

**Consolidated Clause from Report No. 10 of the Administration Committee, which was before the Council of the City of Toronto at its meeting held on October 1, 2 and 3, 2002.**

**26a**

**Purchase and Sale Agreement  
With First Place Spadina Inc  
(Municipal Carpark 164)  
(Ward 22 - St. Paul's)**

*(City Council on October 1, 2 and 3, 2002, struck out and referred this Clause back to the Administration Committee for further consideration, and the City Solicitor was requested to consult with the appropriate parties and submit a further report thereon to the Committee for consideration with this matter.)*

(City Council at its Special Meeting held on July 30, 31 and August 1, 2002, deferred consideration of this Clause to the next regular meeting of City Council scheduled to be held on October 1, 2002.)

**The Administration Committee recommends the adoption of the report (March 6, 2002) from the President, Toronto Parking Authority; and further that the Agreement of Purchase and Sale reflect the purchaser's acknowledgement that such approval not be taken to fetter the City's planning rights and responsibilities.**

The Administration Committee reports, for the information of Council, having directed that the confidential reports (March 6, 2002) and (June 10, 2002) from the President, Toronto Parking Authority respecting the Purchase and Sale Agreement with First Place Spadina Inc., be made public having regard that the Toronto Parking Authority has advised that there is no requirement under the Municipal Act to consider the matter in-camera.

**The Administration Committee submits the following report (March 6, 2002) from the President, Toronto Parking Authority:**

Purpose:

To obtain Council authority to amend the Purchase and Sale Agreement with First Spadina Place Inc. as outlined in this report.

Financial Implications and Impact Statement:

No funding is required for this project as the Purchaser will construct the underground parking garage and provide a cash payment to the Toronto Parking Authority (the "TPA"). The cash payment to the TPA in the original Agreement will not diminish and could potentially be larger as explained in this report.

### Recommendations:

It is recommended that:

- (1) City Council approve the amendments to the Purchase and Sale Agreement with First Spadina Place Inc. for the sale of the development rights located at 453 Spadina Road (Municipal Carpark No. 164) and construction of the underground parking garage as outlined in this report; and
- (2) appropriate City officials be authorized to execute all necessary documents to give effect thereto, including an amendment to the Purchase and Sale Agreement.

### Background:

At its meeting of April 11, 12 and 13, 2000, City Council adopted Administration Committee Report No. 8 (Clause 7), and thereby authorized an Agreement of Purchase and Sale with First Spadina Place Inc. (the “developer”) for the sale of the development rights at 453 Spadina Avenue, Municipal Carpark 164 (see sketch attached). The proposed transaction involved the developer paying the TPA \$135,000 and building an approximately 62-space public parking garage (the “Parking Facility”) on the first and second levels below grade which was valued at approximately \$30,000 per space. The cost to construct has increased to \$35,000 per space. The developer proposed building a ten-unit townhouse project above grade with residential parking on the third level below grade. The current carpark has 43 spaces. Parking studies show that there is a parking shortfall in the area of approximately 19 spaces. Land costs in the area make the cost of acquiring another site prohibitive.

On November 8, 2001 the City, TPA and the developer entered into a Purchase and Sale Agreement (the “Agreement”) reflecting the terms and conditions noted above. Upon execution of the Agreement, the developer paid the TPA an initial cash deposit of \$50,000. Upon expiry of the due diligence period which will occur in early April, the developer will provide final deposit of \$85,000. This total deposit of \$135,000 will be non-refundable after this due diligence period provided that the City/TPA satisfy certain conditions such as approving the parking plans for the development.

The developer has approached the TPA requesting amendments to the Agreement.

### Comments:

Following is a summary of issues related to the amendments to the Agreement for this property:

#### Amendments:

When originally reported to Council, the developer was not certain whether it would be necessary to apply to the City for rezoning. It has since become clear that additional density is required to make the project, including the parking facility and the environmental remediation financially viable. Currently the Agreement contemplates a development of approximately

30,000 square feet. The developer wants the Agreement amended to contemplate a development of 40,000 to 47,000 square feet (not greater than 50,000 square feet), which the developer believes would provide greater flexibility regarding the form of the development.

Environmental:

The site was acquired by the City from Petro Canada Inc. in 1987 and was formerly occupied by a gas station. The developer's environmental testing has revealed contaminants on the site. These contaminants will be removed during development but their removal will add a premium to the development costs. The developer's consultant has estimated that removal of the contaminants will cost approximately \$330,000. The TPA is currently retaining its own consultant to review these findings. An amendment to the Agreement is being proposed that allows for a holdback of the balance of the purchase price due on closing to cover the cost of removing the contaminants. The holdback would be held by the developer's solicitor in trust. The amount of the holdback would be determined by and agreed upon by the TPA and the developer in consultation with their respective environmental consultants. After removal of the contaminants has been completed, only the actual cost of removal incurred by the developer would be reimbursed from the holdback. Any remediation costs in excess of the holdback would be the responsibility of the developer. If the cost of remediation is less than the holdback, the TPA will receive the monies heldback and not spent. The TPA has retained outside legal counsel specializing in environmental law for advise regarding possible litigation to recover the remediation costs.

