

# STAFF REPORT

THE CORPORATION OF THE TOWN OF COBOURG



<b>Report to:</b>	Mayor and Council Members	<b>Priority:</b>	<input checked="" type="checkbox"/> High <input type="checkbox"/> Low
<b>Submitted by:</b>	Brent Larmer, Municipal Clerk/Director of Legislative Services <a href="mailto:blarmer@cobourg.ca">blarmer@cobourg.ca</a>	<b>Meeting Type:</b>  Open Session <input checked="" type="checkbox"/> Closed Session <input type="checkbox"/>	
<b>Meeting Date:</b>	<b>September 26, 2022</b>		
<b>Report No.:</b>	Legislative Services-067-22		
<a href="#">Submit comments to Council</a>			

**Subject/Title: Town of Cobourg Purchase of 117 Durham Street Cobourg from the Kawartha Pine Ridge District School Board (KPRDSB)**

## RECOMMENDATION:

THAT Council receive the report for information purposes; and  
FURTHER THAT Council direct Staff to report back with a land use and disposition strategy for the vacant development land (5 acres) in the first quarter of 2023.

### 1. STRATEGIC PLAN

This land acquisition supports the Town's mission to create places that protects, preserves and promotes its natural assets

### 2. PUBLIC ENGAGEMENT

This staff report is to provide information to Council and the public on the ongoing process of acquiring the declared surplus land from the Kawartha Pine Ride District School Board through the formal process. In regard to the future use and considerations on the land, this will be brought forward to Council and the public in future staff reports.

### 3. PURPOSE

The purpose of this staff report is to provide Council and the public with a written update on the ongoing and final process related to the Kawartha Pine Ridge

#### 4. ORIGIN AND LEGISLATION

Pursuant to Regulation 444/98 under the *Ontario Education Act*, if a body under this Act wishes to dispose of a parcel of land/property, there is a legislative process that must occur prior the disposition of said surplus property to a potential buyer. The Act provides a prescriptive process and associated timelines related to the process in which this report is intended to address and explain to Municipal Council.

#### 5. BACKGROUND

The Town of Cobourg received on November 9, 2021, a notice from Kawartha Pine Ridge District School Board (KPRDSB) to the Town of Cobourg that the Board has officially declared the property located at 117 Durham Street, Cobourg, as surplus by the Board and its intention to dispose of the property. The Town of Cobourg was provided notice by KPRDSB, as the Town of Cobourg is one of the listed bodies specified in the Regulation 444/98 Section 3 (1) 9., being the municipality in which the property is located.

On November 10<sup>th</sup>, 2021, Staff brought forward the Notice of Surplus Land received by the Kawartha Pine Ridge District School Board to Municipal Council in Closed Session, pursuant to Section 239 (2) of the *Municipal Act, 2001* as information and provided a brief overview of the legislation and process related to the potential purchase of the subject property by the municipality. At this time Council directed staff to send the School Board a letter as notice with the Intention to submit an Offer of Purchase, which would be the Town's Expression of Interest pursuant to the Ontario Regulation. Pursuant to the Regulation, the deadline for the Expression of Interest was January 31, 2022. Staff sent in the initial expression of interest on November 12, 2021.

Council additionally directed Staff to consult and retain a professional appraisal business to appraise the parcel to determine the Fair Market Value. This was done in preparation of a potential offer to purchase, as required under the Regulation, to be presented to Council for direction to Staff at a Closed Session meeting.

On January 24, 2022, staff provided Council with an updated report following the Expression of Interest process on next steps related to the submission of an offer to purchase the subject property. The Town received an appraisal from a professional appraisal business at a cost of \$4,800 who appraised the land and determined the Fair Market Value and what the highest and best use of the land can be. Municipal Council provided direction for the Town of Cobourg to make an offer to purchase in the amount of \$2,000,000. Pursuant to the Regulation, the deadline for the offer of purchase was April 29, 2022.

