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**TO:** GENERAL COMMITTEE

**SUBJECT:** WAIVER OF THE CITY'S RIGHTS TO REPURCHASE – RAWSON AVENUE

**WARD:** 8

**PREPARED BY AND KEY CONTACT:** P. DYCK, BUSINESS DEVELOPMENT OFFICER, EXT. 5228

**SUBMITTED BY:** S. SCHLICHTER, DIRECTOR OF ECONOMIC AND CREATIVE DEVELOPMENT

**GENERAL MANAGER APPROVAL:** A. MILLER, RRP, GENERAL MANAGER OF INFRASTRUCTURE AND GROWTH MANAGEMENT

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

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**RECOMMENDED MOTION**

1. That the City of Barrie waive its right to purchase back Lots 69, 70, 71 Plan 51M379 (the "Property") and discharge the Development Agreement registered on title and dated June 1, 2017 (the "Development Agreement").
2. That staff in the Economic and Creative Development Department be authorized to negotiate an agreement pertaining to the waiver and discharge of the Development Agreement for the Property, with 1634567 Ontario Inc. the current landowner, on the following terms and conditions:
  - a) The City's compensation for the waiver and discharge will be 50% of the net profit achieved by 1634567 Ontario Inc. upon the sale of the Property, as calculated per the costs set out in the Development Agreement between 1634567 Ontario Inc. and the City; and
  - b) Transfer of the funds to the City is to coincide with the closing of the sale of the lands from 1634567 Ontario Inc to a new Buyer, and concurrently upon the City lifting its encumbrances along with the Development Agreement currently on title.
3. That the City Clerk be authorized to execute the waiver, discharge and associated agreement and any required relevant documentation in a form satisfactory to the Director of Economic and Creative Development and the Director of Legal Services.
4. That the funds received by the City be allocated to the Industrial Land Reserve, with the intent of supporting municipal capital projects related to employment lands in the City of Barrie.

**PURPOSE & BACKGROUND**

Report Overview

5. The purpose of this Staff Report is to seek Council's approval to waive the City's right to repurchase the industrial Property known municipally as 24, 28 and 32 Rawson Ave, to discharge the current Development Agreement with the owner, and to enter into an agreement whereby the City is reimbursed for releasing the encumbrances due to the owner's failure to live up to the covenants noted in the Development Agreement between the two parties, and the related appreciated land value.

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6. Further, the report establishes the conditions under which the City would remove its covenants, such that a sale of the Property can be completed regardless, at a future date, should the current proposed buyer not proceed with the purchase.
  7. On November 12<sup>th</sup>, 2020 the City received notification from Panels indicating it had found a buyer for the Property and had entered a conditional agreement which must receive the City's approval within 45 days (December 26<sup>th</sup>). As such, Panels sought a formal response from the City as to whether it would approve the sale between Panels and the new buyer.
  8. Given the complexity of the proposed arrangement between all parties, staff requested that Panels extend their agreement with the buyer, allowing the City until January 18<sup>th</sup>, 2021 to review the proposal. As of December 4<sup>th</sup>, Panels and the buyer amended their purchase agreement whereby the conditional period was extended to January 25<sup>th</sup>.
  9. The sale of previous City owned industrial land was sold to 1634567 Ontario Inc. for \$525,000 and was adopted by Council via motion 16-G-144. The relevant points of the motion are as follows:
    - a) The Purchaser agrees that it is purchasing the property in its present condition "as is" and further acknowledges and agrees that it will conduct such tests as it deems necessary to determine to its satisfaction, that the soil conditions for the property are satisfactory to support the development and construction of the building and other structures contemplated for its proposed use of the property;
    - b) The Purchaser also acknowledges that in the event it attempts to sell the Lands without having constructed an industrial building, the City shall have the option to repurchase the Property at 90% of the original sale price;
    - c) The Purchaser agrees that it will within 18 (eighteen) months from the date of the purchase, start construction of an industrial building and complete construction within one year;
    - d) That a Deeming by-law be passed to merge all the lots of the Property as one lot for the purposes of development.
  10. The purchase agreement between the City and Panels and the subsequent Development Agreement provide additional detail regarding the legal requirements and encumbrances between the two parties. Although the City has the option to repurchase the property at 90% of the original purchase price, the City must also include soft costs incurred by Panels. The soft costs include, but are not limited to, legal fees, environmental & engineering fees for reports, and permit fees.
  11. The City entered into an agreement of purchase and sale with RW Framing Inc. in June 2016. RW Framing subsequently created a company called Panels (Panels.ca) which is a new company that currently operates a modular construction framing business primarily for new home construction. The intended use of the Barrie lands was for the company to construct a new manufacturing facility where the modular framing components would be assembled and subsequently shipped to various destinations for installation. RW Framing transferred its interest in the Property to 1634567 Ontario Inc. upon closing of the sale.
  12. The Property is located on the north end of Rawson Avenue in the City's South Barrie Industrial Park (SBIP). The Property consisted of 3 lots totalling 4.2 acres. The City sold the lots for \$125,000 per acre for a total purchase price of \$525,000.
  13. The City of Barrie entered into a Development Agreement dated June 1, 2017 which set out the specifics for which the company was to develop the Property.

