



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Agreement regarding 10 Dundas Street East

Date:	November 19, 2009
To:	City Council
From:	City Solicitor
Wards:	27 Toronto Centre - Rosedale
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege. This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	

SUMMARY

This report seeks approval to enter into agreements with Ryerson University (“Ryerson”) and the prospective purchaser of the retail/office development at 10 Dundas Street (“the Development”).

RECOMMENDATIONS

It is recommended that:

1. City Council adopt the confidential recommendations in Attachment 1;
2. City Council authorize the public release of the confidential recommendations if adopted by Council, after the City Solicitor has confirmed that the agreements referred to therein have been completed.

Financial Impact

Financial implications arising from the adoption of the recommendations are discussed in the Confidential Attachment 1 to this report.

DECISION HISTORY

The history of the Yonge-Dundas development project and of this particular Development and the agreements the City entered with respect to it, is set out in a lengthy report Clause 26 of Report 10 of the Strategic Policies and Priorities Committee as adopted by City Council at its meeting of July 8, 9 and 10, 1998 <http://www.toronto.ca/legdocs/1998/minutes/council/appa/cc980708/sp10rpt.htm>. There are numerous later reports concerning the implementation of the Yonge Dundas development project, including the development in issue.

ISSUE BACKGROUND

The Development was a key element in the Downtown Yonge Street Regeneration Program, a public-private initiative aimed at revitalizing Yonge Street between College and Queen Streets. The Development involved the assembly and development of land on the northeast corner of Yonge-Dundas Square. The City assembled some of the land through expropriation and conveyed it to the developer (Penex Metropolis Ltd.). The Project also involved portions of the adjacent Ryerson property, including the acquisition of air rights and the use of its parking garage.

The City entered into a section 37 Planning Act agreement with Penex and a related company, (Penequity Management Corporation). That agreement in turn incorporated another agreement between the City and Penequity (the “Penequity Agreement”). The Penequity Agreement was assigned to Penex, however Penequity remained jointly liable for the obligations contained in it.

Under the Penequity Agreement, the City was paid \$30 million to convey the property it had assembled to Penex. That Agreement contained a further provision that if actual occupancy of the Development ever reached 95% or more, certain further payments would be made, consisting of a \$3 million payment for land acquisition/excess density and \$4 million for a “participation entitlement cancellation amount”. That latter amount bears interest. With interest, the total potential claim is approximately \$9,400,000.00 and is referred to as “the Financial Obligation”.

We understand that occupancy has never hit 95%. Due to this, nothing is presently owing to the City.

The Development opened in 2007. All assets of Penex, including the Development, went into receivership in April 2009.

The City also entered into an agreement with Ryerson, (the “Ryerson Agreement”) for which the City acquired certain property from Ryerson, and conveyed it to the developer. As part of that agreement, the City guaranteed that Ryerson’s revenues from its parking garage would meet certain levels for a period of time after the Development opened. The

City's obligation is limited to \$750,000.00 in total. That obligation is also guaranteed by Penequity. That obligation is referred to as the "Ryerson obligation".

The receiver who was appointed to manage and sell the Development is in the process of selling it. The prospective purchaser and City staff have had discussions regarding the Financial and Ryerson obligations contained in the Section 37 Agreement and, subject to Council approval, have reached a resolution of those obligations. That resolution and our opinion and recommendations concerning it are detailed in the attached confidential report.

The Chief Planner and Executive Director of City Planning, the Director of Special Projects and the Director of Real Estate Services concur with this report and its recommendations.

CONTACT

Darrel A. Smith
Solicitor, Legal Services, Litigation
Telephone: (416) 392-8052
Fax: (416)-397-5624
E-mail: dsmith5@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

1. Confidential Information