



STAFF REPORT ACTION REQUIRED

Purchase and Sale Transaction of 935 Eglinton Avenue West - Municipal Carpark No. 655

Date:	January 14, 2011
To:	Government Management Committee
From:	President, Toronto Parking Authority
Wards:	Ward 21 – St. Paul’s
Reference Number:	TPA File No.: 5655-00

SUMMARY

The purpose of this report is to obtain City Council authority to complete a purchase and sale transaction involving the Toronto Parking Authority (the “TPA”) Municipal Carpark 655 (935 Eglinton Avenue West) (the “Property”) with BSAR (Eglinton) Ltd. (“BSAR” or the “Purchaser”). BSAR is the owner of adjoining lands at 925 Eglinton Avenue West (the "BSAR Lands") and intends to develop its lands with the Property (collectively, the "Site") once it obtains all necessary approvals. The terms of the transaction involve the sale of development rights for the Property, construction by the Purchaser of a below-grade public parking garage containing approximately 66 spaces to be built to TPA specifications, as well as the acquisition by the City of the portion of the Site occupied by the public parking garage not previously owned by the City as well as main floor retail space (the “Retail Component”) comprised of approximately 10,400 square feet (areas subject to final adjustments). The terms and conditions of the transaction are outlined in the body of this report and detailed in Appendix “A”.

RECOMMENDATIONS

It is recommended that:

1. City Council approve a purchase and sale transaction between the Toronto Parking Authority and BSAR (Eglinton) Ltd. for the sale of the development rights, construction of the underground public parking garage, acquisition by the City of the additional lands required for the underground parking garage, and acquisition of the additional lands required for the Retail Component at 935 Eglinton Avenue West, as outlined in the body of this report and detailed in Appendix “A”;

2. City Council authorize and direct the appropriate City Officials to execute all necessary documents including but not limited to an Interim Parking Lease Agreement, Construction Procedures Agreement, Reciprocal Cost Sharing Agreement and Retail Lease Agreement(s) along with all necessary transfers and undertakings; and
3. City Council authorize and direct the appropriate City Officials to take the necessary actions to give effect thereto.

Financial Impact

For the sale of the development rights at the Property, the TPA will be paid by BSAR a Purchase Price of \$4.9 million for a project potentially having up to 100,000 square feet of Gross Floor Area (GFA).

As part of the sales transaction, BSAR will construct a municipal parking garage to TPA specifications containing approximately 66 spaces at a cost to the TPA not to exceed \$45,000 per space with a total capital cost not to exceed \$2,970,000. In addition, BSAR will also construct approximately 10,400 square feet of main floor retail space (the "Retail Component"). The estimated purchase price of the Retail Component although dependant on the final Net Effective Rent ("NER") negotiated, is estimated to be approximately \$4.303 million based on a NER of \$30 per square foot. The estimated net cost to the TPA for the public parking garage and the Retail Component is approximately \$2.373 million. Total funding in the amount of \$2.50 million has been identified and is included in the TPA's 2011 Recommended Capital Budget and 2012-2020 Recommended Capital Plan.

If the final resulting Retail Component NER is higher than \$30 per square foot on account of higher leased revenues, the purchase price of the Retail Component which will still be based on a capitalization rate of 7.25% will be modified through TPA's future year capital approval process.

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

DECISION HISTORY

At its meeting of November 17, 2009 (TPA Board Minute #09-161), the TPA Board of Directors authorized staff to proceed with negotiating the terms and conditions of an agreement of purchase and sale ("PSA") with BSAR based on a non-binding Letter of Intent ("LOI"). As part of the proposal, BSAR would construct and convey to the City a below-grade parking structure in accordance with TPA specifications, and the TPA would purchase the Retail Component of the Project. The City would therefore retain stratified ownership of the portions of the development containing the public parking garage and the Retail Component.

At its meeting of May 18, 2010 (TPA Board Minute #10-074), the TPA Board of Directors approved the PSA with BSAR involving the sale of the development rights through a conveyance to BSAR of a stratified interest in City-owned lands to be declared

as surplus at Municipal Carpark 655 (935 Eglinton Avenue West). A summary of the terms and conditions of the PSA as approved are detailed at Appendix “A”.

