

THE CORPORATION OF THE
CITY OF WHITE ROCK
CLOSED CORPORATE REPORT



DATE: October 19, 2020
TO: Mayor and Council
FROM: Carl Isaak, Director, Planning and Development Services
SUBJECT: Sale of City Property & Encroachment Agreement (15177 Thrift Avenue)

RECOMMENDATIONS

THAT Council:

1. Considers the sale of the 91.3 square metre parcel, referred to as Lot 1 in Plan EPP105461, for \$318,000 in accordance with the provisions of the *Community Charter* and subject to the registration of an encroachment agreement on the parcel; and
 2. Direct staff to execute all documents necessary for the registration of an encroachment agreement on the parcel, as included in this corporate report.
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EXECUTIVE SUMMARY

On August 27, 2020, the City received an application from Bosa Properties to subdivide the residential and commercial components in Phase 2 of the Miramar Village development into air space parcels (ASP). In preparing the ASP subdivision application, the proponent identified a surveying error that occurred in 2008 when an earlier subdivision plan was filed with the Land Title and Survey Authority (LTSA). The error led to the unintentional consolidation of 91.3 square metres (982.75 square feet) of City-owned land with the Phase 2 development parcel owned by Bosa. The subject parcel, had it remained clearly in the City's possession, would likely have served as a small but essentially open and semi-landscaped public space, allowing for movement around the building and some sitting opportunities. The most recently approved Development Permit drawings from May 2011 illustrate several shrubs in concrete planters surrounding a small plaza area, with steps connecting to the residential lobby area.

The remedy to this matter initially proposed by Bosa was that the lands in question be transferred back to the City ownership by way of a correction in title. The challenge with this option, however, is that portions of the Miramar development now encroach within the former City lands creating the need for an encroachment/easement agreement, and the former City lands now have a BC Hydro pad-mounted transformer (PMT) installed on it to serve the development, yielding limited public benefits should the City re-acquire and maintain ownership of the land. Alternatively, the City could sell the lands in question to Bosa at fair market value in addition to executing an encroachment/easement agreement for portion of the Miramar development that cross existing, or will cross future, legal boundaries.

LEGISLATION

Meetings that may or must be closed to the public

90 (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

...

(e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;

PREVIOUS COUNCIL DIRECTION

Resolution # and Date	Resolution Details
September 16, 2020 2020-LUP/P-028	THAT Council direct staff to prepare a Council Policy regarding the Sale of Municipal Property.

The recommendation to formulate the above Council Policy was introduced by staff originally in July 27, 2020, prior to staff being made aware of the issue with the survey error noted in this corporate report.

A draft Council Policy is included in a separate corporate report on the Regular Council agenda, and includes the following criteria:

- 1) The property/right of way is deemed surplus to the City's current and future needs, including for infrastructure and civic requirements;
- 2) The proposed use of the City property by the purchaser is consistent with the Official Community Plan land use designation on the City property and/or the adjacent private property proposed for consolidation with it (if applicable), or maintains the existing public use in perpetuity; and
- 3) The disposition of the property is either a matter of practical convenience (e.g. stranded sections of laneway without future purpose) or serves the City's purposes.

INTRODUCTION/BACKGROUND

Survey Error in 2008

On August 27, 2020, the City received an application from Bosa Properties to subdivide the residential and commercial components in Phase 2 of the Miramar Village development into air space parcels (ASP). In preparing the ASP subdivision application, the proponent identified a surveying error that occurred in 2008 when the original plan was filed with the Land Title and Survey Authority (LTSA), which was brought to the attention of staff on September 23, 2020. Specifically, Subdivision Plan BCP38589 was used to register the lands tied to Phase 3 of the Miramar project. The survey, included as Appendix A, refers to a small hatched area within the southwest corner of the parcel as "Easement Ref. Plan BCP36586" ('subject parcel'). This area, being 91.3 square metres in area, is further illustrated in Plan EPP105461 (see Appendix B). When the aforementioned subdivision plan was registered at the LTSA the 91.3 square metre parcel, owned by the City of White Rock, was unintentionally transferred to Bosa. Further, the comprehensive development zone (CD-16) and Development Permits approved since the survey error occurred were also applied to the subject parcel as part of the overall development.

Current Encroachments and Potential Transfer to Development

During the construction of Miramar Village Phase 2, several physical encumbrances have been established within the subject parcel. These encumbrances include small portions of the foundation of the buildings, electrical facilities serving the development (i.e., pad-mounted transformer), and a small portion of the residential balconies (i.e., from the 3rd storey up). The subject parcel, had it remained clearly in the City's possession, would likely have remained without a PMT and serve as a small but essentially open and semi-landscaped public space, allowing for movement around the building and some sitting opportunities. The most recently approved Development Permit drawings from May 2011 illustrate several shrubs in concrete planters surrounding a small plaza area, with steps connecting to the residential lobby area.

