BRIEFING NOTE: Government Management Agenda Item 17.5, Application to Apportion Taxes, 35-65 Weston Road (Ward 11, York South-Weston)

Issue:

At its meeting of September 17, 2008, the Government Management Committee will deal with 29 tax apportionment applications made by the City Treasurer or to the Treasurer by an owner of land pursuant to section 322 of the City of Toronto Act (re: agenda item GM17.5 “Apportionment of Property Taxes – September 2008 Hearing”).

One of the applications before Committee is an application initiated by the Treasurer to apportion outstanding taxes for the 2006 taxation year totaling $54,005.81, from the original roll number 1904-91-4-310-00203 (i.e. 35-65 Weston Road) which no longer exists due to its re-development, into 100 new roll numbers representing townhouses developed on the property. The application in question is located on pages 1, 2 and 3 of Appendix A of the staff report.

Staff have been notified that Ms. Bibiana Souto of 119 Brickworks Lane, the owner of one of the townhouses, may attend the Government Management Committee hearing to depute the application to apportion taxes.

Background:

- The application in question relates to a large redevelopment of land into townhouses in the St. Clair/Weston Road area of the City. The developer, Tiffany Park (St. Clair) Limited, undertook the development in phases. Staff understand that phase I and II of the redevelopment was completed in late 2005. As such, most of the owners took occupancy of their properties in late 2005.

- Although the first phase of redevelopment was completed in late 2005, this was not reflected on the assessment roll for 2006 taxation and as such, the Municipal Property Assessment Corporation (MPAC) identified Tiffany Park (St. Clair) Limited as the owner of the lands under one roll number. Accordingly, Revenue Services prepared and sent out tax bills to Tiffany Park (St. Clair) Limited. Those taxes were not paid by the developer.

- In December 2006, Revenue Services staff were notified by MPAC that the land had been severed and redeveloped. Although MPAC provided the new roll numbers and the associated assessment for the 2006 taxation year in December 2006, staff could not initiate an application to apportion taxes since the property was the subject of a 2006 assessment appeal which was not resolved until late 2007.

- In March 2008, following the resolution of the assessment appeal by the Assessment Review Board, Council approved an apportionment of property taxes related to the first phase of the
property’s development. The March 2008 apportionment created roll number 1904-014-310-00203, which is before Committee in September 2008 for a further apportionment related to the second phase of development.

- After Council approved the apportionment of taxes in March 2008, taxes totaling $54,005.81 were billed to Tiffany Park (St. Clair) Limited, who was identified on the assessment roll as the owner of the parcel. However, the tax bill was returned to the City by Canada Post. Other collection efforts have also failed.

- Ms. Souto owns one of the townhouses built during the second phase of development. She moved into her property in late 2005 but took title in April 2006. During this period, she was required to pay occupancy fees to the developer and therefore, maintains that the developer is responsible for the 2006 taxes. Her portion of the property taxes being recommended for apportionment is $540.06.

- Routinely, vendors and purchases enter into Purchase and Sales agreements at the time of closing which detail the conditions of the sale. The City does not have access to those agreements; however, in most property purchase and sale transactions, vendors and purchasers routinely enter into written undertakings to “re-adjust” the original Statement of Adjustments so as to address costs not known at the time of the transaction’s close.

- In 2007, MPAC issued omitted assessment notices to the new owners of the units for the building structure only and not the land. The City levied taxes in accordance with these notices, therefore, the City has not double billed the current owners.

**Keypoints:**

- The Treasurer has initiated this apportionment application as taxes totaling $54,005.81 are outstanding and collection from the developer is unlikely as the 2006 tax bills were mailed in May 2006 and in most cases (including that of Ms. Souto) title for the properties was transferred earlier in 2006. In Ms. Souto's case title was transferred in April 2006. Given that the original roll number has now been redeveloped into multiple townhouses, a tax sale to recover the unpaid taxes in not feasible.

- Staff believe that the objection that will be raised by Ms. Souto is an issue between the developer and the unit owner and as such have recommended to Ms. Souto seek clarification from her lawyer with possible redress being sought from the developer based on the details of the purchase and sale agreement.

**Recommendation:**

- Given that the taxes remain outstanding, the City has the following options:

  a) It can choose not to apportion the taxes, in which case staff would continue to pursue the developer. However, our collection abilities would be limited to collection from the developer only, and not from any of the current owners. As explained above, collection is unlikely, and thus the taxes would most likely have to be deemed uncollectible and written off; or,

  b) It can apportion the taxes in accordance with legislative provisions thereby transferring the obligation to pay to the unit owners. The unit owners can then:
I. Appeal the apportionment to the Assessment Review Board; and/or,

II. Work thorough their lawyer to “re-adjust” the original Statement of Purchase and Sales to address the taxes that will be billed, if they feel that they have cause.

The City’s financial interests would be most protected under Option “b”, as it can lien the properties in the event that the apportioned taxes are not paid.

Circulated to: Chair and Members of the Government Management Committee

Prepared by: Giuliana Carbone, Director, Revenue Services, 416-392-8065

Contact for further information: Carmela Romano, Manager, Property Taxation and Assessment, Revenue Services, 416-395-6730

Date: September 15, 2008