**Minute No. 235**
**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 4, 2019**

**Item No. 1** **Sale of City-owned land located at the southeast corner of Madison Street and St. Matthews Avenue (St. James Ward)**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

1. That the proposed Terms and Conditions for the sale of the City-owned land located at the southeast corner of Madison Street and St. Matthews Avenue, attached hereto as Schedule A and identified as Subject Property on Schedule B, be approved.

2. That subject to the approval of Recommendation No. 1, the Offers to Purchase City-owned Property Policy, adopted by Council on December 6, 2006, be waived.

3. That the City enter into, execute and deliver a Purchase and Sale Agreement with DAAD Holdings Ltd., and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

4. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Purchase and Sale Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

5. That Recommendations 1 to 4 be subject to:

    A. Requiring and obtaining a Notice of Discontinuance of the claim against the City; and

    B. Requiring and obtaining a Release from DAAD Holdings Ltd. in a form acceptable to the City Solicitor.

6. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – March 4, 2019**

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 12, 2019, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 4, 2019, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** Sale of City-owned land located at the southeast corner of Madison Street and St. Matthews Avenue

**Critical Path:** Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| M. Pittet | J. Kiernan | M. Ruta | D. McNeil |

## EXECUTIVE SUMMARY

DAAD Holdings Ltd. ("DAAD") submitted a request to purchase surplus City-owned lands located at the corner of St. Matthews Avenue and Madison Street, shown as "Subject Property" on Misc. Plan No. 11054/4. DAAD was advised at the time of the request that the land in question is a buildable site that would be listed for sale on the open market in accordance with Council Policy.

On June 15, 2017, DAAD filed a Statement of Claim against the City. Among other things, DAAD requested the Court of Queen's Bench to declare that the City be required to sell the Subject Property to DAAD without a public offering or tender process. In the Statement of Claim, DAAD asserted that it requires the Subject Property because it is an exit from their building, there is long standing rental agreement with the City and they had enjoyed use of the property for at least 20 years prior to entering into a rental agreement with the City.

The Public Service has determined that a direct sale of the Subject Property to DAAD is appropriate in this instance and recommends approval of the sale under the terms and conditions contained herein.

Subject to Council approval, both the Public Service and DAAD are agreeable to a proposed sale price of $270,000. A condition of the sale would be that DAAD execute a Release and Discontinuance of the Statement of Claim.

## RECOMMENDATIONS

1. That the proposed Terms and Conditions for the sale of the City-owned land located at the southeast corner of Madison Street and St. Matthews Avenue, attached hereto as Schedule A and identified as Subject Property on Schedule B, be approved.

2. That subject to the approval of Recommendation No. 1, the Offers to Purchase City-owned Property Policy, adopted by Council on December 6, 2006, be waived.

3. That the City enter into, execute and deliver a Purchase and Sale Agreement with DAAD Holdings Ltd., and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

4. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Purchase and Sale Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

5. That Recommendations 1 to 4 be subject to:
   A. Requiring and obtaining a Notice of Discontinuance of the claim against the City; and
   B. Requiring and obtaining a Release from DAAD Holdings Ltd. in a form acceptable to the City Solicitor.

6. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

## REASON FOR THE REPORT

On January 28, 2009, Council authorized the Chief Administrative Officer ("CAO") to approve all sales of City-owned property that have been declared surplus where:

I. the sale price is $500,000 or less;
II. the sale price is at least:
   a. 95% of appraised value, or
   b. 100% of the Standing Policy Committee on Property and Development pre-approved price;
III. the property is being sold through a public offering and / or complies with the "Offers to Purchase City-owned Property policy";
IV. the offer is in the best interests of the City; and
V. prior to public offering, the sale has written concurrence from the Ward Councillor.

The proposed sale does not comply with subsections II(a) or (b) or section III of the CAO's Delegation of Authority.