Financial:

The current compensation, comprised of the cost to construct the Parking Facility plus a cash payment of \$135,000, would be a minimum payment to the TPA. If the developer is successful in obtaining rezoning to permit a higher density development, the TPA will receive compensation for the higher value of the development rights being sold. Therefore, another amendment to the Agreement would provide for an adjustment to the purchase price, based on a formula. Integris Real Estate Counsellors will be retained by both parties to determine the value, per square foot, of the final development. The developer will pay the TPA the greater of:

- (1) the cost to construct the Parking Facility which is estimated to be \$2,170,000 (\$35,000 per space) plus \$135,000 for a total compensation of \$2,305,000; or
- (2) the total value of the development rights after rezoning less the costs to remediate the site and construct the facility.

For example, if the developer's rezoning application results in a permitted density of 47,000 square feet, at an estimated value of \$60 p.s.f. of gross floor area, the net proceeds to the TPA would be calculated as follows:

Development Rights (47,000 x \$60.00)	\$2,820,000
Less: Construction Costs of TPA Garage	<u>\$2,170,000</u>
Potential Net Proceeds Prior to Remediation	\$650,000
Less: Estimated Environmental Remediation Costs	\$330,000

Net Proceeds	\$320,000
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If the development rights granted are less than 47,000 square feet, the \$320,000 net proceeds will decrease however; under no circumstances will the TPA net proceeds be less \$135,000.

Conclusions:

The developer is proposing significant changes to the proposed development. Although these changes are significant the interests of the City and the TPA will be protected by the amendments to the Agreement. The City and the TPA may benefit financially from the larger development and the resulting higher land values.

The developer has met with City Planning staff and believes that they would be supportive of their new plan. At this time, however, the TPA is only seeking approval of amendments to the Agreement. It will be the responsibility of the developer to obtain the appropriate development approvals in the normal manner.

The holdback in the purchase price for the environmental contamination is a reasonable amount and would be requested by any party that would consider developing this property. By structuring the clean up of the contamination as holdback versus a reduction in purchase price, the TPA ensures the TPA only pays for the actual cost of remediation, to a maximum predetermined amount.

The proposed Amendments address both environmental issues and financial compensation to the TPA if the rezoning is successful. The TPA will receive the parking facility and \$135,000 as a minimum amount which is the same as in the original Agreement approved by Council. Regardless of the success of the rezoning, the TPA will have a non-refundable deposit of \$135,000. Beyond the financial benefits, the addition of approximately 19 parking spaces will help to satisfy the parking needs of the area.

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List of Attachments:

Report to Administration Committee  
Location Map

(A copy of Clause No. 7 of Report No. 8 of The Administration Committee, entitled "Spadina and Thelma (Municipal Carpark No. 164 Joint Venture (Midtown))" which was attached to the foregoing report was forwarded to all Members of Council with the June 25, 2002, agenda of the Administration Committee and a copy thereof is also on file in the office of the City Clerk, City Hall.)

**The Administration Committee also submits the following report (June 10, 2002) from the President, Toronto Parking Authority:**

Purpose:

The Toronto Parking Authority has further considered the above matter at its meeting held on May 28, 2002, and is reporting back to the Administration Committee as requested.

Discussion:

The Toronto Parking Authority (the "TPA") has executed a Purchase and Sale Agreement with First Spadina Place Inc. ("Spadina") for the sale of the air rights at Carpark 164 (Spadina and Thelma) as approved by Council at its meeting of April 11, 12 and 13, 2000, (Clause No. 7 of Report No. 8 of The Administration Committee). By selling the air rights the TPA is able to fund the expansion of its existing carpark to satisfy the significant parking demands of the area. The developer is required to build a 62 or 63 space garage and pay the TPA a cash payment of \$135,000. The developer has paid the initial deposit of \$85,000 and is required to pay the remaining balance of \$50,000 upon waiver of conditions.