The City’s internal approval process of declaring the subject site surplus to the City’s needs was followed and the property at 935 Eglinton Avenue West was declared surplus on August 6, 2010 by Delegated Approval Form Tracking No.: 2010-161.

An agreement of purchase and sale dated September 22, 2010 has been executed between the TPA and BSAR and was accepted on September 27, 2010. The agreement contains conditions in favour of the TPA and BSAR which the parties are working to satisfy, one of which is obtaining City Council approval of the transaction.

The City has satisfied the necessary requirements governing the disposal of property as defined under Chapter 213 of the City of Toronto Municipal Code “Sale of Real Property” including declaring the Property as surplus, providing notice to the public of the proposed sale of the Property and obtaining at least one Fair Market Value Appraisal of the Property.

ISSUE BACKGROUND

Municipal Carpark 655 has been used as a parking lot since 1957 and consists of a 43 space surface parking facility measuring approximately 13,200 square feet (1,230 square meters). Following amalgamation in November 1998, the TPA began operating the property on a lease-hold basis from Wittington Properties Limited (“Wittington”). In July 2000, the TPA purchased these lands from Wittington at a cost of \$1.80 million.

BSAR entered into a conditional Purchase and Sale Agreement with N. Kwinter Holdings Limited and Harryetta Holdings Limited, the owners of lands immediately to the east of Municipal Carpark 655, for 925 Eglinton Avenue West (current location of the China House Restaurant). Subsequently, BSAR approached the TPA to negotiate a quasi-joint venture development arrangement that would include the TPA lands at Municipal Carpark 655 and 925 Eglinton Avenue West. BSAR’s intention is to construct a mixed use residential condominium development which will include retail at grade and a below grade parking garage.

Since Municipal Carpark 655 is positioned mid-block along Eglinton Avenue, it lacks prominence in terms of corner exposure and is limited in terms of its re-development potential due to its size and site constraints. However, the potential to greatly increase the economic viability of the Municipal Carpark 655 lands now presents itself by virtue of BSAR having acquired the lands adjacent to the subject site to the east at 925 Eglinton Avenue West from N. Kwinter Holdings Ltd. as at August 16, 2010. Combining the two parcels yields the dimensions necessary to allow the redevelopment plan proposed for the Site by BSAR to take place, a plan that maximizes the economic value of the Site and thereby benefits the TPA and the City.

Although TPA’s practice governing the disposal of a property normally requires a sale on the open market, this transaction is consistent with the TPA’s policy governing property disposal (TPA’s Policy Resolution *5-2B c) - Disposition of Lands by Sale or Lease*) whereby a sale on the open market is not required when the Proponent is an adjacent landowner provided that:

- The Proponent is able to satisfy TPA requirements in terms of their financial and technical capabilities;
- The development proposal benefits from the inclusion of the Proponents property; and
- The development proposal provides the TPA with fair market value or better for the sale of development rights.

TPA Consultation and Peer Reviews

The TPA requested that a circulation to the City's Agencies, Boards, Commissions and Divisions be undertaken to identify any other municipal interest that need to be accommodated before proceeding to declare the Property surplus. Transportation Services advised that a 1.06 metre wide strip along the rear portion of the property was required to be retained for lane widening purposes to satisfy a requirement for a 6.0 metre wide lane right-of-way. Bell Canada also advised that an easement along the southern portion of the property was required. Staff of the Affordable Housing Office determined that there was no interest in the Property for affordable housing.

