TORONTO

STAFF REPORT
ACTION REQUIRED

Sale of Lane at the Rear of 585 Queen Street West

Date:	July 14, 2008
To:	City Council
From:	Chief Corporate Officer
Wards:	Trinity-Spadina – Ward 20
Reference Number:	P:\2008\Internal Services\F&re\GM08066F&re - (AFS 8104)

SUMMARY

The purpose of this report is to obtain approval for the sale of the lane at the rear of 585 Queen Street West to the adjoining land owner, Riocan PS Inc.

The terms for completing the transaction, as set out herein, are considered to be fair, reasonable and reflective of market value.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. Subject to City Council authorizing the permanent closure of the public lane at the rear of 585 Queen Street West, being Part of Lot 11, Section C, Plan Military Reserve Toronto, shown as Part 1 on Sketch No. PS-2006-056, and designated as Part 1 on Plan 66R-23674 (the "Lane"), the Offer to Purchase (the "Offer") from Riocan PS Inc. ("Riocan") to purchase the Lane for a total of $1,000,000.00, to be satisfied by way of an initial cash payment of $700,000.00 on closing, and the City having the right to elect, in its sole discretion, within 1 year of the date the City accepts the Offer, either to have Riocan pay the remaining $300,000.00 by certified cheque or to have Riocan convey to the City two (2) store front condominium units (the "Condo Units") in the development to be constructed by the Riocan on the site, having a total value of $300,000.00, be accepted substantially on the terms and conditions outlined in Appendix "A" to this report.

2. The City be authorized to enter into an agreement with Riocan under Section 45 of the Planning Act to secure the payment of $300,000.00 to the City or the

conveyance of the Condo Units to the City, as the City may elect, and certain other matters, substantially on the terms and conditions outlined in Appendix "B" to this report, and in a form satisfactory to the City Solicitor.

3. Each of the Chief Corporate Officer and the Director of Real Estate Services be authorized severally to accept the Offer on behalf of the City.

4. Authority be granted to direct a portion of the proceeds of closing to fund the outstanding expenses related to the Lane and the completion of the sale transaction.

5. The City Solicitor be authorized to complete the transaction on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable.

Financial Impact

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 above. The minor variance is subject to a number of conditions, including the requirement that Riocan acquire ownership of the Lane from the City and that Riocan enter into an agreement with the City to secure matters identified by the Ward Councillor, including, among other matters more particularly set out in Appendix "B": *"Two store fronts and gallery spaces on Richmond Street as identified in the drawings shall be conveyed to the City and its agent, Artscape, to be negotiated as part of the laneway conveyance agreement. Common space fees and applicable taxes and utility costs will be borne by the City or the tenants. The agreement is to be registered through a Section 45 agreement or other appropriate agreements as determined by the City."*

It is premature to determine whether the City should accept title to the Condo Units as partial payment for the Lane, as many of the costs associated with the Condo Units, such as the cost to finish the Condo Units, the common area and maintenance fees, applicable taxes and utility costs, are not known at this time and have not been included in any Division's budget. There are also numerous legal issues associated with condominium ownership that need to be evaluated and taken into consideration. In addition, no City use has currently been identified for the Condo Units. Although the Committee of Adjustment decision refers to Artscape (which is not the City's agent, as indicated in the decision), no arrangements have yet been negotiated with Artscape and reported to Council for approval concerning Artscape's use of the Condo Units. All of the foregoing issues need to be further investigated and reported to Council so Council can make a determination as to whether it is in the City's best interests to accept ownership of the Condo Units as partial payment for the Lane or instead just have Riocan pay the entire purchase price for the Lane by certified cheque.

The total purchase price that has been negotiated with Riocan for the Lane is $1,000,000.00. On closing, the City will receive a cash payment in the amount of $700,000.00, plus GST, if applicable, less closing costs and the usual adjustments. The City will have the right to elect, in its sole discretion, within 1 year of the date the City accepts the Offer, either to have Riocan pay the remaining $300,000.00 to the City by certified cheque or to have Riocan convey the Condo Units, which have a total value of $300,000.00, to the City following completion of construction.

