

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON  
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT  
RAPPORT

Our File/N/Réf.           A.1.5.4.528  
Your File/V/Réf.

DATE                       6 October 1997

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

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

SUBJECT/OBJET           **REGIONAL DEVELOPMENT CHARGES - CONDITIONS OF  
DEVELOPMENT  
SOUTH KEYS SHOPPING CENTRE**

### **DEPARTMENTAL RECOMMENDATIONS**

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

- 1. An amount of \$310,421.51 be paid to the owners of the South Keys Shopping Centre (South Keys Shopping Centres Limited and 802700 Ontario Inc.) for the following:**
  - (a) retaining wall (\$155,078.63);**
  - (b) water and sanitary service to the South Keys Transit Station (\$28,085.30);**
  - (c) 60% of the cost of the pedestrian walkway from Bank Street to the South Keys Transit Station (\$89,145.09);**
  - (d) the costs for the oversizing of the storm sewer to accommodate the flows generated by the development of the South Keys Transit Station (\$38,112.49);**
- 2. The Region agree to delete the provisions attached as Annex A to this report from the Subdivision/Site Plan Agreement with owners of the South Keys Shopping Centre;**

3. **As a term of this settlement, the owners of the South Keys Shopping Centre abandon any claims under the *Development Charges Act*, sections 8 and 13 and that the owners abandon any claim to have any further modifications made to the subdivision/site plan agreements.**

### BACKGROUND

Prior to the construction of both the Southeast Transitway from Billings Bridge to Hunt Club and the South Keys Shopping Centre, the Region entered into negotiations with the then owner of the Shopping Centre, Camdev Properties Inc., for the acquisition by the Region of the lands for the Transitway and the development of the Transitway and the Shopping Centre. The result of these negotiations was the Transitway Agreement which was approved by Regional Council on 23 February 1994 (Executive Committee Report 103, Item 15).

In addition to providing for the conveyance of the lands needed for the Transitway to the Region for one dollar, the agreement contains the following provisions:

9. The Region represents and warrants to Camdev:
  - (a) that OC Transpo and the Region shall not impose any further land requirements against the Retained Lands [the lands retained for the Shopping Centre] or the owner thereof at any time in the future in connection with off or on-site works related to transitway whether as part of any draft subdivision plan approval or site plan approval or other development approval process of any kind, in any case in respect of all or any portion of the Retained Lands;
  - (b) that the Region shall bear all construction and any other costs associated with the Part 1 Lands [lands conveyed to the Region for the Transitway] now or in the future; and
  - (c) that the Region will facilitate and encourage at no cost to Camdev or any future owner of the Retained Lands, except as set out in subsection 9(a) above, the connection of the transitway to the shopping centre to be constructed on the Retained Lands.

Subsequent to the execution of the Transitway Agreement, the site was purchased by the present owners who proceeded with the process of obtaining subdivision and site plan approval. These negotiations resulted in two agreements which required the owners of the Shopping Centre to construct a number of works including the retaining wall, the water and sanitary services, the pedestrian walkway and the oversizing of the storm sewer.

It is the position of the owners of the Shopping Centre that pursuant to clause 9 of the Transitway Agreement the Region was precluded from requiring the owners to construct the above works. In addition, while the Transitway Agreement did permit the Region to utilise a portion of the lands owned by the Shopping Centre as load bearing soils for the Transitway, the owners of the

Shopping Centre have argued that the Region utilised more of their land for this purpose than permitted by the Transitway Agreement and that therefore they had to incur the cost of constructing a retaining wall in order for them to develop their site.

Finally, there were a number of other items for which the owners sought to receive a credit under the *Development Charges Act* as being works that they felt the Region was not properly entitled to as conditions of subdivision and site plan approval. These included, at an approximate total cost of \$340,000:

- Bank Street sidewalk along the frontage of the shopping centre,
- Bank Street bicycle lanes,
- Additional traffic lane, and
- Land for Bank Street Widening.

Notwithstanding these concerns, the owners did sign the subdivision/site plan agreements agreeing to perform these works. The explanation offered by the representatives of the owners for their having executed the agreements, despite their concerns as to the appropriateness of the Region imposing the conditions, is that there was a need to proceed quickly with the construction of the first phases of the Shopping Centre.

#### BANK STREET WIDENING/SAW MILL CREEK

One matter that was discussed in detail prior to the finalization of the subdivision/site plan agreements was the question of Saw Mill Creek. The conditions of subdivision and site plan approval required that the owners of the shopping centre bear the full cost of any modifications required to Saw Mill Creek as a result of the widening of Bank Street. While the owners were prepared to provide for a fish habitat compensation scheme, a possibility that they sought to avoid was a complete rechannelization of Saw Mill Creek which would cost approximately \$700,000. Regional staff worked with the owners to avoid the incurring of this cost in 1995 and through a minor reduction in lane widths were able to avoid the need to rechannel Saw Mill Creek. However, in the event that Bank Street is widened from four to six lanes the rechannelization will be necessary.