Prior to executing the PSA, TPA staff held discussions with numerous consultants and City staff to verify the viability of the development with BSAR. This process helped determine the best plan and strategy in terms of benefit to the City and the TPA as well as the Eglinton – Bathurst Community from a planning and financial perspective. Some of these consultants and individuals have included:

- Appraiser - Integris Real Estate Counsellors was retained to provide: (i) an appraisal of the development rights for the Property; and (ii) a financial evaluation of the Retail Component of the development proposal in order to confirm that the proposal from BSAR is considered reasonable with respect market valuation parameters;
- Cost Consultant (Garage) - A construction cost management consultant will be retained by the TPA to verify the costs associated with the construction of the garage;
- Retail Development and Design Consultant – Lancer Developments Limited was retained to provide specifications and advice relating to the commercial component of the development;
- Environmental Engineering Consultants – An environmental engineering group and/or consulting firm will be retained in order to provide legal advice on environmental matters and advice to TPA on BSAR's due diligence on the Site's environmental and soil composition analysis; and
- Legal Counsel - Fogler, Rubinoff LLP was chosen as TPA's Legal Counsel related to the closing of the PSA and the completion of any associated agreements related to this transaction. They have worked with the TPA on several significant joint venture development projects including 30 Roehampton Avenue (Municipal Carpark 49), 650 Mt. Pleasant Road (Chateau Royal) (Municipal Carpark 178) and 30 Alvin Avenue (Wittington) (Municipal Carpark 12).

COMMENTS

The following is a summary of the issues related to the recommended approval of the transaction between the TPA and BSAR involving Municipal Carpark 655.

Location and Particulars

Municipal Carpark 655 – 935 Eglinton Avenue West, a 43 space surface parking facility is positioned mid-block between Chiltern Hill Road and Rostrevor Road on the south side of Eglinton Avenue West, a short distance west of Bathurst Street (see attached Site Location Map). The area surrounding the subject property is comprised of residential uses to the south and mainly retail / commercial uses along the Eglinton Avenue frontages to the north, east and west. Since Municipal Carpark 655 is positioned mid-block, it lacks prominence in terms of corner exposure and as a stand alone property, is limited in terms of its re-development potential due to its size and site constraints.

Development Proposal

BSAR is contemplating a 9-storey residential condominium development with a total Gross Floor Area (“GFA”) no greater than 100,000 square feet (9,290 square metres). The project will have a main floor Retail Component of approximately 10,400 square feet of GFA (965 square metres) and a 113-space below grade parking structure on two levels. GFA means the total gross floor area of the Project permitted by the applicable zoning by-laws determined when the Project is zoned in final form.

Parking Supply and Demand

The Eglinton – Bathurst Community is an area that currently has an adequate supply of parking. Although the surface lot’s current capacity of 43 spaces is sufficient to meet the parking needs of the subject area, any additional spaces will ensure that the future parking needs of the area will be met.

Summary of BSAR Purchase and Sale Agreement

Summarized below and at Appendix “A” are the terms and conditions of the PSA between the TPA (“City” as “Vendor”) and BSAR (as “Purchaser”).

Financial Analysis

TPA staff undertook an internal financial analysis to determine the returns that would be realized with converting the surface parking lot into a garage including acquiring the Retail Component of the Project. The table below summarizes these results:

Sale of Development Rights	\$4,900,000
Cost of Parking Garage (66 spaces @ max. \$45,000/space)	(\$2,970,000)
Purchase Price of Retail Component *	<u>(\$4,303,000)</u>
Estimated TPA Net Cost (Garage and Retail Component)	(\$2,373,000)

* The Net Effective Rental Rate (\$30 per square foot - Rental Rate net of Tenant Inducements and Free Rent) multiplied by the Net Rentable Area (10,400 square feet) divided by the market Capitalization Rate (7.25%).

As part of the transaction, BSAR will convey to the City the portions of the BSAR Lands which will house that portion of the public parking garage not located within the Property and the Retail Component, and BSAR will construct a below-grade parking structure built to TPA specifications and containing approximately 66 spaces at a cost per parking space estimated at \$40,000 per space and not to exceed \$45,000 per space. The total capital cost for the garage not to exceed \$2.97 million will be paid by the TPA upon garage turnover with standard procedures for turnover to be followed.

