

In each of the above examples there are no operating costs to the City as these operating costs are the sole responsibility of the tenant.

(e) *Heritage Preservation:*

Heritage buildings provide attractive and intriguing spaces to accommodate creative activity. The Theatre Passe Muraille building was originally built in 1902 for Nasmith Bakeries and included stables to accommodate delivery horses. The building speaks to the post-war boom with its beaux-arts, neo-classical façade. The building at 16 Ryerson Avenue was designated in 1977 a heritage building of "architectural value" under the Ontario Heritage Act.

Concern has been raised regarding the retention of the Theatre Passe Muraille building should the theatre company be forced to sell their building privately since the neighbourhood is highly desirable and the property would be considered a prime redevelopment opportunity.

Theatre Passe Muraille New Operating Model:

In recent months, Theatre Passe Muraille has prepared a new business plan that includes cash flow projections based on the City purchasing the building. These cash flow projections indicate that TPM would break even by the end of 2007. The business plan is being further developed with input from various outside experts.

Theatre Passe Muraille provided the City with a current appraisal of the property at 16 Ryerson Avenue; financial statements; five-year pro formas as well as a business plan that positions Theatre Passe Muraille in the future to be more financially stable. The City commissioned a building condition assessment report.

Extensive review of the possible City acquisition of the Theatre Passe Muraille building has been conducted by staff from Culture; Finance Planning; Real Estate & Facilities as well as City Legal.

Furthermore, outside expert advice was sought by the City from Jane Marsland who has managed arts organizations since 1974, was General Manager of the Danny Grossman Dance Company from 1983-1999 and more recently received the first M. Joan Chalmers Award for Arts Administration for her outstanding contribution to leadership in the arts.

Future Actions to Achieve Financial Stability:

Over the last several months Theatre Passe Muraille has actively been trying to stabilize the theatre's financial situation by recruiting new board of directors with special fundraising skills.

Through a Canada Council Flying Squad grant from Canadian Heritage and a grant from Creative Trust, Theatre Passe Muraille has been able to retain Jane Marsland to help them develop a strategic planning process and recovery strategy for the future.

Creative Trust, an organization with a mandate to improving the financial health and sustainability of some of Toronto's most innovative and accomplished performing arts companies, recently announced that it will match any future surpluses of Theatre Passe Muraille under its new operations.

Involvement of Toronto Artscape at Theatre Passe Muraille:

Theatre Passe Muraille approached Toronto Artscape, a not-for-profit organization which creates and sustains vibrant arts facilities within the City of Toronto by enabling artists and arts organizations to secure low cost space, to get involved in the property management of the 16 Ryerson Avenue building.

Toronto Artscape has a long history of working in buildings owned by the City of Toronto by providing affordable and sustainable space to the arts community through property management services that are provided on a cost recovery basis.

A Building Condition Assessment was prepared by Goldsmith Borgal & Company Ltd., Architects; Marshall Macklin Monaghan and Sucher Consulting Engineering Inc. for the City of Toronto in January 2007. This report indicates that the Theatre Passe Muraille is in good condition and would require a modest amount of capital repairs over the next ten years in order to maintain the facility in a state of good repair.

Toronto Artscape is well positioned to take on both the capital and operational aspect of the Theatre Passe Muraille building. Funds from the sale of the property will allow for debt elimination for Theatre Passe Muraille with an adequate reserve account to cover foreseeable future capital repairs. Together Toronto Artscape and Theatre Passe Muraille have the ability to cover all of the costs of maintaining the property in the long term with no liability to the City of Toronto.

More specifically, to protect the City from the risk of incurring future capital costs for this facility, \$200,000 of the proceeds from the purchase is to be deposited in a City

Reserve Fund and the balance of the Reserve Fund shall remain at \$200,000 for the duration of the tenancy. As a condition of the lease the tenant is to contribute a minimum of \$20,000 annually to this Reserve Fund. Such funds are to be applied to building maintenance through the Economic Development Culture and Tourism Capital Budget.

