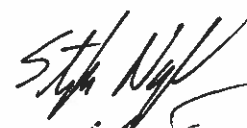


TO: GENERAL COMMITTEE


SUBJECT: COLLIER CENTRE – LEASE OF CITY RIGHT OF WAY FOR PRIVATE OUTDOOR PATIOS

WARD: WARD 2

PREPARED BY AND KEY CONTACT: J. FOSTER, BAA, RPP, MCIP
SENIOR DEVELOPMENT PLANNER, EXT 4517

SUBMITTED BY: S. NAYLOR, MES, M.C.I.P., R.P.P.
DIRECTOR OF PLANNING SERVICES 

GENERAL MANAGER APPROVAL: R. FORWARD, MBA, M.Sc., P. ENG.
GENERAL MANAGER OF INFRASTRUCTURE & GROWTH MANAGEMENT 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the Mayor and Clerk be authorized to enter into a lease agreement with the Mady Development Corporation for the construction, use and maintenance of City right of way on the east side of Mulcaster Street for proposed outdoor patios.
2. That the following be included as the terms and conditions of such lease:
 - a) That a total of 1,274 square feet (SF) of City land be leased as identified in Appendix "A" to Staff Report PLN-032-14;
 - b) That the lease rate be established at \$0.50/SF per month, subject to yearly increases and in accordance with the Consumer Price Index;
 - c) That the lands be leased for a term of 15 years;
 - d) That upon termination of the lease, Mady be responsible for reinstatement of the City right of way to the satisfaction of the City;
 - e) That Mady provide proof of liability insurance in the amount of a minimum of \$2M per occurrence, with a general aggregate of not less than \$5M, naming the City as additional insured;
 - f) That Mady be responsible for all maintenance (snow removal/annual general maintenance) of the City right of way on the east side of Mulcaster, between Worsley Street and Collier Street.
3. That By-law 2008-212, a by-law to regulate the clearing away and removal of snow and ice from the sidewalks in front of, alongside of, or at the rear of buildings or vacant lots in the downtown by the private business owners, be amended by adding "East side of Mulcaster Street, between Collier Street and Worsley Street" to Section 3.0.0.0.0 of the By-law entitled "Geographic Boundaries".

4. That the revenue be recognized as general tax revenue.

PURPOSE & BACKGROUND

Report Overview

5. The purpose of this staff report is to report on the proposed lease of a portion of City right of way on the east side of Mulcaster Street, between Collier and Worsley Streets, in order to facilitate private outdoor patios for restaurants associated with the Collier Centre development.
6. Mady Development Corporation is the owner of the Collier Centre. They wish to secure 3 patio areas for use by their restaurant tenants. In order to do so, Mady is proposing to lease a portion of the City right of way in order to construct permanent, year round patio space to be utilized by the restaurants.
7. Mady was successful in obtaining a minor variance (A36/11) from the Committee of Adjustment, on December 14, 2011, to allow for a reduced side yard on Mulcaster Street for the construction of the building to 0m lot line. The Committee of Adjustment granted a 3m variance that would allow the construction of the building to the property line on Mulcaster Street. In order to facilitate outdoor patio space for their restaurant tenants, the patios must be constructed on City lands given the 0m building setback.
8. The Collier Centre development received initial site plan approval, (File No. D11-1608) on October 30, 2012. Mady has applied for a site plan amendment (D11-1657) in order to include the outdoor patios on City lands. This staff report will establish the terms and conditions related to the lease of City lands, where such terms and conditions will be included in a lease agreement.

ANALYSIS

9. Mady has requested to enter into a lease arrangement with the City for a total outdoor patio area of 1,274 square feet (SF) which would facilitate use by 3 restaurants. The patios will be constructed by Mady utilizing retaining walls in order to raise the grade (given the grade of Mulcaster Street) for a level patio, with interlocking paving stone and decorative railing. See Appendix "A".
10. Because the proposed patios are of a more permanent nature than those of the downtown patio program, (where patios are constructed seasonally on the City sidewalk with the installation of temporary sidewalks) the proposed patio areas would remain year round. The proposed patios will not be constructed seasonally and will not impact the location of the municipal sidewalk.
11. Staff have conducted an evaluation of lease rates within the downtown for similar patio space areas. Lease rates range from the City's patio program at \$0.40/SF/month to \$0.60/SF/month for private outdoor space. Mady has requested that the lease be executed between the City and Mady and not with the individual tenants. This arrangement is preferred as the City will only need to deal with Mady regarding the lease agreement. The fee of \$0.50/SF/month, year round was agreed to. The area of the proposed patios is 1,274 square feet. At \$0.50/SF/month, Mady will be paying \$7,644 per year. This lease rate will be subject to increase and will be in accordance with the Consumer Price Index.
12. The term of the lease is proposed for 15 years. Upon expiration of the lease, the City and Mady will renegotiate the lease or terminate the lease. Should the lease be terminated, Mady will be responsible for reinstatement of the municipal right of way to the satisfaction of the City.