The acquisition of the Retail Component falls within the TPA's scope of business as the TPA has developed retail/commercial space within a number of its existing projects including Municipal Carpark 15 (50 Cumberland Street), Municipal Carpark 26 (Queen / Victoria Garage), Municipal Carpark 68 (Kensington Garage), Municipal Carpark 157 (Bayview / Millwood), and Municipal Carpark 1 (Charles / Hayden Garage). The TPA will purchase the main floor Retail Component estimated to be 10,400 square feet which must be constructed and delivered on a fully turn-key basis at the full cost and expense of BSAR including BSAR's payment of all leasehold improvement allowances, tenant inducements and free rent. TPA's obligation to purchase the Retail Component will also be conditional upon the TPA having reviewed and approved all of the leases associated with the retail space provided that the leases are on commercially reasonable terms with market rental rates and not less than 75% of the tenants in place of an 'AAA' tenant calibre or a tenant with a good covenant satisfactory to the TPA. The purchase price to be paid by the TPA for the Retail Component which will be paid upon substantial completion and upon all tenants being in possession and paying rent will be based on a capitalization rate of 7.25%. The estimated purchase price of the Retail Component although dependant on the final NER negotiated, is estimated to be approximately \$4.303 million based on a NER of \$30 per square foot. If the final resulting Retail Component NER is higher than \$30 per square foot on account of higher leased revenues, the purchase price of the Retail Component which will still be based on a capitalization rate of 7.25% will be modified through TPA's future year capital approval process.

The financial analysis of the development proposal revealed that the TPA's benchmark criteria used to assess the merits of this transaction remain intact and have been achieved. The estimated first year net profit for the combined public parking garage and the Retail Component is estimated at approximately \$328,000 resulting in an IRR of 7.18%. In summary, the TPA will own a fully leased retail project with approximately 10,400 square feet and a new 66 space garage at a cost of approximately \$2.373 million. Including the original land acquisition cost of \$1.8 million for the surface carpark, the cost is closer to \$4.173 million. Total funding in the amount of \$2.50 million has been identified within TPA's 2011 Capital Budget submission.

An appraiser has confirmed that the TPA is receiving fair market value for the sale of the air rights for the property and is paying fair market value for the purchase of the Retail Component of the development.

We have met with the local area Councillor for Ward 21 St. Paul's Joe Mihevc and he is supportive of this joint venture development opportunity as well as the business terms of this sale transaction which should not be mistaken and construed as approving of the

proposed development. The developer will be required to go through the appropriate rezoning and site plan approval processes.

Corporate Profile – BSAR (Eglinton) Ltd. (“BSAR”)

BSAR which is part of the BSAR Group of Companies, is a full service, Toronto-based real estate developer that focuses on high density and mixed use commercial / residential projects in the GTA. Prior to forming BSAR, its principals, through their prior affiliations with Smart Centres (formerly First Professional), Calloway REIT and Empire Communities respectively, have collectively been responsible for the development and construction of over 1,000,000 SF of GTA retail as well as in excess of 800 high rise residential condominium units.

BSAR’s principals formed BSAR itself in 2007 to give a focus to their appetite for medium to high density infill residential development deals either with or without ancillary commercial usage. BSAR has been successful in acquiring target properties that, when developed, represent a fit within the aforementioned end use parameters. Together with its affiliated companies, including Prince Bay Homes (www.princebay.ca), BSAR owns and/or control approximately \$15.0 million CDN worth of real estate. BSAR believes these acquisitions will add value through the development of retail and high density residential on well located infill sites in prominent GTA and surrounding area locations. Highlights amongst BSAR's recent acquisitions include:

Bronte

Locally known as Harbourview Mall, this 1.34 acre site located along Lakeshore Boulevard in Oakville Ontario's Bronte Harbour closed in July of 2009. BSAR's redevelopment plans for the Bronte site contemplate a mix of high density residential and retail uses which would be recognized as the highest and best use for the site in the context of Oakville's most recent official plan review. It is expected that Bronte will yield approximately 250,000 square feet of GFA upon rezoning.

Beverly (12 Degrees)

The Beverly project which is now being actively marketed as *12 Degrees* condominiums is comprised of approximately a 0.3 acre site located in downtown Toronto's Central Queen West area along Beverley Street. BSAR successfully rezoned Beverly, an 11 storey condominium project with a mix of residential and warehouse-retail uses, receiving final approval in the fall of 2010 for approximately 90,000 square feet of GFA (roughly the same size as the subject redevelopment). With the project approaching 60% sold, BSAR expects to commence construction on 12 Degrees in the spring of 2011.

