CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO: Chair and Members General Issues Committee
WARD(S) AFFECTED: WARD 12

COMMITTEE DATE: July 4, 2011

SUBJECT/REPORT NO:
Declaration of Surplus, Sale of Easement, and Lease Agreement with Rogers Wireless Inc. - 385 Jerseyville Road - Morgan Firestone Arena, Ancaster (PED11119) (Ward 12)

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

PREPARED BY:
John Hamilton
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SIGNATURE:

RECOMMENDATIONS

(a) That the subject lands, described as Parts 1 and 2, on Survey Plan C3941, being Part of Lot 38, Concession 2, known municipally as 385 Jerseyville Road, Ancaster (Morgan Firestone Arena); having an area of approximately 178.89 square metres (1,925 square feet) as shown on Appendix “A” attached to Report PED11119, be declared surplus to the requirements of the City of Hamilton in accordance with Procedural By-law 04-299;

(b) That an Offer to Purchase (Easement) by Rogers Wireless Inc. scheduled to close on or before July 15, 2011 for the land described in Recommendation (a) be approved and completed at the sale price of $2.00;

(c) That the sale price of $2.00 does not include the Harmonized Sales Tax (HST); should HST be applicable and collected by the City, that the HST amount be credited to Account No. 22828 009000 (HST Payable);
(d) That the sale proceeds be credited to 47703-444005 and transferred to the Recreation Deposit Account No. 22318-000100;

(e) That the one time application administrative fee of $750.00, payable to the host department, be credited to the Recreation Deposit Account No. 22318-000100, as stated in the Telecommunication Tower and Antenna Protocol;

(f) That City Council, approve entering into a lease with Rogers Wireless Inc. over the land described as Part 1 on Survey Plan C3941, for a term of twenty (20) years;

(i) **Rental Rate:** From the date of commencement, being July 15, 2011, Rogers Wireless Inc. shall pay rent based on $26,000.00 per year net, plus H.S.T. throughout the first year of the term. The initial annual rent of $26,000.00 will increase by 2.5% per year.

(ii) **Operating Costs:** The tenant will be responsible for paying all operating costs and property taxes, in addition to the rent.

(g) That all rent proceeds from the lease described in Recommendation (f) be credited to the Recreation Deposit Account No. 22318-000100;

(h) That any disbursements, legal fees and expenditures incurred by Legal Services be charged to the Recreation Deposit Account No. 22318-000100;

(i) 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 268 of the Municipal Act, incorporating the following:

   (i) That as required by Section 3 (a) of By-Law 04-299, the subject lands be declared surplus by inclusion in this Report to City Council;

   (ii) That an internal appraisal of the fair market value of the real property intended to be sold was completed on May 10, 2011;

   (iii) That, in accordance with the approved method of providing notice in the City of Hamilton By-Law No. 04-299 “Procedural By-Law for the Sale of Land”, Section 12 (a) (6), notice to the public of the proposed sale of land is given by inclusion of this recommendation to City Council, and;

(j) That the Mayor, General Manager of Finance, and City Clerk be authorized and directed to execute the Easement and Lease agreements in a form satisfactory to Corporate Counsel.
EXECUTIVE SUMMARY

The Morgan Firestone Arena, built in 1992, is being expanded. At the site, Rogers Communications wishes to erect a 35 metre cell antenna (flagpole type) together with a small enclosed metal equipment shed at the base of the tower. Rogers has requested from the City, a long term lease and an easement to facilitate this communications installation.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: Proceeds from the sale and lease be credited to the Recreation Deposit Account No. 22318-000100.

Staffing: Staff will take the necessary steps to complete the Lease and transfer of the easement.

Legal: Legal Services Division has been involved in the development of the Easement and Lease Agreements and will continue its involvement until the both transactions are completed.

HISTORICAL BACKGROUND

On February 24, 2010, the City approved the Telecommunication Tower and Antenna Protocol Follow-up Report, which governs the location and make-up of new cell towers. In August 2010, Rogers Wireless Inc. applied to erect a new cell tower at the site of the expanding Morgan Firestone Arena to enhance cell phone coverage in the Ancaster area. The cell tower (flagpole style) proposed by Rogers Wireless Inc. adheres to the City's Telecommunication Tower and Antenna Protocol. The proposed cell tower will provide adequate decorative landscaping as per the client department’s specifications.