13. Mady will also provide liability insurance for the patio areas for a minimum of \$2M per occurrence with a general aggregate of not less than \$5M. The City of Barrie will be named as an additional insured on Mady's insurance.
14. Mady has proposed to be responsible for maintenance of the patio areas as well as the City right of way, including the sidewalk/boulevard and landscape material, year round, including winter maintenance. In accordance with By-law 2008-212, a by-law to regulate the clearing away and removal of snow and ice from the sidewalks in front of, alongside of, or at the rear of buildings or vacant lots in the downtown by the private business owners, Mady would be responsible for winter maintenance. As such, By-law 2008-212 will need to be amended to include the east side of Mulcaster Street, between Collier and Worsley Streets to be described within the "Geographic Boundary" section of this by-law.

ENVIRONMENTAL MATTERS

15. There are no environmental matters related to the recommendations.

ALTERNATIVES

16. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could choose not to lease the lands to Mady or choose to sell the land to Mady.

This alternative is not recommended as staff, at this time, cannot recommend the lands be deemed surplus to City needs. The patios can be constructed without impact to the City sidewalk area, thereby not impeding pedestrian movement. Through site plan approval, Mady has agreed to reinstate the City sidewalk with paving stone and install planters with trees to enhance the streetscape. Mady has advised that they are not interested in purchase of the lands, but rather lease of the lands. Outdoor patios are desirable in the downtown and the City will receive revenue for use of the City right of way.

Alternative #2

General Committee could alter the proposed recommendation by increasing or decreasing the lease rate or lease term.

Although this alternative is available, staff have undertaken research on lease rates. The proposed lease rate of \$0.50/SF is considered fair and reasonable. Mady has agreed to the lease rate. In order for Mady to attract and retain restaurants along the building fronting onto Mulcaster Street, they need to provide a more permanent and confident situation for their tenants and have requested a longer term lease of 15 years.

FINANCIAL

17. The lease rate for the Mady patios will generate revenue in the order of \$7,644 annually and \$114,660 over the term of the lease, subject to increase and in accordance with the Consumer Price Index (CPI).

- 18.
19. At this time staff are recommending that the revenue collected from Mady for the patio space be received as general tax revenue.
20. Consideration is currently being given to allocating all outdoor patio revenue to support Community Improvement Plan programs, however, this would have the impact of re-directing revenue received for the downtown outdoor patios from the Parking Reserve. Work is currently underway on making recommendations for revisions to the City's Community Improvement Plans. In order to provide additional time for work to develop on both the Community Improvement Plans and establishing a self-sustainable Parking Operation, recommendations with respect to the allocate of outdoor patios will be made at a later date.

LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

21. The recommendations included in this Staff Report support the following goals identified in the 2010-2014 City Council Strategic Plan:
 - Create a Vibrant and Healthy City Centre
22. The outdoor patio program has been increasingly successful over the few years since its initiation, assisting in revitalization of the City core, attracting residents and visitors and beautification of the core through implementation of patio furniture, street furniture and plants and flowers. Revenue generated from this program can continue beautification efforts through façade treatments and redevelopment or reuse of existing building stock.
23. Outdoor patios promote a more pedestrian oriented atmosphere. Mady is proposing to make an investment in the downtown that will enhance the public realm and provide a positive benefit to the community. Mady has proposed appealing construction material for the patios which include decorative fencing and paving stone, making them aesthetically pleasing in the downtown streetscape.

Attachment: Appendix "A" – Collier Centre Outdoor Patio Location and Elevation Drawing

APPENDIX "A"

Collier Centre Outdoor Patio Location and Design