The Standing Policy Committee on Property and Development, Heritage and Downtown Development has the authority to approve all sales in accordance with the "Policy for the Sale, Acquisition, Rental, Leasing and Management of Properties" adopted by Council on July 18, 1979.

Inasmuch as the Subject Property is considered buildable, a waiver of Council policy is required as the proposed sale does not comply with The Policy for Offers to Purchase City-owned Property adopted by Council on December 6, 2006.

## IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory, environmental, human resources or other implications associated with this report.

The City's standard terms and conditions of sale include provisions to protect the City's interests in the event that environmental contamination is discovered.

The net proceeds of the sale will be transferred from the Land Operating Reserve to the capital budget of the Polo Park Infrastructure Improvement Project, in accordance with Council instructions from May 27, 2014.

## HISTORY/DISCUSSION

On May 27, 2014, Council initiated expropriation proceedings to acquire the land interests required for the Polo Park Infrastructure Improvement Project – Westside of St. James (the "Project"). The Project allowed for the extension and realignment of St. Matthews Avenue between St. James Street and Century Street. Ultimately, portions of the existing St. Matthews right-of-way were not required for the Project due to the road realignment.

On October 13, 2015, Council concurred in the Public Service Recommendation to close portions of St. Matthews Avenue, including the southeast corner of Madison Street and St. Matthews Avenue (the "Subject Property") indicated on Misc. Plan No. 11054/4. Council also declared the Subject Property surplus to the City's needs.

Since February 1, 2004, the Subject Property had been leased to DAAD Holdings Ltd. ("DAAD") who owns the adjacent building located at 499 Madison Street. After the Subject Property was declared surplus, DAAD expressed an interest in acquiring it. Section B 3(a) of the Policy for Offers to Purchase City-owned Property, adopted by Council on December 6, 2006, specifies that the City "may act on unsolicited offers for City-owned property from an adjacent existing owner when the property in question in not developable on its own (e.g. not buildable due to zoning, location, or size; a remnant parcel)". DAAD was advised that the Subject Property is a buildable site that would be placed on the open market in accordance with Council Policy.

On June 15, 2017, DAAD filed a Statement of Claim against the City. Among other things, DAAD would like the Court of Queen's Bench to declare that the City be required to sell the surplus land without a public offering or tender process. In the Statement of Claim, DAAD asserts (among other things) that it requires the Subject Property because it is an exit from their building, there is long standing rental agreement with the City and they had enjoyed use of the property for at least 20 years prior to entering into a rental agreement with the City.

DAAD engaged an external appraiser who determined that the market value of the Subject Property is $220,000.00. This appraiser opined that the Subject Property is buildable and could be developed with a small structure or improvement.

The Public Service also engaged an external appraiser who determined the market value of the Subject Property to be $295,000.00. The appraiser's highest and best commercial use considered the physical possibility, legal permissibility, financial feasibility and maximal productivity of the site. Although the Subject Property is considered buildable, the site is a unique shape and has multiple development restrictions hindering the developable area. The City determined that access to DAAD's building exit could be accommodated through an easement on the Subject Property. Further, any proposed building on the Subject Property will require a 16 metre setback from DAAD's existing building to account for fire separation. The Public Service believes these characteristics could impact the sale of the property.

Notwithstanding the evidence that the Subject Property is buildable, DAAD advised that it does not intend to drop its Statement of Claim against the City. The Public Service has been engaged in settlement discussions with DAAD to resolve the matter in a timely fashion and avoid potential costs. Subject to Council approval, both the Public Service and DAAD are agreeable to a proposed sale price of $270,000. The proposed sale price is less than the City's appraised value, but within the market range indicated by both appraisers. A condition of the sale would be that DAAD execute a Release and Discontinuance of the Statement of Claim and any associated motions in a form that is acceptable to the City.

The Public Service supports the proposed sale of the Subject Property for $270,000.00 to DAAD for the following reasons:

- The sale will eliminate the need to devote resources to defend against DAAD's Statement of Claim, associated court motions and will ensure the avoidance of any court costs and liabilities associated with litigation;
- The property will be placed back on the tax roll at the closing of the sale;
- The Ward Councillor has been advised and concurs with the intentions of the Department; and
- The sale will eliminate the liability for the City associated with holding this property.

