



"Together We Learn"

SCHOOL DISTRICT No. 23 (CENTRAL OKANAGAN)
1940 Underhill St., Kelowna, BC V1X 5X7
Tel. (250)470-3256, Fax (250)860-9799, www.sd23.bc.ca

Memorandum

Date: November 1, 2006
To: Board of School Trustees
From: Larry Paul, Secretary Treasurer
Prepared by: Judy Shoemaker, Planning Manager

Action: **Property Bylaw No. 100 - Lot 4, Plan 896 and Lot A, Plan 53553
Land Dedication and Land Transfer to the City of Kelowna
Dr. Knox Middle Replacement Project No. 113509**

1.0 ISSUE STATEMENT

In order to develop the new Dr. Knox Middle Replacement School on the above mentioned properties, it is necessary to rezone the property to the P2 - Education and Minor Institutional. As a condition of rezoning, the City of Kelowna requires the dedication and transfer of lands to accommodate the recommended road improvements surrounding the new school site.

2.0 RELEVANT BOARD MOTION/DIRECTION

None

3.0 BACKGROUND

To facilitate the construction of the new Dr. Knox Middle Replacement School, and as condition of rezoning, the School District is required to complete the specific road and frontage improvement works and infrastructure servicing improvements as identified in the Dr. Knox Site Traffic Impact Study and Servicing Report prepared by Urban Systems, and included in the Phase Two Feasibility Study Report. Subsequently, a Development Servicing Agreement has been developed with the City to identify the detailed scope and cost responsibilities for these works.

As part of this process, certain School District and City lands have been identified for road dedication, road closure or as cut-off lands in order to complete the road and servicing improvements as shown on the attached sketch plan and as follows;

- Total road dedications to the City - 4638m²
- Cut off lands to be transferred from School District No. 23 to the City - 383m²
- Cut off lands to be transferred from the City to School District No. 23 - 325m

4.0 POINTS FOR CONSIDERATION

- a) The road dedications are a condition of development and are not compensable. The net difference in land transfers is compensable, however it is negligible at .0014 acre. In lieu of payment to the School District, the City has agreed to share 50% of the cost of the road dedication surveys.

- b) The road dedications are deemed mandatory by City planning, development and engineering staff to access and service the school.
- c) The rezoning application has received third reading and approval from City Council. Fourth and final reading will proceed to council for consideration upon approval of the attached Interim Land Dedication Agreement by the Board.
- d) The Land Dedication Agreement attached is deemed interim, in order to allow the rezoning to proceed. Final Land Transfer Documents will be drawn up upon completion of the Road Design and Legal Surveys.
- e) 95% working drawings and specifications are complete for the Dr. Knox project. It is planned to issue tenders for the project before the end of November.

5.0 OPTIONS FOR ACTION:

- 1. Approve the attached Property Bylaw, allowing the rezoning application to proceed to City Council for final reading and adoption and allowing District staff to proceed with tendering the project on schedule.
- 2. Direct staff to renegotiate the land dedication and transfer agreement thereby delaying the project indefinitely.

6.0 FOLLOW-UP/REVIEW

District staff will continue to work with City staff to complete the necessary legal surveys, subdivision and consolidation plans and legal land transfers as outlined in the Interim Land Dedication Agreement attached.

7.0 SECRETARY TREASURER'S COMMENTS

None

8.0 RECOMMENDATIONS

THAT: The Board give first, second and third readings to School District No. 23 (Central Okanagan) Property Bylaw No. 100 (as attached) at the November 8, 2006 Public Board Meeting;

THAT: School District No. 23 Property Bylaw No. 100 (Dr. Knox Replacement Site Road Dedication and Land Transfer with the City of Kelowna) be read a first, second and third time, and finally adopted this 8th day of November 8th, 2006;

AND FURTHER THAT: The Board grant approval for the dedication and transfer of lands on Lot 4, Plan 896 and Lot A, Plan 53553, ODYD, known as the Dr. Knox Middle Replacement School site to the City of Kelowna, as outlined on the attached Road Dedication and Land Transfer Agreement attached and as shown on the attached explanatory sketch plan;

AND FURTHER THAT: The Board certifies that the granting of this right-of-way shall have no adverse effect on the educational programs provided in School District No. 23 (Central Okanagan).

