



**STAFF REPORT
ACTION REQUIRED**

Emery Village BIA – Monumental Flagpole and Public Square Project

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| Date: | August 5, 2010 |
| To: | Executive Committee |
| From: | General Manager Economic Development and Culture |
| Wards: | 7 |
| Reference Number: | |

SUMMARY

The Emery Village Business Improvement Area (BIA) proposes the development of North America’s tallest flagpole (125 metres) and a public square on a 4.678 acre parcel of land situated at the southeast corner of Arrow Road and Finch Avenue West, west of Highway 400 (known as 1111 Arrow Road). The project is intended to create a landmark tourist destination that promotes Canada and also serves as an attraction and focal point for local community and business activities. This report seeks approval of the project concept from City Council and authorization for City staff to enter into negotiations to purchase the site conditional upon concluding financing agreements with the BIA and determination of the appropriate operating model. The City will recover any costs for the purchase and development of the site through a financial agreement with the BIA. The BIA proposes to generate project funding through the annual BIA levy, the potential use of signage and parking revenues, and possible Section 37 contributions. Project maintenance and programming costs would be covered through similar revenue sources, with the BIA taking responsibility for any shortfalls.

RECOMMENDATIONS

The General Manager recommends that:

1. Council approve the creation of a public square, as a community, tourist and business focal point within Emery Village, including a flagpole intended to be the tallest in North America;

2. Council authorize the Deputy City Manager and Chief Financial Officer to negotiate with the Board of the Emery Village BIA on a comprehensive agreement such that there be no cost to the City for the acquisition, initial implementation, future development and ongoing operation and maintenance of the flagpole and subject site;
3. Council direct the City Manager to consult with the Emery Village BIA and appropriate City staff and develop an operating model and any appropriate agreement for the management and administration of the public square within the existing structure of the Board of the Emery Village BIA;
4. Council authorize the Director of Real Estate Services to enter into negotiations to purchase the lands bounded by Arrow Road, Finch Avenue West and Highway 400 (known as 1111 Arrow Road), conditional upon achievement of agreements with the Emery Village BIA to finance the cost of acquisition, development and operation of the square in accordance with Recommendation 2 and an agreement on an appropriate operating model in accordance with Recommendation 3; and
5. Council direct the Deputy City Manager and Chief Financial Officer to report back to Council through the appropriate Committees on the outcome of the negotiations and consultations, and to seek approval for any agreements and required budget adjustments, pertaining to Recommendations 2, 3 and 4.

Financial Impact

The first phase of project implementation, consisting of the flagpole and surrounding square, will cost approximately \$3.5 million plus the value of the land. There is no budget, or funding source currently in place for this land acquisition. The proposed project structure is that all costs undertaken by the City, for acquisition, development and operation phases of the project, are to be recovered from the Emery Village BIA, which intends to pursue various sources of potential revenue, including that from advertising signage and parking. For the project to proceed an agreement must be executed by the City and the BIA under which the BIA takes financial responsibility through its levy for all costs in excess of those generated by other revenue sources.

The financial terms for recovery by the City of the initial outlay to purchase property and develop the square would be determined through negotiation with the BIA. The following provides a financial context for the recommendations in this report. The 2010 Operating Budget for the Emery Village BIA totalled \$1,974,967 supported by a levy of \$1,767,335. While considering a plan to develop the site through leasing the property, the BIA agreed in principle to raise \$3.5 million over 2011 and 2012. Under this scenario, using the BIA's existing area and total commercial/industrial assessment, the BIA's levy rate would approximately double, from 0.108% in 2010 to 0.221% (from \$1,767,335 to \$3,692,335) in 2011 and 2012. As the amount to be raised under the recommended approach, including the purchase of the property, will be larger, the period

required for the BIA to repay the City would likely be longer, with the terms of repayment being part of the agreement to be negotiated with the BIA.

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

Decision History:

At its meeting on June 9, 2009, Etobicoke York Community Council adopted EY28.56, Sign Variance Report - 1111 Arrow Road and directed that the Director and Deputy Chief Building Official in consultation with the City Solicitor, General Manager, Parks Forestry and Recreation, Director, Transportation Services, and Finance Division report to its September 15, 2009, meeting on an assessment of the lands municipally known as 1111 Arrow Road to determine its feasibility for a proposed community public space, which includes the flagpole project, landscape features, and associated amenities.

Community Council also directed staff to conduct an assessment of the potential for the City of Toronto and the Emery Village Business Improvement Area to expand its community programming and promote its business improvement objectives on the 1111 Arrow Road site as well as the potential use of Section 37 funding for the flagpole project on the site, and to meet with the Owner of 1111 Arrow Road, in consultation with the Emery Village Business Improvement Area, and the Ward Councillor to negotiate a potential agreement.