The requirement to pay the remaining $300,000.00 to the City or to convey the Condo Units to the City will be secured in a Section 45 Agreement to be entered into by Riocan and the City prior to the sale of the Lane being completed. Under the Section 45 Agreement, Riocan will be required to deliver to the City an irrevocable unconditional letter of credit (the "Letter of Credit"), in the amount of Four Hundred Thousand Dollars ($400,000.00), as security for this obligation. If the City elects to receive the remaining $300,000.00 by certified cheque and Riocan fails to pay this amount to the City within 15 days of receipt of written notice from the City, the City shall be entitled to draw down $300,000.00 from the Letter of Credit in satisfaction of Riocan's obligation to make such payment. If the City instead elects to receive a conveyance of the Condo Units and Riocan fails for any reason whatsoever to convey the Condo Units to the City by the later of June 30, 2011 or 36 months following the date the Lane is conveyed to Riocan, the City shall be entitled to draw down on the Letter of Credit in its entirety and to retain the proceeds thereof in full and final satisfaction of Riocan's obligation to convey the Condo Units to the City.

In addition, if the City elects to receive a conveyance of the Condo Units, Riocan will be required to pay, on behalf of the City, all land transfer tax which is payable in connection with the conveyance of the Condo Units to 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.

ISSUE BACKGROUND

Riocan is the owner of the lands immediately north and south of the Lane, known municipally as 585 Queen Street West, 156 Portland Street and 580 Richmond Street West. The title to the Lane is currently registered in Riocan's name, but it is the City's position that the Lane is owned by and under the jurisdiction of the City. Riocan has submitted an application for the development of its lands (including the Lane).

To address the issue of ownership of the Lane, Riocan has delivered a deed for the Lane to the City, to be held in escrow by the City until authority to permanently close the Lane

is obtained and a sale transaction is approved and completed. If the Lane is not closed and a sale transaction is not ultimately completed by an agreed outside date, the escrow deed must be returned to Riocan and Riocan reserves the right to challenge the City's position that it is the owner of the Lane.

COMMENTS

Staff was originally negotiating the sale of the Lane with Riocan on a straight cash basis. However, in January, 2008, Riocan's minor variance application for the development was approved by the Committee of Adjustment, subject to various conditions requested by the Ward Councillor, including the requirement that Riocan convey the Condo Units to the City as part of the sale transaction for the Lane. 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.

Negotiations between the City and Riocan have been completed and both parties have agreed that the value of the Lane is $1,000,000.00. Staff is of the view that it is premature to recommend that the City accept title to the Condo Units as partial payment for the Lane, given the financial and legal uncertainties described in the Financial Impact section of this report. Accordingly, the Offer that has been negotiated with Riocan gives the City the right to elect, in its sole discretion, within 1 year of the date the City accepts the Offer, either to have Riocan pay the remaining balance of the purchase price to the City by certified cheque or to have Riocan convey the Condo Units to the City following completion of construction.

Additional details of the terms and conditions of sale are set out in Appendix "A" and are considered to be fair, reasonable and reflective of market value.

Further property details are as follows:

Approximate Site Dimensions:	4.3 m x 63.8 m (14.10 ft x 209.32 ft)
Approximate Area:	285 m^2 (3,067.81 ft^2)

Transportation Services staff has reviewed the feasibility of closing the Lane and has submitted a report to the Toronto and East York Community Council meeting scheduled for July 7, 2008, recommending that the Lane be permanently closed, subject to a sale of the Lane being approved by Council.

The owners of the property at 607 Queen Street West ("607 Queen"), which is located to the west of the terminus of the Lane, currently use the Lane to access their parking area at the rear of their building. The owners of 607 Queen have expressed concerns about losing vehicular access to the rear of their property if the Lane is closed and sold. Accordingly, as part of the sale transaction, Riocan is required to offer to grant the owners of 607 Queen an unconditional, permanent right-of-way across 580 Richmond Street West for the purpose of providing unobstructed pedestrian and vehicular access between Richmond Street West and 607 Queen. Staff of Transportation Services has

reviewed the technical aspects of the proposed right-of-way and has determined that as it replicates the access that the Lane currently provides to 607 Queen, the owners of 607 Queen will continue to have similar access to the rear of their property. In addition, Riocan will indemnify the City in respect of all claims resulting from or arising out of the City closing the Lane.

The Lane has an existing 300 mm storm sewer that extends easterly from the west limit of Riocan's site and connects to the 375 mm combined sewer on Portland Street, which staff of Toronto Water has advised would be deemed a private connection if the Lane is closed and sold to Riocan. Riocan is required to assume sole responsibility for the storm sewer as part of the sale transaction.

All steps necessary to comply with the City's real estate disposal process, as set out in Chapter 213 of the City of Toronto Municipal Code, have been complied with.

A Cost Centre has been put in place to charge costs directly related to the sale of City-owned properties, and includes such items as commission, surveying and registration costs. A recommendation is included in this report to direct a portion of the sale proceeds to fund the outstanding expenses related to this property.

