

Request for Tenant Support Grant from the Tenant Defence Fund for 310-320 Tweedsmuir Avenue (Ward 21)

Date:	May 10, 2010
To:	Community Development and Recreation Committee
From:	General Manager, Shelter, Support and Housing Administration
Wards:	Ward 21
Reference Number:	

SUMMARY

This report responds to the request of the Tenant Defence Sub-Committee for a report on an additional grant for the Tenants' Association of 310 to 320 Tweedsmuir Avenue to cover legal costs in excess of the original \$15,000 grant from the Tenant Support Grant Program (Grant Program) they received in 2000. The original grant was to assist them in defending the tenants before the Ontario Municipal Board (OMB) in relation to the landlord's redevelopment application.

The Tweedsmuir case was one of the first cases of a landlord requesting planning approvals that would result in demolition of affordable housing after repeal of the Rental Housing Protection Act and after approval of the City's Official Plan Amendment No. 2 (OPA2) by Council. The OMB decision issued in February 2000 laid the foundation for supporting the City's position on future similar planning applications, which requires replacement of the rental housing to be demolished and financial and relocation assistance for the affected tenants as a condition of approving the owner's application.

Significant changes have happened at 310-320 Tweedsmuir Avenue over the past 10 years which necessitated a great deal of complex work to negotiate the details of tenant assistance and leases for the replacement rental housing as required in the OMB decision. As a result, legal costs to the tenants have now exceeded the original \$15,000 grant. The Tweedsmuir Tenants' Association has requested an additional grant of up to \$2,509.00 to help them pay the final legal costs. Staff recommend approval of the grant request as the OMB decision in this case has set a direction that supports the City's position on future redevelopment applications and the tenants have exhausted all their resources.

RECOMMENDATIONS

The General Manager, Shelter, Support and Housing Administration, recommends that Council:

1. approve a grant of up to \$2,509 to the Tenants' Association of 310-320 Tweedsmuir Avenue from the Tenant Support Grant Program to help the tenants pay the final legal costs in excess of the originally approved \$15,000 grant, for legal work completed on the tenant assistance plan and leases for new replacement rental housing as required by the Ontario Municipal Board decision; and
2. authorize the General Manager, Shelter, Support and Housing Administration, to take the necessary actions to implement Council's approval.

Financial Impact

There is no net financial impact. Funds are available from the 2010 Approved Budget for Shelter, Support and Housing Administration for this purpose.

DECISION HISTORY

At its meeting of October 3, 4 and 5, 2000, Council considered a report entitled "Request for Special Grants under the Tenant Defence Fund" and approved grants of up to \$15,000 to fund legal assistance for tenant groups disputing demolition and related housing matters before the Ontario Municipal Board (OMB).

(<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc001003/cms8rpt/cl019.pdf>)

The Tenants' Association of 310-320 Tweedsmuir Avenue was one of the tenant groups included in that report to receive such a grant.

At its meeting of November 30, December 1, 2, 4 and 7, 2009, City Council considered a report entitled "Request for Directions Report – 310-320 Tweedsmuir Avenue – Official Plan Amendment and Rezoning Applications" by the Chief Planner and Executive Director of the City Planning Division.

(<http://www.toronto.ca/legdocs/mmis/2009/te/bgrd/backgroundfile-25077.pdf>).

Council approved the report's recommendations on the revised development proposal at Tweedsmuir, and the replacement rental housing and tenant assistance plan for the tenants.

On August 5, 2009, City Council adopted the Housing Opportunities Toronto (HOT) Action Plan 2010-2020 with recommendations for the City and the other orders of government to create affordable housing and to end homelessness in Toronto.

Recommendation No. 6(a) requests that the City co-ordinate and provide supports and housing to ensure homeless and vulnerable people are able to keep their homes by allocating funding to community programs and services which help people find and keep homes. Recommendation 30(b) requests that the City ensure existing affordable rental

housing is preserved by consistently applying the Official Plan housing policies and the City's conversion and demolition bylaw to prevent the loss of rental housing when property owners apply for City approvals.

