

City risks public distrust and future exploitation by foregoing penalties for Orleans Town Centre project, despite delays

When the city entered into a public-private partnership (P3) with a development consortium in 2006 to develop 19 acres of city-owned land in east Orleans, the centrepiece of which would be the Shenkman Arts Centre, it reassuringly stated to the public that “performance safeguards have been put in place to ensure that the development of elements of this P3 project proceed in a timely way.” Included in the partnership agreement was the right for the city to take back ownership of the land or reduce its financial contribution to the project if the entire development failed to progress for some reason.

Three-and-a-half years later, at the beginning of 2010, the Shenkman Arts Centre stands alone, with no sign of the other buildings that were to make up Phase 1 of the three-phase Orleans Town Centre project. The agreement stated that the elements of Phase 1 would be completed or underway by 2009.

At the last city council session of 2009, while the Centrum Boulevard site should have been a beehive of activity, the city (acting on recommendations from the Corporate Services and Economic Development Committee) voted to amend the partnership agreements between the city and OTCP Arts Centre G.P. Inc. (OTCP) to allow for less density on the site, a pushback of delivery dates of all phases, and to forego the cashing of \$2.5 million in securities as a penalty for the missed deadlines. On top of that, the city also agreed to pay 75 percent of a \$865,099 shortfall in the project budget for the Shenkman Arts Centre, the result of an error in the construction agreement between OTCP and constructor Aecon.

Not counting the decreased future tax revenue from the downsized project density, the city is now down over \$3 million over where it would be if the 2006 guidelines were followed, with no Orleans Town Centre, Phase 1, to show for it.

The Memorandum of Understanding the city signed with OTCP in September, 2006, signalled the start of a development plan worth \$225 million; it was also (by far) the largest P3 project the consortium's leader, Forum Equity Partners, had undertaken since entering the P3 segment of the real estate industry in 2002. They claim their success results from being able to create cost-effective proposals that save municipalities money.

The plan was touted by councillors and the media as being the biggest development project in the history of Ottawa's east end, aimed at generating huge social and economic benefits for the entire

city and promoting Orleans as a distinct cultural and business location.

Phase 1 of the Orleans Town Centre was to include the Shenkman Arts Centre, 140 seniors condominium units, 100 retirement home units, a hotel, 260 housing units, 41 Action Ottawa affordable housing units, 23,000 square feet of office space, 30,000 square feet of mixed-use space, and an expansion of the existing YMCA facility. Phase 2 and 3 include more housing units, office and parking space.

The Shenkman Arts Centre, the only completed element, cost \$36.8 million to build, and was financed through a \$27.8 million loan to developers from the city, who promised to sign a 30-year-lease for the facility, as well as another \$9 million loan from the city (with no interest and principal payment for 30 years). At the end of the 30-year term, the facility reverts back to the city.

Following its June, 2009, grand opening, Forum Equity Partners announced on its web site that the facility opened “on time and on budget, serving to underline the benefits of a successful public-private partnership.”

The land on which the facility sits was bought from the city by OTCP for \$12.1 million. To service the site with public infrastructure, the city created a \$3.1 million Enhanced Infrastructure Budget from the proceeds of the sale. The \$3.2 million annual operating costs of the facility are covered by the city. That cost would be offset by the \$3.2 million in property taxes the city expected to receive from the completed (original) OTC plan, however, that money is now further away due to the approved pushback of the delivery dates and the dollar figure stands to be less as a result of the downsizing of several elements of the project.

Three months after applauding the “on time and on budget” construction of the city-funded Shenkman Arts Centre, Forum president Richard Abboud responded to media scrutiny that showed Phase 1 being well behind schedule by saying, “The economy has had an effect (on the project).” Abboud stated that the state of the economy had affected the availability of capital for their development partners and demand for the available housing and office space.

Included among the amendments approved by council is a reduction of housing units, from 260 to 200. Using a three-phased approach, the delivery dates of the units will be deferred by one year. The construction start date of the hotel was pushed back two years, while delivery of the seniors' condominium, retirement residence and mixed-use space was also deferred to the same date. Further amendments allowed the 30,000 square feet of mixed-use space to be reduced to 20,000 square feet, and the seniors' component (totaling 240 units) to be reduced to 220 units.

Construction of two roads to service the site was also deferred three years. Due to the need to make up the Shenkman funding shortfall with funds from the Enhanced Infrastructure Budget, the city

is now burdened with constructing one of the roads.

The most time-sensitive element of the project – the 41 affordable housing units provided by Wigwamen, Inc. – are dependent on the construction of an access road by March 31, 2010, to meet the requirements for funding from the provincial and federal governments. OTCP was ordered to demonstrate to the city, by Dec. 31, 2009, that design work on the road has proceeded, otherwise city housing staff would recommend that the funding be transferred to another affordable housing provider.

Looking at the recent economic downturn (which Ottawa, at a glance, seemed to weather as well as or better than other Canadian cities), it isn't surprising that a development consortium involved in a P3 agreement would seek an amendment to reduce the scale of a project. Adjusting a plan to fit market conditions is something that could be forgiven; downsizing doesn't necessarily constitute a failure to follow through with a partnership agreement (unless explicitly stated), so there would be no need for a municipality to impose a penalty on the private partner. However, deferral of delivery dates – in this case a deferral of all elements of the project but one – should result in penalties, unless the circumstances surrounding the delay are exceptional.

In the case of the downturn, one would expect construction delays to a largely residential project if the city were hit with massive job losses, such as sweeping cuts to the Civil Service. This did not occur. While the housing market in Ottawa in 2009 followed a nationwide trend that saw housing starts drop in the early and mid part of the year, by November (as reported by the Canadian Mortgage and Housing Corp.), nationwide housing starts were up significantly over 2008, with December numbers showing the upward trend continuing, making the economic downturn a brief blip on Ottawa's traditionally strong housing market.

Seniors are less effected by job losses (or fear of), and, as half of the dwelling units in the Orleans Town Centre were designated senior's condominium or retirement residences, one would expect the downturn would have little effect on the demand for these units. City of Ottawa growth projections show a rapidly aging population in need of downsized living accommodations such as condominiums. The market for dwelling units isn't there? One wonders how deep this need was explored by the developer.

Cities that choose not to penalize P3 partners for failing to deliver run the risk of losing the trust of the public, who perceive a lack of respect for procedure on the part of the city, leading to a tarnished image. Another risk emerges from private consortiums coming forward with overly ambitious proposals that promise a cost-neutral product as a best-case scenario, no longer worried about incurring penalties for delays.

In this case, the deferrals also threatened the availability of funding for the social housing

element of the project, a critical resource (as over 9,600 Ottawa households sit on the long waiting list for social housing). Yet another reason for imposing a penalty in the best interests of both the city and the public.

Given the resilience of the Ottawa housing market, the aging demographic and the current stability of government employment, the downturn was not as severe a blow to Ottawa developers as was seen in elsewhere. If the economic situation forced amendments that pushed elements of the OTC project back up to three years, one has to ask: if the economy is anything less than ideal from here forward, are more amendments and deferrals forthcoming? And, can similar problems be expected as the city goes forward with other P3's?