

Town of Whitby Staff Report

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Report Title: **Public Input and Next Steps in Declaration of Surplus:
Part of Pt Lot 24, Conc. 1, being Part of PIN 26488-
0153 (LT) – South-East Corner of Garden Street and
Burns Street East for the Purpose of Conveyance to
Town Brewery Inc.**

Report to: **Council**

Date of meeting: March 6, 2023

Report Number: **FS 08-23**

Department(s) Responsible:

Financial Services Department

Submitted by:

Fuwing Wong, Commissioner, Financial
Services & Treasurer

**Acknowledged by M. Gaskell, Chief
Administrative Officer**

For additional information, contact:

Fuwing Wong, ext. 4314

1. Recommendation:

1. That public feedback received as part of the public notice requirements of Town Policy F 190 regarding the Acquisition, Sale or Other Disposition of Land Policy be received;
2. That a by-law be brought forward to authorize the sale/conveyance of approximately two (2) acres and not less than one (1) acre of land located at the south-east corner of Garden Street and Burns Street East, being a portion of Part of Lot 24, Concession 1, being part of PIN 26488-0153 (LT) (the "Sale Parcel") to Town Brewery Inc., or its associated company, subject to the concurrence of the Commissioners of Financial Services/Treasurer and Legal and Enforcement Services/Town Solicitor;
3. That the Mayor and Clerk be authorized to execute the necessary documents to complete the sale/conveyance of the Sale Parcel to Town Brewery Inc., or its associated company; and

4. That following the completion of the sale/conveyance of the Sale Parcel to Town Brewery Inc., or its associated company, the remainder of the Property shall automatically be deemed *not* to be surplus to the needs of the Town.

2. Highlights:

- The Town owns approximately 20.5 acres of property at the South-East corner of Garden Street and Burns Street East;
- The developable portion of the Garden and Burns property is zoned prestige industrial;
- Approximately three (3) acres of the Garden and Burns property may be developable, subject to Central Lake Conservation Authority review and approval of any development applications;
- In 2021, Council provided direction to staff to determine the developable portion of the property for a future land surplus declaration and sale;
- Town Brewery Inc. expressed an interest in acquiring a portion of the property to re-locate and expand their current Whitby business;
- This report provides an outline of the comments and objections received from the public notice/engagement stage of the Town's disposition process; and
- Staff recommend proceeding with the land sale.

3. Background:

The Town owns approximately 20.5 acres of property at the South-East corner of Garden Street and Burns Street East, legally described as: Part Lot 24, Concession 1, Township of Whitby, as in CO147657 lying west of Parts 1 and 2 on Plan 40R-5077, Part 2 on Plan 40R-10560, Parts 1 and 4 on Plan 40R-13580, Part 7 on Plan 40R-1029, Part 12 on Plan 40R-18134 and North of Part 4 on Plan 40R-18134; TOWN OF WHITBY (PIN 26488-0153 (LT)), (the "**Property**"), as shown on **Attachment 1**.

The Property is zoned M1A-F under By-law # 2585, Select Industrial (also referred to as Prestige Industrial) Zone – Flood Zone.

Through the September 27, 2021 Report FS 37-21, the "Town-owned Land Strategy" report, Council authorized staff to conduct further studies to identify the developable portion of the Property for the purpose of declaring it surplus and future disposition.

Comments from CLOCA

Staff obtained preliminary feedback from the Central Lake Conservation Authority (“**CLOCA**”) related to the developable limits of the Property. CLOCA advised that they consider the entire parcel as being within the Natural Heritage System of Pringle Creek. However, CLOCA noted that they understand that there is a “sliver” of land in the North-West corner of the Property that is zoned M1A (Prestige Industrial) that is outside of the floodplain and the typical urban buffer limits of the existing key natural heritage features, as CLOCA understands them today. Based on preliminary analysis, CLOCA estimates approximately three (3) acres of the Property to be developable (the “**Developable Property**”). The CLOCA estimate of the extent of the Developable Property based on a 15 metre setback to the conceptual wetlands, 30 metres to the centreline of the creek, 10 metres from the woodland dripline and 6 metres from the edge of the flooding hazard. CLOCA also noted that:

- these natural heritage setbacks can all be found within the Town Official Plan as the minimum vegetation protection zones to be assigned to each of these features as part of any development application; and
- the remainder of the Property is entirely within the floodplain of Pringle Creek and as stated in the Provincial Policy Statement, development and site alteration shall not be permitted within a floodway such as this.

Town Brewery Inc.

