



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Supplementary Transaction Update on City-Owned 50 Cumberland Street/37 Yorkville Avenue (Municipal Car Park 15)

Date: July 8, 2020

To: Board of Directors, Toronto Parking Authority

From: City Solicitor

Wards: Ward 11, University-Rosedale

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report pertains to potential litigation involving Toronto Parking Authority and the City of Toronto and contains advice that is subject to solicitor-client privilege.

SUMMARY

This report is to provide the Board of Directors of Toronto Parking Authority with further information and updates regarding the insolvency proceeding commenced by the construction lenders bclMC Construction Fund Corporation ("bclMC") and Otera Capital Inc. ("Otera") against the owners of the property municipally known as 50 Cumberland Street/37 Yorkville Avenue (the "Property"), namely, 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnerships (the "33 Yorkville Cresford Subsidiaries").

Information about this insolvency proceeding was first provided in a joint report from the Acting President, Toronto Parking Authority, and the City Solicitor entitled "Transaction Update on City-Owned 50 Cumberland Street/37 Yorkville Avenue (Municipal Car Park 15)" dated March 13, 2020 (Item PA14.4, the "First Report") and in a verbal update to the Board at its May 15, 2020 special meeting.

The insolvency proceeding has continued since those dates.

Confidential Attachment 1 contains information pertaining to potential litigation involving Toronto Parking Authority and the City of Toronto and contains advice that is subject to solicitor-client privilege.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The Board of Directors of Toronto Parking Authority direct that the information contained in Confidential Attachment 1 remain confidential in its entirety at the discretion of the City Solicitor, as it pertains to potential litigation involving Toronto Parking Authority and the City of Toronto and contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications were discussed in Confidential Attachment 1 to the First Report. An update to one aspect of the potential financial implications is discussed in further detail in Confidential Attachment 1 to this report.

DECISION HISTORY

At its special meeting on May 15, 2020, the Board of Directors of Toronto Parking Authority adopted Item PA14.4, Transaction Update on City-Owned 50 Cumberland/37 Yorkville Avenue (Municipal Car Park 15), without amendment.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PA14.4>

COMMENTS

Court Order Issued in Relation to the Property

The First Report referenced that the insolvency proceeding commenced by bcIMC and Otera would be heard on March 27, 2020. As the Board was advised verbally on May 15, 2020, the relief sought by bcIMC and Otera was granted in full, and in particular, the 33 Yorkville Cresford Subsidiaries and the Property were placed under Court-supervised Receivership. A copy of the Court's reasons are available here:

<http://canlii.ca/t/j6q1r>

Also placed under Receivership were two other residential condominiums under development by related Cresford subsidiaries, namely, a property at 587 - 599 Yonge Street, which operates with the name Clover, and 480 - 494 Yonge Street, which operates under the name Halo. There are no TPA issues involved in either of those two projects.

On May 25, 2020, counsel for the Court-appointed Receiver brought a further motion before the Court, to be heard on June 4, 2020, to seek Court approval for the sale and investor solicitation process, which would provide a framework to sell or re-finance the Property.

Counsel for the TPA were consulted with by lawyers for the Receiver shortly before this motion was brought. Following this consultation, the Receiver added the following description regarding the role of the City / TPA in the sale and investor solicitation process:

The City of Toronto (the "City") / Toronto Parking Authority (the "TPA") have, among other things, retained legal title of the sub-surface lands below the Real Property in which a public parking garage is to be constructed by the developer concurrently with the construction of the property residential condominium above it, and has entered into agreements with the Companies to secure completion thereof (the "TPA Agreements"). ... Together, the Lenders ... the City and the TPA are referred to herein as the "Secured Creditors."

As one of the "Secured Creditors," the sale and investor solicitation process gives the City / TPA certain consultation rights in relation to marketing materials that were to be (and now have been) distributed to potential purchasers of the Property.

In addition, potential bidders who are interested in purchasing the Property are required to include specific statements concerning their proposed treatment of the City / TPA, the TPA Agreements, and letters of credit that are in relation to the proposed construction of the Public Parking Garage in the TPA Agreements.

The Receiver is also required to consult with the City / TPA regarding whether any proposed bidder is likely to be able to consummate an acceptable sale proposal, and the manner in which that sale proposal proposes to treat the City / TPA.

As well, final bids will be evaluated based on submissions that includes full details of their proposed treatment of the City / TPA, the TPA Agreements, and letters of credit that are in relation to the proposed construction of the public parking garage in the TPA Agreements.

The sale and investor solicitation process contemplates that final bids be received by August 6, that Court approval be sought the week of August 24, and the transaction be scheduled to "close" sometime in late September, 2020.

On June 4, 2020, the Court granted the Receiver's sale and investor solicitation process motion.

Communications between Counsel for the City / TPA, the Receiver, and the Construction Lenders

On June 24, 2020, lawyers for the City / TPA sent a letter to bclMC and Otera, as well as its counsel. That letter advised that the City / TPA would not at this time be serving an Initial Notice and then Second Notice pursuant to a Lender's Agreement between the City / TPA, bclMC and Otera dated November 13, 2018. Such notices, if served, may require a cessation of the Receivership proceeding, failing which, the City / TPA may call upon the letters of credit and build the Parking Garage.

This letter stated that the City / TPA had reviewed the progress of the matter to date, and that it appeared promising to the City / TPA that the matter of the construction of the Public Parking Garage could be dealt with by a subsequent owner of the development in a manner acceptable to all parties without the City / TPA taking this step.

This letter also reserved the right of the City / TPA to serve those notices under the Lender Agreement, thus potentially affording the City / TPA the right to call upon the letters of credit to build the Parking Garage.

On May 27, 2020, lawyers for the TPA / City discussed with the Receiver the matter of monthly lost revenue compensation which is payable during the period between when the previous TPA parking garage located on the Property was demolished, and when the new Public Parking Garage becomes operational.

Finally, on June 26, 2020, lawyers for the TPA / City sent a letter to the Receiver requesting reimbursement for property tax overpayments which the TPA had made to the 33 Yorkville Cresford Subsidiaries. Lawyers for the TPA / City had discussed this matter with the Receiver on May 27, 2020, and the Receiver had requested further explanation and documentation about this matter.

Further information about these matters is contained in the confidential attachment.

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Supplementary Transaction Update - 50 Cumberland/37 Yorkville