

**AFFECTS  
WARD 3**

**CITY OF HAMILTON**

**PLANNING AND DEVELOPMENT DEPARTMENT  
Development and Real Estate Division**

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|  <b>Report to:</b> Mayor and Members<br>Committee of the Whole |  <b>Submitted by:</b> Lee Ann Coveyduck<br>General Manager    |
|  <b>Date:</b> September 26, 2003                               |  <b>Prepared by:</b> Bill Farkas<br>(905) 546-2424, Ext. 7019 |

 **SUBJECT:** Sale of City Owned Property - 286 Sanford Avenue North to W. J. Hughes, In Trust for a Company to be Incorporated. Reference - Referred from COW on January 7, 2003 (PD03264) (Ward 3)

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 **COMMENDATION:**

- (a) That an Offer to Purchase, executed by William J. Hughes, scheduled to close on or before January 8, 2004 for the property municipally known as 286 Sanford Avenue North, composed of Part of Lots 13, 15 & 30; All of Lots 14, 28 & 29; Part of the Alley lying between Lots 15 & 28, Closed by By-law 535 and Part of the Alley lying between Lots 13, 14, 29 & 30, Closed by Order Instrument 298258 HAM, Registered Plan 167, being described as Part 1 on Deposited Plan 62R-9241, saving and excepting Part 1 on Deposited Plan 62R-16213, in the City of Hamilton, be approved and completed and that the funds derived from this sale of \$200,000, subject to adjustments be credited to account 47702-3560150100 (Land Sales);
- (b) That the General Manager of Corporate Services hold the deposit cheque, in the amount of \$20,000, until the closing of this transaction;
- (c) That upon successful completion of the sale, a real estate commission of \$12,000 plus GST (6% of the \$200,000 sale price) be paid to Star Real Estate Limited (Sale Representative David G. Field), who acted in this matter;
- (d) That the completion of this transaction be subject to the following conditions:
  - (i) The Vendor entering into an Encroachment Agreement with the Traffic Engineering and Operations Section, Public Works Department of the City of Hamilton, for that portion of the road allowance lying under the existing building, as depicted on Plan 62R-9241. The Offer/associated covenants and

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Agreement are to be finalized and registered contemporaneously with each other.

- (ii) The Vendor entering into a Heritage Easement Agreement with the Heritage & Urban Design Section, Planning and Development Department of the City of Hamilton, to conserve the present historical, architectural, aesthetic and scenic character of the building on the real property. The Offer/associated covenants and Agreement are to be finalized and registered contemporaneously with each other;
  - (iii) The Vendor covenants and agrees that it will apply for a building permit for the purpose of developing the site within six months after completion of the transaction and the Vendor will complete the development within 24 months of the completion of this transaction.
- (e) That the Mayor and Municipal Clerk be authorized and directed to execute and issue a Certificate of Compliance, in the form prescribed pursuant to Section 193 of the Municipal Act, incorporating the following:
- (i) The property was declared surplus by resolution of the City Council on February 13, 2002 by adopting Item #3, of Report 02-005 of the Committee of the Whole.
  - (ii) That in accordance with the approved method of the Notice to the Public in Real Property Sales Procedural By-law No. 95-049, the property was listed with a licensed real estate broker, Star Real Estate Limited, and offered for sale to the public.
  - (iii) An appraisal of the fair market value of the real property to be sold was obtained on January 25, 2002 and August 5, 2003.
- (f) That the Item # 4.3, Report 03-001 (286 Sanford Avenue North) deferred from Committee of the Whole on January 7, 2003, be identified and removed from the outstanding business list.
- (g) That the net proceeds of the sale be used first to help offset any shortfall in achieving the \$1,000,000 program reduction to realize operating cost reductions and if not required, be contributed to the Reserve for Property Purchases.

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Lee Ann Coveyduck  
General Manager  
Planning and Development Department

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**EXECUTIVE SUMMARY:**

This report is to provide direction to staff to complete the sales transaction with William J. Hughes, subject to the City's conditions, as stipulated in the Offer to Purchase.

**BACKGROUND:**

The information/recommendations contained within this report primarily affect Ward 3.

Effective January 1, 1995, the Municipal Act was amended by Bill 163, requiring municipalities to enact a By-law to establish procedures for the sale of real property owned by a municipality.

In accordance with Item 21 of Report 01-029 of the Committee of the Whole, approved by City Council on September 18, 2001 approving the Consolidation of Routine Real Estate Matters that authority to approve the disposition of land or any interest in land (except for a leasehold interest) be delegated to the City Manager, General Manager of the relevant department or their designates within the limits set out and subject to the following:

- “(3) The disposition price shall be at or above fair market value;
- (4) Fair market value shall be determined by appraisal (in-house, outside, verbal or written);
- (5) Disposition value shall not exceed:
  - (i) \$60,000 for the General Manager or designate;
  - (ii) \$150,000 for the City Manager or designate.”

