SUBJECT: Section 30 of the Expropriation Act, City Purchase of Part of 100 Cumberland Avenue (Lifesavers Park), Part 1 on Plan 62R-17378 from Archer Developments Corp. (PED06403) (Ward 3)

RECOMMENDATION:

(a) That the Property Purchase Agreement to be executed by Archer Developments Corp., for the lands known as part of 100 Cumberland Avenue (Lifesavers Park), being Part 1 on Plan 62R-17378, as shown on Appendix "A" to Report PED06403, be approved and completed.

(b) That the partial compensation of $325,000 for the subject property outlined in Sub-section (a) above, be charged to Account Number 4400650661 (Lifesavers Park Project), subject to the following conditions:

(i) That pursuant to the provisions of Section 30 of the Expropriation Act, the Owner hereby consents to the acquisition of the herein described lands by the City. The City hereby consents to an application by the Owner to the Ontario Municipal Board for the determination by the Board of the compensation, which the Owner would be entitled by the Expropriation Act if the lands were expropriated. The City hereby agrees to pay to the Owner any compensation determined by the Board or in the event of an appeal, as determined by the Court of Appeal, in excess of the amount of compensation paid pursuant to the Agreement herein. If the amount of compensation stated in this agreement exceeds the compensation awarded by the Ontario Municipal Board or Court of Appeal, the property owner agrees to refund the difference to the City within 30 days of the decision of the Ontario Municipal Board or Court of Appeal, in excess of the amount of compensation paid pursuant to the Agreement herein.
(ii) That the City further agrees to pay interest on any such compensation pursuant to Section 33 of the *Expropriation Act*.

(iii) That the date of valuation of the Section 30 Agreement is the date of its signing by the owner.

(iv) That it is agreed that the execution of this Section 30 Agreement does not dispense with the hearing before the Board of Negotiation. The parties agree not to proceed to arbitration before the Ontario Municipal Board unless the City and the Owner have agreed to dispense with negotiations before the Board of Negotiation or negotiations before same do not result in a settlement of compensation. The above does not limit the parties from obtaining a final settlement of compensation prior to an application by the Owner to the Ontario Municipal Board.

(v) That it is understood and agreed that the City will pay reasonable legal costs actually incurred by the owner for the transfer of the subject property to the City. If agreement on these costs cannot be reached, these costs will be claimed as part of the Section 30 compensation. Reasonable legal or other costs incurred prior to the execution of the Agreement will be paid upon final settlement or adjudication of the Section 30 compensation.

(vi) That it is understood and agreed that this transaction is conditional upon the lease arrangement between the Owner and the City for the lease of the subject lands to remain in force until such time as the closing of this transaction.

(c) That all further costs and expenses to settle the expropriation of part of 100 Cumberland Avenue be charged to Account Number 4400650661 (Lifesavers Park Project).

(d) That approval be given to continuation of the City lease of the Lifesavers Park lands until such time as the closing of the Property Purchase Agreement.

(e) That the Mayor and the City Clerk be authorized and directed to sign any necessary documents in a form satisfactory to the City Solicitor.

____________________________________

Lee Ann Coveyduck  
General Manager  
Planning and Economic Development Department
EXECUTIVE SUMMARY:

This recommendation deals with the partial settlement of a City expropriation of the lands located at 100 Cumberland Avenue, being the Lifesavers Park. The owners, Archer Developments Corp., are prepared to sell and provide vacant possession of the parklands for the appraised value of $325,000, but would look for a final determination of compensation for this property from the Ontario Municipal Board.

BACKGROUND:

This report has City Wide implications, and specifically for Ward 3.

The 2.2 acre industrial land at 100 Cumberland Avenue is comprised of the closed Lifesavers industrial plant at the east end and the subject Lifesavers Park at the west end of the site. The City of Hamilton has leased the 0.67 acres parkland since 1971, on a year-to-year basis, originally from Lowney Inc. for $1 per year, and later from Hershey Canada for a T-Ball diamond and general playground. Either party could terminate the lease with a 60-days notice. Prior to the City’s lease of these lands, the park was the site of a shoe polish factory.

As a result of various corporate restructuring, and with the candy manufacturing being transferred from Hamilton to Quebec, the Lifesavers plant was closed in 2003 and the equipment sold off in 2004. The last operating owner, L. S. Acquisitions Corp., sold the lands and building in December 2004 to W. W. Michael Construction for $975,000. The current owner, Archer Developments Corp., acquired the property in August 2005 for $1,000,000.

City staff became aware of the possible loss of the Lifesavers Park when a potential purchaser of 100 Cumberland Avenue made inquiries of the Planning and Economic Development Department to redevelop the site for townhouse use. Community Planning Section staff contacted the Real Estate Section with direction to attempt to negotiate the purchase of the existing park, as these lands are the only significant open space available to the public in this older urban neighbourhood.

Meetings were held with the owners – W. W. Michael Construction and their broker. It was agreed that the City was interested in purchasing the existing park and the owners would sell to the City, but that the purchase price would have to be a market value agreeable to the owners. The owners concurred that the basis of the acquisition would be an appraisal by a qualified AACI. The City hired the firm of Pocrnic Realty Advisors to complete the preliminary appraisal to estimate the market value of the park for purchase purposes.

