



STAFF REPORT ACTION REQUIRED

Property Transfers to Build Toronto - Enhanced Process

Date:	February 6, 2013
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	All
Reference Number:	P:\2013\Internal Services\Re\Gm13008re – AFS 17014

SUMMARY

By its adoption of GM13.7 on May 8 and 9, 2012, Council directed that prior to reporting to Government Management Committee and Council on the transfers of land to Build Toronto, the Director of Real Estate Services consult with the Chief Planner and Executive Director and the local Councillor to consider if the conveyance of a stratified portion of the land is appropriate, for inclusion in the terms of transfer and requested the Chief Corporate Officer to report to Government Management Committee on options on how key properties could be pre-zoned prior to transfer to Build Toronto or prior to sale.

This report outlines the proposed enhanced process to be followed in order to determine if a recommendation will be made to Council to transfer a stratified portion of such property to Build Toronto and outlines various considerations and implications of stratification as well as alternative control mechanisms that might be considered. Further it discusses pre-zoning of City property as requested by Council.

The concept of stratification, explained further in this report, allows a property owner to separate a property into layers which may be dealt with independently of one another. For example, the City could transfer a layer of property to Build Toronto while retaining the remaining lands in City ownership.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council receive this report for information.

Financial Impact

As Build Toronto receives a property transfer from the City at a nominal consideration, the retention of a strata portion by the City has no direct effect on the costs of acquisition to Build Toronto. Rather Build Toronto may be affected by a reduction in potential revenue from the future sale of the property. The transfer of some properties to Build Toronto with strata limits may reduce the market value of these properties.

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

DECISION HISTORY

On May 8 and 9, 2012, City Council adopted GM13.7 and approved terms of transfer for five properties to Build Toronto, declared surplus three properties for transfer to Build Toronto and deferred consideration of the terms of transfer of three properties pending community consultation.

(April 11, 2012) Report from the Chief Corporate Officer on Transfer of Properties to Build Toronto and Declaration as Surplus - Second Quarter 2012

<http://www.toronto.ca/legdocs/mmis/2012/gm/bgrd/backgroundfile-46409.pdf>

(April 11, 2012) Appendix 1 - Terms and Conditions for All Transfer Agreements

<http://www.toronto.ca/legdocs/mmis/2012/gm/bgrd/backgroundfile-46410.pdf>

(April 11, 2012) Appendices 2-9 regarding Transfer of Properties to Build Toronto and Declaration as Surplus - Second Quarter 2012

<http://www.toronto.ca/legdocs/mmis/2012/gm/bgrd/backgroundfile-46438.pdf>

(April 11, 2012) Appendix 10 - Properties to be Declared Surplus for Transfer to Build Toronto

<http://www.toronto.ca/legdocs/mmis/2012/gm/bgrd/backgroundfile-46439.pdf>

COMMENTS

Enhanced Process

By its adoption of GM18.8 on November 27, 28 and 29, 2012, City Council requested the Chief Corporate Officer to provide briefings on the declare surplus and transfer process of properties to Build Toronto. On January 28, 29 and 30, 2013, the Chief Corporate Officer presented briefings to councillors on the enhanced process developed to facilitate the transfer of properties to Build Toronto which will assist in implementing City objectives (27 wards were represented at these sessions). This enhanced process includes:

- earlier circulation of properties and earlier and on-going communication with the local councillor on the part of Real Estate staff, Build Toronto and City Planning with regard to the declare surplus and transfer process;
- earlier participation by City Planning in the declare surplus and transfer process and better identified opportunities to provide planning information and sound planning advice.

City Planning will also participate in the City Real Estate Strategy Team (CREST) meetings along with Real Estate, Finance, Legal, and Build Toronto where properties are considered and reviewed for possible transfer to Build Toronto, prior to being circulated and forwarded for further review to the Property Management Committee. City Planning will provide planning information and context with respect to each property being considered for transfer to Build Toronto and comment on its development potential.

Planning criteria to determine development potential will include the following considerations:

- Is the property located within a planned context, such as a Secondary Plan?
- Is the property located within a:
 - a. Growth Area (Centre, Downtown, Waterfront, Avenue)?
 - b. Stable low density residential neighbourhood?
 - c. Transit Corridor or Transit Nexus?
 - d. Employment Area?
- Could development potential of the property be optimized through a "Master Planning" exercise?

When a planning assessment has been completed, City Planning will identify appropriate development parameters for the property for consideration before terms of transfer are presented to Council.

Stratification

Members of City Council expressed concern that properties are being transferred to Build Toronto without consideration of city building and growth management planning policies as reflected in the City's Official Plan.