As the Offer to Purchase price exceeds the limit as set out above, Council's approval is, therefore, sought to complete this transaction.

The City, as a result of tax arrears in the amount of \$359,275.45, acquired the subject property. Notice of Vesting to the City was registered on August 1, 2001 as Instrument Number VE 48827.

Located in the Gibson Neighbourhood at the southeast corner of Sanford Avenue North and Myler Street, the lot has dimensions of approximately 36.08 meters by 64.47 meters (118.37 ft. x 211.5 ft.) and a site area of approximately 0.279 hectares (0.69 acres). The building is an abandoned 7-storey, 6224 square meter (67,000 sq. ft.) steel frame and brick office building, circa 1917, formerly occupied by Westinghouse Canada. Current zoning is K-Heavy Industrial, Official Plan Designation Industrial (Special Policy Area II) allows light industrial as well as heavy industrial uses under the Zoning By-law.

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The structure is designated as a heritage building and is regarded as being in poor condition.

The southern portion of the subject property is currently leased by the City to Siemens Westinghouse for parking purposes. The lease provides a monthly payment to the City and will continue on a month-to-month basis until such time as the subject property is required for municipal purposes or sold. Upon acceptance of this transaction, notice will be provided to Siemens Westinghouse pursuant to the terms and conditions of the agreement to cancel and/or have the lease assigned to the prospective purchaser. With respect to this issue, staff on August 26, 2003 has been notified by Siemens Westinghouse that they will be vacating the premises as of September 30, 2003.

The former Corporation of the City of Hamilton had enacted By-law No. 88-202 designating the lands at 286 Sanford Avenue North as a property of Historical and Architectural Value and Interest. A copy of this By-law was registered against the subject property on September 16, 1988 as Instrument Number 475280 C.D.

Vanguard Pacific Technologies Ltd. carried out a Facility Condition Assessment for this property. Based on their review and that of other experts in the various fields, their estimated cost to bring this facility back to today standards is approximately \$5,981,000.

The subject property was listed for sale with Star Realty on September 6, 2002. The City had received an offer for the property and a report was prepared and presented to the Committee of the Whole for acceptance. Committee of the Whole on January 7, 2003 tabled Item # 4.3, Report 03-001. After numerous extensions to the irrevocable date and closing date, on April 9, 2003 notification was received from the prospective purchaser stating that they were no longer in agreement to providing further extensions to the Offer and subsequently, withdrew their offer for 286 Sanford.

As a result of the previous offer being withdrawn, the subject property was re-listed for sale with Star Realty on August 5, 2003, one of several realtors that have been approved to act on behalf of the City through a bidding process to provide municipal real estate services. The asking price was \$189,900 for the subject property.

As of September 15, 2003, Staff had received two (2) offers on the subject property thereby, creating a multiple offer situation. Each party was requested to sign a letter of "Acknowledgement" that they had been advised that there were multiple offers on the subject property and that they were making their best offer on that basis. Of the two parties, only one party signed the acknowledgement, that being William J. Hughes. Two Offers were received, in the amount of \$150,000 and \$200,000, respectively.

Based on the submitted offers, Staff recommends that the lands be sold to the highest offer, being William J. Hughes. It is further noted that the sale price is well above the range of value, as determined by the appraisal of the subject's fair market value. It is further recommended that the cost incurred by Public Works Department, Facility

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Operation Section, for the preparation of the Facility Condition Assessment report and Asbestos consulting services be re-covered through the sale of the subject property.

It is also our understanding that the prospective purchaser's intention is to utilize the property for document storage. The building will be upgraded to meet the needs and provide a proper business environment.

 **ANALYSIS OF ALTERNATIVES:**

If Council does not recommend the approval of the sale, the current Offer to Purchase will become null and void.

As the building has sat vacant for a number of years, and if Council does not recommend the approval of the sale of this historical building, funding must then be allocated through the City's capital budget to maintain this vacant building on an interim basis, until such time as the property is sold. Further, as no alternative municipal use had been identified for the subject property, which is due in part to the high cost of renovations and lack of parking, the economic spin off through the sale of the subject property will reduce operational costs to the City of Hamilton from a maintenance standpoint. The sale of the subject land will eliminate the financial burden on the City for the costs and liability associated with owning this property and would generate tax revenue, in the amount of approximately \$48,000 per year. The sale of the subject property will allow the re-adaptive use and preservation of the historical structure.

