

February 12, 2008

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## **BRIEFING NOTE: Apportionment of Property Taxes – February 2008 Hearing (GM12.5), re: 387 Bloor Street East**

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### **Issue:**

Report GM12.5 entitled “Apportionment of Property Taxes – February 2008 Hearing” includes an application to apportion outstanding taxes, in the amount of \$34,453.51, for the 2003 taxation year from an original parcel of land (re: assessment roll number 1904-06-8-510-01500, 387 Bloor Street East, referred to as the “parent” account) which has been re-developed and no longer exists, to 11 new parcels which were created as a result of the property’s re-development (i.e. “child” accounts/roll numbers).

One of the owners of the 11 newly created parcels, Mr. Martyn Stollar, has provided a written submission to Government Management Committee recommending that Committee and Council reject the apportioned taxes recommended by the staff and instead apportion the entire tax burden of \$34,453.51 to either Assessment Roll number 1904-06-8-510-01501-0000 or to Assessment Roll number 1904-06-8-510-01511-0000, or that the entire taxes be apportioned to the two roll numbers. Both of these roll number are properties that continue to be owned by the developer.

The issue that the Committee needs to decide is whether the unpaid 2003 taxes should be apportioned by Council onto the 11 “child” roll numbers in proportion to their relative assessment value for the 2003 taxation year, or, in another manner if Council is of the opinion that an apportionment on this basis is not appropriate due to special circumstances.

### **Background:**

- The property at 387 Bloor Street East was re-developed into 11 residential condominiums and commercial units beginning in 1998. The new units were fully occupied by 2001. However, the Municipal Property Assessment Corporation (MPAC) did not update the assessment roll with new roll numbers until 2004 when 11 “child” roll numbers for the new units were returned. For years 2001, 2002 and 2003 the “parent” roll number for 387 Bloor Street East was the only one returned and accordingly the City billed taxes to it. The taxes for these three years were not paid.
- To address these unpaid taxes, in May 2003, 572550 Ontario Limited filed an application with the City to apportion the taxes onto the “child” roll numbers. This application was part of a group of tax and assessment related appeals filed by 572550 Ontario Limited. In 2004, the apportionment application was suspended to accommodate the resolution of assessment appeals for taxation years 2001, 2002, 2003.
- Staff also took steps to address the unpaid taxes on the “parent” roll number. In March 2005, the City applied to the Assessment Review Board (Board) to apportion the taxes for 2001 and 2002.

- In April 2006, the assessment appeals filed by 572550 Ontario Limited were resolved, and the City and 572550 Ontario Limited entered minutes of settlements to resolve the City's apportionment applications. To be clear, the City had only brought to the Board the 2001 and 2002 outstanding taxes to be apportioned. The City had always intended to deal with the 2003 outstanding taxes through the City hearing process i.e. at the Government Management Committee. In error, the owners of the 11 "child" roll numbers were not parties to the settlements. Nevertheless, the settlements were filed and accepted by the Board and it issued decisions reflecting them in August 2006. In its apportionment decisions, the Board apportioned the 2003 unpaid taxes ostensibly on the basis of the City's applications from March 2005. This was an error because that applications made to the Board by the City were only for the 2001 and 2002 taxation years.
- Upon receipt of the Board's decisions Revenue staff billed the apportioned 2001, 2002 and 2003 taxes onto the "child" owners. The "child" owners were understandably surprised to receive these tax bills. Unfortunately, neither the Board, nor the City, nor 572550 Ontario Limited had given any notice to the "child" owners of either the apportionment applications or the Board's decision.
- Mr. Martyn Stollar, the owner of unit 502 and roll number 1904 068 510 01517 wrote to the Board bringing to its attention the fact that he and his neighbours had not been given notice of the apportionment applications nor of the Board's decision. In response, the Board made an Order reversing its decision for the three tax years and ordering a re-hearing of the City's applications for the 2001 and 2002 taxation years. The Board's Order also clarified it had no record of a compliant being filed for the 2003 year.
- In accordance with the Board's Order, Revenue Services staff began the process of reversing the tax bills that had been sent to the "child" owners. This was the first time that the City has ever been ordered to reverse tax bills and this required significant changes to the City's property taxation system. These changes were finished in the fall of 2007 and the apportionment tax bills were reversed in December 2007.
- The re-hearing of the City's 2001 and 2002 apportionment application was scheduled for January 8, 2008. For this hearing, the Board sent proper notice to all of the "child" roll number owners. The City also sent notices to the owners and served a Statement of Issues on each owner with its position. The City sought to have the 2001 and 2002 unpaid taxes apportioned onto each of the 11 child roll numbers in proportion to their relative values for these taxation years. The City received three Responses, including from Mr. Stollar, and in each case the "child" owners opposed the City's application.
- Initially, the City's position was supported by 572550 Ontario Limited who remains an owner of two of the "child" roll numbers. The Legal Services division was closely involved in the preparations for the January 8, 2008 hearing, including regular contact with Mr. Stollar and counsel for 572550 Ontario Limited, Mr. David Fleet. Shortly before the January 8th hearing, 572550 Ontario Limited proposed an alternative basis for apportioning the 2001 taxes whereby these would be apportioned entirely onto the "child" roll number still owned by 572550 Ontario Limited. The City agreed to this proposal because this outcome would not affect its purpose of collecting the 2001 taxes. Mr. Stollar also accepted this proposal. There was no similar alternative apportionment proposed for the 2002 taxes and the parties agreed these would be apportioned onto the "child" roll numbers in proportion to their relative value for the 2002 taxation year. Reflecting this agreement, the City, Mr. Stollar, a representative for 572550 Ontario Limited and one other "child" owner signed Minutes of Settlement at the January 8