To control development on lands transferred to Build Toronto, City Council has the option of establishing stratified title at a specified level above grade and then transferring only a strata parcel to Build Toronto for development, rather than the whole of the property. At its meeting on May 8 and 9, 2012, City Council by its adoption of GM13.7 directed the Director of Real Estate Services to consult with the Chief Planner and Executive Director and the local Councillor on a property by property basis to consider if the conveyance of a stratified portion of the land is appropriate in the circumstances and consistent with the Official Plan.

The concept of strata is based on the fact that land can be divided vertically and portions or strata transacted independently. In instances where the creation of a stratified portion is being recommended, the strata limit will generally be described as a certain number of metres above grade and the property to be conveyed will generally consist of that portion below the strata limit. For registration purposes, a reference plan will need to be prepared and deposited to describe the stratified portion of property to be transferred to Build Toronto.

It should be noted that from a planning perspective, the *Planning Act* makes no specific reference to the concept of "strata" or vertical severance. The determination of whether or not the sale of City land should be stratified is a real estate, not a planning, tool. Stratification is available to the City as-of-right due to statutory entitlement, unlike the private sector. The City may retain the fee in the strata located above that part of the property being transferred to Build Toronto.

Some of the reasons the City may consider stratification is that it is available to the City as-of-right:

- provides certainty as the extent to which the transferred property may be developed vertically (subject to a planning approvals process);
- minimizes appeals to the Ontario Municipal Board in certain circumstances;
- precludes building on non-owned land;
- provides the local community with some development expectations for former publicly held lands;
- provides leverage for the City to negotiate future additional strata transfer consistent with the approved planning framework.

The volume of the property ownership is clearly distinct from whatever height limit may be approved in the planning assessment process for the property. That is, the transfer of a strata real estate interest is just that, a real estate transaction. The new owner of the stratified property interest may elect to make planning applications and engage in the normal planning process for any proposed development on its land.

As Real Estate staff are recommending terms of transfer for properties being transferred to Build Toronto, staff will consider information provided as to whether stratification:

- may reduce the value of the lands being transferred and subsequently sold by Build Toronto for development purposes;
- may result in lower financial revenues to the City from future development charges, Section 37 and 42 (parkland dedication) obligations, and property taxes.

Alternative Control Mechanisms

Although it is recognized that stratification provides the most certainty with respect to the height of a development, there are other control mechanisms used by the commercial market that while legally inferior (i.e. providing less certainty and potentially open to challenge), may be presented or recommended to Council in certain circumstances.

Staff may determine that it is appropriate to recommend other control mechanisms such as contractual agreements, or restrictive covenants, recognizing that they provide less certainty but concluding that the risk is acceptable in relation to the value creation. Value creation for the City includes sale revenue, generating property tax revenue, regenerating neighbourhoods, attracting targeted industries and stimulating employment.

The appropriate alternative control mechanism to be recommended for Council approval will be assessed on a property by property basis. For example, if Build Toronto is the actual developer of a property or completes a planning process and transfers a property to a third party after the planning application approvals process is complete, then staff may determine that it is appropriate to recommend to Council that the property be transferred to Build Toronto without a strata limit or with another lesser control mechanism.

Pre-Zoning City-owned Properties

By its adoption of GM13.7, 2012 in May 2012, City Council requested the Chief Corporate Officer to report to the Government Management Committee on options on how key properties could be pre-zoned prior to transfer to Build Toronto or prior to sale on the open market.

All lands in the City of Toronto, whether municipally owned or not, are subject to the City's Official Plan policies and have been zoned. The *Planning Act* requires that a municipality's comprehensive zoning by-law conform with its Official Plan. However, a property owner, including Build Toronto and subsequent owners of the land, have the right to make an application to amend the Official Plan and/or zoning by-law applicable to this land to provide for a development proposal. Offering Build Toronto "pre-zoned" land, interpreted to be land that has been "re-zoned" by the City in anticipation of its transfer to Build Toronto, would not preclude subsequent applications to further re-zone the land. Reporting to City Council on suitable planning parameters for developing city-owned lands being recommended for transfer to Build Toronto and recommending stratification or alternative control mechanisms as part of the transfer process, where deemed appropriate, is more prudent than having City staff undertake site-specific re-zonings on an on-going basis for lands being contemplated for transfer to Build Toronto.

Conclusion

The proposed enhanced process of transfer of properties to Build Toronto will provide early and continued consultation with the local councillor, City Planning and Build Toronto.

Staff recommendations appropriate in the circumstances will be made with respect to each property to unlock its value using the enhanced process to achieve City objectives, including sale revenue, generating property tax revenue, regenerating neighbourhoods, attracting targeted industries and stimulating employment.

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