On April 27, 2022, Municipal Staff received correspondence from the School Board of the need to recirculate notice of disposition and proceed from the start of the

formal Education Act Regulation as there was one entity that was missed in the November 9<sup>th</sup> 2022 notice. On the same day, Staff proceeded with Council's direction to Staff and resubmitted the Expression of Interest under the new timeline being July 26, 2022 for the first Ninety (90) days and for the Offer to Purchase deadline being October 24, 2022.

The overview of the purchase and the process is explained in more detail under the Analysis section of this staff report.

### **Land Purchase Discussions:**

When a municipality is in the process of buying or selling municipal land, holding discussions about the land transaction in an open session could affect the municipality's bargaining position or negotiation strategy. The purpose of the acquisition or disposition of land exception under the Municipal Act open session rules, is to protect the municipality's bargaining position by permitting discussions to be held in closed session about a proposed or pending acquisition or disposition of land by a municipality.

In order for the acquisition or disposition of land exception to apply, the municipality must either own the land or be the prospective owner of the land that is the subject of the proposed or pending land transaction. Generally, a municipality must be either the seller or purchaser of the land in order for the exception to apply.

The exception does not apply to discussions that involve speculation about a land transaction or discussions about land transactions that may or may not happen in the future. The discussion must involve an actual land transaction that is currently pending or has been proposed. A staff report on current and pending land transactions where the municipality is a party is likely to fit within the exception.

The above overview helps to explain to the public on the reasons why the Staff Report on the purchase of 117 Durham Street is only coming forward now to open session, which is now at the point during the land discussions when the final Agreement of Purchase and Sale is taking place.

## **6. ANALYSIS**

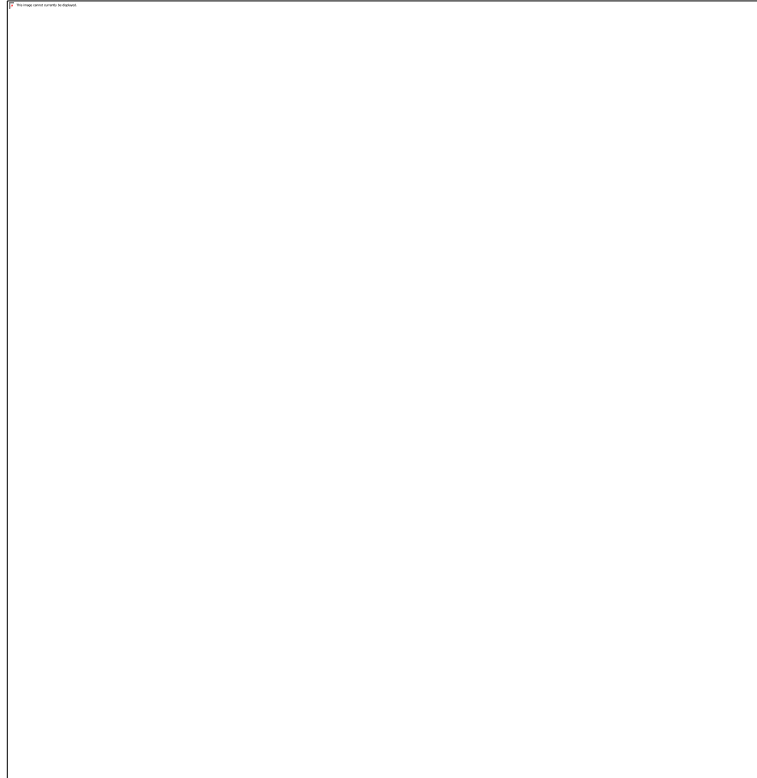
The subject property is located in downtown Cobourg near the waterfront on the west side of Durham Street (known municipally as 117 Durham Street, Cobourg) extending to Lake Ontario. The Town of Cobourg's boardwalk crosses along the bottom half of the parcel. The immediate neighbourhood is residential properties that surround the site with Legion Village just to the east.

The subject site is an irregular shaped parcel of vacant land with 269 feet frontage on Lake Ontario. The Town of Cobourg has registered an easement in favour of a boardwalk over a portion of the sandy area. Most of the parcel is grassed and was previously used as a sports field for the CCI West. It measures 269 feet by 832.60 feet with a total estimated square footage of 4.886 acres. The Kawartha Pine Ridge District School Board has identified it as approximately 4.57 acres.