Staff are of the opinion that the subject parcel, with these electrical and balcony encumbrances in place, does not truly serve a public purpose and as such it is more appropriate that it be sold to the development (to Bosa, and ultimately to the residential strata) to maintain. Staff have also discussed the situation with the City's legal counsel who concurred with this opinion. Further, at this stage it is not considered reasonable to require the removal of portions of the balconies or the relocation of the BC Hydro PMT, and the developer is planning to transfer titles to the new residents within the next few weeks. While Bosa initially requested that the error be corrected without transferring the subject parcel by sale back to the developer, primarily due to concerns with the timing of this process and their scheduled closings of residential units, staff have consistently communicated that the subject parcel under the current circumstances does not serve a public purpose, and that it should be made part of the overall development since it primarily serves the development. Bosa is also required to resolve the issue of the balcony encroachments prior to the City's Approving Officer (the Director of Planning and Development Services in a separate, statutorily defined role) final approval of the ASP subdivision. Bosa has stated their willingness to proceed with the purchase and transfer of the subject parcel.

A draft Purchase and Sale Agreement is included as Appendix C. This document is draft and subject to further review by the City's solicitor, who is discussing the approach with the developer's legal counsel.

In addition to a sale of land to Bosa, an encroachment agreement is to be executed as a means of recognizing portions of the overall Miramar development that will cross over the boundaries of the subject parcel, whether owned by the City or when the parcel is transferred to the developer and subsequently the residential strata. A copy of a draft Encroachment Agreement is included as Appendix D (this document is also draft and subject to further review by the City's solicitor). The completion of this Encroachment Agreement will enable the ASP subdivision to proceed while the processes for the sale and transfer of the subject parcel (newspaper notification and LTSA filings) carry on.

Consideration of Fair Market Value

One of the methods supported by the City's Planning Procedures Bylaw to establish the fair market value of land is by taking the assessed value in the most recent tax assessment for the adjacent parcel of the purchaser, and applying the same rate (i.e., dollars per square foot) to the area of the land. An alternative is to use an appraiser, which generally takes longer. In this case, acquiring the subject parcel does not give Bosa any additional development entitlements, and their initial position was that it did not have value to them in the same way that another piece of urban land may generate value based on its development potential. Staff's position is that the subject parcel benefits the development by hosting the BC Hydro PMT, and that if the City were to acquire property elsewhere in the Town Centre to make up for this lost use of City property, the City would need to pay market value for that property.

A value of \$323.82 per square foot is believed to be fair and reasonable as the 91.3 square metre, “easement area” parcel, is contiguous with the overall development of Miramar Phase 2, is zoned as part of the Comprehensive Development Zone (i.e., CD-16), is designated Town Centre in the OCP, and the assessed land value per square foot in this area is relatively consistent between similarly situated parcels.

The land area of the current development parcel (including easement area) is 95,132 square feet, and the assessed land value in 2019 was \$30,806,000 (down from \$34.7M in 2018). This represents a land value of \$323.82 per square foot. A survey of other properties in the area shows a similar assessed land value, if not higher. In the table below, indices 1-3 are south of Russell Avenue (mixed zoning), whereas indices 5-8 are north of Russell Avenue and zoned CR-1 with a potential/actual maximum density of 5.4 FAR. Staff believe that it is fair to group the “easement area” with the lower assessed values in indices 1-3 given that the overall density of Miramar Village is lower (at 3.8 FAR) and the parcels in the nearby area seem to be valued consistently at ~\$320/square foot. There is a parcel owned by the City that forms part of Bryant Park (15131 Thrift Avenue; #9 below) which is assessed at a lower value, which staff consider to be an outlier relative to the other parcels in the area because this parcel is zoned P-1 (Institutional) and designated as a Park / Open Space in the OCP, though it could be argued that this is what land used for park/institutional purposes is valued at by BC Assessment.

Index	Civic Address	PID	Assessed Land Value (as of July 1, 2019)	Land Size (square feet)	Land Value (per square foot)	Note
1	1456 Johnston Road	030-232-040	\$2,975,000	9298	\$319.96	Parcel is under development with a 6 storey mixed use building (Forge Properties' "Verve"). Parcel is opposite Miramar Village on Johnston Road
2	1434 Johnston Road	011-278-803	\$2,954,000	9234	\$319.90	Parcel has two storey mixed use building from 1971. Opposite Miramar Village (south of indice #1)
3	15226 Russell Avenue	009-504-281 et al	\$7,410,200	23074	\$321.15	Parcel occupied by 1 storey commercial building, on same block as indices 1 & 2. Sold in 2017 for \$11.65M
4	15241 Thrift Avenue	029-127-181	\$9,704,000	26371	\$367.98	Parcel is under development with a 14 storey residential building (Marcon's "Semiah"). Parcel is opposite Miramar Village on Thrift Avenue. Approximate density of 5.4 FAR vs Miramar 3.8 FAR (overall)
5	1513 Johnston Road	006-760-481	\$16,422,000	38016	\$431.98	Parcel occupied by 1 storey commercial building, opposite Miramar Village 1 on Russell Avenue. Nominal Maximum FAR potential in current CR-1 zone is 5.4 FAR (with density bonus/amenity contribution and conformity to Town Centre Design Plan)
6	1575 George Street	030-045-843	\$19,210,000	38669	\$496.78	Parcel occupied by 23 storey seniors building and 2 storey commercial/amenity building, completed in 2017. Built to maximum FAR potential in current CR-1 zone is 5.4 FAR (with density

