



STAFF REPORT ACTION REQUIRED

23 Brydon Drive - Tax Sale Extension Agreement

Date:	May 29, 2008
To:	Government Management Committee
From:	Treasurer
Wards:	Ward 2 - Etobicoke North
Reference Number:	P:\2008\Internal Services\Rev\gm08013rev (AFS#7722)

SUMMARY

The City of Toronto registered a Tax Arrears Certificate against the title of the property municipally known as 23 Brydon Drive on August 1, 2007. Pursuant to the provisions of the *City of Toronto Act, 2006*, (the “Act”), the property owner or any interested party has until July 31, 2008 to pay the cancellation price in full (which includes all of the outstanding taxes, accrued penalties and interest, and costs). The property owner has requested, and staff are recommending, a one-year extension to pay the cancellation price from July 31, 2008 to July 31, 2009.

RECOMMENDATIONS

The Treasurer recommends that:

1. Authority be granted to enter into an extension agreement with Madresa Ashraful Uloom, the owner of the land municipally known as 23 Brydon Drive, to extend the redemption date for payment of tax arrears owing on the Property from July 31, 2008 to July 31, 2009; and,
2. Authority be granted for the introduction of the necessary Bill to authorize the execution of the extension agreement.

Financial Impact

Currently, there are no financial impacts arising from the adoption of the recommendations contained in this report.

However, penalty and interest will continue to accrue on the tax account until the full cancellation price is paid. If the cancellation price is not paid by the recommended extended redemption date of July 31, 2009, the Treasurer will proceed to a sale of the property through a public tender, with the minimum tender amount being equal to all outstanding taxes, penalty/interest, and costs. If the tax sale is unsuccessful, the City will have two years to determine if it wants to take ownership of the property.

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

DECISION HISTORY

This matter has not previously been before Council.

ISSUE BACKGROUND

Tax Sale Process

Where a property has unpaid property taxes owing for three (3) or more years, the City may recover such arrears by selling the property in accordance with the tax sale provisions in Part XIV of the *Act*.

Tax sale proceedings are commenced after all other collection efforts have been exhausted. If staff are unable to achieve payment or a firm, suitable repayment plan to address the arrears of taxes, they register a Tax Arrears Certificate on title to the property. The debtor has one year from the date of registration of a Tax Arrears Certificate to pay the cancellation price in full (which includes all of the outstanding taxes, accrued penalties and interest, and costs). Failing payment within that year, or the entering into of an extension agreement, the Treasurer is required to proceed to a sale of the property through a public auction or public tender.

The minimum tender allowed at a Tax Sale is the amount of all outstanding taxes, accrued penalties and interest, together with all reasonable costs incurred by the City in the tax sale process. This amount is referred to as the cancellation price. The City is required to accept the highest tender submitted for the property, so long as it meets or exceeds the cancellation price. After a Tax Sale, any monies received by the City for a property, in excess of the cancellation price, are paid into Court.

Pursuant to the provisions of section 349 of the *Act*, City Council may pass a by-law, before the expiry of the one-year redemption period, authorizing an extension agreement extending the period of time in which the cancellation price is to be paid provided that such an agreement does not reduce the amount of the cancellation price or prohibit any person from paying the cancellation price at any time. If the terms of the extension agreement are not fulfilled by the owner, then the lands are to be sold by the City.

23 Brydon Drive – Property Tax History

The property municipally known as 23 Brydon Drive (the “Property”) is currently assessed as a “commercial” property with a 2008 assessed value of \$1,184,000 (based on a January 2005 valuation date). The Property was acquired on September 15, 1993 by Madresa Ashraful Uloom (“Madresa”) which is a religious organization and registered charity.

From September 1993 to 1995, renovations were undertaken to develop a prayer hall and seminary of learning on the Property. Religious services at the Property began in January of 1994, and in September 1995 the seminary of learning began operations. On October 4, 1995, the Ontario Ministry of Education and Training confirmed that the seminary had been recorded with the Ministry as a private school.

For 1993 the Property was assessed as taxable at the commercial rate, and for 1994 it was assessed as taxable at the residential tax rate. No appeals were filed for taxation years 1993 or 1994.

For tax years 1995 to 1997, tax appeal applications were processed by the former City of Etobicoke converting 29% of the total assessed value to exempt. Madresa did not appeal the appeal decisions for tax years 1995 to 1997 to the Assessment Review Board.

Assessment appeals were filed by Madresa for taxation years 1998 to 2000:

- a) For 1998, the Property was returned on the Assessment Roll as fully taxable at the Industrial Vacant rate. The Assessment Review Board, in hearing the 1998 appeal, reduced the assessed value of the Property but did not make the Property or any portion of the Property exempt.