Bank Street, in the vicinity of the South Keys Shopping Centre is shown in the 1997 Regional Official Plan as having a width of 34 metre which suggests a four lane divided road. The Bank Street South Bridge north of the South Keys Shopping Centre, which also has a four lane cross-section, was rehabilitated in 1996. With the acquisition of the Airport Parkway as well as the priority assigned to widening other north-south roads such as Conroy and the construction of the Alta Vista Parkway, it is not anticipated that any widening of Bank Street in the location of the South Keys Shopping Centre will be needed within the time frame of the new Regional Official Plan (i.e. to 2021). In addition, if Bank Street is ever widened, it may be possible to minimize the impact on Saw Mill Creek through utilizing the lands on the east side of Bank Street.

DISCUSSION

Other than the works related to the Transitway, it is the opinion of staff that the costs for which the owners of the South Keys Shopping Centre are claiming reimbursement were properly imposed through the site plan and subdivision process in a manner similar to that for any other development. Therefore, for the non-Transitway related costs, (Bank Street sidewalk, bicycle lanes, additional traffic lane, land for widening) it is the opinion of staff that no credit should be offered.

However, with respect to the costs of the retaining wall, the services to the Transit Station, and the walkway, a strong argument can be made that the Transitway Agreement precluded, at least in part, the imposition of these costs on the South Keys Shopping Centre. The owners of the Shopping Centre have agreed that the Shopping Centre benefits in part from the pedestrian walkway by being prepared to accept 40% of the cost of the pedestrian walkway.

With respect to the question of the further widening of Bank Street and the possible rechannelization of Saw Mill Creek, given the cost of the rechannelization of Saw Mill Creek, the remoteness of the need to widen Bank Street and the possibility that the next twenty-four years may provide another means of dealing with the creek, it is the opinion of staff that it is a fair settlement of the disputes with the owners of the South Keys Shopping Centre over the cost of the works that they were required to perform by the Region to relieve them of the responsibility to any possible rechannelization of Saw Mill Creek as well as the provision of land at no cost for any future widening of Bank Street, in addition to the credit of \$310,421.51.

FINANCIAL STATEMENT

	\$
Approved Funding to Date	78,400,000
Total Paid and Committed	<u>(77,534,874)</u>
Balance Available	865,126
THIS REQUEST	<u>(310,422)</u>
Balance Remaining	<u>554,704</u>

Funds are available in the 1997 Capital Budget, Account No. 942-30611, Southeast Transitway - Billings Bridge to Hunt Club Road. (Reference page 377)

*Approved by  
N. Tunnacliffe  
Planning & Development  
Approvals Commissioner*

*Approved by  
J. Douglas Cameron  
Regional Solicitor*

*Approved by  
J.C. LeBelle  
Finance Commissioner  
& Treasurer*

FINANCE DEPARTMENT COMMENT

Funds are available as indicated.

*Approved by C. Colaiacovo  
on behalf of the Finance Commissioner*

NT/JDC/JCL/TCM

**ANNEX A****PROVISIONS TO BE DELETED IN BOLD****REGIONAL ROAD WIDENING**

8. (1) The Owner covenants and agrees to convey to the Region at no cost, an unencumbered road widening and 0.3 metre reserves except at the approved access locations, along the complete Bank Street Frontage of the subject lands, measuring 20 metres from the existing centreline of pavement of Bank Street, to the satisfaction of the Regional Transportation Commissioner. The conveyance for this road widening shall be effected within three (3) months of the issuance of the building permit by the Corporation of the City of Ottawa, or by August 31, 1995, whichever first occurs.

**Further, the Owner covenants and agrees to reserve an additional 4.0 metres along the Bank Street frontage of the subject lands, for possible future road widening, to be conveyed to the Region at no cost and free and clear of encumbrances, to accommodate auxiliary turning lanes providing access to the shopping centre. Until such time as the 4.0 metre additional lands are conveyed to the Region, the land may be used for parking or landscaping (excluding trees), providing that the Owner agrees that the Region shall be saved harmless for any costs or liabilities resulting from the Owner's use of the additional 4.0 metre lands.**

(2) The Owner covenants and agrees to prepare the Reference Plan required to accommodate the conveyance of the road widening, 0.3 metre reserve **and the additional 4.0 metres**, at its expense and to the satisfaction of the Regional Transportation Commissioner. The Reference Plan must be tied to the Horizontal Control Network in accordance with the Municipal requirements and guidelines for referencing legal surveys. This shall be to the satisfaction of the Regional Surveyor.

(3) **The Owner covenants and agrees that it shall be responsible now and in the future for the entire cost of the rehabilitation/modification to Sawmill Creek, resulting from the widening of the Bank Street right-of-way for the proposed development and during any phase of construction of the proposed development.**