Background:

The Project

The Emery Village BIA is proposing the development of North America's largest (125 metres) flagpole (to display the Canadian flag) and a public square. Additional amenities, including a skating rink, bocce courts, playgrounds, an outdoor seating area, historical markers, a Canada pavilion, information kiosks, and landscaped gardens will also be considered as additional revenue opportunities arise. Ancillary retail space to serve visitors is also being considered. The BIA proposes to consult with the local community in order to help shape the vision for the site and determine the programming best suited for a successful public space.

Monumental flagpoles can be found in many countries around the world as symbols of national pride. The world's tallest flagpole is in Aquaba, Jordan and stands 131 metres in height. However, this record is soon to be surpassed by projects in Turkmenistan (133 meters) and Azerbaijan (162 metres). North America's tallest flagpole is located in Surrey, British Columbia and stands 86 metres in height.

While the nature and design of the project is centred on promoting national pride and celebrating Canada, it is more than just a flagpole. The overall vision for this project is to create a landmark destination in the City that will benefit the people who live, work,

shop, and play in the area. In this regard, it is seen as an investment in community pride and the revitalization of the area.

Local residents and community groups will benefit from the creation of a new venue from which to host various community events including Canada Day celebrations, citizenship ceremonies, cultural celebrations and other community activities.

For the local business community, the project is an important step in the revitalization efforts currently being undertaken by the BIA. The project continues the “maple leaf” streetscape improvements and branding already occurring in the area. The revitalization of the area is expected to promote the area as a place to do business and attract new investment into the community, increasing property values and the City’s assessment base. The City as a whole will also benefit from the creation of a new landmark tourist destination that will attract tourists to Toronto and direct visitors to other venues throughout the City.

The project is intended to be undertaken in phases, with the first phase consisting of the construction of the flagpole and surrounding landscaped public square. The estimated cost for phase one, not including land acquisition is approximately \$3.5 million (\$2.5 million for the flagpole and \$1.0 million for the public square).

Project History

The proposed flagpole and public square project has been a key objective of the Emery Village BIA since its establishment in 2004.

Originally, the proposal for a flagpole was tied to a residential development application for the lands at 15-21 and 23 Toryork Drive approved, subject to conditions, by the Committee of Adjustment in 2003. One of the conditions required the owner to enter into an agreement to secure a flagpole and an outdoor ice rink. The original suggested location for the flag pole was the City-owned Emery Yard. The application approved by the Committee of Adjustment represented a revised proposal for the subject lands from a previous Official Plan and Rezoning application submitted in 2002.

The proposed development has evolved further since Committee of Adjustment approval in 2003, but the submission of revised plans has not occurred and the project file is inactive. Therefore, it is unrealistic to suggest the flag pole and public square desired by the Emery Village BIA can be achieved through the residential development. In addition, it was determined that the Emery Yard could not be made available as the site of the flag pole.

In 2009, the Emery Village BIA approached the City with a preliminary proposal to construct the tallest flagpole in North America, an associated public square and ancillary facilities on an alternate site (1111 Arrow Road).

The Project Site

The site is strategically located at the southeast corner of Arrow Road and Finch Avenue West, just west of Highway 400. The site comprises relatively flat, vacant land measuring 4.678 acres with 384 feet of frontage on Finch Avenue West and 307 feet of frontage on Arrow Road. A Phase I Environmental Assessment was recently prepared for the site and indicates there is no evidence of any deleterious conditions which would impact on the ability to develop the property. A flag pole is not considered a structure under the City's Zoning By-law and is permitted on the subject property. All other uses, amenities and buildings proposed on the lands will be subject to zoning review.

Comments

Land Acquisition

In October 2009, the Emery Village BIA approached the City of Toronto with a proposal for the BIA to enter into a 15 year lease with the property owner of 1111 Arrow Road to construct the flagpole and a public square and potentially food and other concessions on the site. The proposed lease contains an option to purchase the property, and the Emery Village BIA has advised it may wish to exercise the option. In May 2010, the BIA conducted a general meeting of the membership during which it voted to pursue a land lease arrangement for the project.

However, there are a number of legal and policy issues associated with the BIA leasing or purchasing property for this purpose.

City Board:

BIA boards of management are city boards, and accordingly, everything they do is on behalf of the City. While, arguably, Council may delegate to a city board the acquisition or leasing of land on the City's behalf, and the control and management of municipal services and activities on the land, the city board is an agent of the City. Accordingly, the City becomes wholly liable for all the indebtedness of the board and for the activities undertaken by the board on the land. This raises the issue of the proper governance model or control mechanisms for oversight of the property.

