TO: Chair and Members  
Economic Development and Planning Committee  
WARD(S) AFFECTED: WARD 2  

COMMITTEE DATE: April 6, 2010  

SUBJECT/REPORT NO: Enterprise Zone Grant Program – 170-176 Jackson Street West – Agreement – EZ07/01 (PED10090)  

SUBMITTED BY: Tim McCabe  
General Manager  
Planning and Economic Development Department  

PREPARED BY: Hazel Milsome 905-546-2424 ext 2755  

SIGNATURE:  

RECOMMENDATION:

a) That the Enterprise Zone Grant, as detailed within Report PED10090, be applied to 170-176 Jackson Street West as the redevelopment of the property is complete and the terms and conditions of the Program have been satisfied.

b) That the Mayor and City Clerk be authorized and directed to execute the Agreement attached as Appendix “A” to Report PED10090.

EXECUTIVE SUMMARY

Report PED10090 recommends the approval of the Enterprise Zone Grant for 170-176 Jackson Street West as the redevelopment of the property has been completed and the Municipal Property Assessment Corporation (MPAC) has reassessed the property. The end result is a 15 unit residential property that as been rehabilitated to meet today’s standard.
The grant is based on the municipal portion of taxes in the year in which the application was submitted (the applicant submitted his application in 2007) and deducting the amount from the municipal portion of the taxes in the year in which MPAC reassesses the property post-redevelopment completion. The grant will be $915.13 each year for the first five (5) years and then will be reduced by twenty percent (20%) for the following four (4) years. The total estimated grant over the nine (9) year period is $6,405.93.

Alternatives for Consideration – See Page 6.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** The City is collecting full property taxes on the property and in turn providing a grant for nine (9) years declining each year after the fifth (5th) year by twenty percent (20%) based on the increase in the municipal portion of the taxes post-redevelopment completion of 170-176 Jackson Street West. Following year five (5) of the grant payment, the City will start to realize the positive results of the Program from a financial perspective.

**Staffing:** Applicants and subsequent grant payments under the Enterprise Zone Grant Program are processed by the Downtown and Community Renewal and Taxation Divisions. There are no additional staffing requirements.

**Legal:** Section 28 of the Planning Act permits a municipality, in accordance with a Community Improvement Plan to make loans and grants which would otherwise be prohibited under Section 106(2) of the Municipal Act, to registered/assessed owners and tenants of lands and buildings. A Community Improvement Plan can only be adopted and come into effect within a designated Community Improvement Project Area. Changes to a Community Improvement Plan or Community Improvement Project Area require formal amendments as dictated by the Planning Act.

The Agreement attached as Appendix “B” to Report PED10090 has been developed in consultation with staff of Legal Services.

**HISTORICAL BACKGROUND** (Chronology of events)

City Council, at its meeting held August 22, 2001, approved an amendment to the Downtown and Community Renewal Community Improvement Plan which introduced the Enterprise Zone Grant Program. Since that time, a number of program refinements have been approved by Council. The Enterprise Grant Program applies to properties within the Downtown Hamilton Community Improvement Project Area. Under the Program, at the time of application for 170-176 Jackson Street West, the terms of the

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Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
Program offered a nine-year grant not to exceed the increase in municipal realty taxes as a result of the development/redevelopment of the land and/or building. The grant is not to exceed 100% of the municipal realty tax increase during the first five (5) years, 80% in year six (6), 60% in year seven (7), 40% in year eight (8) and 20% in year nine (9). The Program also allows a developer of residential condominium units to assign the grant to first condominium purchasers of each unit.

170-176 Jackson Street West was approved as an eligible project under the terms of the Enterprise Zone Grant Program by City Council at its meeting held February 15, 2007. The project included the redevelopment of a three (3) storey, fifteen (15) residential unit apartment building. The actual cost incurred redeveloping the property was $165,000.00

On March 28, 2007 City Council approved an amendment to the Program reducing the grant from a nine (9) year program to a five (5) year program, however the five (5) year program is not applicable to 170-176 Jackson Street West.

