
TO: GENERAL COMMITTEE

SUBJECT: SALE OF PROPERTY- TECK ROAD

WARD: 6

PREPARED BY AND KEY CONTACT: E. EMBACHER, SENIOR REAL ESTATE OFFICER, EXTENSION #4479

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That Block 178 and Teck Road identified on Plan 51M-867 as shown on Appendix "A" to Staff Report LGL010-17, being all of PIN's 587631430(LT) and 587631437(LT) (the "Subject Property") be sold to 1862145 Ontario Inc. (the "Purchaser") in accordance with the terms set out in the Agreement of Purchase and Sale (the "APS") as amended and attached as Appendix "B" to Staff Report LGL010-17.
2. That the City Clerk be authorized to execute all associated and required documents necessary to remove the condition of sale or amend any term contained in the APS on the recommendation of and in a form approved by the Director of Legal Services.
3. That the sale proceeds be transferred to the Tax Capital Reserve (Account # 13-04-0440).

PURPOSE & BACKGROUND

Report Overview

4. The purpose of this staff report is to recommend the sale of the Subject Property at fair market value and in accordance with the terms and conditions contained in the APS.
5. The Purchaser is proposing to assemble the Subject Property with the surrounding lands to be incorporated into a residential development.
6. Staff Report LGL009-16 was put forward to General Committee on November 28, 2016 recommending that the Subject Property be permanently closed as a roadway, declared surplus to the needs of the Corporation of the City of Barrie and offered for sale to the Purchaser. Council motion 16-G-275 approved this recommendation.
7. The Subject Property was acquired by the City in 2007 by dedication through the registration of Plan 51M-867 for the creation and future extension of Teck Road. The Subject Property consists of Teck Road and a 0.3m reserve.

ANALYSIS

8. An APS that is conditional upon Council approval has been entered into with the Purchaser pursuant to Council motion 16-G-275.

9. An external appraisal was completed for the Subject Property in January of 2017 and estimated the fair market to be in the range of \$137,000 to \$155,000 as if unencumbered.
10. There is significant underground infrastructure encumbering the Subject Property which will require disconnection and removal at the expense of the Purchaser prior to development. These costs have been offset from the appraised value in order to determine the fair market value as encumbered.
11. The cost to remove the infrastructure is estimated to be \$95,760, which includes the removal of electrical servicing, gas servicing, communication utilities, water main, asphalt, concrete curbing and storm & sanitary sewer. This estimate has been reviewed and approved by City staff for acceptability.
12. The low end of the estimated unencumbered appraisal value (\$137,000) is being recommended due to the entrepreneurial effort required on behalf of the Purchaser to remove the associated infrastructure. This equates to a fair market value (as encumbered) and purchase price of \$41,240 (\$137,000-\$95,760).
13. A circulation of applicable City departments for staff comment on the proposed disposition of the Subject Property was completed. Any comments or concerns raised by staff have been addressed as part of the disposition process.
14. The requirements of Section 34 of the *Municipal Act, 2001*, City's Sale of Property By-law 95-104 and the City's Notice By-law 2003-116 to declare the Subject Property surplus and permanently close it have been complied with by way of published notices in a newspaper having general circulation within the City of Barrie.
15. Disposition of the Subject Property and development in conjunction with the surrounding lands will create a revenue source for the City through the sale proceeds, development charges and future property taxation while reducing City liability on the unutilized vacant land.

ENVIRONMENTAL MATTERS

16. The Purchaser has agreed to purchasing the Subject Property on an "as is, where is" basis that is absent of any representations or warranties made by the City with respect to the environmental condition.

ALTERNATIVES

17. The following alternative is available for consideration by General Committee:

Alternative #1 General Committee could choose not to approve the sale of the Subject Property to the Purchaser.

This alternative is not recommended as pursuant to an internal circulation, the Subject Property is not required for City purposes and the sale would create a source of revenue to the City while reducing the City's liability and maintenance costs upon unutilized land.





FINANCIAL

18. The proceeds from this sale will be transferred to the Tax Capital Reserve (Account # 13-04-0440).
19. The Purchaser shall pay all of the City's costs and fees associated with the transfer of the Subject Property including appraisal, advertising, survey and legal expenses.

LINKAGE TO 2014-2018 STRATEGIC PLAN

20. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2014-2018 Strategic Plan.

