

August 11, 2010

BRIEFING NOTE: 3640 to 3650 Kingston Road, Tax Appeal Applications

Re: GM33.30 - *Cancellation Reduction or Refund of Property Taxes - August 12, 2010, Hearing*

Issue:

On August 12, 2010, the Government Management Committee will be considering 268 tax appeal applications for the reduction, cancellation and refund of property taxes pursuant to the provisions of sections 323 and 325 of the *City of Toronto Act*.

Of the 268 applications before Committee, 148 applications relate to the properties at 3640 to 3650 Kingston Road. These applications can be found on Appendix A, pages 4 to 10, agenda item GM33.30.

The applications were filed by property owners under section 323(1)(d)(ii) of the *City of Toronto Act* on the grounds that the buildings were damaged by a hydro vault explosion that occurred on March 19, 2009 and were therefore rendered substantially unusable.

Notices of Hearing have been sent to affected taxpayers indicating that a reduction/cancellation of taxes for these units is not being recommended, given that the Municipal Property Assessment Corporation (MPAC) has advised that there was no structural damage to the buildings caused by the hydro vault explosion and therefore no reduction in assessment value which would result in a property tax reduction.

These properties also did not qualify for a tax reduction based on the fact that occupants were prevented from accessing their units for a period of time (due to a Fire Marshal's order), as the *City of Toronto Act* provision that permits taxes to be reduced where repairs or renovations prevented the normal use of the property (S. 323(1)(h)), requires that the property be unusable for a period of at least three months. In the case of 3640 and 3650 Kingston Road, the period of time in which residents were not permitted to enter the building was less than three months in all cases, and so the legislative requirement for a tax reduction was not met.

Some property owners have been in contact with Revenue Services staff to advise that they are not in agreement with the staff recommendation and may be attending the Government Management Committee meeting on August 12, 2010 to make a deputation before the Committee.

Background:

- 3640 to 3648 Kingston Road are residential town houses constructed in 2006 each having between seven (7) and nine (9) individually assessed units. 3650 Kingston Road is a residential condominium that was also constructed in 2006 with 234 individually assessed units.

- On March 19, 2009, an electrical explosion with smoke and no fire occurred in the hydro vault located in the underground parking area of 3650 Kingston Road. As a result of the explosion, a power outage occurred which caused the Office of the Ontario Fire Marshal to issue an evacuation order for the residence at 3650 Kingston Rd (234 units) as well as the residence at 3640-3648 Kingston Rd (38 townhouses).
- While under the authority of the Office of the Ontario Fire Marshal, the residents at the six buildings were prohibited from entering their units. Occupancy was granted to the thirty-eight (38) townhouse residents at 3640-3648 Kingston Road on June 4, 2009.
- Occupancy to the main building residents of 3650 Kingston Road (234 units) was granted on June 12, 2009.
- Section 323(1)(d)(ii) of the *City of Toronto Act* allows the City to cancel, reduce or refund all or part of taxes levied on land “in the year in respect of which the application is made” if “during the year or during the preceding year after the return of the assessment roll, a building on the land was damaged by fire, demolition or otherwise so as to render it substantially unusable for the purposed for which it was used immediately prior to the damage”.
- Between May 2009 and March 2010, 148 applications were filed with the City Treasurer for the 2009 taxation year requesting a reduction, cancellation, refund of property taxes due to damages caused by the electrical explosion. The applicants are seeking tax relief for the period of March 19, 2009 to June 12, 2009.

Key Points:

- Applications for the cancellation, reduction or refund of taxes received by Revenue Services staff are forwarded to MPAC to determine whether the circumstances identified in the application have a bearing on the current value assessment (CVA) of the property, and if so, to what extent the CVA is affected. Revenue Services staff rely on this information to calculate the reduction/cancellation in taxes and make a recommendation to the Committee or Council.
- MPAC reviews the applications and provides City staff with the changes in assessment value due to the damages that occurred on the property.
- Upon receiving the assessment information provided by MPAC, Revenue Services staff calculate the recommended tax cancellation/reduction (if applicable), notify the applicant of the staff recommendation and prepare for the hearing before the Government Management Committee.
- For the subject properties, MPAC advised that there was no damage to the structures or the units caused by the electrical explosion or smoke that occurred in the hydro vault located in the underground parking area. Therefore, MPAC determined that there is no decrease in CVA (assessment value) to the individual units as a result of explosion. Accordingly, staff are not recommending a reduction in taxes.
- Engineers inspected all six buildings and reported that they were structurally sound; nonetheless, the Ontario Fire Marshal ordered an evacuation of the premises due to the power outage.

- In this case, although the applications were filed under section 323(1)(d)(ii) (damaged by fire), Revenue Services staff also gave consideration to whether the properties might be eligible under section 323(1)(h) which permits taxes to be reduced /cancelled if, during the year a property was subject to repairs or renovations which prevented the normal use of the land for a period of at least three months.
 - In considering the applications under s323(1)(h), it was noted that: a) the legislative requirement of three (3) months during the year (i.e. between March 19, 2009 and June 12, 2009) was not met; and, b) there were no repairs or renovations being carried on within the individual units. As such, the properties did not qualify under section 323(h). Staff therefore proceeded to process the applications under section 323(1)(d)(ii) (damaged by fire).
 - The process used by staff to calculate and recommend a reduction in taxes has been consistently applied to all section 323 and 325 applications since 1998 (and was consistently applied by the six former municipalities for many years prior to amalgamation). In addition, this same process is employed by municipalities across the GTA.
 - Revenue Services staff have consulted with the City Solicitor's office in respect to the subject application and they are in agreement with the staff's recommendation not to reduce, cancel, refund taxes.
 - Once Committee and Council make a decision regarding these applications, the property owners will have 35 days from the date of the Notice of Decision to appeal the decision of Council to the Assessment Review Board (ARB). The ARB is well versed in assessment matters and therefore is better able to deal with disputes related to assessment valuation of properties.
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Circulated to: Members of Government Management Committee

Prepared by: Casey Brendon, Director, Revenue Services, 416-392-8065

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

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