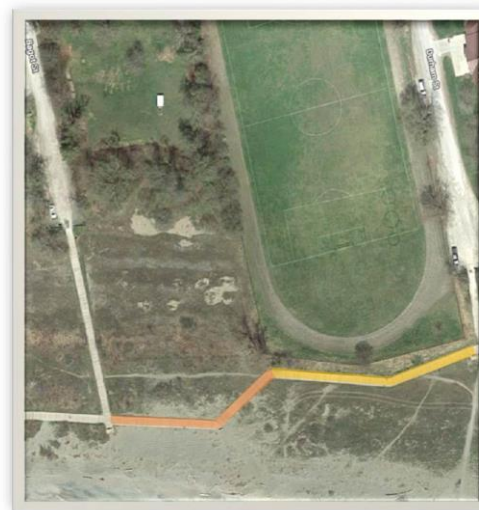
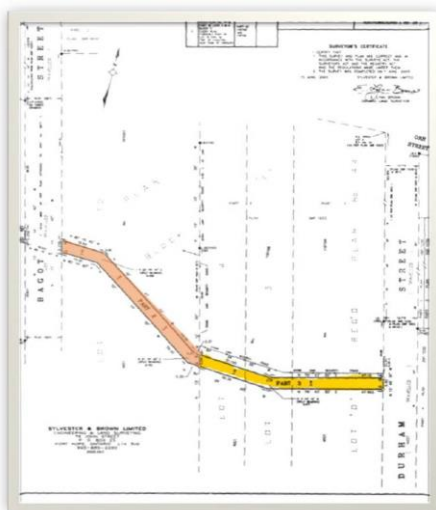
The subject property is currently Zoned under the Town of Cobourg Comprehensive Zoning By-law as Open Space (OS) for the playing field and Environmental Constraint (EC) for the waterfront.

The following pages demonstrate and reference the area that the KPDSB is declaring surplus and seeking offers to purchase from qualified organizations and entities subject the Education Act, O.REG 444/98.

Google Image of the Subject Property – 117 Durham Street, Cobourg



2005 Survey to the most recent google aerial image – 117 Durham Street, Cobourg



As demonstrated in the above photographs, the Town has had a long-term interest in the property through the installation and ongoing operation of a Community

Boardwalk. Prior to 2018, the Town had an undocumented agreement with the School Board for permission to operate and maintain a boardwalk crossing the lower half of the School Board property and its use by the Public to travel along. In 2018 the KPRDSB declared the property surplus to their needs and required the Town to agree to a legal registered easement of the Boardwalk through an easement agreement that was registered on title, and Council received that report in 2018. This agreement contained a provision that at any time the School Board could provide notice for the Town to vacate the property and remove all materials within six (6) months. As explained in the report, there is a specific and tightly regulated process under the *Education Act* for a School Board to sell land, and this process the Town was subject to and the only option to maintain the rights and future ownership of the Boardwalk site.

As part of the process, and in preparation of submitting the formal offer to purchase, the Town of Cobourg engaged the services of Baayen Real Estate Appraisers - Real Estate appraisers & consultants, to provide the Town with a detailed appraisal of the subject property in order to give the Town a fair market evaluation of the property as per the request from the KPRDSB and to be in compliant with statute.

On December 13, 2021, the final appraisal was received by the Town and brought to Council for first review for future consideration in a staff report for staff direction.

Baayen Real Estate Appraisers define Market Value as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus."

As part of the attached report, Baayen Real Estate Appraisers, conducted a direct comparison approach to value. Direct Comparison Approach is a valuation technique whereby the property that is being appraised is compared to other properties that have sold recently or are currently listed for sale. The property was compared to six (6) comparable properties within the Town of Cobourg that are similar and have sold between the years of 2018 to 2021. This referencing material and a more in-depth review of the comparable properties can be found on pages 18-25 of the appraiser's report.

