



OAKVILLE

REPORT

COUNCIL MEETING

MEETING DATE: JANUARY 27, 2014

FROM: Legal Department
DATE: January 17, 2014
SUBJECT: Linbrook School Site
LOCATION: 1079 Linbrook Road
WARD: 3

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RECOMMENDATION:

1. That the sale of lands identified as Parts 2, 5 and 6 on Plan 20R-19751 as described in the report of the Legal Department dated January 17, 2014, be approved.
2. That all requisite documentation in connection with the sale of this property be executed in accordance with By-law 2013-057.
3. That the Town Solicitor be authorized to make minor modifications to the agreement of purchase and sale and all requisite documentation that do not affect the substance of the documents.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Pursuant to Council authorization, staff has negotiated an agreement of purchase and sale of the site of the former Linbrook Public School at 1079 Linbrook Road for the purposes of a private boys school.
- The agreement secures the interests and considerations identified in the disposition of the Administrative Services Committee of July 3, 2013, approved at the Council meeting of July 8, 2013, reconvened on July 10, 2013.

BACKGROUND:

On July 2, 2013, Administrative Services Committee passed the following resolution that was approved by Council at its meeting of July 8, 2013, reconvened on July 10, 2013:

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“That staff be authorized to negotiate with the proponent, the option to lease or the option to purchase the former Linbrook Public School site for the purpose of a private boys school, and thereafter select whichever option will best maximize the financial value to the town, afford the best protection to the local neighbourhood, and best secures the following interests and considerations:

- a) traffic controls for motor vehicles, pedestrians, and crossings;
- b) optimum length of any lease and no sub-leasing clause, if applicable;
- c) heritage protection;
- d) enrollment capping of schools on Linbrook Road;
- e) expansion limits;
- f) hours of operation;
- g) activities and types of operation;
- h) noise control;
- i) residential uses;
- j) enforcing the promises from St. Mildred's Lightbourn School;
- k) public access to school lands;
- l) improvements to property, responsibility of lessee; and
- m) a mandatory requirement that any changes or improvements to the site be subject to site plan control and town approval.”

Upon further analysis and advice, staff determined that the best option that maximizes the financial value to the town, affords the best protection to the local neighbourhood, and best secures these interests and considerations was a transaction of purchase and sale for the subject lands.

COMMENT/OPTIONS:

An agreement for the purchase and sale of the site of the former Linbrook Public School site for the purposes of a private boys school has been achieved following extensive and detailed negotiations.

Particulars and components of the agreement are summarized below, with the exception of the financial details, which are included in Confidential Appendix B to this report.

The Purchaser

The purchaser is “Linbrook School”, a corporation incorporated under the Canada Not-for-profit Corporations Act by Amber Ann Way on December 16, 2013, for the purpose of establishing, operating and maintaining an independent elementary school for boys.

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The Property

The property being acquired includes the former Linbrook Public School building and the lands identified by the hatchmarks as Parts 2, 5 and 6 on Reference Plan 20R-19751, attached hereto as Appendix A. The lands being acquired exclude the woodlot to the north (Part 3), being retained by the Town, as well as a 2.4 metre strip along the front (Part 1) for a road widening.

Restrictions and Covenants

The purchase of the property is subject to a number of restrictions and covenants, including:

Permitted Use and Enrollment Cap

The property will be operated for a minimum of fifteen years as a private school, with enrollment at all times limited to a maximum of 180 students.

Outdoor Space

The outdoor recreational space on the site shall be available for public use as a public park accessible in the evenings, subject to applicable Town by-laws, and on weekends, holidays, and days outside the school year at any time when not being used by the purchaser as a use ancillary to the school.

The Town will retain an easement over part of the lands being conveyed (Part 6) for the purposes of park and woodlot maintenance, as well as pedestrian ingress and egress. Linbrook School will maintain an easement over part of the lands being retained by the Town (Part 7) for the purposes of outdoor recreational space accessory to a private school.

Hours of Operation

The agreement specifies the hours of operation of the school. The school would be open at 7:00 a.m., with regular school hours being from 8:45 a.m. – 3:20 p.m. Clubs, homework support, after school and community based programs may run during the school year until 8:00 p.m., provided that all programs between the hours of 7:00 p.m. and 8:00 p.m. shall be located within the school buildings only.

