

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. 12 09-99-08201-001
Your File/V/Réf.

DATE 10 January 2000

TO/DEST. Co-ordinator
 Corporate Services and Economic Development Committee

FROM/EXP. Planning and Development Approvals Commissioner

SUBJECT/OBJET **LEASE PROPOSAL, 137 MURRAY STREET, OTTAWA**

REPORT RECOMMENDATION

That the Corporate Services and Economic Development Committee, in accordance with Council direction, consider a ten year lease agreement with Claude Lauzon Construction for 180.84 square feet of the Murray Street road allowance abutting 137 Murray Street, City of Ottawa, representing a revenue of \$ 3,750 for the first five years, excluding GST.

BACKGROUND

The Environment and Transportation Department received a request for permission to build a permanent addition to an existing building that would extend onto Murray Street. Since the proposed encroachment contravened sidewalk width provisions of the Official Plan, it was necessary to have the matter dealt with by Regional Council.

A report was subsequently prepared by the Environment and Transportation Department, in which on the basis of both the permanency of the proposed addition and the resultant reduction in effective sidewalk width, it was recommended that the proposed permanent surface encroachment be rejected. However, the Transportation Committee carried an amended recommendation that Council approve the proposed encroachment.

On 9 June 1999, Council carried the Transportation Committee recommendation to approve the proposed permanent surface encroachment at 137 Murray Street, but in the form of a lease rather than by encroachment agreement. The matter was referred to Real

Estate Services Branch to negotiate a lease at market value, which is now the basis of this report.

LEGISLATIVE AUTHORITY

The Region normally permits the private use of its road allowance by encroachment permit, which allows only temporary occupation by an abutting land owner for minor, non-permanent uses. Because of the public nature of the road allowance, which the Region holds in trust for public use, the Region must consider the needs of all members of the public before alienating a roadway, or part of it.

The *Municipal Act* permits a municipality to lease untravelled portions of the road allowance to abutting landowners, but in keeping with the principle that the road allowance should not be removed from public use on a permanent basis, and short of closing the road, a lease or license similar to that of an encroachment agreement seems appropriate.

DISCUSSION

The subject property is one of two commercial units contained in a structure at the northeast corner of the intersection of Dalhousie Street and Murray Street. As part of a project to renovate 137 Murray Street, the property owner is proposing to construct a permanent addition to the facade of the existing building. The proposed addition will be of masonry, wood and glass materials, and will incorporate an entrance, a vestibule and a solarium to a bar/lounge. The structure will contain a gross area of 180.84 square feet and will extend outwardly from the face of the existing building 8 feet into the public sidewalk. The location and extent of the proposed addition are illustrated on Annex 'A'.

Typically, encroachments are minor in nature and deal with non-permanent surface improvements such as sidewalk cafés and patios, or more permanent situations involving overhanging elements on existing buildings such as bay windows and fire escapes. However, in the case of the subject application, the proposed addition is of a permanent nature substantially within the boundaries of a public right-of-way. Of particular concern is the fact that Official Plan guidelines require a minimum effective sidewalk width of 1.5 m. This does not include clearance zones around obstacles in the right-of-way that pedestrians will naturally avoid. When clearance zones are applied, the required minimum sidewalk width, in this case, is 2.85 m. The encroachment, as proposed, would contravene the approved guidelines by reducing the sidewalk width to 2 m.

In accordance with Council direction, the Real Estate Services Branch contacted the property owner with a view to securing a market value lease for the portion of Murray Street that will be occupied by the proposed building addition.

LEASE NEGOTIATIONS

Typically, Regional land lease agreements involve terms of less than 2 years and contain provision for early termination. This provision for early termination, which is usually 60 or 90 days, affords the Region flexibility in the use of its property by providing an opportunity to obtain vacant possession of the land prior to the expiration of the term of the lease if the need arises. A term of two years or less is also within staff's delegated approval authority. With this in mind, Real Estate Services Branch contacted the applicant and proposed an agreement to lease a portion of Murray Street for a period of 2 years, but in view of the permanent nature of the structure, with no provision for early termination.

This 2 year proposal was not acceptable to the property owner who advised that following completion of both the addition and the renovations to 137 Murray Street, the unit would be leased to a third party for a period of 5 years with an option to renew for a further period of 5 years with no provision for early termination. The owner further indicated that both the cost and permanency of the proposed addition would be such that any lease term or early termination short of 5 years would preclude the viability of the project.

LEASE PROPOSAL

To coincide with the lease arrangement proposed for the tenant of 137 Murray Street, the property owner requires permission to occupy a portion of Murray Street for a period of 10 years. This would involve a lease agreement having a term of 5 years at an annual rent of \$750.00, with an option to renew for a further term of 5 years. To defray administration costs, an up front, lump sum payment of \$3,750.00 will be requested. This lump sum payment represents total rental payments over the initial 5 year term of the lease. There would be a provision to permit a sub-lease, but no provision for early termination. The Lessee would be responsible for all taxes and/or charges levied against the property, and would indemnify the Region from and against all claims and actions. The Lessee will also be responsible for all survey costs associated with the occupation and/or use of the leased property.

At the end of the 5 year term, and upon the lessee exercising the option to renew, the rent would be subject to adjustment. In accordance with Regional policy, rent will be based on the market value of the land, and will provide the Region with an annual rate of return commensurate with market conditions at that time.

PUBLIC CONSULTATION

Residents within 60 m of the proposed encroachment were circulated information outlining the proposal and requested to submit any concerns in writing to the Environment and Transportation Department. No responses were received.

FINANCIAL IMPLICATIONS

The lease will generate an initial lump sum payment of \$3,750.00 to the Corporation for the first 5 year term of the lease, with a potential revenue on the 5 year renewal option. However, without provision in the lease for early termination, and in the event the land is required by the Region at any point during the 10 year term, the Region could face significant financial implications. As well, there is the risk of setting a precedent in establishing long term leases on road allowances.

FINANCIAL STATEMENT

Proceeds from the leasing of a portion of Murray Street will be credited to Cost Centre 112143.

*Approved by Nick Tunnacliffe, MCIP, RPP
Commissioner,
Planning and Development Approvals*

Date: January 24, 2000

Attach. (1)