In summary, the final appraisal report that was provided to the Town by Baayen Real Estate Appraisers, will give Staff and Council an understanding of what the value of the KPRDSB property will be and provide a basis as to what a potential offer to purchase amount would be if Council wishes to proceed with a formal offer on purchasing the subject lands.

Purchasing Process:

In terms of process, the *Education Act*, with the accompanying regulation provides for a detailed process on how the school Board is to proceed with the disposition

of their land. The first step in the process is a Ninety (90) day circulation period to bodies to receive proposals from District School Boards under Section 3 of Ontario Regulation 444/98. During this period, all that's required by the municipality is to make the expression of interest, which the Town submitted on April 27<sup>th</sup> 2022. During this period nothing prevents the Town in making an actual offer. However, the School Board cannot accept any offers until this period expires (i.e. before July 26, 2022).

After the first Ninety (90) day period, there is an additional Ninety (90) day period in which bodies that made expressions of interest can make formal offers to purchase. This period runs until October 24, 2022.

During this second Ninety (90) day period, the School Board can accept an offer. However, any offer accepted must be from the body with the highest priority under the regulation that submitted an expression of interest during the initial Ninety (90) day period unless that expression of interest is withdrawn (in which case they may accept an offer from the next highest priority body that expressed interest, etc.). If the body with the highest priority that expressed interest fails to submit an offer within this additional Ninety (90) days (i.e. within one- hundred and eighty (180) days of the proposal), the Board may accept an offer from the body with the next highest priority that expressed interest within the initial Ninety (90) days (and so on).

Note that while the Board can only accept an offer from the highest priority body, there's nothing that makes this a sealed or blind process – they could review offers from lower priority bodies, they just can't accept them.

The governing Ontario Regulation requires that the Board get fair market value for the property. If the highest priority bidder submits an offer and the Board disagrees on fair market value, there is a thirty (30) day period of negotiation in which the Board and the bidder attempt to agree on a fair market value. Within those thirty (30) days the bidder may withdraw its offer or elect to have the fair market value determined through binding arbitration. If the thirty (30) day negotiation period expires with no agreement, then the Board may accept an offer from a lower priority body or commence thirty (30) days of negotiation with that body, etc. etc. until they have either accepted an offer, a body elects binding arbitration to determine fair market value, or there are no more bodies that expressed interest, or the one-hundred and eighty (180) day period expires without any further offers – at which point they can market the property more broadly.

Under section 3 (1) of Ontario Regulation 444/98, there are several bodies that are on the list that the Board must circulate notice and opportunity to seek interest from that range from district school boards, service managers, other levels of governments and other public bodies that may provide interest on the property. Whoever is the body with the highest priority the Board will be obliged to negotiate, and they only will negotiate with that body first. After the first 90-day timeline and the second stage and 90-day period, the School Board informed the Town that we were the only one that provided interest in the property. This allowed the Town to

start the process of submitting a formal offer to purchase to the School Board for consideration.

Contents of the Offer to KPRDSB:

On August 25<sup>th</sup>, 2022, the Town submitted its formal offer to the School Board for the purchase of 117 Durham Street Cobourg.

Within the notice from the KPRDSB, it was noted that a clause in the agreement of purchase and sale to be included with respect to any resale of the property. The following was noted in their notice letter to the Town:

*The Board wishes to ensure that any purchaser of the property will use it for the purposes of such body and not for the purpose of resale. As such, any agreement of purchase and sale to be entered into by the Board and a prospective purchaser as identified in Regulation 444/98, will contain language which will provide that:*

- 1. in the event of any sale of all or any part of the property, the purchaser will be required to share equally with the Board any net sale proceeds which are in excess of the price per acre paid to the Board by the purchaser, excluding the cost of any facility constructed; and*
- 2. the Board shall be entitled to register notice of its interest in the property pursuant to such provision, at its sole discretion.*

It should be noted that the above two (2) sections were discussed and negotiated in the final back and forth of the purchase and sale agreement.

