

**Election of Payment of the Outstanding Balance for Sale
of the Closed Lane at the Rear of 585 Queen Street West**

Date:	June 9, 2009
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	Trinity-Spadina – Ward 20
Reference Number:	P:\2009\Internal Services\F&re\GM9051F&re - (AFS 10233)

SUMMARY

In 2008, RioCan PS Inc. purchased a closed lane at the rear of 585 Queen Street West from the City for \$1,000,000.00, of which \$700,000.00 has been paid to the City to date. The purpose of this report is to obtain approval to elect to receive payment of the outstanding balance of \$300,000.00 by certified cheque rather than by the conveyance of 2 store front condominium units in the development to be constructed on the site.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council elect to receive the outstanding balance of \$300,000.00 owed to the City by RioCan PS Inc. (“RioCan”) from the sale of the lane at the rear of 585 Queen Street West (the “Lane”) by certified cheque rather than by the conveyance of 2 store front condominium units valued at \$300,000.00 (the “Condo Units”) that are yet to be constructed on the site.
2. The City Solicitor be authorized and directed to execute and deliver notice to RioCan of the City’s election in Recommendation 1.

Financial Impact

The City will receive revenue in the amount of \$300,000.00 by electing that the outstanding balance of the purchase price be paid by certified cheque. The Agreement of Purchase and Sale between the City and RioCan (“APS”) stipulates that RioCan must pay the outstanding balance within 15 days of receipt of written notice from the City that it

has elected to receive payment by certified cheque. At that time, the City is required to return the irrevocable, unconditional letter of credit (the "Letter of Credit") that RioCan delivered to the City pursuant to the terms of the agreement under section 45 of the *Planning Act* between RioCan and the City (the "Section 45 Agreement") as security for the payment of the outstanding balance. If RioCan fails to deliver the payment, the City will be entitled to draw down \$300,000.00 on the Letter of Credit. According to the City's policy governing land transactions and proceeds from sale of surplus City-owned real property this revenue will be directed to the Corporate Land Acquisition Reserve Fund.

If the City were to elect to receive the Condo Units, they would not be conveyed until construction is completed, which is anticipated to occur in June of 2011.

At present, no City use has been identified for the Condo Units. Cultural Services has indicated that it is not interested in acquiring jurisdiction of the Condo Units if the City pursues ownership. Although the Committee of Adjustment decision refers to Artscape (which is not the City's agent, as indicated in the decision), no arrangements have been negotiated with Artscape and reported to Council for approval concerning Artscape's use of the Condo Units. In addition, there are numerous use restrictions imposed on the Condo Units as per Schedule "F" of the Section 45 Agreement (attached as Appendix "A"), which severely limit uses other than an art gallery.

Costs associated with the Condo Units, such as the cost to finish the Condo Units, applicable taxes and utility costs are not known and have not been included in any Division's budget. Condo maintenance fees are currently projected at \$58.03/month for one unit and \$59.61/month for the other unit in Year 1, but will be subject to inflation and all increases that may occur in the condo budget in future years.

There are also numerous legal issues associated with condominium ownership that need to be evaluated and taken into consideration. The decision-making body of the condominium corporation is a Board of Directors elected by the unit owners, whose decisions could have financial and/or legal implications that bind the City. In the case of the subject condominium, the condominium is to consist of 90 residential units on the third to seventh floors of the building (together with related below-grade parking units and locker units) and two ground floor retail units, being the Condo Units which the City can elect to acquire. If City staff were to seek election to the Board of Directors to try to protect the City's interests as the only non-residential unit owner in the building, this could result in a potential conflict of interest for staff, as the best interests of the condominium corporation might not be the same as the best interests of the City.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

In accordance with the City's Real Estate Disposal By-law, No. 814-2007, the Lane was declared surplus on May 20, 2008 (DAF No. 2008-069), with the intended manner of

disposal to be by inviting an offer to purchase the Lane from the abutting owner at 585 Queen Street West, being RioCan.

The permanent closure of the Lane as a public highway was authorized by Item TE17.62, as adopted by City Council at its meeting held on July 15, 16 and 17, 2008.