In late 2021, the Town received interest from Town Brewery Inc. (“**Town Brewery**”) to purchase a portion of the Developable Property. Town Brewery is a local brewery, established in 2017, that produces and sells beer. Town Brewery is currently located at 1632 Charles Street, Whitby, and is looking to purchase a property for a permanent re-location and expansion of their business within the Town. Town Brewery’s interest in acquiring the developable property came as a result of the brewery being informed that their current location may be sold for re-development in the near future. According to Town Brewery, if this site is not suitable, they may have to look outside of the municipality for a new site.

Town Policy F 190

Before the Town may dispose of property, it must be declared surplus and, in accordance with Town Policy F 190 - the “Acquisition, Sale or Other Disposition of Land Policy”, the Town must:

- Obtain the fair market value of the Lands (as defined in Town Policy F 190) via an appraisal report from a qualified appraiser;
- Provide public notice which includes:
 - Posting a sign on the Lands for not less than ten days;
 - An advertisement in a newspaper having general circulation within the Town; and

- Posting notice on the Town's website;
- Provide the public an opportunity to submit written objections to the Town as follows:
 - any person may submit an objection, in writing, to the Clerk 20 days after notice is provided;
 - The objection shall include the person's name, address and reason(s) for objecting;
- If no objection is received, Council's decision to declare the Lands surplus shall be final.
- If objections are received, staff are to prepare a report to Council outlining the objections and provide a recommendation to Council regarding the subject Land.

One additional step related to the Property is that the Sale Parcel (a portion of the Developable Property) must be identified to be severed from the remainder of the Property. A sketch/outline of the Developable Property (i.e. the portion of the property that could potentially be developed) is included as **Attachment 2**. As shown in Attachment 2 only the north-west corner of the entire Town-owned Property make up the Developable Property.

Project Milestones

On January 14, 2022, the Town received a narrative appraisal of industrial land located at the South-East corner of Garden Street and Burns Street East from a qualified land appraiser hired by the Town.

On February 28, 2022, Council authorized staff to negotiate an Agreement of Purchase and Sale with Town Brewery based on the fair market value established by the Town's appraiser in January.

On June 13, 2022, Council:

- declared between one (1) to two (2) acres of the Developable Property surplus subject to the conditions noted in the Agreement of Purchase and Sale below;
- directed staff to provide public notice beyond the requirements of Policy F 190 (noted above) by distributing mailout notices to residents on Prentice Drive and Hyland Street with properties that face the Town-owned Garden and Burns property; and
- authorized the Mayor and Clerk to execute the Agreement of Purchase and Sale between the Town and Town Brewery Inc., or an associated company.

Also on June 13, 2022, the Town of Whitby entered into a conditional Agreement of Purchase and Sale (“**APS**”) with Town Brewery for the potential sale of approximately two (2) acres and not less than one (1) acre of the Developable Land subject to conditions, including requirements under Town Policy F 190:

- the Town notifying the public and obtaining public input in accordance with Town policy on the disposition of land;
- the Town considering any comments received during the public engagement period;
- the Town passing resolution to declare between one (1) to two (2) acres of the Developable Land surplus; and
- the Town passing a by-law to convey the Sale Parcel;
- See more information on the policy related to the disposition of land, in the “Town Policy F 190” section, above.

On July 6 and 7, 2022, the Town provided notice of the declaration of surplus lands for the Developable Property via two physical signs on the Property (July 6) newspaper advertisement, and a posting on the Town’s website (July 7). Notification letters were also dropped off at homes along Prentice Drive and Hyland Street where the homes face/have backyards that face the Town-owned Garden and Burns property (July 7). The notices outlined the process for providing written objections to the Town by the deadline of August 5, 2022.

The Town received 42 comments from members of the public related to the public notice. The balance of this report will review the feedback received and recommended next steps.

4. Discussion:

The purpose of this report is to provide Council an outline of the objections and other comments received from the public notice and engagement step of the Town’s property disposition process and policy (Policy F 190).

In total, 42 written comments were received from July 7 to August 5, 2022 (Note: one comment was received after the August 5, 2022 deadline but is also included in the summary of 42 comments for Council’s consideration):

- 10 of the written comments received were in support;
- 29 of the written comments received were opposed to the declaration of surplus/proposed land conveyance; and
- 3 of the written comments received requested additional information.

10 Responses in Support:

Comments in support of the declaration of surplus and proposed land conveyance are generally in favour of:

- the Town supporting a local business;
- the corner of Garden and Burns developed/being used for a productive purpose; and
- how the proximity of the site to 3 local neighbourhoods would promote active transportation.