925 Eglinton Avenue West

As part of the assembly that will include the subject lands (Municipal Carpark 655), BSAR acquired the roughly 0.13 acre site located on the southwest corner of Eglinton Avenue West and Chiltern Hill Road on August 16, 2010. BSAR’s intentions for redevelopment of this property are discussed in detail herein.

Conclusion

BSAR's offer provides a number of financial benefits that add value and therefore is of substantial benefit to the City and the TPA including:

- A Purchase Price of \$4,900,000 for the development rights exceeds the TPA's minimum requirement for considering conversion from a surface lot to an underground garage at Municipal Carpark 655;
- By combining additional lands adjoining Municipal Carpark 655; improved design/density are being realized, providing advantages in terms of accessibility and overall improvements;
- The development would introduce new commercial uses to the immediate area which would be supported by the new municipal parking garage; and
- TPA acquisition of the Retail Component will provide for a far more attractive option as it will ensure a long term income stream from the property.

For the reasons outlined within the body of this report, we recommend that City Council approve the purchase and sale transaction involving Municipal Carpark 655 (935 Eglinton Avenue West) to BSAR (Eglinton) Ltd. on the terms and conditions as outlined in the body of this report and detailed in Appendix "A"

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SIGNATURE

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ATTACHMENTS

Site Location Map
Appendix "A" – Summary of BSAR Purchase and Sale Agreement

Site Location Map – See Attachment

Appendix “A”

Summary of BSAR Purchase and Sale Agreement

Summarized below are the basic terms and conditions of the current PSA between the TPA / City (as “Vendor”) and BSAR (as “Purchaser”):

1. Purchaser – BSAR (Eglinton) Ltd.;
2. Purchase Price - \$4,900,000;
3. Bonus Pricing for Additional Density – Purchase Price was determined on the basis of an estimated zoning Gross Floor Area (“GFA”) of 100,000 square feet. If the Purchaser obtains approval to construct a larger development; in addition to the Purchase Price, the TPA will receive \$40.00 for each square foot of GFA for which the Project is approved in excess of 100,000 square feet multiplied by the Density Pro Rata Share (Area of the TPA lands divided by the sum of Area of TPA lands and Area of 925 Eglinton Avenue West lands);
4. Deposit Structure – Initial Deposit of \$200,000 was paid within five (5) business days of execution of the PSA; second deposit of \$300,000 to be paid upon satisfaction or waiver of the Purchaser’s Conditions; and balance of the Purchase Price, subject to adjustments, on closing. The Purchase Price Bonus is to be paid within three (3) business days of the date upon which the Project is Zoned in Final Form;
5. Closing – Closing will occur twenty-seven (27) months following: i) waiving of BSAR’s Conditions; and ii) satisfaction of the TPA’s conditions including the obtaining of TPA Board approval, City Council approval, declaration of the lands as surplus and TPA’s approval of BSAR’s preliminary plans for the project;
6. Public Parking Garage and Construction Cost – BSAR will construct and convey to the City, a below-grade parking structure consisting of approximately sixty-six (66) spaces be constructed to TPA specifications at a cost per parking space estimated at \$40,000 per space and not to exceed \$45,000 per space. Based on a capital cost of \$45,000 per space, the total capital cost is \$2,970,000 which will be paid by the TPA upon garage turnover. The final purchase price of the parking spaces (which will not exceed \$45,000 per space) will be verified by a TPA qualified cost consultant;
7. Purchaser’s Conditions – The PSA is conditional for a period of one hundred and twenty (120) days following execution and approval of the PSA by the TPA Board of Directors upon BSAR satisfying themselves at their discretion as to the suitability of the proposed project, the results of their due diligence enquiries and the ability to obtain zoning and site plan approval;
8. Vendor’s Conditions – The PSA is conditional for a period of one hundred and fifty (150) days following execution of the PSA upon the TPA obtaining approval of the PSA by the TPA Board of Directors, approval of the PSA by the Council of the City of Toronto, the declaration of the property as surplus to the needs of the City by Council of the City of Toronto or by any other delegated authority. Additional conditions will include approval of the beneficial owners of the