Priority Lien Status of the Board Charges:

Unless it is clearly demonstrated that the property in question is "City-owned" land, BIA charges (levies) could lose their priority lien status. A lease or ownership by the BIA does not constitute "City-owned" land, and therefore, falls outside of the activities that BIAs may undertake under Municipal Code Chapter 19, Business Improvement Areas. While Chapter 19 could be amended, Ontario Regulation 594/06 gives BIA charges priority lien status, provided the charges are imposed for the purpose of improving city-owned land, as required by subsection 329(13) of the *City of Toronto Act, 2006*. If the charges are not imposed for this purpose, their priority lien status is endangered, making

it considerably more difficult for the City to collect them from BIA members. As a result, the City would be responsible for any outstanding liabilities associated with the flagpole project to the extent they are not recoverable from the BIA.

BIA Tax Rebates:

Unless it is clearly demonstrated that the property in question is "City-owned" land, a BIA member may not be eligible for charity tax rebates or vacancy tax rebates in respect of its BIA charges. Under subsection 331(25) of COTA, BIA members that are registered charities, or owners of vacant space, will be eligible for charity rebates or vacancy rebates in respect of their BIA charges only if the BIA charge imposed meets the requirements set out in subsection 329(13), that improvements be made to City-owned land.

Improper Charge:

If Chapter 19 is not amended and the City allows the BIA to lease or purchase the property, the flagpole project falls outside the BIA's mandate, and the City has no authority to impose the project-funding charge on behalf of the BIA. This could make the charge vulnerable to challenge on the grounds that it is not valid, and it may be deemed to be an improper tax. If the charge is successfully challenged, the BIA board would be unable to fund the project and the City would be responsible for any outstanding liabilities.

Bonusing:

A lease of the property results in improvements to privately-owned land with no assets accruing to the City, as once the lease expires, all buildings, structures and other improvements remaining on the property would revert to the property owner. This could constitute illegal bonusing, contrary to the *City of Toronto Act, 2006*.

For the reasons noted above, staff believes it would be more prudent for the City to purchase the site, which could then be improved and funded by the BIA, as permitted under Chapter 19. The City would then recover all costs associated with the purchase and construction of the project through a financial agreement with the BIA and collect the payments through the BIA levy. This is similar to the financial arrangements for the Bloor Street Transformation Project being undertaken by the Bloor-Yorkville BIA.

It is therefore recommended that the Director of Real Estate Services enter into negotiations to purchase the lands bounded by Arrow Road, Finch Avenue West and Highway 400 (known as 1111 Arrow Road), conditional upon achievement of agreements with the Emery Village BIA to finance the cost of acquisition, development and operation of the square in accordance with Recommendation 2 and an agreement on an appropriate operating model in accordance with Recommendation 3.

Financing and Maintenance Agreement

The BIA will be responsible for repaying the City for all costs incurred by the City regarding the project, including land acquisition and project development, construction and on-going maintenance. It is therefore recommended that the Deputy City Manager and Chief Financial Officer, with the City Solicitor, be authorized to negotiate with the Board of the Emery Village BIA on a comprehensive agreement such that there be no cost to the City for the acquisition, initial implementation, future development and ongoing operation and maintenance of the flagpole and subject site.

BIA Approval and Funding

To date, the BIA membership has only considered the project based upon the property-lease option proposed by the BIA, but rejected as problematic by City staff.

Should Council approve the land purchase approach, this approach must be brought forward to a general meeting of the BIA membership for consideration, especially given that the BIA levy is an important source of funding for the project. In considering the costs of developing the first phase of the project, consisting of the flagpole and the surrounding square, the BIA agreed in principle to raise \$3.5 million over 2011 and 2012. Under this scenario, using the BIA's existing area and total commercial/industrial assessment, the BIA's levy rate would approximately double, from 0.108% in 2010 to 0.221% (from \$1,767,335 to \$3,692,335) in 2011 and 2012. As the amount to be raised under the recommended approach, including the purchase of the property, will be larger, the period required for the BIA to repay the City will likely be longer, with the terms of repayment being part of the agreement to be negotiated with the BIA.

Given the relatively large assessment base in the BIA, it is not expected that the additional levy will represent an unreasonable burden on commercial property owners. The amount of the levy could be increased if revenues from other sources do not meet expectations, or reduced were such revenues to exceed expectations. The financial agreements with the City, as well as any agreement on the governance model would also require consideration by the BIA membership.

Operating Model

It is critical for the City to establish a proper operating or governance model to ensure appropriate management and administration of the property. There are several possible approaches available. The BIA proposes the property be administered by the BIA and managed by a volunteer Board of Management selected by the BIA Board. As the BIA is an agent of the City it is critical that the relationship take financial responsibility into consideration as well as the need for a structure that can effectively operate the facility to be created. Clear lines of accountability, aligned with financial responsibilities, are important and a separate Board of Management is not recommended; however, other mechanisms such as an advisory subcommittee may be appropriate to facilitate community input.

