



STAFF REPORT ACTION REQUIRED

Extension of Closing Date for Section 30 Agreement between the City and 863880 Ontario Limited Concerning Lands on the west side of Strachan Avenue

Date:	April 24, 2009
To:	Government Management Committee
From:	Chief Corporate Officer
Wards:	19 – Trinity - Spadina
Reference Number:	P:\2009\Internal Services\F&re\Gm09039F&re – (AFS 9887)

SUMMARY

In 2001, the City entered into a Section 30 Agreement with 863880 Ontario Limited, the owner of lands on the west side of Strachan Avenue, as required for the proposed Front Street Extension. At its meeting held on June 19, 20 and 22, 2007, City Council authorized the City to exercise the City’s option to extend the closing date for a further two-year period until October 31, 2009. The City has the option to extend the closing date one or more times up to February 28, 2012. This staff report is requesting authority to exercise the City’s option to extend the closing date until February 28, 2012. If the City does not extend the closing date as recommended, the City is contractually required to close the transaction on October 31, 2009, at which time the City will be required to pay \$1 million compensation for the lands, followed by the balance of the compensation that is payable once the amount has been determined by the Ontario Municipal Board (“OMB”) pursuant to the Expropriations Act.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. Pursuant to the existing agreement under section 30 of the Expropriations Act (the “Section 30 Agreement”) between the City and 863880 Ontario Limited (“863880”) for certain lands (the “Lands”) on the west side of Strachan Avenue, the City exercise its option to extend the closing date from October 31, 2009 to February 28, 2012, in a form satisfactory to the City Solicitor.

2. The Director of Real Estate be authorized to undertake discussions with 863880 to unwind the existing Section 30 Agreement and report back to Council when the necessary lands from 863880 for local road purposes are secured at no cost to the City.

Financial Impact

Approval of this report will result in no immediate financial impact. If the City does not extend the closing date as recommended, the City will be required to close the transaction on October 31, 2009, at which time the City will be required to pay \$1.0 million compensation for the Lands, followed by the balance of the compensation that is payable once the amount has been determined by the OMB pursuant to the Expropriations Act.

The original source of funding for the expropriation of the Lands was included in the Waterfront Revitalization Initiative Capital Budget, beginning in 2010 (funded from reserves and the other orders of government). However, as the Front Street extension project is not proceeding, this funding is no longer available. Should the transaction close on October 31, 2009, a new funding source would need to be identified and costs accommodated within the City's 2009 Approved Capital Budget.

The City is still required by the Section 30 Agreement to pay compensation for the Lands in the amount of \$1.0 million, followed by the balance that is payable once the amount has been determined by the OMB pursuant to the Expropriations Act. The source of that funding will need to be determined prior to closing on February 28, 2012. However, once the City has title to the Lands and if the City determines the Lands are no longer required, City Council can declare the Lands to be surplus to municipal requirements. 863880 will have the option to repurchase the Lands from the City at the same price the City paid, plus 6% interest per annum.

863880 has submitted redevelopment plans for its property to City Planning. The submitted plans show the provision of a local road. If the City acquires the lands required for a local road through the development planning process, it will be at no cost to the City.

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

DECISION HISTORY

At its meeting held on December 4, 5 and 6, 2001, City Council adopted Clause 23 of Administration Committee Report No. 18, and thereby authorized the City to enter into a Section 30 agreement with 863880 for the acquisition of the Lands. At its meeting held on April 25, 26 and 27, 2006, City Council adopted Notice of Motion J (37) which authorized certain amendments to the Section 30 Agreement, including giving the City the option to extend the closing date one or more times up to February 28, 2012.

ISSUE BACKGROUND

In 2001, the City entered into the Section 30 Agreement with 863880 for the acquisition of the subject Lands. In the Section 30 Agreement, the parties agreed that the date for valuing the market value of the Lands would be December 14, 2001, which is the date the Section 30 Agreement was signed. With City Council's approval, the closing date of the transaction was extended a number of times by mutual agreement with 863880.

In 2006, the City and 863880 entered into an agreement amending the Section 30 Agreement, which gives the City the right to further extend the closing date one or more times to February 28, 2012 at the latest, at no additional cost to the City. The amending agreement also gives each of the City and 863880 certain rights for a period of 20 years following the closing date if the City no longer requires the Lands. During the 20 year period following closing, the City will have the right to require 863880 to repurchase the Lands from the City at the same price the City paid, plus 6% interest per annum. During the same 20 year period, if the City determines that the Lands are not required for the Front Street Extension and City Council declares the Lands to be surplus to municipal requirements, 863880 will have the option to repurchase the Lands from the City at the same price the City paid, plus 6% interest per annum.

The City is currently contractually required to close the transaction on October 31, 2009. If the City wishes to exercise its option to extend the closing date beyond October 31, 2009, the City must give 863880 at least 120 days prior written notice of the extension, which means notice must be delivered no later than July 3, 2009.

The extensions to date have benefited both parties. They have allowed the City to defer payment of the \$1.0 million dollars compensation that is payable on closing, as well as payment of the balance of the compensation owing once it is determined pursuant to the Expropriations Act. As for 863880, the extensions have allowed 863880 to minimize its costs of remediating its adjoining development site by making use of the Lands for remediation.

With the elimination of the Front Street extension project it no longer makes sense for the City to take title to the 863880 Lands. However, with the emerging development of the Liberty Village Area it makes sense for the City to acquire land from 863880 through the development planning process for local road purposes. 863880 has submitted a zoning development application to City Planning for redevelopment of its lands. The submitted plans show provision of a local road on the 863880 lands. If the local road can be secured by the City at no cost through the development planning process and in consultation with the local area Councillor, then the Section 30 Agreement with 863880 is no longer required.

COMMENTS

The City no longer requires use of the Lands for the cancelled Front Street Extension project. However, the City may still require lands for the extension of the Liberty Village local road network. 863880 currently has submitted plans to City Planning to redevelop its property and the plans show for the provision of a local road. It will benefit both the City and 863880 to be released from the terms of the Section 30 Agreement, which secured lands for a much larger road than is currently being contemplated.

City staff still deem it appropriate to recommend a further extension of the closing date to February 28, 2012. This will allow the necessary planning applications to follow due course and be considered by City Council, after which legal documents will be finalized to secure the land required for the local road. The requested extension will also keep the Lands available for road purposes should the submitted planning application not be approved.

If the City does not extend the closing date as recommended, the City is contractually required to close the transaction on October 31, 2009, at which time the City will be required to pay \$1.0 million dollars compensation for the Lands, followed by the balance of the compensation that is payable once the amount has been determined by the OMB pursuant to the Expropriations Act.

Extending the closing date will not result in the City having to pay any additional compensation for the Lands. Accordingly, it is to the City's advantage to defer closing and attempt to secure the necessary lands required for local road purposes at no cost to the City through the development planning process.

In summary, the proposed closing extension for the Lands relating to the Section 30 Agreement benefits the City and Real Estate staff recommends it.

CONTACTS

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SIGNATURE

Bruce Bowes, P. Eng.
Chief Corporate Officer

ATTACHMENTS

Appendix "A" – Site Map