**POLICY IMPLICATIONS**

Report PED10090 relates to the processing of an application under the Enterprise Zone Grant Program which is contained within the Downtown and Community Renewal Community Improvement Plan. The Downtown Hamilton Secondary Plan and Zoning By-law 05-200 affect developments/redevelopments that are approved under the Program.

**RELEVANT CONSULTATION**

Staff from the Taxation and Legal Services Divisions of the Corporate Services Department were consulted and concur with the recommendations included in Report PED10090.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

The Downtown and Community Renewal staff, in co-operation with staff from the Taxation and Legal Services Divisions, developed the Agreement concerning the schedule of grant payments under the terms of the Program. Appendix “A” to Report PED10090 is the Agreement that specifically relates to the development of 170-176 Jackson Street West. A Signing Officer for Aquino Construction Ltd., the owner of the property, has signed the Agreement thereby accepting the terms and conditions.
outlined therein. The following provides an overview of the grant calculation for 170-176 Jackson Street West as presented in Appendix “A” to Report PED10090.

The Grant shall be calculated according to the following formulas:

Grant Level: 100%

Total Eligible Costs (Maximum): $165,000.00

Pre-project AV: $439,000.00 Year: 2007

Municipal Levy: $16,019.52
Education Levy: $1,158.96
Pre-project Property Taxes: $17,178.48

Post-project AV: $462,750.00 Year: 2009

Municipal Levy: $16,934.65
Education Levy: $1,166.13
Post-project Property Taxes: $18,100.78

Municipal Tax Increment = Post-project Municipal Taxes (actual) - Pre-project Municipal Taxes

“Grant Payment in Year 1” (first full calendar year after re-valuation of the completed and occupied project by the Municipal Property Assessment Corporation) or the “Initial Grant Payment” = Municipal Tax Increment*100%

Calculation of Grant Payment in Year 1 (Initial Grant)

Pre-project Municipal Taxes = Municipal Levy = $16,019.52
Municipal Tax Increment = $16,934.65 - $16,019.52 = $915.13
Grant Payment in Year 1 = $915.13 x 1.0 = $915.13

EXAMPLE GRANT PAYMENT SCHEDULE

(subject to re-calculation each year and up to the total eligible costs)

<table>
<thead>
<tr>
<th>Year*</th>
<th>Grant Factor (2)</th>
<th>Tax Increment (3)</th>
<th>Grant (2*3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (2009)</td>
<td>100%</td>
<td>$915.13</td>
<td>$915.13</td>
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<tr>
<td>2</td>
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Grant Terms

The Agreement also outlines the terms and conditions of the grant payments over the nine-year period. Key terms and conditions include the following:

- The total grant under the grant program shall not exceed $165,000.00 with respect to 170-176 Jackson Street West.
- Property owners must maintain property taxes in good standing. Properties must have no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority.
- The grant payment is recalculated annually.
- Annual grant payments after the first grant payment are adjusted downwards in the event the municipal tax increment in any subsequent year has been reduced.
- The property must be maintained in its rehabilitated state.
- If property taxes are owing for more than one (1) full year, the City will have the option, without notice and at its own discretion, to terminate all future Grant payments.
- In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property the City shall have absolute discretion in ceasing any further grant payments.
- Where, in the opinion of Council, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the applicant being involved in litigation with the City, the City may, at its discretion and without notice, terminate all future Grant payments. Applicants are individuals; corporate entities and individuals behind the corporation (Officers/Directors/Shareholders).

In addition, on an annual basis, prior to the issuance of a grant payment, the property owner will be required to sign an affidavit attesting to compliance with the terms and conditions outlined within the Agreement.
ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Non-acceptance of the recommendations contained in Report PED10090 or, reducing the amount of the annual grant payment would undermine the principles of the Enterprise Zone Grant Program and downtown renewal efforts in general. These alternatives are not recommended.