The following was included within the Agreement of Purchase and Sale for the Boards acceptance:

1. The Town of Cobourg would like to place an offer to purchase for the subject property with a purchase price of \$2,000,000.00. plus HST (if applicable).
2. Upon Acceptance, the Purchaser, its consultants and authorized agent(s) shall request access to the Property upon twenty-four (24) hours written notice to the Vendor to undertake such tests and inspections of the Property as the Purchase may in its discretion require, including tests regarding environmental condition of the Property. The Purchaser shall restore the Property to its condition prior to such tests at its sole cost and expense.
3. The Town of Cobourg has included a clause in the Agreement of Purchase and Sale under Section 2.3 that in the event of any sale of all or any part of the Lands within ten (10) years of the Closing Date, the Town of Cobourg will share equally with the Board any net sale proceeds which are in excess of the price per acre paid to the Board by the Town and excluding the cost of any facility constructed; and the Town will register, or cause to be

registered, on title to the Lands pursuant to Section 118 of the Land Titles Act (Ontario), an entry restricting any transfer its interest without the consent of the Board for a period of ten (10) years from the Closing Date.

The Town of Cobourg indicated to the Board that the Town of Cobourg has a current interest in the subject property with a registered easement on title in favor of a boardwalk over a portion of the sandy area. The purchase of this property would be in accordance the Town's commitment to purchasing and acquiring lands when available, and as outlined and referenced in the Town of Cobourg Official Plan.

#### Boardwalk Capital Update:

The purchase of this property would allow the Town to acquire the ownership of waterfront lands in which the Town of Cobourg's Boardwalk runs along which provides a significant benefit for the community and residents to utilize. Additionally, the Town of Cobourg is making a large capital investment of \$810,000 in the Boardwalk structure reconstruction to provide modern improvements and to raise the level of accessible use.

The wooden boardwalk was originally scheduled to be designed and replaced in 2022. The required environmental studies have been completed and the design options and cost estimates have been prepared.

A public consultation plan had also been prepared and was scheduled to be posted on Engage Cobourg when Staff learned of the school board property becoming surplus. Coincidentally, Staff reached out to the School Board to inquire about the terms of the temporary easement in an attempt to establish the easement as a more permanent agreement or perhaps even an acquisition of the waterfront area where the boardwalk existed. In the same day, a letter was received from the school board notifying us of the intended disposal of the lands.

Since the design options will vary substantially in cost, it is important to know if the boardwalk lands will be owned by the Town or on a permanent OR temporary easement. If the lands remained within a temporary easement, the decision about what type of boardwalk to construct within those lands may differ from what is decided to be constructed if we knew it was on Town property or a permanent easement ie. the section of boardwalk on a temporary easement could be of less expensive material/construction in case the Town has to remove it upon short notice.

Since learning about the disposal of surplus lands, Staff halted any further progress on the design work.

Now that we know the lands will be owned by the Town, we can proceed to public consultation and choosing which option to proceed with to final design and tendering. It is now too late in the construction season to have the work completed



in 2022. A revised construction cost estimate based on the chosen design approach will be brought to Council for approval in the 2023 budget deliberations. Designs will be completed throughout the remainder of 2022 to be tendered in early 2023 following budget approval.

Of special note, the Town was successful in obtaining Active Transportation Funding from Infrastructure Canada for 60% of the boardwalk replacement up to a maximum of \$450,000, which all has to be spent by March 31, 2026.

On September 20, 2022, the Town received notice that the board was in acceptance of the Town's Offer and they would like to proceed with the signing of the Agreement.

### The Balance of the Lands and Future Development

While the shoreline, beach area and hazards lands will remain in public ownership and form part of the Town's open space system, the balance of the lands have significant development potential.

The entire parcel is approximately 5 acres however there appears to be +/- 3.4 acres that could be developable. The developable limit would require further study to determine the lands eligible for development and the lands to be protected as open space.

After a preliminary and high-level review of land use policy directions for the area and the site's context, it appears the site could accommodate medium density residential development (townhouses, low-rise apartments with some limited ground-related residential units – subject to approvals under the Planning Act (ie Zoning By-law Amendment, Subdivision/Condominium approvals and Site Plan approval). All tenures should be explored including a mix of ownership, rental and affordable units.

