CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development and Real Estate Division

TO: Chair and Members
    Economic Development and Planning
    Committee

WARD(S) AFFECTED: WARD 5

COMMITTEE DATE: April 6, 2010

SUBJECT/REPORT NO:
Sale of Two Surplus City Owned Vacant Industrial Properties at 445 and 490 Nash
Road North to Paling Industries Ltd. (John Evans) and Snave Holdings Ltd. (John
Evans) (PED10008(a)) (Ward 5)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development
Department

PREPARED BY:
Keith Anderson
(905) 546-2424 Ext. 7634

SIGNATURE:

RECOMMENDATION:

(a) That the approval of staff report PED10008 by City Council in its adoption of Item
    3 of Economic Development Planning Committee Report 10-001 on January 27,
    2010, be rescinded.

(b) That an Offer to Purchase City property known as 445 Nash Road North, as
    shown on Appendix “A” to Report PED10008(a) attached, and described as Parts
    3 to 8 on Plan 62R-18661, being 0.3595 ha (0.888 acres), subject to an
    easement in favour of the City over Part 7, from Paling Industries Ltd. and Snave
    Holdings Ltd., for the price of $197,552.00 to be completed on or before June 8,
    2010, subject to conditions noted below, be approved by Council.

(c) That an Offer to Purchase City property known as 490 Nash Road North, as
    shown on Appendix “A” to Report PED10008(a) attached, and designated as
    Parts 9, 10 and 28 on Plan 62R-15125, being 0.819 ha (2.024 acres), from
    Snave Holdings Ltd. for the price of $450,277.00, to be completed on or before
    June 8, 2010, subject to conditions noted below, be approved by Council.
(d) That the required deposits of $23,181.27 and $45,027.70, respectively, be held by the General Manager of Finance and Corporate Services pending acceptance and completion of the transaction(s).

(e) That the proceeds from the transactions totalling $647,829.00 be deposited to Account No. 47702-4060087001 (Red Hill Valley Project). That the sum of $22,052 for general administrative and appraisal costs incurred by the Real Estate Section be funded from Account No. 4060087001 (Red Hill Valley Project) and credited to Account No. 45408-3560150200 (Land Sales and Purchases). Any Legal Services Section expenses are to be funded from Account No. 52425-4060087001 (Red Hill Valley Project).

(f) That the following conditions be included in the Offer to Purchase for 445 Nash Road North:

(i) The Purchaser acknowledges and agrees that there shall be no discharging of drainage or any other materials or liquid substances from the subject property off site, and in particular into the Red Hill Valley immediately west of the property municipally known as 445 Nash Road North;

(ii) The Purchaser acknowledges and agrees that the existing Lease of Parts 3 and 4 on Plan 62R-13167 between the former Regional Municipality of Hamilton-Wentworth and Paling Industries Ltd. / Snave Holdings Ltd., registered as VM210906 on June 1, 1995, amended by an Amending Agreement registered on January 5, 1996 as VM223853, shall expire and merge upon closing of this transaction. The Purchaser further acknowledges and agrees that it will surrender the aforesaid Lease registered as VM210906, as amended by Amending Agreement registered as VM223853, and register a discharge of same on title to the lands set out in the Lease, on or before closing.

(g) That the following conditions be included in the Offer to Purchase for 490 Nash Road North:

(i) The Purchaser acknowledges and agrees that there shall be no discharging of drainage or any other materials or liquid substances from the subject property off site, and in particular into the Red Hill Valley immediately west of 445 Nash Road North.

(ii) The Purchaser acknowledges and agrees that it will surrender the existing Lease of the subject lands, and register a discharge of same, if required by the Vendor, on the title to the subject lands on or before closing.
(h) That each Offer to Purchase shall be conditional upon the City accepting and approving the other Offer to Purchase, and that the closing of both transactions shall be contemporaneous.

(i) That Section 3 of By-Law 04-299, the Procedural By-law for the Sale of Land, requiring that land be declared surplus, that an appraisal of fair market value be obtained and that notice to the public of the proposed sale be given, does not apply to industrial land, according to Section 8 of By-Law 04-299. The subject properties have been and are intended to be used for industrial purposes. Nevertheless, an internal opinion of value for the subject property was completed in September, 2009 and the selling price of each parcel reflects appraised market value.

(j) That a land Lease between the Regional Municipality of Hamilton-Wentworth and Paling Industries Ltd. and Snave Holdings Ltd. dated January 10, 1995 and registered as instrument VM210906, regarding property at 445 Nash Road North, provides that if during the term of the Lease and up to two years after termination of the Lease, the lands are deemed surplus to the Lessor and not required for the Red Hill Creek Expressway, then the Lessor agrees to grant to the Lessee an option to purchase the lands at fair market value at that time. Since the Lessee currently occupies the premises as an overholding tenant, the City’s proposed sale of the surplus portion of the leased lands to the Lessee is in accordance with the option to purchase provided for in the Lease.