- b) For 1999 and 2000, the Property was returned on the Assessment Roll as mostly taxable at the Industrial Occupied rate with a small portion (approximately 13%) returned as exempt. The Assessment Review Board converted the Industrial Occupied assessment to Commercial Occupied with a slight reduction in the assessment value. The Board however did not change the small portion of the assessment returned as exempt.

In 2001, Madresa applied to the Superior Court of Justice (under section 46 of the *Assessment Act*) in order to secure an exemption from property taxation. The exemption was granted by the Superior Court effective January 1, 2001. The legislation only allows the Court to grant an exemption for the year that an application is made and on a go forward basis. Based on the Superior Court’s decision, the Property became exempt as of January 2001 and was returned on the Assessment Roll as exempt for taxation years up to 2006.

Effective May 1, 2006, and up to and including tax year 2008, the Municipal Property Assessment Corporation converted the Property to fully taxable at the commercial rate. Madresa has not filed any assessment appeals for 2006 to 2008 inclusive.

Currently, the Property has outstanding taxes of over \$1.1 million (as at May 31, 2008) for taxation years 1995 to 2000 inclusive, and 2006 to 2008 (excluding the 2008 final tax levy of \$23,957.44 due in July, August and September). The City registered a Tax Arrears Certificate against title to the Property on August 1, 2007.

Table 1, below, summarizes the assessment history of this Property from 1993 (when the Madresa purchased the Property) to 2008.

Table 1: Summary of Assessment for the Property by Year

Tax Year	Assessment as Returned on the Roll		Revised Assessment (as amended by Appeal Decisions, etc.)		Comments / Events
1993	Commercial	122,000	Commercial	122,000	Sept. 15: Madresa purchases Property. Renovations begin. Appeals have not been filed.
1994	Residential	122,000	Residential	122,000	Renovations continue Appeals have not been filed.
1995	Residential	122,000	Residential Exempt* Total:	86,620 <u>35,380</u> 122,000	Sept. – Seminary of Learning begins operating <i>*effective Sept. 1, 1995</i>
1996	Residential	122,000	Residential Exempt Total:	86,620 <u>35,380</u> 122,000	
1997	Residential	122,000	Residential Exempt Total:	86,620 <u>35,380</u> 122,000	
1998	Industrial, vacant	598,000	Industrial, vacant	531,000	
1999	Industrial Exempt Total:	531,390 <u>66,610</u> 598,000	Commercial Exempt Total:	464,390 <u>66,610</u> 531,000	
2000	Industrial Exempt Total:	531,390 <u>66,610</u> 598,000	Commercial Exempt Total:	464,390 <u>66,610</u> 531,000	
2001	Industrial Exempt Total:	608,000 <u>179,000</u> 787,000	Exempt	787,000	Madresa applies to the Superior Court of Justice for exemption. Court grants exemption effective Jan. 1/01
2002	Exempt	787,000	Exempt	787,000	
2003	Exempt	1,071,000	Exempt	1,071,000	
2004	Exempt	1,118,000	Exempt	1,118,000	
2005	Exempt	1,118,000	Exempt	1,118,000	
2006	Exempt (Jan 1 to April 30) Commercial	1,184,000 1,184,000	Exempt (Jan 1 to April 30) Commercial	1,184,000 1,184,000	MPAC converts Assessment from Exempt to Commercial effective May 1, 2006 based on evidence indicating that the property was no

Tax Year	Assessment as Returned on the Roll		Revised Assessment (as amended by Appeal Decisions, etc.)		Comments / Events
	(May 1 to Dec 31)		(May 1 to Dec 31)		longer being used as a school and place of worship. Appeals have not been filed.
2007	Commercial	1,184,000	Commercial	1,184,000	Appeals have not been filed.
2008	Commercial	1,184,000	Commercial	1,184,000	Appeals have not been filed.

COMMENTS

On August 1, 2007 the City of Toronto registered a Tax Arrears Certificate against title to the Property. In accordance with the *Act*, Madresa, or any interested party, has until July 31, 2008 to pay the cancellation price (which includes all of the taxes levied, all accrued penalties/interest and costs). If full payment is not made within that year, and an extension agreement has not been entered into, the Treasurer is required to proceed to a tax sale of the Property through a public auction or public tender. The cancellation price at the expiry of the one year redemption period, being July 31, 2008, will be approximately \$1.16 million. Table 2, below, provides a breakdown of the total cancellation amount as at July 31, 2008.