## FINANCIAL IMPACT

**Project Name:** **First Year of Program** **2019**

Sale of City-owned land located at the southeast corner of Madison Street and St. Matthews Avenue

| | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|
| **Capital** | | | | | |
| Capital Expenditures Required | | $ - | $ - | $ - | $ - |
| Less: Existing Budgeted Costs | | - | - | - | - |
| Additional Capital Budget Required | $ - | $ - | $ - | $ - | $ - |
| **Funding Sources:** | | | | | |
| Debt - Internal | $ - | $ - | $ - | $ - | $ - |
| Debt - External | - | - | - | - | - |
| Grants (Enter Description Here) | - | - | - | - | - |
| Reserves, Equity, Surplus | - | - | - | - | - |
| Other - Enter Description Here | - | - | - | - | - |
| Total Funding | $ - | $ - | $ - | $ - | $ - |
| Total Additional Capital Budget Required | $ - | | | | |
| Total Additional Debt Required | $ - | | | | |
| **Current Expenditures/Revenues** | | | | | |
| Direct Costs | $ - | $ - | $ - | $ - | $ - |
| Less: Incremental Revenue/Recovery | 270,000 | - | - | - | - |
| Net Cost/(Benefit) | $ (270,000) | $ - | $ - | $ - | $ - |
| Less: Existing Budget Amounts | (270,000) | - | - | - | - |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Net proceeds of disposition of $270,000 will be credited to the Land Operating Reserve. The municipal property tax implications of the proposed sale are not material and have been excluded from this analysis.

*"Original signed by"*
Mike McGinn, CPA, CA
Manager of Finance

**CONSULTATION**

This Report has been prepared in consultation with:

Legal Services Department (as to legal issues)

**OURWINNIPEG POLICY ALIGNMENT**

01-1b Key Directions for Building a City That Works
The Subject Property is a surplus land parcel as a result of the Polo Park Infrastructure Improvements Project. This aligns with the referenced section of the OurWinnipeg Policy as it suggests that the City should dynamically integrate transportation with land use.

**SUBMITTED BY**

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Julian Roberts, Senior Negotiator
Date: January 22, 2019
File No: 5605

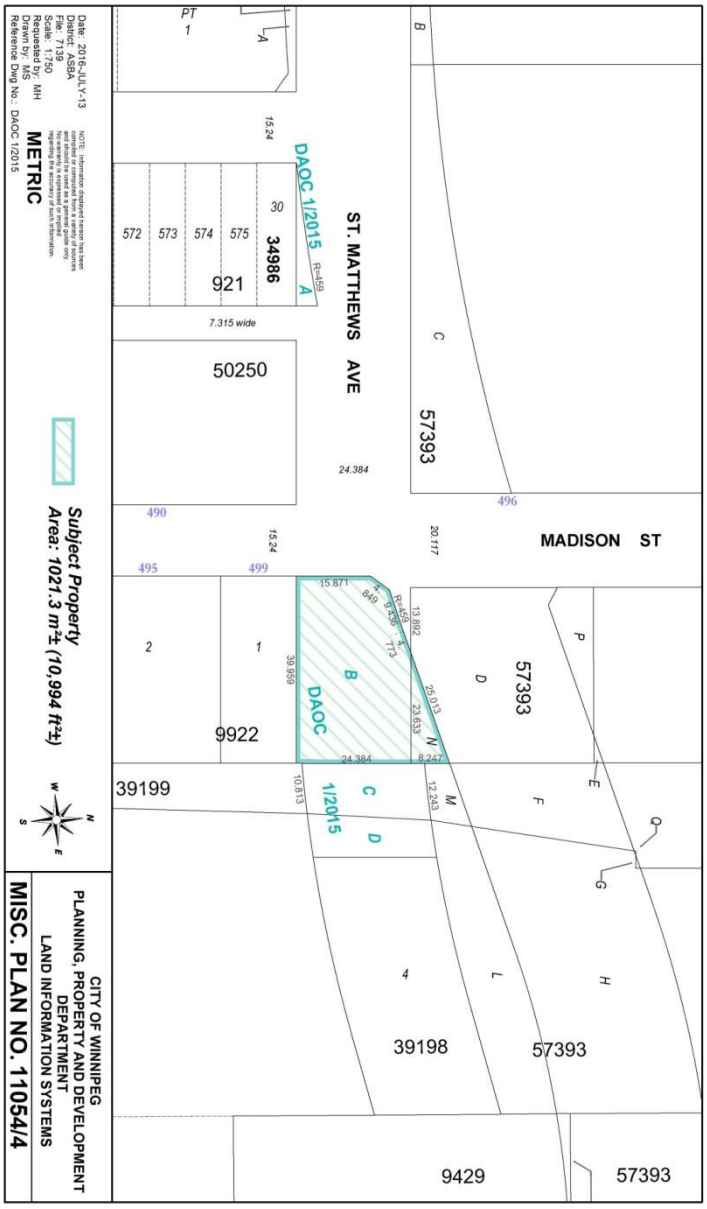
Attachments:

Schedule A – Terms and Conditions
Schedule B – Misc. Plan No. 11054/4

## Schedule A

| | |
|---|---|
| Owner/Vendor: | The City of Winnipeg (the “City”); |
| Purchaser: | DAAD Holdings Inc. (the “Purchaser”); |
| Purchase Price: | $270,000.00 plus applicable taxes; |
| Additional Consideration: | None; |
| Land to be Purchased: | Shown as “Subject Property” on Misc. Plan No. 11054/4; |
| Closing Date: | Sixty (60) days following approval by City Council or its delegated authority, or a date to be mutually agreed to between the parties and approved by the City’s Chief Administrative Officer; |
| Taxes: | The Purchaser is responsible for the payment of taxes applicable to the Subject City Property on and after the Closing Date, in accordance with the provisions of The Municipal Assessment Act and The City of Winnipeg Charter, S.M. 2002 c. 39, if applicable; |
| Other Terms: | Centra Gas Manitoba Inc. has identified services within the Subject Property and will require a blanket easement. Alternatively, if the Purchaser is not amenable to a blanket easement, Centra Gas Manitoba Inc. will require a sketch prepared by a Manitoba Land Surveyor showing the exact location of all gas facilities (gas main and service). Centra Gas Manitoba Inc. will then return an easement layout for the preparation of an easement plan. Such easement must be permitted by the Purchaser and any associated costs in determining and granting such easement will be the sole expense and responsibility of the Purchaser.<br>Shaw Cablesystems Limited has identified services within the Subject Property. A 3.1m wide easement over the westerly portion of the Subject Property must be permitted by the Purchaser and any associated costs in determining and granting such easement will be the sole expense and responsibility of the Purchaser.<br>No permanent structures will be allowed within the noted easement areas.<br>The Purchaser may elect to conduct an Environmental Site Assessment of the Subject City Property, if desired;<br>The Owner makes no representations, warranties, or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Subject City Property;<br>The Purchaser will enter into a formal Purchase and Sale Agreement with the City embodying the terms and conditions contained herein and such other terms and conditions as the City Solicitor / Director of Legal Services deems necessary. |

## Schedule B


Date: 2016-JULY-13
District: ASBA
File: 7139
Scale: 1:750
Requested by: MH
Drawn by: MS
Reference Dwg No.: DAOC 1/2015
METRIC
Subject Property
Area: 1021.3 m²± (10,994 ft²±)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 11054/4
ST. MATTHEWS AVE
MADISON ST
DAOC 1/2015
DAOC
1/2015
34986
921
50250
57393
9922
39199
39198
9429
7.315 wide