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Traffic Mitigation

The purchaser will enter into a Three Party Agreement with the Town and St. Mildred's-Lightbourn School, establishing a common policy for parking of motor vehicles and the dropping off and picking up of students by buses and private vehicles.

Drop off and pick up of students who utilize bus services will occur at the current location on the St. Mildred's property, with Linbrook having responsibility to ensure the safe crossing of boys between the two school premises.

St. Mildred's and Linbrook agree to staggered start and dismissal times and corresponding drop off and pick-up times, without an overlap for the initial school year of Linbrook. Modifications to the school year start and dismissal times beyond that set in the initial year will be subject to review and approval of the Town.

Linbrook shall obtain and deliver to the Town at year end a yearly monitoring report to review the traffic operations and, if necessary, provide and undertake recommendations to adjust the traffic controls and operations, to the satisfaction of the Town.

Heritage Designation

The existing Linbrook Public School building on the east side of the property will continue to be a designated property subject to the provisions of the *Ontario Heritage Act* and Town By-law 2012-087.

Right of Repurchase

The Town shall have the right to repurchase the property at a price equal to the purchase price if at any time within the first fifteen years the site ceases to be used as a private school with enrollment at all times limited to a maximum of 180 students.

Right of First Refusal

If at any time within the first fifteen years the purchaser is willing to accept a bona fide third party offer to sell the property, then the Town shall have the right to first purchase the property pursuant to the terms of any such offer.

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“As Is, Where Is” Condition

The property is to be purchased on an “as is, where is” basis at the purchaser’s sole risk. The agreement contemplates that the purchaser may conduct improvements to the site prior to closing at its expense, subject to Town approval and all required permits and conditions.

Sign

The purchaser has expressed an intention to commence school operations in September 2014. To facilitate the proposed opening, the agreement permits the installation of a sign on the site upon acceptance of the offer, inviting pre-registrations and advising of the pending private school opening, subject to compliance with all by-laws, including the Town’s sign by-law.

Voting Station

The agreement permits the Town for a period of fifteen years to use the property from time to time as a polling station for municipal elections.

Other Approvals

On November 12, 2013, the Town’s Committee of Adjustment approved a minor variance application to permit a private school to be located on the site. The minor variance approval provided relief to zoning provisions regarding minimum road width, the existing side yard, and curbing of surface parking areas. The variance is subject to a condition that enrollment be limited to a maximum of 180 students. The approval was not appealed and became final as of December 2, 2013.

Pursuant to the approved resolution of the Administrative Services Committee, and as a requirement of the minor variance approval, the purchaser has made application for site plan approval for the proposed private school use at the site.

Conclusion

Staff recommend that the agreement that has been negotiated, including all components as described in this report, achieves the direction of Council for the use of the former Linbrook Public School site as a private school, while maximizing financial value to the Town and affording the best protection to the local neighbourhood.

CONSIDERATIONS:**(A) PUBLIC**

The property will continue to be subject to all laws and Town by-laws, permits and approval processes, including building and heritage permits where required. The agreement contemplates that the purchaser has until August 29, 2014 to obtain all required approvals, which date may be extended at the purchaser's option for a further year in the event the purchaser is not satisfied that it has all the necessary approvals to enable it to carry on the proposed private school use on the site.

All restrictions and covenants that run with the land will be registered on title in the public land registry.

(B) FINANCIAL

Details of the financial components of the transaction are set out in Confidential Appendix B to this report.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

The agreement was negotiated with input from a number of other departments, including the Planning Department, Parks and Open Space, Development Engineering and Financial Planning.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be the most livable town in Canada

(E) COMMUNITY SUSTAINABILITY

The proposed agreement maintains the 4 pillars of sustainability - social (including accessibility), economic, environment or cultural aspects of the community.

APPENDICES:

Appendix A: Reference Plan 20R-19751

Confidential Appendix B: Confidential Memorandum of the Legal Department to the Mayor and Members of Council, dated January 17, 2014
(See *confidential agenda*)

Prepared and Submitted by:
Douglas Carr
Town Solicitor

APPENDIX A