In late August 2005, Real Estate staff was advised by Mr. Ravi Jain of Archer Developments Corp. that as of August 4, 2005, Archer was the new owner of 100 Cumberland Avenue and gave the City of Hamilton notice for termination of the existing $1 lease for the Lifesavers Park. The City made an offer to Archer Development Corp.,
based on the preliminary appraisal, to purchase the park site, but this offer was rejected. Until an acceptable purchase price could be negotiated, the owners agreed to a short-term lease. Archer originally requested a payment of $6,000 per month, but later agreed to a figure of $3,500 per month.

While the owners were prepared to negotiate the sale or perpetual lease of the park, the values that Archer placed on the subject lands were much beyond a reasonable amount given the prices that were paid to purchase the entire site and the value result of the City’s appraisal of the lands. Real Estate staff conferred with the local Councillor and it was agreed that the best and only sure means to secure the permanent continuation of the park for the St. Clair neighbourhood use was to initiate an expropriation of the subject lands. On October 26, 2005, City Council approved the Ward Councillor’s motion to commence expropriation of Lifesavers Park from Archer Developments Corp.

In an effort to keep open communications with the owners further meetings were held by Legal and Real Estate staff with the owners and their lawyer to explain the City’s position and to find some course to keep the park open to the public while the expropriation process continued. As a means to expedite the Expropriation process and allow the City early possession of the subject lands, the owners, Archer Developments Corp., endorsed a Section 30 Agreement of the Ontario *Expropriation Act*. Under the provisions of Section 30 of the Act, the owner consents to the acquisition of the lands by the expropriating body, the City of Hamilton, at an amount considered market value by the City, but allows the owner to apply to the Ontario Municipal Board for the determination of the final compensation to which the owner is entitled to by the *Expropriation Act*. This section eliminates the need for the Hearing of Necessity, the registration of an expropriation plan, making of the Official Offer and passing of the various By-laws required under the *Expropriation Act*. Most importantly, this mechanism provides the City vacant possession of the parklands many months earlier than would be possible if the normal expropriation process had to be completed.

Pocnic Realty Advisors have recently completed a formal Appraisal report for the City of the current day market values of the subject parkland. The indicated value of $325,000 is the basis of the compensation for the Property Purchase Agreement under Section 30 of the *Expropriation Act*.

As part of the ongoing negotiations with the owners and to assist the Appraiser to determine land value, Real Estate staff requested the Facilities Section to complete a Phase 1 and Phase 2 Environmental Review of the park site with boreholes and ground water samples. The Report by AMEC Earth & Environmental concluded that soil and water samples were within acceptable standards for parkland and residential uses.

The owners have asked for a 5% increase in the monthly Lifesavers lease payment. Real Estate and Legal staff is in support of the rise from $3,500 per month to $3,675 per month from September 1, 2006, until the closing of this transaction.
ANALYSIS/RATIONALE:

Should this Section 30 Agreement not be approved, the City will be required to continue the expropriation process with the need for the requested Hearing of Necessity. Should the owners not continue to lease the parklands, the City will be required to vacate the park and remove the playground equipment.

ALTERNATIVES FOR CONSIDERATION:

Council could choose not to approve the Section 30 Property Purchase Agreement and continue the normal process under the terms of the Expropriation Act. The City could also choose to abandon the expropriation and close the Lifesavers Park. Neither of these options is recommended.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Sufficient monies are available in Account Number 4400650661 (Lifesavers Park Project).

POLICIES AFFECTING PROPOSAL:

Approval of this report does not alter or contravene established policies of the City of Hamilton.

RELEVANT CONSULTATION:

Staff from the Legal Services Section of the Corporate Services Department and Real Estate Section of the Planning and Economic Development Department were involved in the negotiations and preparation of the Section 30 Agreement. Staff from the Open Space Development Section and Parks Maintenance Section of the Public Works Department were kept apprised during the discussion with the owners. Staff supports this agreement as it represents a fair interim resolution and avoids additional costs to the expropriation process and provides uninterrupted public access for the residents of the St. Clair neighbourhood to the Lifesavers Park facilities.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Approval of the Agreement will ensure that the Park facilities are kept in the name of the City and public access to the neighbourhood park is not interrupted.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
If the current park facilities can be purchase, it would not require the acquisition of alternative lands to replace the Lifesavers Park site.
Economic Well-Being is enhanced. ☑ Yes ☐ No
Approval of the agreement avoids the continuation of the expensive expropriation process.

Does the option you are recommending create value across all three bottom lines?
☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☐ Yes ☑ No

:VDP
Attach. (1)
100 Cumberland Ave – Lifesavers Park

KEY MAP

SECTION 30 PURCHASE FROM ARCHER DEVELOPMENTS
PART OF 100 CUMBERLAND AVENUE
LIFESAVERS PARK

REAL ESTATE SECTION
PLANNING AND ECONOMIC DEVELOPMENT
CITY OF HAMILTON

LEGEND

SUBJECT LAND

SCALE: NOT TO SCALE
DATE: 2006-10-11
REFERENCE FILE NO: 2005-084