APPENDIX "A"

Subject Property



APPENDIX "B"

Agreement of Purchase and Sale



AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)

BUYER: 1862145 Ontario Inc., agrees to purchase from
(Full legal names of all Buyers)

SELLER: The Corporation of the City of Barrie the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address: Teck Road fronting on the East side of Wright Drive

in the City of Barrie

and having a frontage of unknown more or less by a depth of unknown more or less, legally described as

Teck Road, Plan 51M-867, Barrie; being all of PIN# 587631437(LT) & Block 178, Plan 51M-867, Barrie; being all of 587631430(LT) as shown in Schedule "B"
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE Forty One Thousand Two Hundred & Forty Dollars (CDNS 41,240.00)

DEPOSIT: Buyer submits (Upon Acceptance) One Dollars (CDNS 1.00)
(Herewith/Upon acceptance)

By negotiable cheque payable to the Seller to be held in trust without interest pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer agrees to pay the balance as follows:

On closing, the balance of the purchase price, subject to the adjustments described herein, by cash or certified cheque to the Seller or as the Seller may direct.

SCHEDULE(S) "A" & "B" attached hereto form(s) part of this Agreement.

1. CHATTELS INCLUDED: NONE
 2. FIXTURES EXCLUDED: NONE
 3. RENTAL ITEMS: The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable. N/A
 4. IRREVOCABILITY: This Offer shall be irrevocable by Buyer until 4:00 p.m. on the 16th day of May, 2017
(Seller/Buyer)
after which time, if not accepted, the Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.
 5. COMPLETION DATE: This Agreement shall be completed by no later than 4:00 p.m. on the 16th day of (SEE SCHEDULE "A"), 2017.
Upon completion, vacant possession of the Property shall be given to the Buyer unless otherwise provided for in this Agreement.
 6. FAX No. _____ (For delivery of notices to Seller) FAX No. (705) 739-4278 (For delivery of notices to Buyer)
 7. HST: If this transaction is subject to Harmonized Sales Tax (H.S.T.), then such tax shall be in addition to the Purchase Price.
(included in/in addition to)
- If this transaction is not subject to H.S.T., Seller agrees to certify, on or before closing that the transaction is not subject to H.S.T.
8. TITLE SEARCH: Buyer shall be allowed until 6:00 p.m. on the 30th day prior to the day of completion (Requisition Date) to examine the title to the Property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or, (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the Property, that its present use (N/A) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the Property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
 9. FUTURE USE: Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the Property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
 10. TITLE: Provided that the title to the Property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been compiled with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and (d) any easement for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the Property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact that said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance and except against risk of fire in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Broker and Co-operating Broker shall not be liable for accepted Seller's title to the Property.
 11. CLOSING ARRANGEMENTS: Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part 111 of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electric Registration Act, S.O. 1991, Chapter 44, and any amendments thereto the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.
 12. DOCUMENTS AND DISCHARGE: Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except such as are in the possession or control of Seller. If required by Buyer, Seller will deliver any sketch or survey of the Property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
 13. INSPECTION: Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

INITIALS OF BUYER(S)



INITIALS OF SELLER(S)



APPENDIX "B" cont'd

Agreement of Purchase and Sale

14. **INSURANCE:** All buildings on the Property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50 (22) of the Planning Act, R.S.O. 1990.
16. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
17. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmettered public or private utility charges and unmettered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself be apportioned to Buyer.
18. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing and completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
19. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
20. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent, hereinafter provided.
21. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the Property, Seller has not caused any building on the Property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the Property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is subject of this transaction.
22. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
23. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision written or typed in this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
24. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) _____ (Buyer) Constance Venero (Seal) DATE: May 15, 2017
 Name: Constance Venero
 Title: President
 I have authority to bind the corporation

(Witness) _____ (Buyer) _____ (Seal) DATE: _____
 Name: _____
 Title: _____
 I have authority to bind the corporation

I, the Undersigned Seller, agree to the above Offer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) DMagnano (Seller) DM (Seal) DATE: May 15/17
 Name: Dawn McAlpine
 Title: City Clerk
 I have authority to bind the corporation

(Witness) _____ (Seller) _____ (Seal) DATE: _____
 Name: _____
 Title: _____
 I have authority to bind the corporation

SPOUSAL CONSENT: The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) _____ (Spouse) _____ (Seal) DATE: _____
 Name: _____
 Title: _____

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally executed by all parties on 10 o'clock this 15th day of May, 2017. DM (Signature of Seller/Buyer)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and authorize the Agent to forward a copy to my lawyer.

(Seller) _____ DATE _____

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and authorize the Agent to forward a copy to my lawyer.