On May 5, 2010, the Tenant Defence Sub-Committee requested the General Manager, Shelter, Support and Housing Administration, to report to the next meeting of the Community Development and Recreation Committee on May 26, on an additional grant for the Tenants' Association to cover legal costs in excess of the original \$15,000 grant they received in 2000 to cover costs associated with defending themselves before the Ontario Municipal Board.

ISSUE BACKGROUND

Status of the OMB Appeal

The 310-320 Tweedsmuir Avenue property is located just north of St. Clair Avenue West at Heath Street and originally contained 246 rental apartments, of which 146 were charged affordable rents (note: the other 100 apartments were used as executive suites were not classed as "affordable" by the OMB February 2000 interim decision). In 1999, the owner of the Tweedsmuir Avenue properties filed applications to the City to amend the Official Plan and Zoning By-Law to permit the development of two condominium apartment buildings. If approved, the new development would result in the demolition of 146 affordable rental units. The applications were refused by the City and the owner appealed to the OMB. The Tweedsmuir case was the first case of a landlord requesting planning approvals that would result in demolition of affordable housing after repeal of the Rental Housing Protection Act and after approval of OPA 2 by Council (which seeks to preserve rental housing where conversion or demolition is proposed) and was before the OMB on appeal by the landlord.

Hearings were held at the OMB in 1999 and 2000. In its February 2000 interim decision, although the landlord's appeal was allowed, the OMB supported the position of the City and the Tenants' Association respecting replacement of 146 units of affordable rental housing and relocation and other assistance for the tenants who lived in the buildings at the time of the interim decision. The OMB decision required that these benefits be included in a Section 37 Agreement. The OMB withheld its final order until the City and the owner had executed and registered on title a Section 37 Agreement and until the tenants had signed leases for the replacement rental housing.

Over the past 10 years, significant changes in the original development proposal and change of property ownership have taken place, requiring further OMB hearings and lengthy, complex negotiations respecting the implementation details of the tenant relocation and assistance plan. The tenants' lawyer has played an important role in supporting the relocation of tenants to interim housing as required by the OMB (such as reviewing the relocation package and preparing leases for the rental units), and carried out detailed legal work needed on behalf of the tenants on this matter. As of today, all tenants affected by the OMB's February 2000 decision have been relocated and those

who choose to have claimed the right to return to a unit in the new replacement rental building.

On April 13, 2010, the OMB issued its final order which approved the City's amendment to the zoning by-law to permit redevelopment on the site. Although the Section 37 Agreement had not yet been executed at that time, the OMB was satisfied with the draft Section 37 provisions provided in the attachment of the order. As such, it waived the requirement for the execution of the Section 37 Agreement before it released the order, given the passage of nine years and the toll of time on tenants waiting to resume tenancy at Tweedsmuir.

Planning staff have been consulted in the preparation of this report. They have indicated that the implementation details of the Section 37 Agreement and tenant leases have been finalized and the agreement has recently been executed.

OMB Decision on Rental Housing Replacement and Tenant Assistance

The following section provides highlights of the OMB decision on rental housing replacement and tenant assistance.

Rental Housing Replacement Plan:

The approved development will include replacement of the original 146 affordable units on the same site. The replacement units will be registered as 'purpose-built' rental and will be secured as rental for at least 20 years, meaning that during this 20 year period no application to demolish or convert the units to non-rental or non-residential purposes may be made.

The tenants affected by the OMB's February 2000 decision will be given the right of first refusal to rent the new units and their maximum rents will not exceed the sum of their previous rent as of the February 2000 decision date, plus one-half of the difference between the previous rent and the new maximum rent, subject to the annual rent increase guideline and permitted above-guideline increases if applicable. While the OMB decision only secured these rents for a 10-year period, the owner subsequently agreed to secure the rents for existing tenants for the life of their tenancy in order to prevent eviction.

New tenants may be charged rents up to the maximum rent and rents would be secured for a period of 10 years as per the OMB decision, subject to annual guideline increases and permitted above-guideline increases if applicable. The maximum rents will range from \$725.00 for a bachelor unit, \$950 for a one-bedroom unit and \$1,125.00 for a two-bedroom unit for the replacement units. These maximum rents are generally close to the current affordable rents in the City (i.e. average rents reported by the CMHC 2009 October Rental Market Report). The reason for securing these rents for new tenants as part of the Section 37 agreement is that the *Residential Tenancies Act* (RTA) does not limit rent increases for new buildings constructed after 1991.

