

MEETING DATE: April 6, 2005

SUBJECT: 44 Jackes/33 Rosehill (Bretton Place) Lease Rent Renewal

RECOMMENDATION

1. It is recommended that the Commission approve the lease rent renewal as outlined in this report; and
2. Authorize staff to execute the necessary agreements to the satisfaction of the TTC's General Counsel.

FUNDING

Under the rent renewal schedule provided in this report the TTC will realize an increase in annual rent averaging more than 10 times the current annual rental for the next 26 year period, increasing the rent from \$23,112.25 per annum to an average of \$250,000 per annum, and a total rent over the 26 period of approximately \$6.5 million.

BACKGROUND

Pursuant to an agreement dated January 2, 1964 ("Lease") between the TTC, as landlord, and Karwood Realty Limited and San Salvador Investments Limited, as tenants, and Cadillac Contracting (1959) Limited and Dakota Developments Limited, as guarantors, the TTC leased the air-rights over certain lands above the Yonge Street Subway right of way between Jackes Avenue and Rosehill Avenue (see Appendix "A"). The initial 40 year Lease term expired on December 31, 2003. However, the Lease provides the tenants with two renewal options. The first renewal option is for an additional 26 year term and the second option is for an additional 33 years respectively.

The tenants subsequently constructed two residential complexes known as the Bretton Place Apartments on the lands, transferring the density associated with the TTC lands (163,238 square foot of density), to the development. The TTC lands are being utilized as amenity lands i.e. landscaping, surface and subsurface parking, roads etc.

By agreement dated November 11, 1995 the rights and obligations of the January 2, 1964 agreement were assigned to 3170497 Canada Inc. (Great West Life) ("GWL"). Prior to the expiration of the initial term of the Lease, GWL provided notice that it was exercising the first option to renew the Lease for an additional 26 year term.

The Lease requires that the terms and conditions of the renewal terms are to be similar to the existing Lease in all respects save and except for rent which is to be settled on the basis of a "Fair and Proper Sum".

DISCUSSION

Negotiations between the TTC, GWL in collaboration with the City of Toronto have been ongoing for several months. The main hurdle facing negotiations was the philosophical difference in the definition of "fair and proper sum" as required under the existing agreement.

There are two approaches or methodologies in analysing the value of land: the first is using the 'objective' approach that views the lands as vacant and free of any encumbrances. Under this approach the lands would be available for development in accordance with the highest and best use.

The second method is the ‘subjective’ approach, which considers all aspects of the site including its value in the open market and the existing uses and density available on the site.

The Yonge Eglinton Building Limited (YEBL) arbitration decision concluded that the proper approach in determining the “fair and proper sum” for an entirely commercial development was the subjective approach, an approach advocated by the TTC during the YEBL arbitration proceedings.

GWL and the TTC agreed to apply the subjective approach in determining the new rental rate for the subject lands. However, disagreement on what factors should be considered in determining the unit value of the land stalled negotiations.

In an effort to find a resolution the parties agreed to attend a non-binding mediation. Consequently, a mediation hearing was conducted on October 7, 2004 with the Honourable George W. Adams, Q.C. acting as mediator. GWL and the TTC both prepared independent appraisals for the mediation, however the parties were unable to resolve the rental issue. After the mediation, the parties continued to discuss the matter and exchanged proposals in an attempt to resolve the dispute.

Following extensive negotiations and taking into account the mediation efforts the following rental structure has been accepted in principle by GWL, TTC and City staff, subject to approval of GWL’s Board of Directors and the Commission.

Period (Years)	Annual Rent	Percentage Increase	Total Rent Over Period
1-5	\$185,000		\$925,000
6-10	\$211,825	14.5%	\$1,059,125
11-15	\$242,540	14.5%	\$1,212,700
16-20	\$277,708	14.5%	\$1,388,540
21-26	\$317,976	14.5%	\$1,907,856
		Total	\$6,493,221

GWL has also agreed that rent will be re-negotiated if at any time during the renewal term, GWL (or its assigns) makes an application to “condominiumize” the development, which application is approved by the City of Toronto(or another entity with jurisdiction).

JUSTIFICATION

The rental rates agreed upon are considered to be satisfactory given the principle of “fair and proper sum” and are similar to settlements reached on other TTC properties.

April 6, 2005

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