CONTACT

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SIGNATURE

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Bruce Bowes, P. Eng.,
Chief Corporate Officer

ATTACHMENTS

Appendix "A" – Sale Terms and Conditions
Appendix "B" – Section 45 Agreement Terms and Conditions
Appendix "C" – Site Map and Sketch No. PS-2006-056

Appendix "A"
Terms and Conditions of Offer to Purchase

Subject Property:	Public lane at the rear of 585 Queen Street West
Legal Description:	Part of PIN 21239-0064 (LT) Part of Lot 11, Section C, Plan Military Reserve Toronto, designated as Part 1 on Plan 66R-23674, City of Toronto (the "Lane")
Purchaser:	Riocan PS Inc. ("Purchaser")
Recommended Sale Price:	$1,000,000.00
Recommended Deposit:	$70,000.00
Balance:	$630,000.00 by certified cheque on closing, subject to the usual adjustments City has right to elect, in its sole discretion, within 1 year of date City accepts Purchaser's Offer, either to have Purchaser pay remaining $300,000.00 to City by certified cheque within 15 days of City delivering written notice to Purchaser or to have Purchaser convey two (2) store front condominium units (the "Condo Units"), which have been valued at $300,000.00, to the City by the later of June 30, 2011 or 36 months from the Closing Date. This obligation will be secured in a Section 45 Agreement under the Planning Act and, prior to closing, the Purchaser will be required to post an irrevocable unconditional letter of credit in the amount of Four Hundred Thousand Dollars ($400,000.00) as security for this obligation.
Closing Date:	45 days following enactment of the by-law permanently closing the Lane as a public highway. In the event that **(i)** Council has not enacted the closing by-law on or before July 31, 2009; or **(ii)** prior to July 31, 2009, Council has considered the proposed closing by-law and has decided not to enact it, the Agreement of Purchase and Sale shall be at an end and the deposit returned to the Purchaser.
Lane Closing Requirements and Sale Conditions:	1. Purchaser shall accept the Lane in "as is" condition and, on closing shall execute and deliver a release in favour of the City, in a form satisfactory to the City Solicitor, in respect of all loss, costs, damages, liability or actions relating to the environmental

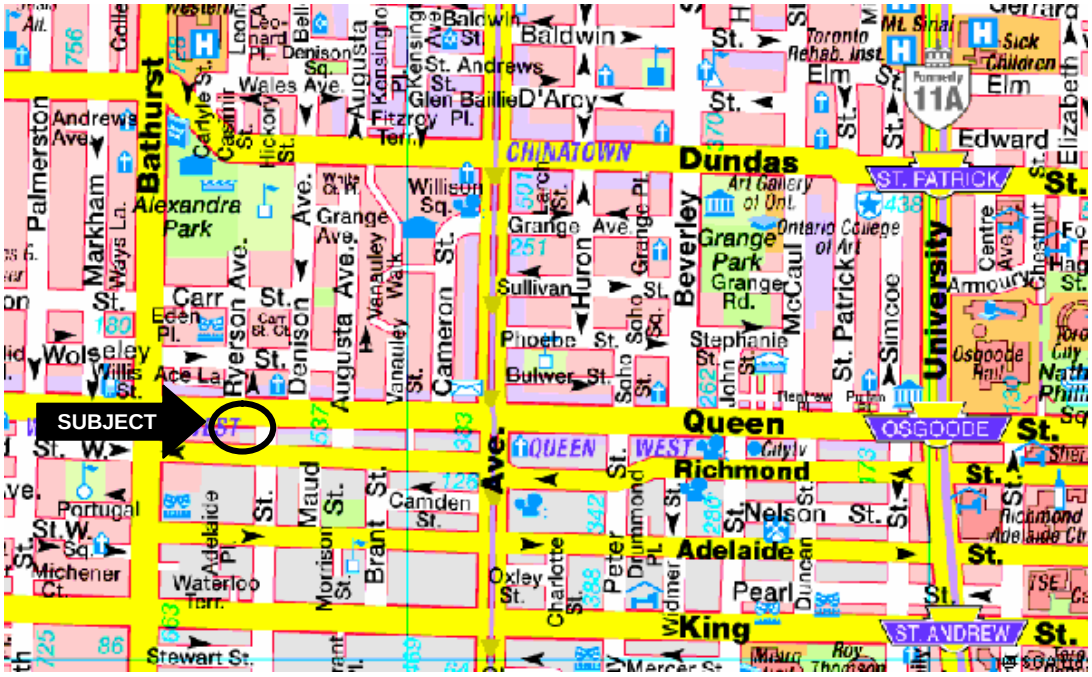
	condition of the Lane; 2. Purchaser shall indemnify the City against all loss, costs, damages or actions, including injurious affection claims, resulting from the closure of the Lane as a public highway; 3. On closing, Purchaser shall assume sole responsibility for the existing sewer located within the Lane, which shall be deemed to be a private connection thereafter; 4. Prior to the closure of the Lane, Purchaser shall pay all costs to relocate Bell Canada's facilities in and around the vicinity of the Lane. 5. Prior to the closure of the Lane, Purchaser shall deliver an offer to the owners of 607 Queen Street West to grant an unconditional, permanent right-of-way across 580 Richmond Street West for the purpose of providing unobstructed pedestrian and vehicular access between Richmond Street West and 607 Queen Street West, for nominal consideration of Two Dollars ($2.00). If the registered owner of 607 Queen Street West accepts such offer, the right-of-way shall be granted to the owner of 607 Queen Street West on the same day as the Closing Date; 6. Prior to the closure of the Lane, Purchaser shall execute and deliver to the City an agreement pursuant to Section 45 of the Planning Act, in a form satisfactory to the City Solicitor, which, among other matters, secures the conveyance to the City of the Condo Units, having a total area of not less than 953 square feet, on the Richmond Street West frontage of the development to be constructed by the Purchaser on the site, on the following terms and such other terms as may be satisfactory to the Chief Corporate Officer ("CCO"): (1) the Condo Units shall be conveyed to the City on or before the later of June 30, 2011 or 36 months following the closing date of the Lane sale transaction; (2) the standard of finish to be provided in each Condo Unit shall be satisfactory to the CCO;