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14. Panels intended initially to construct a 20,000 sq.ft. facility and employ approximately 14-20 staff which was to include general labourers, administrative and engineering staff. They intended to have their products shipped throughout GTA and the Barrie markets.
  15. The former City owned industrial lots along Rawson Avenue are serviced with water & sewer however the lots are not considered 'development ready' as the lots are not graded and have no drainage infrastructure. The valuation of the lots reflected the site deficiencies, and it was the buyer's responsibility to undertake the necessary construction requirements. Due to the additional engineering requirements Panels was also provided up to 18 months to begin construction over the usual 12 months as per the City's standard sale agreements. The lots are further bounded by the City's rail line along the westerly limit.
  16. In October of 2016 an amendment was made to the purchase agreement which saw the closing date for the purchase extended to June 1, 2017. On June 19<sup>th</sup>, 2017 the City enacted deeming bylaw 2017-063 which saw the three lots 'deemed not to be lots on a Registered Plan of Subdivision for the purposes of Section 50(3) of the Planning Act'. This was a requirement of the purchase agreement and the three lots are now considered to be a single lot.
  17. Panels faced delays completing its environmental and engineering reports and delivering an adequate design. The company did receive a conditional building permit for footings & foundation in November 2017. By October 2018, the City received notification that Panels had withdrawn its original building permit for a 47,791 sq.ft. facility and intended on substantially reducing the building footprint to approximately 14,000 sq.ft.
  18. Up until August 2019 staff continued to receive communication from the company that it intended to move forward and was awaiting completion of various reports and engineering plans. However, in October 2019 the City was verbally informed that Panels was looking to sell the Property citing reduced demand in new home construction and the rising cost of the project no longer made the project feasible for their development.
  19. Panels was informed that both the Purchase and Development Agreements did not allow it to outright sell the property without first having developed it or offering it back to the City under the terms of the agreement. The terms of the buy-back are as noted:
    - a) The owner of the lands was to begin construction on the Property within 18 months from the date of transfer of the lands and must further complete such construction within 1 year.
    - b) Unless the covenant to complete construction on the Property is satisfied, the owner may not sell the lands, or any part thereof, without first offering the Property to the City of Barrie at a price equal to 90% of the original purchase price, plus all soft costs including consultant fees, plans, surveys, engineering costs, legal fees etc. and must be free from all encumbrances.
    - c) The City shall have 90 days from receipt of an offer made by the owner to accept such an offer, failing which the City's option to repurchase the Property shall terminate.

However if it could be demonstrated that the City would benefit economically from a new buyer, the City might consider waiving its rights to repurchase the Property. Over the following year, Panels subsequently pursued opportunities to sell the Property on the open market.