- development and approval of the list of tenants. In addition, the PSA is conditional upon the TPA having reviewed and approved preliminary design drawings for the development and upon the TPA and the City satisfying itself with the results of any environmental and geotechnical investigations and enquiries relating to the adjacent lands;
9. TPA's Purchase of Retail Component and Leasing Criteria – Subject to the satisfaction of the Retail Component conditions, the TPA will purchase the main floor Retail Component estimated to be 10,400 square feet which remains to be finalized. The Retail Component must be constructed and delivered on a fully turn-key basis at the full cost and expense of BSAR including BSAR's payment of all leasehold improvement allowances, tenant inducements and free rent. TPA's obligation to purchase the Retail Component will also be conditional upon the TPA having reviewed and approved all of the leases associated with the retail space provided that the leases are on commercially reasonable terms with market rental rates and the tenants of an 'AAA' tenant calibre or a tenant with a good covenant satisfactory to the TPA. The purchase price to be paid by the TPA for the Retail Component which will be paid upon substantial completion and upon all tenants being in possession and paying rent is based on a capitalization rate of 7.25%. The estimated purchase price of the Retail Component although dependant on the final Net Effective Rent negotiated, is estimated to be approximately \$4.303 million based on a NER of \$30 per square foot. The purchase price for the Retail Component will be adjusted accordingly if the final resulting Retail Component NER is higher than \$30 per square foot. Although the purchase price to be paid by the TPA will continue to be based on a capitalization rate of 7.25%, the TPA will retain the option to seek additional approvals terminate the purchase of the Retail Component should the Retail Component NER exceed \$60 per square foot resulting in a purchase price in excess of \$8.6 million;
 10. Lost Revenue during Construction – No compensation is due from BSAR if the Public Parking Garage and the Retail Component is substantially completed no later than twenty-four (24) months following the construction commencement date (the "Substantial Completion Deadline"). In the event of project delay, BSAR will pay to the TPA monthly and in arrears following the Substantial Completion Deadline, an amount equivalent to the lost parking revenue plus HST based on operating statements for the twelve (12) months preceding closure of the TPA lot for commencement of construction of the project;
 11. Construction Procedures Agreement – Upon Closing, the PSA will require that the TPA and BSAR enter into an agreement that will set out the guidelines and procedures for construction of the Public Parking Garage, the project parking facility and the Retail Component;
 12. Construction Commencement Deadline – A date not later than four (4) years from the closing date;
 13. Reciprocal Operating Agreement – Upon completion of construction, the PSA will require that the TPA and BSAR enter into a reciprocal operating agreement

which sets out the terms for the sharing of certain common facilities and the creation of mutual easements, the responsibility for the maintenance / repair of same and the allocation of costs related thereto;

14. Lease-Back Provision (TPA Monthly Rent) – The TPA will lease back the TPA parking lands for use as a commercial parking lot for a term commencing on Closing and continuing until construction of the development commences. The TPA will pay the sum of \$5,200 per month as rent for its lease of the parking lot and will pay all expenses that are associated with the parking lot but will exclude realty taxes which will be the responsibility of BSAR;
15. Construction Security – The PSA will require BSAR to secure its obligation to construct the TPA garage, with a letter of credit as well as performance, labour and material bonds. BSAR’s construction obligation in respect of the Retail Component will be secured by performance, labour and material bonds; and
16. Restrictive Covenant – The PSA imposes a restriction on BSAR from being able to submit a rezoning application to build over a pre-determined development limit in terms of GFA without approval from the TPA. The restrictive covenant limits the size of the development to a maximum of GFA of 100,000 square feet and therefore the realization of the additional bonus provision above 100,000 square feet without the TPA’s prior written consent is unlikely. It should also be noted that there is no provision for allowing any reduction of the price if the gross floor area of the Project when zoned in Final Form is less than 100,000 square feet.