Financial: Grants totalling approximately $6,405.93 over a nine (9) year period would not be issued.

Staffing: Not applicable
Legal: Not applicable

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Growing Our Economy
• Investment in Hamilton is enhanced and supported. Property owners invest in their properties leading to property assessment increases.

Environmental Stewardship
• Financial incentive programs support residential intensification and the reuse of existing building stock and infrastructure.

Healthy Community
• Partnerships are promoted.

APPENDICES / SCHEDULES

Appendix ‘A’ to Report PED10090 – Enterprise Zone Grant Program Agreement
Appendix ‘B’ to Report PED10090 – location map.

HM:vk
City of Hamilton

ENTERPRISE ZONE GRANT PROGRAM

Grant Payment – Agreement

DATE: March 11, 2010

Application No. EZ07/01

PROPERTY INFORMATION

Name of registered property owner: Aquino Construction Ltd.
Attention: Jack Aquino

Address of property (subject of Grant Program): 170-176 Jackson Street West Hamilton, Ontario

Roll Number(s): 02013650520

Mailing Address of Owner (where address is different from address of property)

Aquino Construction Ltd.
672 Louise Drive
R. R. #3, Dundas, Ontario
L9H 5E3

Attention: Jack Aquino

GRANT CALCULATION

The Grant shall be calculated according to the following formulas:

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<tr>
<td>Total</td>
<td></td>
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Grant Terms

1. The actual amount of annual Grant payments is subject to re-calculation of (Municipal Tax Increment*the applicable %) in each and every year.

2. The total value of the sum of the annual Grant payments that may be provided under the Enterprise Zone Program shall not exceed the total eligible costs of the said redevelopment that have been accepted by the City ($165,000.00).

3. Annual Grant payments shall be paid, subject to these terms and conditions, by the City to a maximum of 9 payments. Such payments shall cease when the total amount paid out equals the total eligible cost amount as determined by the City, or after 9 grant payments, whichever comes first.
4. The total value of the eligible Grant provided under this Program shall be reduced by the amount of any property tax arrears in respect of any and all taxes that have been cancelled or reduced on the subject property by the City under any other programs or by relief allowed under any statute.

5. The Grant Payment in Year 1 and subsequent annual Grant payments are calculated based upon changes in property taxes as a result of completion of the accepted eligible works and construction and improvement to the property.

6. If at any point after the original redevelopment of the land, new construction is added to the land that is not part of the original Enterprise Zone Grant application, the Grant will be calculated only in respect of the original eligible costs, original redevelopment works, and original building size contained in the original Enterprise Zone Grant application.

7.1 The initial Grant payment is not payable by the City until each of the following conditions are fulfilled to the satisfaction of the City:

(a) redevelopment of the property is completed in accordance with the proposed redevelopment as specified in the Enterprise Zone Grant application;

(b) the Owner has supplied the City with evidence satisfactory to the City as to the amount of the eligible costs incurred by the Owner;

(c) the Owner has satisfied the City that the total eligible costs, incurred in respect of the redevelopment have been paid in full and that there are no liens, claims or litigation in respect of the Owner's obligation to pay the total eligible costs;

(d) the Owner has satisfied the City that the accepted redevelopment that is subject of the Grant application has not been substantially altered or has not been demolished;

(e) the Owner has satisfied the City that there are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the redevelopment, the property and the business of the Owner conducted on the land;

(f) the Owner has satisfied the City that the Owner, its redevelopment and property are in full compliance with:

   (i) any Agreement(s) relating to the property in favour of the City, including any Agreement relating to: condominium, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,

   (ii) by-laws of the City and provincial and federal legislation and regulations.