20. Over that time period, industrial land values had been steadily increasing and Staff estimated the City could potentially resell the lands for a net return in the range of \$400,000 - \$500,000. If Panels wished for the City's support in allowing it to sell the Property, then the City would also be entitled to a portion of the profits from the land sale. If this approach was acceptable to Panels, and upon verification of the soft costs, staff would be willing to bring this scenario forward for Council's review and consideration.
21. Given the failure of Panels to meet the requirements to build, and also given the current market conditions, Panels stood to make a considerable return on its purchase, which would otherwise be seen as 'flipping' the Property which went against the original intent of the land sale, which is to encourage development, business attraction and job creation.
22. Panels has been operating in good faith and has invested a considerable amount of time, resources and money into the project. Expenses received to date by the City indicate Panels has spent \$494,961 on the project – excluding the cost of the land. Offering the Property back to the City at 90% of the original purchase price (plus soft costs) would have resulted in a loss to the company. These costs, along with the original purchase price for the Property would have been as follows:

Permits	\$22,094
Land Survey	\$6,570
Building (Steel Costs)	\$262,000
Engineering	\$84,275
Contractors (land prep)	\$30,000
Legal	\$2,692
Environmental	\$45,227
Financing	\$15,585
Property Taxes	\$26,517
Sub Total	\$494,961
Land Purchase	\$525,000
Total Land & Other Costs	\$1,019,961

23. The Development Agreement with the City stipulates any repurchase of the Property must include 90% of the original purchase price and the associated soft costs to develop the land. This would have excluded the above noted Building (steel costs) of \$262,000. The soft costs would therefore total \$232,961 (the sub total of \$494,961 - \$262,000) plus the cost of the land at \$472,500 (90% of \$525,000). The total amount the City would be required to pay Panels, should it wish to purchase the Property would be \$705,461. To date, Panels has invested a total of \$1,019,961 in both land, hard and soft costs. Any acquisition by the City as specifically set out in the Development Agreement would result in a loss of \$-314,501 for Panels.
24. The impact of the COVID-19 Pandemic had a severe impact on the first half of 2020. Both parties remained in contact throughout this time although it was unclear during the early stages of COVID-19 what the impact might be. However, as the months passed it became evident the industrial land sector was very resilient and was experiencing increases in both demand and sale price.

25. Staff have acquired a copy of the purchase agreement between Panels and the new buyer. The buyer is noted as a numbered company; 11447556 Canada Inc., which is held by TFI International. TFI is a large international transportation and logistics company with over 16,000 employees and is based out of Montreal. It is publicly traded on both the Toronto and New York Stock Exchanges. (TFII)
26. Staff have connected with TFI in order to obtain information regarding their proposed new location in Barrie. Response from TFI has been very positive. They intend on a spring/summer construction start date for a new facility which will house their package and courier businesses. The new facility is to consist of a 43,800 sq.ft. building with both office and warehousing space. Employment complement is to be approximately 89 employees plus owner operators.

**ANALYSIS**

27. The current situation arose as a result of various economic factors impacting the ability of Panels to fulfil its business objectives and in turn it was not able to meet its obligations with the City as set out in the Development Agreement.
28. The agreement between Panels and the new buyer stipulates a purchase price for the Property of \$2,113,750 and makes allowances for the buyer to assume the studies, assessments, engineering documents and the steel contract already purchased for the planned development of the site. Based on the sale price, less its investment into the Property, Panels stands to make a profit of \$1,093,789 (new sale price 2,113,750 - \$1,019,961 costs). There would be additional legal fees and commission costs associated with the sale, which Panels would be assuming.
29. The buyer intends on closing the purchase within 14 days following waiver of its due diligence/conditional requirements. The purchase agreement indicates the buyer is aware of the current deeming bylaw which has merged the lots into one parcel. The purchase agreement also stipulates the property is to be free of any encumbrances (such as the Development Agreement) but otherwise recognizes the Deeming Bylaw. One of the noted conditions is the approval by the City of the purchase agreement between the two parties.
30. The purchase price of \$2,113,750 as negotiated by Panels equates to \$503,273 per acre, which is a significant increase from the \$125,000 per acre it negotiated with the City in 2016. However as indicated, vacant industrial land has seen a surge in demand and pricing, in part due to the lack of available inventory. Current asking prices for vacant industrial land vary considerably depending on the location, available services, condition of land (e.g. grading, geotechnical, etc). Below are some examples of current listings along with one recently sold parcel:

Location / acreage	For Sale or Sold	Per acre Price
72 King Street / 1.93 acres	For Sale: City owned industrial land recently listed for sale	\$601,638 / acre asking (\$1,175,000 total asking price)
40 Saunders Rd / 3.74 acres	For Sale: Long time listing along highway 400, with small obsolete building	\$854,278 / acre asking (\$3,195,000 total asking price)
53 Morrow Rd / 2.31 acres	For Sale: Vacant lot near Hwy 400	\$606,060 / acre asking (\$1,400,000 total asking price)
1 Big Bay Pt / 35 acres	Sold: (May 2020): Former Molson's property.	\$299,968 / acre (\$10,528,896 sale price)

31. The above comparables show properties that are similar in zoning and use, but superior to 28 Rawson. For example, the City owned industrial parcel currently for sale at 72 King Street, is flat, fully serviced and located in a desirable industrial park. The Rawson lands have several development constraints that will need to be addressed by any future owner, such as grading, tree clearing, drainage, and a potential retaining wall abutting the adjacent rail lands at the rear - to name a few.
32. The purchase price between Panels and TFI does include the engineering reports, environmental studies and other items invested by Panels. However, during informal discussions with TFI staff have been informed that TFI will not acquire the steel contract available through Panels as their building design will differ from that originally designed by Panels.
33. The City has the right to repurchase the property at 90% of the original purchase price, plus the associated soft costs which Panels has invested in the Property. This is predicated by the legal requirement that Panels must first 'offer' to sell the Property back to the City after which the City has 90 days to accept. Panels has not done this and has instead requested the City waive its conditions as set out in the Development Agreement. Also, given that Panels has not fulfilled its requirement to build on the site within 18 months from the sale closing date, the City may need to consider legal action if it wants Panels to fulfil its obligations or alternatively sell the Property back to the City.
34. Under the re-purchase conditions set out in the Development Agreement, the purchase price including soft costs would equate to a payment of approximately \$705,461 or \$167,966 per acre. Given the current demand for industrial land it may be possible for the City to sell the Property for roughly \$350,000 to \$450,000 per acre – this valuation would need to be confirmed by a professional appraiser.
35. Assuming the City were to sell the lands using an average selling price of \$400,000 per acre the City could see a total sale value of \$1,680,000. The net return on this would then be \$974,539 (buy back at \$705,461 and sell for \$1,680,000). The return per acre on the \$974,539 would be \$229,652 which is marginally higher than what the City would have paid to Panels to re-acquire the land. Not included in this are costs the City must bear such as the appraisal and commission costs to sell the lands as this will also affect the net price the City receives.
36. Other costs associated with the City buying back the property to re-sell, is lost tax revenue from the duration of time the City were to retain the property and staff time associated with re-marketing and negotiating a sale for the property, in addition to legal and commission costs.
37. If Council accepted the request by Panels to sell the lands to another buyer, it would be the City's position that its compensation due to the increase in value of the Property should equate to 50% of the net profit, based on the requirements of the Development Agreement. Namely, 90% of the original purchase price and the relevant soft costs, but excluding the contract costs for the steel.
38. TFI and Panels have negotiated the purchase price to include all reports and contracts, and may fluctuate based on their due-diligence findings. The City itself is in no position to utilize the steel contract and as per the Development Agreement is only obligated to base its financial calculations on the Development Agreement. The recommended compensation structure of 50% of the net profit – based on the current purchase price and soft costs - will mean a split on the net profit of \$1,408,289 whereby the City would receive \$705,144.