As such, the recommended lease with the City of Toronto is structured with Toronto Artscape as the lessee and Theatre Passe Muraille being the sub-tenant. With Toronto Artscape responsible for property management, Theatre Passe Muraille can focus their attention on what they do best – producing innovative and provocative Canadian theatre.

Acquisition and Leaseback:

The \$1.2 million purchase and below market lease of 16 Ryerson Avenue to keep Theatre Passe Muraille in operation falls within the scope of City policy. Terms and Conditions of the purchase and lease are set out in Attachment No. 1 and Attachment No. 2 respectively. An appraisal of the property and a building condition assessment are also complete. Facilities and Real Estate staff, in consultation with Culture staff have negotiated the terms and conditions of the proposed purchase and proposed lease further to City policies and direction of Culture staff. The City purchasing the Theatre Passe Muraille property at 16 Ryerson Avenue is an opportunity that dovetails with the vision of Toronto as a creative city. It builds upon Toronto being Canada's cultural capital and a global cultural centre by specifically creating affordable and sustainable space for Toronto's artists to continue to pursue their craft.

CONTACT

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SIGNATURE

Sue Corke
Deputy City Manager

ATTACHMENTS

Attachment 1: Proposed Purchase Terms and Conditions.
Attachment 2: Proposed Lease Terms and Conditions

Attachment 1: Proposed Purchase Terms and Conditions

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| Property Address: | 16 Ryerson Avenue |
| Description of the Property: | PIN 21237-0008 (LT) Parcel A-4, Section M200, being part of Block A, Plan M200. |
| Vendor: | Theatre Passe Muraille |
| Purchase Price Payment: | \$1,200,000 with \$1,000,000.00 payable on the Closing Date and \$200,000.00 will be held by the City on the Closing Date to provide for a reserve for capital maintenance stability of the property. |
| Lease Condition: | The proposed purchase is subject to the City's subsequent lease to Toronto Artscape Inc. (with Theatre Passe Muraille as the sub-tenant). Details of the proposed lease are set out in Attachment 2 of this report. |
| Deposit: | Ten Dollars (\$10.00) |
| Closing Date: | 30 days after delivery of a Notice of Waiver or Notice of Satisfaction of Due Diligence. (Approximately 120 days or sooner following City acceptance of Offer to Sell.) |
| Environmental Due Diligence Period: | 90 days after City's Acceptance Date |
| Requisition Period: | 30 days after delivery of a Notice of Waiver or Notice of Satisfaction in connection with the Due Diligence Period. |

Attachment 2: Proposed Lease Terms and Conditions

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| Property Address: | 16 Ryerson Avenue |
| Description of the Property: | PIN 21237-0008 (LT) Parcel A-4, Section M200, being part of Block A, Plan M200. |
| Tenant: | Toronto Artscape Inc. |
| Sub-Tenant: | The Tenant agrees to sub-let to Theatre Passe Muraille |
| Lease Condition: | The Tenant and the Sub-Tenant qualifies for below market rent based on the City-owned Space at Below Market Rent Policy so long as they continue to meet the eligibility criteria. |
| Use: | The Tenant and Sub-Tenant shall only use the property as a performing arts facility including renting performance space to other community- based arts groups and operate according to its service agreement with the City. |
| Rent: | \$2.00 per year for the net rent. |
| Additional Rent | Tenant is responsible for all capital repairs, operating costs, insurance, taxes and all other applicable additional costs and fees related to the property. |
| Building Repair: | All repairs and renovations are to be carried out within the time frame as scheduled in the Building Condition Assessment Report. All renovation and repair projects over \$25,000.00 shall be approved by the City. |
| Capital Reserve Fund: | The Tenant to provide a minimum contribution of \$20,000.00 annually to provide for a reserve for capital maintenance stability of the property. |

Commencement Date: Lease commences on the date the City becomes registered owner of the property.

Lease Terms & Renewal: 10 Years from Commencement Date with two, five-year renewal options, provided the Tenant is not in default of the Lease Agreement and continues to meet the eligibility criteria for below market rent