8.0 APPENDIX

- a) Sketch Plan showing Proposed land Dedication and Land Transfers
- b) Road Dedication and Transfer Agreement
- c) Property Bylaw No. 100

REV

October 23, 2006

File: 0915-20-174-001

School District No. 23
685 Dease Road
Kelowna BC V1X 4A4

Attention: Judy Shoemaker

Dear Ms. Shoemaker:

Re: Proposed Road Closure of a Portion of Valley Road and Partial Road Dedications of Lot 4, Plan 896 and Lot A, Plan 53553

Further to our discussions on the above, we would be pleased to forward a recommendation to Council that the City of Kelowna (the "City") enter into a road closure and sale of that road to the Owners of Lot 4, Plan 896 (the "Owners") on the following terms and conditions:

1. By way of a road closure bylaw:
 - a. The City will close and raise title to that portion of Valley Road identified as "Proposed Road Closure" as shown on the attached plan marked Schedule A (the "Road Closure");
2. By way of a follow-up consolidation and subdivision plan:
 - a. That portion of the Lands identified as Dedicated Road on the attached plan marked Schedule A will be dedicated as road (the "Road Dedication").
 - b. That portion of Valley Road to be closed will be transferred to the Owners and consolidated with the Lot 4, Plan 896 (The "Consolidated Lot"). The Consolidated Lot will be sub-divided in general accordance with the plan marked Schedule B (the "Consolidation Plan");
 - c. That portion of Lot 4, Plan 896, measuring approximately 246 sq m and identified on Schedule C ("City Consolidation") will be transferred by the Owner to the City and consolidated with Lot 3 Plan 896 in general accordance with the Consolidation Plan.
3. The City and the Owners agree that the road dedications are a condition of their development application and are not compensable.
4. The City and Owners agree that the Road Closure (325 sq m) and the area of the City Consolidation (246 sq m) will be transferred at the price of \$1.00.
5. The City agrees to share 50% of the cost of the road dedication survey which shall be inclusive of the road dedication on the adjacent City lands to the west of the Lot 4, Plan 896.
6. Subject to #5 herein the Owners shall be responsible for all costs to complete the transaction contemplated in this Agreement including, but not limited to, road closure and subdivision/consolidation surveys, subdivision application fees and legal costs to prepare

and register all documents necessary to complete the Land Title registration. The Road Closure, Road Dedication & Consolidation Plan will be registered concurrently.

7. The Owners shall bear all costs of the conveyance.
8. In addition to the Purchase Price, the Owners agree to pay any applicable Goods and Services Tax and Property Transfer Tax.
9. The cost of all legal advice by either party, other than Land Title registration, will be at the expense of that party. The Owners will retain independent legal counsel to search and certify title to the respective real properties being received and to facilitate the exchange of land anticipated herein. Each party shall bear their own costs and attorney fees associated therewith.
10. If a portion of Road Closure area contains utilities the Owners will grant a right of way to protect those utilities concurrent with registration of the Consolidation Plan in Land Titles Office, or will relocate those utilities at the Owners cost. The right of way shall be registered as a priority charge with the Consolidation Plan.
11. Concurrent with registration of the above noted Plans in Land Titles Office, the City agrees to grant a release a right-of-way for an for an unconstructed sewer utility over that portion of the Lot A Plan 53553, shown as SROW Plan KAP53554 on the attached Schedule "A".
12. This agreement is subject to subdivision approval.
13. Nothing in this agreement shall be construed to imply any specific approvals for development intended by the Owners. Any intended development by the Owners may require the approvals of, but not limited to, the City of Kelowna Council, the Subdivision Approving Officer and the Ministry of Environment, Parks and Land. The Owners are separately responsible for obtaining any of the required approvals for subdivision and any intended development on the respective Lands.