Costs Per Development Agreement	Fee structure
Purchase Price of Property (between Panels & new buyer)	\$2,113,750

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Less: City's Costs per Development Agreement	\$705,461
Subtotal (Net Profit)	\$1,408,289
City Receives 50% of Net Profit	\$704,144

39. It is the recommendation of this report that the City attempt to negotiate an agreement with Panels (1634567 Ontario Inc.) which would allow Panels to sell the Property to a buyer (as per their current agreement or with a future buyer) but which would also see the City apply the costs as set out in the Development Agreement, and as further depicted in the table above (the soft costs and 90% of land purchase price), and subsequently release the Development Agreement from title once it receives 50% of the net proceeds for the sale of the Property.
40. In reviewing the financial considerations with Panels, their management has expressed a strong preference to deduct the steel costs from the financial equation. This would lower the net profit by \$262,000 to \$1,146,289 and would result in both Panels and the City each receiving \$573,145. Panels has further indicated that if the recommended motion and calculations are approved, whereby the City receives \$704,144, it would be Panels probable course of action to retain the property and attempt to build on the Property.

**ENVIRONMENTAL AND CLIMATE CHANGE IMPACT MATTERS**

41. There are no environmental matters and/or climate change impact matters related to the recommendation. Any environmental investigations and reports are the responsibility as negotiated between Panels and the new buyer.

**ALTERNATIVES**

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

**Alternative #1**

General Committee could alter the proposed recommendation and direct staff to utilize the preferred calculation method by Panels, whereby the steel costs of \$262,000 are deducted from the profit. This affects the net return, resulting in a reduction in the compensation to the City and an increase to Panels; effectively each party would, subject to verification, receive approximately \$573,145.

While this alternative is an option it is not recommended as both the City and Panels obligations are clearly defined in both the Purchase Agreement and Development Agreement. Panels has not been able to live up to these obligations and given the amount of support Panels has received from the City since 2016, and the increase in industrial property values, the recommended calculation method and compensation, is reasonable to both parties.

**Alternative #2**

General Committee could refuse the request by Panels (1634567 Ontario Inc.) to have the City waive its conditions as set out in the Development Agreement, and instead direct staff to investigate legal measures which would allow it to repurchase the Property at 90% of the original purchase price plus soft costs.

While this alternative is an option, it is not recommended at this point in time. The Industrial Land Reserve does not have adequate funds to support a re-purchase of the Property and the City would need to identify a funding source for the amount of \$705,461 in order to buy back the Property in addition to legal fees and transfer costs. There is also no guarantee that should the City buy-back the Property, it would be in a position to sell the lands and earn a similar amount to what has been negotiated with the Panels company.

Additional staff time, costs associated with a new appraisal and attempting to negotiate a new agreement may result in losing the existing buyer.

The City will also need to legally enforce its Development Agreement which could result in additional legal fees associated with potential, litigation.

**FINANCIAL**

43. Any potential revenues associated with this report have not been included in the 2020 Business Plan. Should Panels management agree to the terms as noted herein, the revenue would be net new dollars for the City that can be applied to other municipal projects that could advance employment opportunities. Once the costs from Panels have been substantiated, the City could possibly receive an estimated \$704,144. This is in addition to the \$525,000 the City earned from its sale to Panels in 2016, for a total of \$1,229,144.
44. Although staff are in receipt of the purchase agreement between Panels and TFI, the conditions and requirements are a private matter between the two parties. Further adjustments to the final sale price could result as a matter of their due diligence process.



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**LINKAGE TO 2018–2022 STRATEGIC PLAN**

45. The recommendation included in this Staff Report support the following goals identified in the 2018-2022 Strategic Plan:
- Growing Our Economy
46. This staff report links to the strategic plan as it focuses on growing our economy and supporting businesses, particularly during the current economic strains of COVID-19. The motion and report focuses on providing an opportunity for Panels to overcome a possible operational deficit by entering into an agreement with the City of Barrie and the end-user TFI International.

APPENDIX "A"

Aerial: 29 Rawson Avenue

