



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Lost Revenue Compensation (Empire Communities (1603 Eglinton) Ltd.): Municipal Car Park 664 (1609 Eglinton Avenue West)

Date: July 5, 2021

To: Board of Directors, Toronto Parking Authority

From: President, Toronto Parking Authority

Wards: Ward 12 – Toronto-St Paul's

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report is about a position to be applied to negotiations being carried out by Toronto Parking Authority (TPA) and contains advice that is subject to solicitor-client privilege.

SUMMARY

This report seeks authority from TPA Board of Directors to accept a proposed settlement payment from Empire Communities (1603 Eglinton) Ltd. (the Developer) related to lost revenue compensation as a final outstanding matter under a Purchase and Sale Agreement that was entered into between TPA and the Developer dated February 12, 2013 (the Agreement).

Under the terms of the Agreement, the Developer was responsible for constructing 33 parking spaces in accordance with TPA Design Specifications (the Public Parking Facility) and turning over the Public Parking Facility to TPA on or before March 31, 2020. Turnover of the Public Parking Facility was not completed until December 4, 2020. Under the Agreement, the Developer is responsible for compensating TPA for the delay in the turnover of the Public Parking Facility. The Developer asserts that the delay was attributed to work stoppages that were required as a result of the Covid-19 pandemic.

RECOMMENDATIONS

The President, Toronto Parking Authority (TPA) recommends that:

1. TPA Board of Directors adopt the confidential instructions to staff set out in *Confidential Attachment 1*; and
2. TPA Board of Directors direct that the confidential information contained in *Confidential Attachment 1* remain confidential in its entirety, as it contains information about a position to be applied to negotiations being carried out by TPA and advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are discussed in the confidential attachment.

DECISION HISTORY

At its meeting of December 14, 2010, TPA Board of Directors authorized staff to negotiate a Purchase and Sale Agreement involving the City-owned property at 1607 Eglinton Avenue West, operating as Municipal Car Park 664, with the then adjacent land owner (1603 Eglinton Avenue West Inc.) for the sale of development rights, and directed staff to retain legal counsel to assist in the negotiation and completion of the transaction (*TPA Board Minute No. 10-180*).

On March 2, 2012, the property owner, 1603 Eglinton Avenue West Inc., sold its ownership interest in the adjoining lands located at 1603 Eglinton Avenue West to Empire Communities (1603 Eglinton) Ltd.

At its meeting of February 27, 2013, TPA Board of Directors approved a Purchase and Sale Agreement with the Developer involving the sale of development rights through a conveyance to the Developer of a stratified interest in the City-owned lands to be declared surplus (Municipal Car Park 664 located at 1607 Eglinton Avenue West) (*TPA Board Minute No. 13-018*). A conditional Agreement of Purchase and Sale between TPA and the Developer was executed under date of February 12, 2013. The Purchaser waived the Purchaser's due diligence condition on June 12, 2013. The Purchaser waived its municipal approval condition and TPA waived its condition on June 13, 2017.

As detailed in *DAF 2013-188* dated August 26, 2013, the City's internal approval process of declaring the subject site surplus to the City's needs was followed and the property at 1607 Eglinton Avenue West was declared surplus on September 4, 2013.

At its meeting of February 21, 2017, TPA Board of Directors approved an Amending Agreement to the Purchase and Sale Agreement with the Developer (*TPA Board Minute No. 17-031*). This amending agreement contemplated TPA purchasing 20 to 25 underground parking spaces at a cost of \$22,500, sharing \$125,000 in elevator construction costs, and TPA and the Developer agreeing upon the final standards and specifications of the underground parking spaces after closing of the sale transaction.

As detailed in *DAF 2016-131* dated May 8, 2017, authority was sought and obtained to complete the purchase and sale transaction involving the City-owned 1607 Eglinton Avenue West set out in an Agreement of Purchase and Sale entered into between TPA and the Developer, as amended from time to time. The transaction closed on June 13, 2017.

At its meeting of November 21, 2017, TPA Board of Directors approved amending the Purchase and Sale Agreement and the Construction Procedures Agreement with the Developer. This amending agreement contemplated the release of TPA's rights to acquire the underground parking spaces from the Developer, and any costs associated with the acquisition. Additional information is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PA5.2>

COMMENTS

Background

TPA partnered with Empire Communities (1603 Eglinton) Ltd., on a development project at 1603 to 1609 Eglinton Avenue West, involving Municipal Car Park 664. Under an Agreement that was entered into between TPA and the Developer, the Developer was responsible for constructing a 33-space surface parking facility in accordance with the terms of the Agreement. Turnover of the parking facility to TPA was required on or before March 31, 2020, but did not occur until December 4, 2020. Under the Agreement, the Developer is responsible for compensating TPA for the delay in the turnover of the Public Parking Facility. The Developer issued a reserved payment in the form of a wire transfer in support of their obligation against lost revenue compensation but has taken the position that the delay was attributed to work stoppages that were required as a result of the Covid-19 pandemic.

Additional information about the proposed settlement is included in *Confidential Attachment 1*.

CONTACT

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SIGNATURE

W. Scott Collier, President,
Toronto Parking Authority

ATTACHMENTS

Confidential Attachment 1 – Confidential Information