Relocation assistance:

The OMB decision also outlined a tenant relocation and assistance plan for tenants affected by its February 2000 decision as follows:

- payment equal to at least 3 months rent upon vacating the unit;
- right to return to a new replacement rental unit; and
- payment of \$4,000 to each tenant moving to temporary housing and a further payment of \$3,000 for moving back to a replacement unit

This compensation is more than what is required under the Residential Tenancies Act.

Status of 2000 Tenant Support Program Grant

As directed by Council in October 2000, a grant of \$15,000 was made to the Tweedsmuir Tenants' Association from the Tenant Support Grant Program to assist them in retaining legal counsel for representation before the OMB. The program allows for partial payments for eligible tenant groups based on evidence of actual costs.

To date, of the \$15,000 approved, a total of \$8,457.92 has been disbursed in three instalments, with \$6,542.08 remaining to be disbursed. The last bill was recently received (\$9,051) and exceeds the total amount of the grant remaining to be disbursed by \$2,509. Therefore the Tenants' Association has requested a further grant of up to \$2,509 to help them pay the final legal costs.

COMMENTS

The purpose of the Grant Program is to protect the City's affordable rental housing supply and help tenants maintain their tenancies in affordable rental homes. The City's Tenant Support Grant Program authorizes tenant grants in several situations, including appeals or applications to the OMB for demolition or conversion of their building to condominiums.

In the case of 310-320 Tweedsmuir Avenue, a grant of \$15,000 was approved, but the legal costs have exceeded the original grant as a result of significant changes to the original development proposal, change of property ownership and complex negotiations required to complete the tenant relocation and assistance plan. The Tenants' Association has requested a further grant of up to \$2,509 to help them pay the final legal costs. The City Solicitor has confirmed that this request is beyond the authority delegated to staff in the Tenant Support Grant Program by-law and, therefore, Council approval is necessary.

Upon review of the request by the Tenants' Association, supporting documents provided by their legal counsel, and information provided by the City Planning Division, staff recommend a grant of up to \$2,509 from the Tenant Support Grant Program for the following reasons:

1. The Tweedsmuir case is one of the most significant cases in the history of Toronto since amalgamation respecting demolition of rental housing. It was the first such matter to be considered by the OMB after the repeal of the Rental Housing Protection Act in 1997. The February 2000 decision issued by the OMB laid the foundation for supporting the City's position on future similar appeals that rental housing must not be demolished unless the rental units are replaced as part of the redevelopment, and the tenants losing their homes are treated fairly. Since the decision on Tweedsmuir was made, tenant protection and assistance and rental housing replacement have become standard requirements for redevelopment and intensification applications in the Toronto Official Plan.
2. The initial Tenant Support Grant provided by the City has been well spent. The tenants were able to obtain effective representation to protect their rights as the details of the replacement rental housing and tenant assistance plan required by the OMB decision were worked out. In addition, the tenants' representative has helped to streamline the work of City Planners in drafting the Section 37 Agreement. As such, it is in the interest of the City to provide additional financial assistance to help the tenants pay the final legal costs.
3. The OMB's decision was not only positive for the Tweedsmuir tenants but also for future tenants of Toronto. This decision may be cited on future similar cases before the OMB in Toronto and elsewhere in Ontario.
4. The Tweedsmuir Tenants' Association had raised \$5,000 on their own for legal assistance prior to their first request for the \$15,000 grant in 2000. They have demonstrated their commitment to this cause and have now exhausted all resources.

CONTACT

Katherine Chislett, Director, Housing & Homelessness Supports & Initiatives
Shelter, Support and Housing Administration
Phone: 416-397-0260; Fax: 416-338-1144 ; E-mail: kchisle@toronto.ca

Gwynne Cheung, Policy Development Officer
Housing & Homelessness Supports & Initiatives
Shelter, Support and Housing Administration
Phone: 416-392-0643; Fax: 416-338-1144; E-mail: gcheung2@toronto.ca

SIGNATURE

Phil Brown
General Manager
Shelter, Support and Housing Administration