29 Responses Opposed/Objections

The following is a summary of objections received and Town staff comments:

Frequency	Concerns Received	Staff Comments
10	Community Safety - Proximity to Residential Homes/ School/ Children/ Zoning	The portion of the property to be sold is zoned prestige industrial and the proposed use is permitted.
15	Traffic & Noise / Speeding	<p>As noted above, the portion of the property to be sold is zoned prestige industrial and any development related to the permitted prestige industrial use may increase traffic and noise to the area. Traffic and noise concerns may be mitigated in a future site plan process.</p> <p>Speeding is an issue independent of the Town's declaration of surplus lands/sale of land and may be best addressed by a combination of traffic calming measures and active enforcement by Durham Regional Police Services.</p>
5	Previous Special Council Meeting not open to public / Lack of Information	Public notice and engagement was in accordance with Town Policy F 190 (as detailed in this report). Further, as per Council direction, additional notice via mail drops were provided to homes along Prentice Drive and Hyland Street where the homes face/have backyards that face the Property.
4	Other restaurants/ commercial available within walking distance	Staff cannot comment on market conditions/viability of the proposed use on the site. This would be a consideration for a potential purchaser. The Town encourages all potential purchasers of Town-owned property to complete their own due diligence.

6	Don't want to see development in open space/ Disrupt Wildlife	The Property is approximately 20.5 acres. Only a small portion (~ 2 to 3 acres) at the North-West portion of the Property is considered developable, subject to CLOCA review, and zoned industrial. The remainder of the 20.5 acres of the Property will be retained by the Town and continue to be used for storm water management.
4	Not Suitable for School in Past - Why suitable for restaurant?	<p>In 2002, this site was considered as a potential site to replace the R.A. Hutchison Public School and the Kathleen Rowe Memorial Public School. Staff did not recommend this site for a public school for the following reasons (as noted in the November 18, 2002 Planning and Development Meeting, Staff Report 180-02):</p> <p>"The Town's property on the south-east corner of Garden and Burns Street, while central, was the site that raised the question of 'safety'. Planning staff provide the following comments on this site:</p> <ul style="list-style-type: none"> - the site is irregular in shape and does not appear to be of a size or configuration that will allow the development of a school, parking/bus areas and playground; - the site is flanked by two arterial roads and the valley lands of the Pringle and Ash Creek. Planning Staff advise that this site is in the greatest conflict with the value of safety. - In considering the site's characteristics and the issue of children's safety, we are compelled to advise that this site, from a planning perspective, is not recommended, notwithstanding its qualities as a central site."
2	Aroma/Odour/ Air Quality	By-law Enforcement reports that there have been no odour complaints from area residents near Town Brewery's current location.

1	Lower Property Value/ Crime	A portion of the property has been zoned prestige industrial since 1968. Any market values and a due diligence search prior to purchasing property in the area would consider the impacts of the property.
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Note: Frequency of concerns, in the table above, totals 47 as many of the 29 objections received noted more than one concern.

Next Steps

Staff recommend proceeding with the disposition/sale of approximately two (2) acres and not less than one (1) acre of the Developable Property to Town Brewery. A by-law to authorize the conveyance of the Sale Parcel to Town Brewery Inc., or its associated company will be brought forward once Town Brewery has completed its due diligence and waived conditions in accordance with the APS to the satisfaction of the Town Solicitor and Town Treasurer.

Should Council not approve this conveyance or should Town Brewery not waive its conditions in the APS, the Town may seek other potential purchasers for the Developable Property.

5. Financial Considerations:

Net proceeds from the sale of land will be transferred to the Town's Land Sales Reserve. The Land Sales Reserve is used to fund the purchase of other land required for other Town purchases, such as land in the Whitby downtown area for additional municipal parking. Using proceeds from the sale of surplus land to purchase other land required to provide Town services mitigates the impact on property taxes if the project is not otherwise eligible to be funded by non-tax sources such as development charges or cash received in lieu of parkland dedication.

6. Communication and Public Engagement:

Communication and public engagement related to this project has been outlined in other sections of this report.

Member of the public who have provided their contact information through the public engagement process and all contacts on the interested parties list for this project have been sent a link to this report.

7. Input from Departments/Sources:

The recommendation to sell a portion of the Developable Property is consistent with the Town-owned Lands Strategy report in 2021 (September 27, 2021 Report FS 37-21), which was circulated to all Town departments.

Economic Development received the initial request from Town Brewery and has been actively involved in the ongoing communications and supports the recommendations outlined in this report.

Planning and Development has been consulted for guidance pertaining to severing the Land and has been involved in the development planning process.

Legal Services has prepared the APS, reviewed this report and has provided advice regarding the completion of this matter, and will be facilitating the completion of the transaction if approved by Council.

8. Strategic Priorities:

The disposition of the Property continues the Whitby tradition of responsible financial management and respect for taxpayers and ensures that Whitby is clearly seen by all stakeholders to be business and investment friendly and supportive.

9. Attachments:

Attachment 1 – Staff Report

Attachment 2 – Sketch of Potentially Developable Portion of the Property