

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. S.3.2.953
Your File/V/Réf.

DATE 11 October 2000

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

FROM/EXP. Acting Regional Solicitor
 Planning and Development Approvals Commissioner

SUBJECT/OBJET **SUBDIVISIONS - AIR RIGHTS**
 KANATA REGIONAL SHOPPING CENTRE

DEPARTMENTAL RECOMMENDATIONS

That the Corporate Services and Economic Development Committee recommend Council approve:

- 1. That the air rights located beyond 5.5 metres above Blocks 3 and 4, Plan 4M-921 be declared surplus to Regional needs;**
- 2. The granting of a lease for the air rights (above 5.5 metres) over Block 4, Plan 4M-921 to Penex Kanata Limited for a period of ninety-nine years at nominal consideration with the Penex having the option of renewing the lease for two, twenty-five year periods at fair market rent;**
- 3. That the Region grant to Penex Kanata Limited an option to acquire the air rights (above 5.5 metres) over Block 3 at fair market value with such price to be agreed upon between the Region/new City and Penex, or, in the absence of agreement, as determined by an arbitrator;**
- 4. That Penex shall have until the expiration of two years following the earlier of the completion of the construction of the Transitway station or the park and ride at the regional shopping centre site to exercise the option.**

BACKGROUND

Commencing with the earliest discussion of the detailed official policies for the Kanata Town Centre, the Region has supported a compact development form for the regional shopping centre. To encourage this development form, in their comments in 1993 on Kanata Official Plan Amendment No. 24, Regional staff recommended that policies be included in the amendment to permit development over the transitway and transitway platforms in order to promote a compact and intensive development form.

The 1997 Regional Official Plan similarly provides in Policy 3.2.12 that the Region shall:

...encourage the creation of a community core as a focal point for the new development or redevelopment area by:

- a) enabling the core to develop over time as a compact, mixed-use, pedestrian, cyclist and transit-friendly activity node;

Finally, Kanata Official Plan Amendment No. 51, approved in the context of the recent hearings on commercial policies in the City of Kanata permits development at the Regional Shopping City by way of an air rights agreement.

DISCUSSION

The Region acquired Block 4 on Plan 4M-921 in 1994 at a price of one dollar for transitway purposes through conditions of subdivision approval. Block 3 was also acquired in 1994 for a park and ride by purchase for a consideration of \$1,650,000. The terms of the acquisition of Block 4, as provided in the subdivision agreement, state that the "Region covenants and agrees to transfer the lands which are surplus to the transitway needs abutting Block 4 on the Plan of Subdivision to the Owner for nominal consideration." It is consistent with the terms of this subdivision agreement that the portion of Block 4 not required for Regional purposes, i.e. that above 5.5 metres, would be granted to Penex for nominal consideration.

With respect to Block 3, while the intensification of this site, allowing for a park and ride, is consistent with Regional and Kanata official plan policy, given that the Region paid the full market value for this site, it is the opinion of staff that it is necessary to ensure that the fair market value for the air rights over Block 3 is paid to the Region. While it has not been possible to date to reach agreement with Penex as to the value of the air rights, Penex has requested that some degree of certainty be provided that it will be able to acquire the air rights.

An approach that meets the objective of providing compensation at market value to the Region while also providing certainty to Penex is the granting of an option to purchase. Under this scenario, staff, with the concurrence of Council, would indicate the price at which the Region/new City was prepared to sell the air rights over Block 3. A period of negotiation would follow. In the event that an agreement with respect to price is not reached, the question of price would be referred to an arbitrator for a final decision.

To provide a time limit to the option, Penex would be given until the expiration of two years following the earlier of the completion of the construction of the transitway station or the park and ride at the regional shopping centre site to exercise the option.

PRINCIPLES OF AIR RIGHTS AGREEMENT

The air rights agreement provides that the interest leased to Penex Kanata shall be five and one-half metres above the highest point of the platform, the bus lanes or the park and ride area. The location of the highest point is of course not known at this time. Therefore, if prior to the construction of the transitway either the Region/new City of Ottawa or Penex wish to conclusively determine the point of commencement of the air rights, the agreement provides a process of negotiation by which the parties can agree as to the point or refer the matter to arbitration. In either event the agreement states that the location of the highest point of the platform, bus lanes and park and ride shall be based upon the approach a reasonably prudent engineer acting for a municipality would consider in designing a Transitway station and a park and ride at the locations contemplated.

Staff note that five and one-half metres would be sufficient clearance for light rail were it to be extended to this site.

NEW CITY OF OTTAWA

The encouragement of intensive development at the Kanata Regional Shopping Centre site is consistent with the official plans of the Region and the City of Kanata. The lease of air rights will therefore not have any negative impact on the new City.

OTTAWA TRANSITION BOARD

The air rights agreement and granting of the option will require the approval of the Ottawa Transition Board.

FINANCIAL IMPACT

Should the Region/new City of Ottawa wish to proceed with the determination of the precise location of the base of the air rights in advance of Penex, then it will incur minor costs (<\$10,000) in so doing.

Should Penex determine to exercise the option for the air rights over Block 3, such will represent a revenue to the new City. As described above, the amount of the revenue will be determined by agreement, or failing agreement, arbitration.

Approved by
E.A. Johnston

Approved by
N. Tunnacliffe, RPP, MCIP

EAJ/NT/TCM