						bonus/amenity contribution and conformity to Town Centre Design Plan)
7	1588 Johnston Road	003-674-789	\$18,129,000	41966	\$431.99	Parcel is under development with a 26 storey mixed use building. Parcel is immediately north of indice #6
8	1530 Foster Street	004-514-041	\$29,497,000	68281	\$431.99	Parcel is vacant (used as commercial parking and staging area for adjacent construction). Immediately north of indice #5.
9	15131 Thrift Avenue	007-283-601	\$2,207,000	9198	\$239.94	Parcel forms part of Bryant Park and is zoned P-1 (Institutional) and designated Park in OCP. Considered outlier as does not have development potential.

Applying the \$323.82 per square foot valuation to the 91.3 square metre (982.38 square foot) parcel of land provides an overall value of ~\$318,000. This value has been communicated to Bosa, who has agreed to this price, while noting that they do not necessarily believe it has the value assigned to it by this valuation method.

FINANCIAL IMPLICATIONS

The completion of the sale agreement attached as Appendix C would result in a \$318,000 amount being transferred to the City, which will be deposited to the City’s Land Sale Reserve as per the statutory White Rock Land Sale Reserve Establishment Bylaw 1989, No. 1186.

LEGAL IMPLICATIONS

Sections 26 and 94 of the *Community Charter* outline the process of giving notice of a property disposition. The notice must include a description of the land in question, the person who is to acquire the property, the nature of the disposition and the consideration to be received by the municipality for the disposition. Regarding the latter requirement, it is the recommendation of staff that the land being the subject of this report be sold to Bosa at fair market value and that an encroachment agreement be secured to protect both the City’s interest and the interest of future property owners within the Miramar development.

COMMUNICATION AND COMMUNITY ENGAGEMENT IMPLICATIONS

Sections 26 and 94 of the *Community Charter* outline the process of giving notice of a property disposition. Space in the Peace Arch News would be reserved in two (2) consecutive issues to provide required notice.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS

City Planning staff consulted with staff within the Engineering and Operations Department to confirm whether the land sale would result in challenges with future service delivery and site access. The Department confirmed that the land sale would not present issues and, further, that there is not a desire to retain ownership of components of a private development (i.e., the encumbrances within the former City parcel). The Director of Financial Services has also provided input with respect the land sale proceeds.

CLIMATE CHANGE IMPLICATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES

The recommendation in this report serves to benefit the interests of the City overall and does not directly relate to one of Council's Strategic Priorities.

OPTIONS / RISKS / ALTERNATIVES

The following options are available for Council's consideration, as an alternative to staff's recommendation to proceed with the sale of the subject parcel:

1. Council could deny the recommendation of staff. Staff would expect that a correction to the ownership of the parcel of land described in this report would need to occur, bringing ownership back to the City, and this would require the applicant to revise submission materials tied to their active air space parcel subdivision application to reflect ownership circumstances. In this option, the City would own the constrained subject parcel without receiving compensation, and an encroachment agreement would remain necessary, or the removal of the encroachments (at the expense of the developer and resulting in an extensive delay to new residents and businesses moving into the buildings); or
2. Council could defer consideration of the recommendation pending the receipt of additional information, as identified by Council.

CONCLUSION

Bosa Properties has identified a surveying error that occurred in 2008 when an earlier subdivision plan for the Miramar Village Phase 2 development was filed with the Land Title and Survey Authority (LTSA), which led to the unintentional consolidation of 91.3 square metres of City-owned land with the Phase 2 development parcel owned by Bosa.

Given that the former City lands now have a BC Hydro pad-mounted transformer (PMT) installed on it to serve the development, as well as small portions of the residential balconies extending onto the parcel from above, staff see very limited public benefits should the City re-acquire and maintain ownership of the land, and recommend that the City could sell the subject parcel at fair market value, rather than accepting the return of the constrained parcel.

Proceeds from the sale of City Land is required to be deposited in the City's Land Sale Reserve.

Respectfully submitted,



Carl Isaak,
Director of Planning and Development Services

Comments from the Chief Administrative Officer

I concur with the recommendations of this corporate report.

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line and a short vertical stroke at the end.

Guillermo Ferrero
Chief Administrative Officer

- Appendix A: Original Subdivision Plan BCP38589
- Appendix B: Subdivision Plan EPP105461
- Appendix C: Draft Encroachment Easement Agreement
- Appendix D: Draft Purchase and Sale Agreement