(Buyer) C. Venero DATE May 15, 2017

(Seller) _____ DATE _____

(Buyer) _____ DATE _____

Address for Service: 70 Collier Street, Barrie, ON L4M 4T5 Address for Service: 27 Clapperton St. Suite 100A
 Seller's Lawyer: Chris Packham Buyer's Lawyer: Anderson, Rain
 Address: 70 Collier Street, Barrie, ON L4M 4T5 Address: 27 Clapperton St. Suite 100-A
 Tel. No. (705) 739-4220 Ext 4511 Fax No. (705) 739-4278 Tel. No. 705-915-0251 Fax No. 888-822-8620

APPENDIX "B" cont'd

Agreement of Purchase and Sale

SCHEDULE "A" TO THE
AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, 1862145 Ontario Inc., and

SELLER, The Corporation of the City of Barrie

For the purchase and sale of Teck Road, Plan 51M-867, Barrie; being all of PIN# 587631437(LT) & Block 178, Plan 51M-867, Barrie; being all of 587631430(LT) as shown in Schedule "B"

1. This Agreement has been executed by the City Clerk pursuant to Council motion 16-G-275 and is conditional for a period of 120 days following acceptance upon the ratification or approval of this agreement by the Council of The Corporation of the City of Barrie.

Unless the Seller gives notice in writing delivered to the Buyer that this condition has been fulfilled this Offer shall become null and void and the deposit shall be returned to the Buyer forthwith in full without deduction.

2. This Agreement is conditional for a period of 90 days following the removal of the condition pertaining to Council approval upon the Buyer taking title to the adjacent properties identified by PIN #'s 587631366(LT), 587631367(LT), 587631368(LT) and 587631427(LT).

Unless the Seller gives notice in writing delivered to the Buyer that this condition has been fulfilled this Offer shall become null and void and the deposit shall be returned to the Buyer forthwith in full without deduction.

3. The Buyer and Seller may extend the conditional periods by mutual agreement so long as the extension is agreed to in writing and in advance of the conditional period expiring.
4. The completion date shall occur within 90 days following the removal of all conditions contained in this Agreement of Purchase and Sale.
5. The Buyer acknowledges that the sale of the subject land does not guarantee that a rezoning or official plan amendment will be granted by the municipality if pursued by the Buyer following closing. The Buyer acknowledges that any attempt at a future rezoning application is done so at the Buyer's sole risk.
6. The Seller makes no representation or warranty concerning the soil and/or environmental condition of the Property. The Buyer is purchasing the Property on an "as is where is" basis.
7. The Buyer agrees to pay the Seller's reasonable costs associated with this transaction which include legal, appraisal and advertising fees.
8. The Buyer acknowledges the Property is currently encumbered by existing infrastructure and that future development of the Property will require its removal and or accommodation. The purchase price reflects the cost estimates associated with these works. Following closing, the Buyer, at its sole expense and risk shall undertake to complete these necessary works.
9. The Buyer and its representatives shall be entitled to enter upon the Property at any time prior to closing in order to inspect same, check elevations, conduct soil tests, prepare surveys, conduct environmental investigations and for any other purpose necessary or incidental for the Buyer to proceed with its development plans, at its own expense, provided that in so doing, no damage is done to the Property or any infrastructure contained within it.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



APPENDIX "B" cont'd

Agreement of Purchase and Sale



Amendment to Agreement of Purchase and Sale

Between BUYER 1862145 Ontario Inc.

And SELLER The Corporation of the City of Barrie

RE: Agreement of Purchase and Sale between the Buyer and Seller, dated the 15th day of May, 2017, concerning the property known as Teck, more particularly described as:

Teck Road, Plan 51M-867, Barrie; being all of PIN 587631437(L1) & Block 178, Plan 51M-867, Barrie; being all of PTN 587631430(L1)

The Buyer and Seller herein agree to the following Amendments to the aforementioned Agreement:

Delete:


1. This Agreement has been executed by the City Clerk pursuant to Council motion 16-G-275 and is conditional for a period of 120 days following acceptance upon the ratification or approval of this agreement by the Council of The Corporation of the City of Barrie.

Insert:


1. This Agreement has been executed by the City Clerk pursuant to Council motion 16-G-275 and is conditional for a period of 200 days following acceptance upon the ratification or approval of this agreement by the Council of The Corporation of the City of Barrie.

The Buyer and Seller agree that all other terms and conditions in the Agreement shall remain as stated therein and time shall remain of the essence.

SIGNED, SEALED AND DELIVERED in the presence of


(Witness)

IN WITNESS whereof I have hereunto set my hand and seal


Dawn McAlpine
Title: City Clerk
I have authority to bind the corporation



(Seal)

DATE Sept 11, 2017

SIGNED, SEALED AND DELIVERED in the presence of


(Witness)

IN WITNESS whereof I have hereunto set my hand and seal


Connie Verette
Title: President
I have authority to bind the corporation


(Seal)

DATE Sept 11, 2017