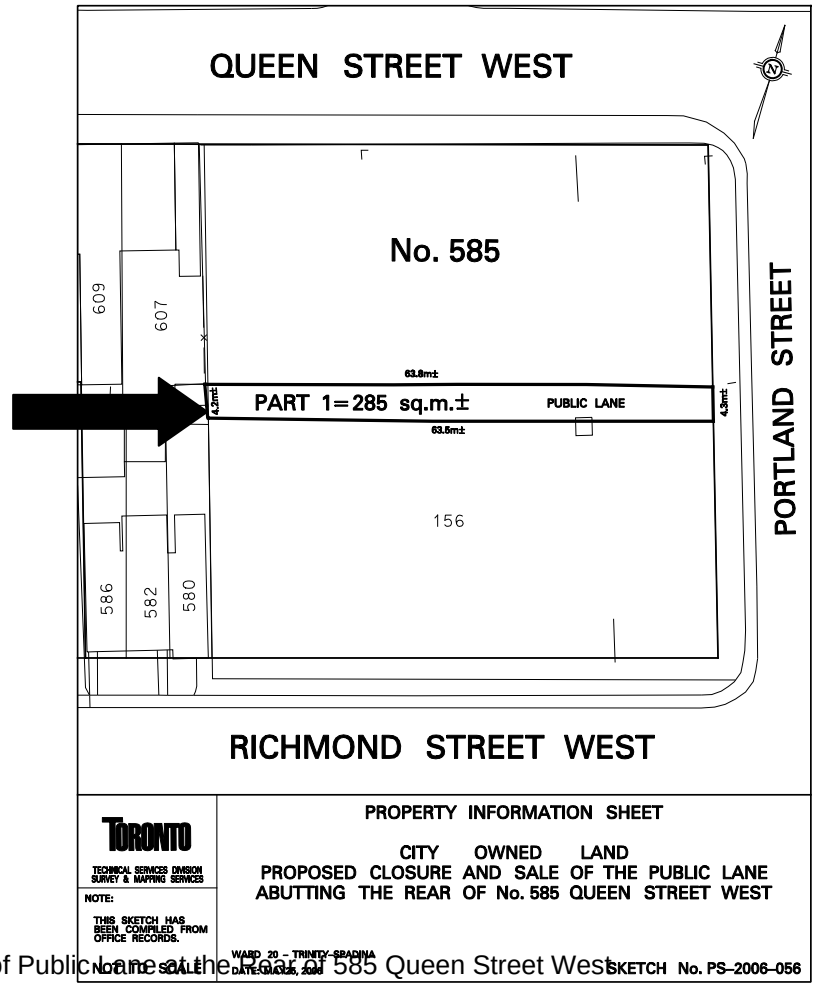
	(3) the common area and maintenance fees applicable to the Condo Units shall be capped to the satisfaction of the CCO; (4) any restrictions on the use of the Condo Units shall be to the satisfaction of the CCO; (5) the proposed condominium Declaration and by-laws applicable to the Condo Units shall be to the satisfaction of the CCO; (6) for a period of fifteen (15) years following the date the Condo Units are conveyed to the City, the City will have the option to put the Condo Units back to the Purchaser to purchase the Condo Units for $300,000, plus the increase in the TREB Index since the closing date of the Lane sale transaction; (7) for a period of fifteen (15) years following the date the Condo Units are conveyed to the City, the Purchaser will have a right of first refusal to purchase the Condo Units in the event that the City receives a bona fide offer from a third party to purchase the Condo Units which the City is prepared to accept; (8) the Purchaser shall pay on behalf of the City all land transfer tax which is payable in connection with the transfer of the Condo Units to the City; (9) at the time the Condo Units are conveyed to the City, the Purchaser shall, at its sole cost and expense, provide the City with its solicitor's title opinion, in form and content satisfactory to the City Solicitor; (10) on the closing date of the Lane sale transaction, the Purchaser shall deliver to the City an irrevocable unconditional letter of credit in the amount of Four Hundred Thousand Dollars ($400,000.00) as security for the obligation to convey the Condo Units to the City; and (11) if within 1 year of the date the City accepts the Purchaser's Offer, the City delivers written notice to the Purchaser that it has elected to have the Purchaser pay $300,000.00 to the City by certified cheque, the Purchaser shall pay $300,000.00 to the City and be released from its obligations to complete and convey the Condo Units to the City.