**EXECUTIVE SUMMARY**

The purpose of this report is to request Council’s approval to sell lands deemed surplus to the Red Hill Valley Project to an adjacent land owner. The subject property consists of two vacant parcels situated opposite one another along Nash Road North and east of the Red Hill Valley Parkway, with a total area of 1.1785 ha (2.912 acres). The adjoining owner(s), Paling Industries Ltd. / Snave Holdings Ltd. have leased the subject parcels from the City since 1994. The Lease provides the Lessees with an option to purchase the lands, which would be exercised via this transaction.

Council recently approved of this transfer of lands, however following soils testing by the Purchaser where it was found that a small portion of the north end of 445 Nash Road North was contaminated, it was recommended by Public Works engineering staff that this 0.062 ha (0.154 ac.) contaminated area be retained by the City (this parcel abuts City lands to the north), and the remaining property be sold to Paling Industries Ltd. and Snave Holdings Ltd.

*Alternatives for Consideration – See Page 5*
FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: The sale of the lands will net $647,829 less Real Estate and legal expenses, to Public Works – Red Hill Valley Project to offset costs of that project.

Staffing: There is no staffing implication arising from this recommendation.

Legal: Legal Services has assisted in the preparation of the Offers to Purchase and will be required to assist in the completion of the sale transactions.

HISTORICAL BACKGROUND (Chronology of events)

The subject lands were acquired many years ago by the City and Region as part of the lands required for the Red Hill Valley Parkway. The lands are now deemed surplus to the requirements of the expressway and therefore can be sold.

The Real Estate Section was requested by Public Works to dispose of the subject parcels. These properties are being sold at current market value for industrial purposes to the abutting property owner at 409 Nash Road and long time tenant, in accordance with an option to purchase clause in the Lease.

Council recently approved the sale of these lands in its adoption of Item 3 of Economic Development and Planning Committee Report 10-001 on January 27, 2010. The completion of one of the two prior agreements of purchase and sale however was conditional upon the purchaser being satisfied with the environmental condition of the property within 60 days after the acceptance date. The purchaser’s soil tests revealed some soil contamination on the northerly end of 445 Nash Road North and subsequent discussions between staff and the purchaser led to a resolution whereby the City should retain the northerly 0.154 acres (the City currently owns abutting property immediately to the north) and sell a parcel slightly reduced in area to the purchaser. The current recommendation to Council is the same as the prior recommendation approved on January 27, 2010, except:

- The current recommendation includes a paragraph whereby City Council rescinds its prior approval of staff report PED10008 concerning these properties;
- The land area of 445 Nash Road North has been reduced from 1.042 acres to 0.888 acres by excluding the northerly 0.154 acres;
- The current offer to purchase 445 Nash Road North does not include the environmental soil testing condition for the purchaser that was included in the previous agreement of purchase and sale.
POLICY IMPLICATIONS

The recommendation to approve the sale of lands is consistent with the Real Estate Management Portfolio Strategy to dispose of surplus property, as approved by City Council on November 24, 2004, and the “Procedural By-law for the Sale of Land”, By-law No. 04-299.

RELEVANT CONSULTATION

- Public Works, Operations and Waste Management Division, Support Services Group; Environment and Sustainable Infrastructure Division, Engineering Services Group
- Corporate Services, Legal Services Division, Commercial/Development/Policy Section

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

There is no municipal requirement for the subject lands and the project for which the lands were acquired – the Red Hill Valley Parkway, is now complete, and the subject remnant parcels are deemed surplus.

Disposal of the subject lands to the adjacent land owner was contemplated in the Lease given the option to purchase that was granted to the tenant, in the event the City did not require the land for the Red Hill Valley Parkway. The City of Hamilton will receive a financial benefit from the sale of the subject lands, future real estate taxes and potential development fees and due to the fact the conveyance will eliminate any future liability or maintenance costs for the City.

Further, sale of the lands to the purchaser will allow that business to expand and therefore contribute to retention of an existing business in the City.

ALTERNATIVES FOR CONSIDERATION:

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

The alternative not to sell these surplus lands would mean the City would be retaining property for which it has no intended purpose or use, and foregoing benefits flowing from its development by the private sector. The alternative of selling the lands to
another purchaser is only legally possible should the current tenant decline to purchase, as the current tenant has an option to purchase noted in the Lease.

Another alternative is to continue leasing the properties. The administration of property leases is time consuming for staff (Real Estate, Finance, Legal and Facilities). Leasing is desirable when there is a future municipal use for the property. If there is no future municipal use for the property, the best course of action is to dispose of the asset.

CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Financial Sustainability

- Financially Sustainable City by 2020
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

APPENDICES / SCHEDULES

Appendix 'A' to Report PED10008(a)