The sale of the Lane was authorized by Item GM16.13, as adopted by City Council at its meeting held on July 15, 16, and 17, 2008.

On October 30, 2008, City Council enacted By-law No. 1116-2008, permanently closing the Lane.

ISSUE BACKGROUND

On January 23, 2008, the Committee of Adjustment approved a minor variance application from RioCan, permitting it to redevelop the existing parking lot at 585 Queen Street West, 156 Portland Street and 580 Richmond Street West with a seven-storey mixed-use building, with retail on the lower three levels and residential condominiums on the four levels above.

The minor variance approval was subject to a number of conditions, including the requirement that RioCan enter into an agreement with the City pursuant to section 45 of the *Planning Act* to secure matters identified by the Ward Councillor, which included the conveyance of the Condo Units by RioCan to the City as part of the sale transaction for the Lane.

Staff was originally negotiating the sale of the Lane with RioCan on a straight cash basis. After the Committee of Adjustment decision was issued and staff became aware of the condition relating to the Condo Units, the conveyance of the Condo Units was introduced into the Lane sale negotiations.

On July 23, 2008, the City and RioCan entered into the APS, whereby RioCan agreed to purchase the Lane for \$1,000,000.00, with \$700,000.00 to be paid on closing and the outstanding balance of \$300,000.00 to be paid, at the election of the City, either by certified cheque or by the conveyance of the Condo Units, to be secured in the Section 45 Agreement.

On September 7, 2008, the City and RioCan entered into the Section 45 Agreement, which required RioCan to deliver a Letter of Credit to the City in the amount of \$400,000.00 to secure RioCan's obligations with respect to the balance owing to the City.

The sale of the Lane was completed on November 20, 2008, at which time the City received \$700,000.00 and the Letter of Credit from RioCan.

Pursuant to the APS and the Section 45 Agreement, if, within 1 year of the APS acceptance date of July 23, 2008, the City notifies RioCan in writing that the City elects to receive payment of the outstanding balance by certified cheque, RioCan is required to

deliver certified funds in the amount of \$300,000.00 to the City within 15 days of receipt of notice and the City is required to return the Letter of Credit to RioCan. This would also be in accordance with the City's policy governing land transactions and proceeds from sale of surplus property. Otherwise, the City is deemed to have elected to receive the conveyance of the Condo Units as payment of the outstanding balance. In that event, RioCan is required to convey the Condo Units to the City no later than November 20, 2011 and the City is entitled to retain the Letter of Credit as security for the performance of that obligation.

At its meeting held on April 29 and 30, 2009, City Council adopted motion MM35.9 requesting the Deputy City Manager and Chief Financial Officer, in consultation with the Chief Planner and Executive Director of City Planning and the City Solicitor, to consider and report to the Government Management Committee on a City-wide policy dealing with the disposal of "stranded" City-owned lands which are acquired by a developer for inclusion into its development site and the use of the proceeds of sale received by the City. A broader policy will also be developed and reported to Council by staff from Real Estate, Legal, City Planning and Finance to address all related issues arising from situations similar to this particular situation in which the Committee of Adjustment imposed a condition requiring a land exchange between the developer and the City, before City Council had had the opportunity to determine the merits of such a land exchange, including the financial and other obligations that such an exchange would impose on the City.

COMMENTS

Given the lack of interest by City Divisions resulting in no discernable Municipal Purpose, financial obligations, limited use options and legal uncertainties described in the Financial Impact section of this report, staff is of the opinion that the City should elect to have RioCan pay the remaining balance of the purchase price to the City by certified cheque rather than by the conveyance of the Condo Units.

CONTACT

Joe Casali
Director of Real Estate Services
Tel: (416) 392-7202
E-mail: jcasali@toronto.ca

Chuck Donohue, P. Eng.
Executive Director, Facilities & Real Estate
Tel: (416) 397-5151
E-mail: cdonohue@toronto.ca

SIGNATURE

Bruce Bowes, P. Eng.,
Chief Corporate Officer

ATTACHMENTS

Appendix "A" – Schedule F, Restricted Uses
Appendix "B" – Site Map and Sketch