(g) the Owner has satisfied the City that the assessed value of the subject property has increased as a result of the said redevelopment to the property and that the assessed value was increased for reasons that meet the eligibility requirements of the City's Enterprise Zone Program;
Appendix ‘A’ to Report PED10090
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(h) the Owner or the municipality has not appealed said increased assessed value and there exists no other pending appeal which has not been settled completely in respect of the assessed value as of a date which is either in advance of or as of a date, which follows the said redevelopment;

(i) the Owner has satisfied the City that the property taxes for the year during which property taxes were calculated pursuant the said increased assessment and for each of the preceding years, have been paid in full, have not been deferred and there are, at the time of application for payment of the annual Grant payment, no instalments for the current year remaining to be invoiced and paid;

(j) the Owner has satisfied the City that the Owner, as of the date of the proposed Grant payment, has paid in full and not deferred all other charges (where applicable) against the property in favour of the City, including but not limited to: Development Charges, park land dedication fees, special assessments and frontage charges.

7.2 Subsequent annual grants as set out herein will be payable each year upon the written request of the Owner where the Owner has satisfied the City as to the matters set out in paragraphs 7.1 (d), (e), (f), (h), (i) and (j) above.

7.3 The amount of each subsequent grant is equivalent to the Municipal Tax Increment (MTI) for the year in which payment is to be made. The MTI shall be calculated as shown in Section 3 of this Agreement. It is acknowledged that the amount of this grant may vary up or down from year to year during the term of this Agreement. No grant is payable where the MTI is zero or a negative value.

8. The decision of the City regarding the total amount of eligible costs and the calculation of the actual total redevelopment Grant and annual Grant payments is final.

9. Payment of the Grant and the actual amount of the total Grant will be subject to the City’s review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual costs of eligible works. Any and all of these costs may be, where required by the City subject to verification, third party review or independent audit, at the expense of the Owner.

10. Grants are not payable by the City until such time as all taxes eligible for a Grant have been billed by the City, and all outstanding taxes have been paid in full for all years by the Owner. Grant cheques will not be issued if there is an outstanding tax payment.

11. On an annual basis, the City, upon ascertaining that the Owner is in compliance with this Agreement and has met all and any other requirements of the City, shall pay the annual Grant payment.
12. If in the opinion of the City the property is not maintained in its rehabilitated condition, the City may, at its own discretion and without notice, terminate all future Grant payments and require repayment of all Grant payments already paid out by the City to the Owner.

13. The City retains the right at all times not to make any or all of the Grant payments or to delay payment where the City deems that there is non-compliance by the Owner with this Agreement. In particular, without limiting the generality of the foregoing, the Grant is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the redevelopment and to there being compliance on the part of the Owner with all other requirements contained in this Agreement.

14. Where property taxes are in arrears on the subject property for a year or more, the City may, at its discretion and without notice, terminate all future Grant payments.

15. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property the City shall have absolute discretion in ceasing any further grant payments.

16. Where the Owner is a corporation the Owner covenants and agrees that in the event that:

a) the Owner fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require: or

b) without the written consent of the City first had and obtained:

i) the Owner issues or redeems any of its shares or transfers any of its shares;

ii) there is a sale or sales of the shares of the Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner; or

iii) the Owner amalgamates, merges or consolidates with any other corporation

and the result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Owner, or the requested information is not provided, then future grant payments under the Program shall cease at the absolute discretion of the City.
17. Where, in the opinion of Council, the commercial relationship between the City and the Applicant has been impaired by, but not limited to, the applicant being involved in litigation with the City, the City may, at its discretion and without notice, terminate all future Grant payments. Applicants are individuals; corporate entities and individuals behind the corporation (Officers/Directors/Shareholders).

IN WITNESS WHEREOF the parties duly execute this Agreement, as follows as of the day and date set out in the date of this Agreement:

Approved As To Form: CITY OF HAMILTON

Legal Services

(1 - )

______________________________
Fred Eisenberger, Mayor

______________________________ c/s
Kevin C. Christenson, City Clerk

OWNER

per: ________________________________

per: ________________________________ c/s

I/We have authority to bind the corporation.