Due to a significant increase in costs related to the overall construction of the development including the public parking spaces, the developer has requested permission to put forth a rezoning application which would increase the project size to approximately 47,000 square feet. This increase of proposed density requires an amendment to the original agreement. The Toronto Parking Authority approved this matter at its meeting of February 26, 2002. The Administration Committee, at its meeting held on March 26, 2002, had before it a confidential report (March 6, 2002) from the Toronto Parking Authority (TPA) respecting an amendment to the Purchase and Sale Agreement with First Spadina Place Inc. At this meeting the area Councillor, Michael Walker requested this matter be deferred for public consultation and we agreed to defer this until the following Administration Committee meeting. The public meeting, which was organized quickly by Councillor Walker, was attended by approximately 30 area residents, a clear majority of whom were opposed to the proposed amendment. At the Administration Committee meeting of April 30, 2002, the Councillor asked for this matter to be referred back to have the TPA Board of Directors reconsider their previous approval.

The TPA considered this matter at its meeting held on May 28, 2002 (Minute No. 02-097). Deputations were heard from several residents of the Spadina/Thelma area, Councillor Michael Walker, and the developers of the proposed site (Municipal Carpark 164). A motion was considered that the TPA's previous approval to amend the Purchase and Sale Agreement with First Spadina Place be rescinded. This motion was defeated on a tie vote. The matter is being forwarded back to Administration Committee for its consideration.

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The Administration Committee reports for the information of Council, also having before it a communication (June 18, 2002) from Mr. Daniel Schonberg, Chair, Forest Hill Village Business Improvement Area, in opposition to the aforementioned matter.

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The following persons appeared before the Administration Committee in connection with the foregoing matter:

- Mr. Maurice Anderson, President, Toronto Parking Authority;
- Mr. Ted Matlow, and filed two binders of information with respect thereto;
- Ms. Susan Ainley, President, North Hill District Homeowner's Assoc.;
- Ms. Tina Shapiro;
- Mr. Ron Lieberman;
- Ms. Jill Goldman;
- Mr. Fred Green;
- Mr. Lorne Persico, Toronto Parking Authority; and
- Mr. Adam Brown, Solicitor.

The following Members of Council also appeared before the Administration Committee in connection with the foregoing matter:

- Councillor Joe Mihevc, St. Paul's and
- Councillor Michael Walker, St. Paul's.

*(City Council on July 30, 31 and August 1, 2002, had before it, during consideration of the foregoing Clause, the following report (July 30, 2002) from the President, Toronto Parking Authority:*

*Purpose:*

*To respond to Councillor Anne Johnston's letter dated July 30, 2002.*

*Discussion:*

*In response to Councillor Anne Johnston's letter dated July 30, 2002 requesting deferral of the above noted matter, I have attached the by-law approving the acquisition of original parking lot at the southeast corner of Spadina Road and Thelma Avenue and the authorization to levy a portion of the capital costs through Benefitting Assessment.*

*In our meeting with Councillor Johnston, she requested information related to the purchasing of the original site and funding of the same. She felt that there may have been some commitment on the TPA's part to return the lands to the local businesses. This carpark was established on the site of a former Esso Service Station under the Benefitting Assessment legislation whereby owners of commercially-zoned properties in a defined area along the adjacent retail strip were required to contribute \$275,516 as their share of the cost, with the Authority to pay the balance (OMB Order E791695, dated March 13, 1980). Benefitting Assessment is something that we use throughout the city when the cost to develop a parking lot exceeds the revenues it is projected to generate. Local businesses pay the loss through a special levy on their tax bills each year over a period of 10 to 20 years. Ownership of the lands remain with the City.*

*In 1986, the TPA relocated this carpark to the northeast corner of Spadina Road and Thelma Avenue through a land exchange. The exchange occurred at no cost to the City or the Authority.*

*It is our experience that Benefitting Assessments have no impact on the City's ability to redevelop properties, specifically in this case where the TPA is adding approximately 20 spaces to the existing parking supply.*

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*(A copy of the by-law referred to in the foregoing report is on file in the office of the City Clerk.)*

*(City Council also had before it, during consideration of the foregoing Clause, the following communications:*

- (i) (July 30, 2002) from Councillor Anne Johnston, Eglinton-Lawrence, in support of a deferral of the purchase and sale agreement with First Place Spadina Inc. Municipal Car Park 164; and*
- (ii) petition containing approximately 1,200 signatures, in opposition to the construction of a multi-level condominium project on the site of the parking lot at Spadina Road and Thelma Avenue, submitted by Councillor Michael Walker.)*

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*(City Council on October 1, 2 and 3, 2002, had before it, during consideration of the foregoing Clause, a petition containing approximately 1,200 signatures, in opposition to the construction of a multi-level condominium project on the site of the parking lot at Spadina Road and Thelma Avenue, submitted by Councillor Michael Walker, a copy of which is on file in the office of the City Clerk.)*

*(Councillor Miller, at the meeting of Council held on October 1, 2 and 3, 2002, declared an interest in the foregoing Clause, in that his spouse is the owner of property within the subject area.)*