 **FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial**

If this recommendation is approved, staff will take the necessary steps to have this transaction finalized.

It should be noted that the sale of the subject property will result in realizing revenue collected from taxes subsequent to the sale and re-development which would otherwise have not been received if the property had of stayed in Municipal ownership. The new tax revenue should be considered, if required, during the 2004 budget process in order to help achieve the \$1 million in operating savings that is to come out of the base budget.

**Staffing**

No municipal need has been expressed to retain the subject property.

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**Legal Implications**

Registering a Heritage Easement and Encroachment Agreement against the property will be completed and registered contemporaneously of each other.

Legal Services will be required to assist in the preparation of the necessary documents required to complete the recommendation set out herein.

**POLICIES AFFECTING PROPOSAL:**

City Council on January 9, 2001, approved Item 1.2 of the Committee of the Whole establishing Policy for the sale of Municipally Owned Real Estate. Schedule "A" – Policy for the Sale of Municipally Owned Real Estate states in part:

- “(3) Surplus lands shall be sold by one of three methods as appropriate in the discretion of the Real Estate section: 1) Tender Call 2) Open Market - marketed and negotiated directly by staff or 3) Brokered – marketed by approved independent real estate brokers.
- (4) With the exception of properties that are sold by tender, when property is initially put on the market for sale, a minimum period of time shall be specified during which the municipality will be open to accept all Offers to Purchase, such time to be no less than ten (10) days.....”

As a condition of the Sales Listing Agreement with Star Real Estate Limited, the following notation was made; “that the listing of the subject property must be on the open market a minimum of fourteen (14) days before any offer will be considered by the City of Hamilton”.

In accordance with Item 21 of Report 01-029 of the Committee of the Whole, approved by City Council on September 18, 2001, approving the Consolidation of Routine Real Estate Matters that authority to approve the disposition of land or any interest in land (except for a leasehold interest) be delegated to the City Manager, General Manager of the relevant department or their designates within the limits set out and subject to the following:

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As the purchase price exceeds the limits as set out above, Council's approval is, therefore, required.

**CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:**

Various City Departments, School Boards, Hospital Boards, McMaster University, Mohawk College and the Province of Ontario have been notified of the surplus status of the subject property and none have shown interest or objected to the sale. Comments received by City Departments include:

Planning and Development:

The subject property is designated "Industrial" by the City of Hamilton Official Plan-Schedule A. The City of Hamilton Zoning By-law identifies the property a "K" (Heavy Industrial).

The property was subject to an OMB Hearing for a proposed high-density residential development in the early 1990's, including redesignating the site in the Gibson Neighbourhood plan to "Medium Density Apartments". However, due to higher than desired density and noise concerns, it was denied By the Board.

Public Works:

The City retaining sufficient lands to construct a standard radius curve at the intersection of Myler and Sanford Avenue. (minimum 2m x 3m)

According to the plans submitted there appears to be a number of building encroachments within the adjacent road allowances and agreements should be retained with the City for any encroachments within the road allowance with the purchaser(s).

Heritage & Urban Design:

In order to appropriately conserve and manage a City owned heritage asset that is now proposed for sale, heritage staff recommends that, in this specific case, that a Heritage Easement be negotiated as a condition of sale.

Public Health & Community Services:

Consideration had been given to this location for office space, however, due to the high cost which would have exceeded the estimated value of \$5,981,000 as established by the consultant and the lack of parking, it was determined that the re-utilization of this building was economically unfeasible.

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Staff had also looked at other alternatives and, in particular, the conversion of the building into residential dwelling units. As the property was subject to a previous Ontario Municipal Board decision of April 29, 1991, denied the proposed residential use. Due to the Board's decision, it was felt that any application to re-introduce a residential re-development on this site might be unsuccessful. Enquiries were made with the firm that had originally lodged the objection to the Board. They were non-committal to providing staff with a response as to their position relative to a new application being made to pursue the re-designation of the site for residential use. Therefore, it was felt that any form of residential use by any prospective purchaser would, in all likelihood, face an uphill battle with the original objector.

 **KEY STRATEGIC COMMITMENT:**

The sale of the land will assist in the adaptive re-use and preservation of the historical structure. The social and cultural impacts of the sale on the community will be protected through the registration of a Heritage Easement as a condition of the sale. Also, as noted previously in this report, the economic impacts through the sale of the subject property will reduce the City's liability and operational costs to maintain a vacant building, while increasing the City's tax base through the adaptive re-use of the building, as well as providing increased employment for the City of Hamilton.

:BF  
Attach. (1)