It is recommended that the City Manager consult with the Emery Village BIA and appropriate City staff and develop an operating model for the management and administration of the square within the existing structure of the Board of the Emery Village BIA. The resulting agreement with the BIA on financing and management, as well as a Capital Budget adjustment supporting the project will be reported to Council for consideration.

Conclusions

The flagpole project presents an opportunity to create a landmark tourist destination and significant gateway into the City from the north. It will also become a focal point for community and cultural activities. For the business community, this project continues the process of revitalizing the area which will attract new business and new customers and improve property values. It is therefore recommended that Council approve the creation of a public square, as a community and tourist focal point within Emery Village, including a flagpole intended to be the tallest in North America.

The Emery Village BIA has a significant assessment base to undertake a proposal of this size and a proven track record of undertaking significant revitalization projects in their area.

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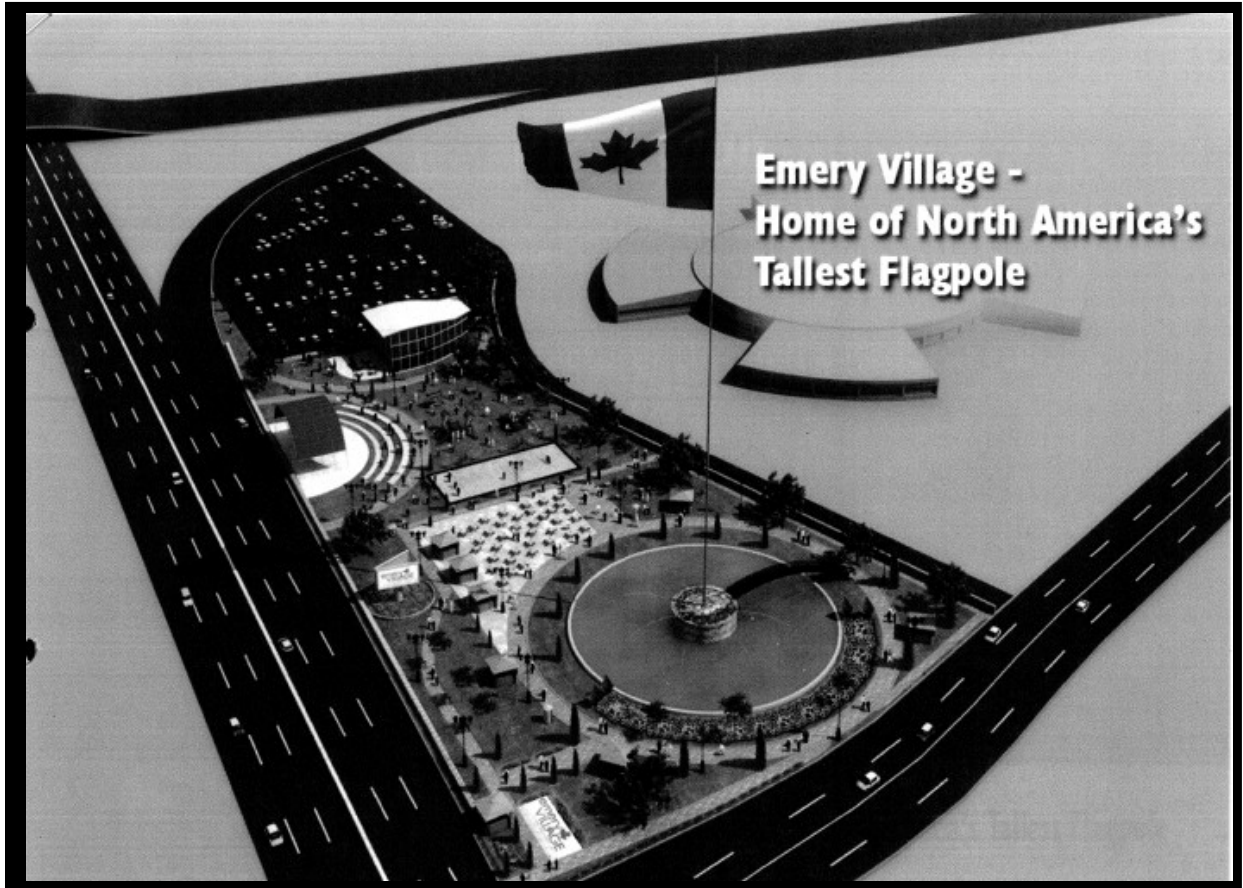
SIGNATURE

Michael H. Williams
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ATTACHMENTS

No 1. Project Schematic
No 2. Site Location Map

Attachment No. 1 – Project Schematic



Attachment No. 2 – Site Location Map