Table 2: Cancellation Amount Estimates to July 31, 2008

YEAR	TAXES	FEES	PENALTY/INTEREST	TOTAL
2008 (includes interim & final levy)	\$48,260.73		\$1,311.75	\$49,572.48
2007	48,464.40	10.00	8,044.93	56,519.33
2006 Supp	31,007.26		7,945.66	38,952.92
2006	Exempt	15.00		15.00
2001 to 2005	Exempt			0.00
2000	69,430.26		85,062.98	154,493.24
1999	69,571.64		95,264.63	164,836.27
1998	49,709.73		75,683.32	125,393.05
1997	38,681.89		65,156.11	103,838.00
1996	38,326.75		69,796.74	108,123.49
1995	48,208.17		97,256.32	145,464.49
1994	51,911.00		110,852.91	162,763.91
1993	17,907.30		35,381.28	53,288.58
SUB TOTAL	\$511,479.13	\$25.00	\$651,756.63	\$1,163,260.76
REGISTRATIONS:				\$610.04
LEGAL COSTS:				\$904.00
TOTAL CANCELLATION PRICE:				\$1,164,774.80

In 2007, Madresa made an application to the Legislative Assembly of the Province of Ontario for special legislation to waive the legislated deadline for a Court application under section 46 of the *Assessment Act* and to allow it to make an application to the Superior Court of Justice for a property tax exemption with respect taxation years 1994 to 2000 which is tabled as Bill Pr5 “An Act respecting Madresa Ashraful Uloom”, (attached

as Attachment 1). Bill Pr5 was reported to the Legislative Assembly on April 30, 2008 having received First Reading on March 19, 2008. The Act will come into force following second and third reading on the day the Bill receives Royal Assent.

Staff from Revenue Services and Legal Services have been working with Madresa and its solicitors to determine a means for addressing the retroactive tax exemption issue without having to extend the time limit during which an application may be made to the court for taxation years 1994 to 2000. The time limits in the *Assessment Act* are regularly relied upon by the City of Toronto and other municipalities. City staff are concerned that granting an extension of the time limits for this particular Property will render the time limits in the *Assessment Act* meaningless and will likely be seen as a precedent for other property owners which could result in significant loss of revenue and uncertainty for the municipality. If a viable alternative for addressing the exemption issue for 23 Brydon Drive is not agreed upon by City staff and Madresa, a report will be submitted to Committee and Council with respect to Bill Pr5.

On May 2, 2008, the solicitors for Madresa wrote to the City's Revenue Services Division requesting an extension of the one-year tax sale redemption period from July 31, 2008 to July 31, 2009. The extension agreement proposed will provide for repayment of the tax arrears in full, on or July 31, 2009. Based on the current taxable status, and assuming no further appeals or court decisions are forthcoming, the Cancellation Amount on July 31, 2009 will be approximately \$1.3 million due to the fact that the full 2009 tax levy will have been added to the amount owing in addition to accumulated penalties and interest. Although the estimated cancellation amount of \$1.3 million is slightly higher than the assessed value of \$1,184,000 (based on a January 2005 valuation date), Revenue Services staff feel that any outstanding taxes, interest, penalties and costs owing to the City are reasonably protected given that:

- a) assessment values have gone up since 2005 and are being updated by MPAC later this year (based on a January 2008 valuation date) for taxation years 2009 to 2012;
- b) if a further tax reduction or exemption is awarded by the Courts or the Assessment Review Board, the estimated cancellation amount of \$1.3 million will be reduced accordingly;
- c) if a further tax reduction is not awarded by the Courts or the Assessment Review Board, and if the cancellation price is not paid by the recommended extended date of July 31, 2009, the Treasurer will proceed with a sale of the Property through a public tender. In the event that a tax sale is not successful, the City may choose to vest the Property in the City's name and write off the outstanding balances on the account. In this case, the education portion of the write-off (estimated at \$0.3 million) can be recovered from the Province / school boards. If this Property is later sold, proceeds must be shared with the school boards in the same proportion to the taxes originally written off. Alternatively, if the City chooses not to assume ownership of the Property following the unsuccessful tax sale, ownership will

remain in the name of the current owner and all arrears can remain on the tax account.

Given the discussions currently underway between City staff, Madresa and its solicitors, and the introduction of Bill Pr5 in the Provincial legislature, the Revenue Services Division recommends a 12 month extension from July 31, 2008 to July 31, 2009 to pay the cancellation price.

CONTACT

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SIGNATURE

Cam Weldon
Treasurer

ATTACHMENTS

Attachment 1: Bill Pr5 “An Act respecting Madresa Ashraful Uloom”, Reported to the House on April 30, 2008, awaiting 2nd and 3rd reading and Royal Assent