As shown on Appendix “A” attached, Part 1 on Survey Plan C3941 defines the area where the tower and base building is proposed. It comprises an area of 63.75 square metres (686.22 square feet).

Part 2, which crosses the driveway entrance into the arena compound, comprises an area of 115.4 square metres (1,239.39 square feet). An easement is required over Part 2 to extend fibre and hydro service from Jerseyville Road to Part 1, the flagpole compound.

Combined, the 179.89 square metre (1,925 square feet) parcel is situated at the front of the Morgan Firestone Arena at 385 Jerseyville Road West and is valued at $11,000.00,
based upon a market value for the land of $500,000 per acre. The $11,000.00 price was amortized over the 20 year term of the lease in the amount of $1,000.00 per year, plus a 2.5% escalation after the first year, which was added to the rental payment. This property is legally described as Part of Lot 38, Concession 2, and forms part of PIN 17422-0001. The property is zoned “A” (Agricultural) in the former Town of Ancaster Zoning By-Law.

**POLICY IMPLICATIONS**

The recommendations are consistent with the City’s Real Estate Portfolio Management Strategy Plan as approved by City Council on November 24, 2004 and Procedural By-Law No. 04-299. On June 29, 2005, City Council approved the Delegation of Authority to staff for the acquisition, disposition or lease of properties as follows:

- General Manager or designate not exceeding $150,000,
- City Manager or designate not exceeding $250,000,
- City Council must declare surplus any lands to be disposed of by the City.

Although the amount of the annual lease payments is below the foregoing limits, Council approval is required for leases having a term or commitment of more than five years, as mandated by Council. The subject property was circulated to all City Departments as well as external agencies.

**RELEVANT CONSULTATION**

- Community Services, Recreation Division
- City Manager’s Office, Legal Services Division
- Public Works, Environmental Services Section
- Planning and Economic Development, Development Planning Section

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

With the lease recommendation being adopted, the City will have secured a long term revenue stream commitment at an escalating net rental rate that is 25% above past known market levels. The tower will be camouflaged as a flagpole and Rogers Wireless Inc. has agreed it will shield its facility with landscaping and a decorative stone wall. The cell tower adheres to the guidelines set out in the Telecommunication Tower and Antenna Protocol. The finished tower will provide improved cell phone coverage in the Ancaster area.
ALTERNATIVES FOR CONSIDERATION

If this easement and lease recommendation are not adopted, Rogers Wireless Inc. will need to search for an alternate location in the area to enhance its local cell phone coverage.

Pros:
- No 35 metre high flagpole cell tower at the Morgan Firestone Arena.

Cons:
- If a compliant application was declined, it would cause the Telecommunication Tower and Antenna Protocol to lose credibility thereby decreasing our ability to serve an expanding industry.
- The City will lose a reliable source of revenue.

CORPORATE STRATEGIC PLAN


Skilled, Innovative & Respectful Organization
- The flagpole style of cell tower is new to the Hamilton area and is a compromise solution offered by Rogers Communication Inc. to retain the parkland character of the site.

Financial Sustainability
- Net rental rate escalates annually over the proposed term. Lessee has a strong covenant.

Intergovernmental Relationships
- The N.E.C., Industry Canada and several City departments will each have had input on the location and design of the proposed tower.

Growing Our Economy
- Rent proceeds are 25% higher than previously obtained.

Social Development
- Sale of easement proceeds will be credited to Parkland Reserve Fund.
Environmental Stewardship

- All efforts will be made to allow the antenna tower to blend with the surrounding parkland and arena aesthetics, i.e. landscaping, building materials. NEC and HCA have been consulted.

APPENDICES / SCHEDULES

Appendix “A” to Report PED11119 – Location Map

JH/sd
Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Number:
2011-004

Date:
May 10, 2011

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
JH/AL

Subject Property
385 Jerseyville Road West

- Part 1
- Part 2

Size of Easement:
Part 1 is 63.75 square metres
Part 2 is 116.14 square metres
Total is 179.89 square metres

Ward 12 Key Map
N.T.S.