hearing. No other “child” owners appeared at the hearing. Rather than process the Minutes, the Board opted instead to issue a decision reflecting the agreement reached by the parties present at the hearing.

▪ **2003 unpaid taxes on “parent” roll number**

Now that the 2001 and 2002 years have been dealt with by the Board, the City can and should proceed to apportion the 2003 outstanding taxes totaling \$34,453.51 from the parent roll number to the eleven “child” roll numbers.

**Key Points:**

- The goal of an apportionment is to satisfy the City's obligation to collect property taxes that it can no longer collect through other measures like a tax sale. This apportionment application attempts to reconcile the fact that in 2003 the “child” roll numbers should have been returned on the assessment roll, but were not, and so steps need to be taken to transfer, i.e. apportion, those taxes onto the child roll numbers.
- Even though the property at 387 Bloor Street East was re-developed into 11 separately assessable units by 2001, and the units were fully occupied by that time as well, MPAC did not return roll numbers for the “child” units until taxation year 2004. As such, 572550 Ontario Limited continued to be billed property taxes for properties that it did not own (except for two individual units).
- The City and 572550 Ontario Limited seek that the unpaid taxes from 2003 be apportioned onto the 11 “child” roll numbers in proportion to their relative value for the 2003 taxation year. Relative value means the 2003 returned value on the parent roll number is “related” to the child roll numbers through a reasonable division of the value among the child roll numbers.
- Apportioning the taxes in this manner is consistent with the majority of all apportionments approved by Council and the decision of the Board (which Mr Stollar agreed to) for unpaid taxes from 2002.
- Mr. Stollar's proposal that Council apportion the 2003 taxes entirely onto the two “child” roll numbers still owned by 572550 Ontario Limited would result in an unfair tax burden being placed onto 572550 Ontario Limited. In 2003, 572550 Ontario Limited was incorrectly returned as the assessed owner of the “parent” roll number when, by this time, the property had been redeveloped into new units and of which 572550 Ontario Limited only owned two. Apportioning the taxes in the way recommended by Mr Stollar would effectively place 572550 Ontario Limited in the same position it found itself in 2003 and provide unwarranted tax relief to Mr. Stollar and his neighbours.
- Mr. Stollar and his neighbours were unfairly treated by the Board and the City with the Board's original apportionment decision of August 2006. Since that time, however, the decision and the taxes were reversed. Furthermore, the unpaid taxes from 2001 and 2002 were addressed by the Board in its January 8th decision to the satisfaction of Mr Stollar and the other parties. These applications are not before Government Management Committee.
- Staff recommend that the 2003 taxes be apportioned based on the values provided by MPAC as is customary. This method is consistent with the provision of *City of Toronto Act* and past

practices of the City. Once Council has made its decision to apportion the taxes as recommended by staff, taxpayers can appeal the decision to the ARB.

**Recommendation:**

**It is recommended that the Committee approve the application to apportion taxes for the property municipal known as 387 Bloor Street East. Following Council's decision, taxpayers have 35 days to appeal Council's decision to the Assessment Review Board.**

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**Circulated to:** Chair and Members of Government Management Committee, City Manager, Deputy City Manager and Chief Financial Officer, Treasurer

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**Date:** February 12, 2008