Should the Owners be unable to obtain approval for their intended development, the Owners may, at their option, terminate this agreement.
14. Any notice given under this agreement shall be sufficient and deemed received three (3) days after deposit in the mail, postage prepaid, to the Owners at the address as set forth herein, and to the City at the address noted hereon, to the attention of Doug Gilcrest, Manager – Community Development & Real Estate.
15. No failure by either the Owners or the City to insist on the strict performance of any covenant, duty or condition of this agreement or to exercise any right or remedy consequent on a breach of this agreement shall constitute a waiver of any such breach or of such or any other covenant, duty or condition.
16. Any individual executing this agreement does represent and warrant to each other so signing that he/she has been duly authorized to deliver this agreement in the capacity and for the entity set forth where he/she signs.
17. This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

18. The Road Closure and Consolidation contemplated in this agreement shall be completed sixty (60) days after subdivision approval at the appropriate Land Title Office. Time shall be of the essence hereof and unless registration of the road closer and transfers are completed on the Completion Date, the City may, at the City's option, terminate this agreement.
19. The Owners are responsible to obtain execution of the Consolidation Plan by the holder of any mortgage and assignment of rents registered against Lot 4, Plan 896.
20. The City has not yet adopted the bylaw necessary to close the Road Closure to traffic and remove its highway dedication, so this agreement is subject to the adoption of the bylaw. The bylaw is expected to be adopted by Council once all the necessary survey plans and documentation outlined by this letter are complete and executed by everyone except the City. However, before adoption of the bylaw, Council must consider representations from persons who consider they are affected by the bylaw. For certainty, this agreement does not commit Council to adopt the bylaw, which is a matter within the sole discretion of Council.

This letter is an offer by the City and if the Owners execute the enclosed copy of this letter and deliver it to the City, this letter will become an agreement based on the terms of this letter. This agreement forms the entire agreement between the Owners and the City. It supersedes all previous conversations, correspondence and other communications. Should you wish to proceed with the closure and sale, please sign and return the duplicate of this letter indicating your approval to this agreement.

Yours truly,

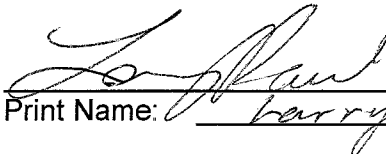
Doug Gilchrist
Manager – Community Development & Real Estate
250-469-8720
dgilchrist@kelowna.ca

Encls.

cc: Manager Inspection Services
cc: Subdivision Approving Officer
cc: Development Engineering Manager

APPROVED:

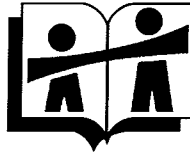
School District No. 23 by its
authorized signatory(ies):


Print Name: Larry Paul

Nov 9 2006
(Date)

Print Name: _____

(Date)



"Together We Learn"

**SCHOOL DISTRICT No. 23
(CENTRAL OKANAGAN)**

PROPERTY BYLAW NO. 100

A Bylaw of the Board of School Trustees of School District No. 23 (Central Okanagan), hereinafter called "the Board", to grant approval for the dedication and transfer of lands on Lot 4, Plan 896 and Lot A, Plan 53553, ODYD, known as the Dr. Knox Middle Replacement School site to the City of Kelowna, as outlined on the attached Road Dedication and Land Transfer Agreement and as shown on the attached explanatory sketch plan

The Board certifies that the granting of this right-of-way shall have no adverse effect on the educational programs provided in School District No. 23 (Central Okanagan).

Read a first, second and third time and finally passed on the 8th day of November, 2006.

Seal


Chairperson of the Board


Secretary-Treasurer

I hereby certify this to be a true original of School District #23 (Central Okanagan), Property Bylaw No. 100, adopted by the Board on the 8th of November, 2006.


Secretary-Treasurer