As the Town becomes the owner of the lands, this provides a unique opportunity for the Town to influence how the land is used. The Town may wish to simply sell the developable lands on the open market, or there may be a more targeted approach where the Town may issue a Request for Proposal and tender process for a specific type of project on all or part of the development parcel. Staff will be seeking direction on this in 2023.

Staff are recommending that Council direct staff to bring forward a report to the new Council in the first quarter of 2023 to provide a strategy for the use and potential disposition of the +/- 3.4 acre development parcel. The strategy will include a public engagement component and will also identify opportunities to partner with other levels of government and/or organizations that have an interest in providing housing for all in the Town of Cobourg.

## **7. FINANCIAL IMPLICATIONS/BUDGET IMPACTS**

As Council is aware, Council entered a Restricted Acts of Council, known as a Lamé Duck Period on August 19<sup>th</sup>, 2022. This means that Council may not approve making any expenditures nor incurring any liability exceeding \$50,000. In this purchase, the Town has offered a \$2,000,000 purchase price for the School Board Vacant Land which has been accepted by the School Board. This purchase price is well beyond Council's limits under section 275 of the *Municipal Act, 2001*.

As this process has been ongoing from 2021 and into 2022, the CAO was directed by Council prior to the Lamé Duck provision to proceed with the purchase with full Council approval, with this Council direction and under Section 239 (2) of the *Municipal Act, 2001*, the CAO has used the authority under the Delegation of Authority By-law to authorize and complete the transaction and has authorized the authoring of this report to provide information on the process and the final result to Council and the public for information.

The initial purchase price of the property, plus related closing costs would be financed from current cash on hand. The cost in the short term would be the loss of interest income currently being earned on those funds. The current rate of return on short-term money is 3.70% which would equate to \$74,000 per annum of lost investment income on two million dollars.

The longer-term costs will depend upon the ultimate decision of Council on how the property will be used. If a significant portion of the land is sold the funds recovered would reduce or eliminate the need for long-term financing.

A decision to retain the entire parcel for use as either active or passive parkland would require other sources of funding such as funds from the Parkland Reserve or a fundraising campaign involving both the public and user groups. However, it is anticipated that the existing funds in the Parkland Reserve will be depleted as of December 31, 2022 based on prior budget commitments.

The use of a community fundraising campaign has been successful in the past with respect to the purchase of the former Chateau Hotel property in the north-west corner of upper Victoria Park however this is not a guaranteed source of funding for this project.

If the ultimate use of the property is for a community-based housing project then the cost of the land could be viewed as the municipality's contribution towards that project and this cost could be funded from a combination of the annual tax levy, a one-time lump sum contribution from Northam and a debenture.

For illustrative purposes the current cost for long-term borrowing through Infrastructure Ontario would be 4.21% annual interest for a ten-year locked-in rate. The annual repayment over ten years would be \$245,392 based on a cost of two million dollars of borrowing. The total interest expense over a ten-year term would be \$453,909.

In terms of the 2022 Annual Repayment Limit as provided by the Ministry of Municipal Affairs and Housing in accordance with Ontario Regulation 403/02, the additional long-term borrowing capacity of the municipality using a 5% interest rate and a 10-year repayment term was shown as \$78,308,961 so debt capacity is not an issue for this potential additional debt of two million.

## 8. CONCLUSION

That Council receive this Staff report for information purposes regarding the purchase the Kawartha Pine Ridge District School Board Surplus Property located at 117 Durham Street Cobourg. Municipal Staff will bring forward a report in early 2023 regarding next steps and related to the vacant land, and in the meantime the Town of Cobourg has confirmed and solidified its interest in the permanent easement of the Boardwalk and the advancement of the Boardwalk Capital Project.

### Report Approval Details

Document Title:	Town of Cobourg Purchase of 117 Durham Street, Cobourg from the KPRDS Board - Legislative Services-067-22.docx
Attachments:	
Final Approval Date:	Sep 22, 2022

This report and all of its attachments were approved and signed as outlined below:

**Tracey Vaughan, Chief Administrative Officer - Sep 22, 2022 - 7:59 AM**