Appendix "B"
Terms and Conditions of Section 45 Agreement

Subject Property:	585 Queen Street West, 156 Portland Street and 580 Richmond Street West
Applicant:	Riocan PS Inc. ("Applicant")
Matters to be Secured:	(1) At the election of the City, in its sole discretion, Applicant shall either pay $300,000.00 to the City or convey to the City two store front condominium units on the Richmond Street West frontage of the development to be constructed by the Applicant, in accordance with the requirements set out in Appendix "A" (2) City's Heritage and Preservation Services must sign off on final design of the development and all changes to the design must be approved by the City (3) A minimum of 10% of the total number of units must be offered for sale as three bedroom apartments (4) Applicant shall construct knock out panels between units (5) Store frontages, as proposed, must be maintained as separate business addresses (6) Commercial parking lot must not be used or set aside exclusively for the stores inside the complex and this condition shall be included in the site plan agreement (7) Tractor trailers shall not be used for pick up or drop off or used to service the site after the commercial enterprises are occupied

Appendix “C”


SUBJECT
Bathurst
Dundas
Queen
Richmond
Adelaide
King
Spadina Ave.
University
Bay
Yonge
CHINATOWN
QUEEN WEST
OSGOODE
ST. PATRICK
ST. ANDREW
Alexandra Park
Grange Park
Willison Sq.
Baldwin
Elm
Edward
Sullivan
Phoebe
Bulwer
Nelson
Pearl
Oxley
Camden
Portugal
Michener Ct.
Waterloo Terr.
Stewart St.
Wolseley
Ace La.
Carr
Carr Pl.
Ryerson Ave.
Denison
Augusta Ave.
Cameron
Vanauley Walk
Grange Ave.
Beverley
Huron
McCaul
Simcoe
St. Patrick
Stephanie
Soho
Peter
Brant
Maud
Morrison
Adelaide Pl.
Charlotte
Duncan
Drummond
Widmer
Markham
Palmerston
Andrews Ave.
Glen Baillie
D'Arcy
Fitzroy Pl.
Augusta
Kensington
Bell
Leonard Pl.
Denison Sq.
Weles Ave.
Carlyle St.
Cassimir
Hickory
Wales Ave.
Centre Ave.
Armoury
Osgoode Hall
Art Gallery of Ont.
Ontario College of Art
Toronto Rehab. Inst.
Mt. Sinai
Sick Children
Formerly 11A
Elizabeth
Chestnut
Hagerman
Tiendraw Pl.
Portland
Sherbourne
Richmond Adelaide Ctr
TSE
Roy Thomson
Mercer St.


QUEEN STREET WEST
No. 585
609
607
63.8m±
4.2m±
PART 1=285 sq.m.±
PUBLIC LANE
4.3m±
63.6m±
156
586
582
580
PORTLAND STREET
RICHMOND STREET WEST
TORONTO
TECHNICAL SERVICES DIVISION
SURVEY & MAPPING SERVICES
NOTE:
THIS SKETCH HAS BEEN COMPILED FROM OFFICE RECORDS.
PROPERTY INFORMATION SHEET
CITY OWNED LAND
PROPOSED CLOSURE AND SALE OF THE PUBLIC LANE
ABUTTING THE REAR OF No. 585 QUEEN STREET WEST
WARD 20 - TRINITY-SPADINA
SKETCH No. PS-2006-056