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PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

Ferndale Public Schools
871 Pinecrest
Ferndale, Michigan 48220

Attn: Blake Prewitt
Superintendent

Re: *Sale of Surplus Real Property*
Taft & Wilson Sites

Dear Board Members:

You have requested our opinion as to the rights and responsibilities of the Board of Education in entering into transactions for the sale of surplus real property owned by Ferndale Public Schools (the "School District"). It is our understanding that the School District is contemplating a sale of certain surplus real property consisting of the former Taft School Site ("Taft") and the former Wilson School Site ("Wilson").

Authority To Sell Real Property

As a "general powers school district" under Section 11a of the Revised School Code, MCL 380.11a, the School District has all the rights, powers and duties expressly stated in the Revised School Code; may exercise powers implied or incident to those powers expressly stated in the Code; and, except as provided by law, may exercise powers "incidental or appropriate to the performance of any function related to the operation of the school district . . ." Within this last grant of powers, Section 11a(3) enumerates five categories of activity in which the School District is expressly empowered to engage; wherein subsection (c) states as follows:

Acquiring, constructing, maintaining, repairing, renovating,
disposing of, or conveying school property, facilities, equipment,
technology or furnishings. MCL 380.11a(3)(c) (emphasis added).

Based upon the foregoing provisions of the Revised School Code, it is our opinion that, upon the determination by the Board of Education that real property is surplus, the Board of Education is free to sell or exchange the property. In turn, the proceeds from the sale of real property, on which there is no bonded debt, may be credited to any account of the School District, including the general operating fund.

Although the Revised School Code does not specifically provide criteria for the Board of Education in establishing a sales price for a piece of property, the Attorney General, in Opinion Number 5522 of 1979, has inferred that Michigan law requires a school district to sell land for “valuable consideration.” Considering this with the general fiduciary responsibilities of the Board of Education to properly maintain and care for the assets and fiscal condition of the School District, it is our opinion that the Board of Education should use its best efforts to ensure that it is reasonably compensated for the sale of surplus real property.

RFP Process

As you are aware, in February of 2016, with the assistance of Plante Moran CRESA and Clark Hill PLC, the School District issued a Request For Proposals For Purchase of Real Estate (the “RFP”) for both the Taft site and the Wilson site. Included in the RFP was various information about each site, as well as various forms that much be completed by each entity submitting a proposal. In particular, the RFP included specific proposal forms and a form of Offer To Purchase Real Estate (the “Offer”), and the RFP required each entity to expressly set forth any exceptions or other special considerations it required as part of its proposal. The proposals were due on February 25, 2015.

Overview of Proposals Received

In response to the RFP, the School District received four (4) proposals for Wilson, and three (3) proposals for Taft. In addition to an overview of the proposals prepared by Plante Moran CRESA, which is attached hereto and incorporated herein by reference as **Attachment A**, below is a summary of additional aspects of the proposals received.

Robertson Brothers

Robertson Brothers Homes (“Robertson”) submitted a proposal for a single-family development at both Taft and Wilson.¹ As part of the proposed development, Robertson is requesting up to 360 days to perform due diligence and obtain the necessary governmental approvals.² Additionally, the development and purchase price for both Taft and Wilson are contingent upon receiving governmental approvals for the proposed development, as well as Brownfield Credits for the demolition of the buildings and construction of the proposed new roads. If all of these contingencies and governmental approvals are not met and/or obtained, Robertson would be able to terminate the transaction and be entitled to a return of its earnest money for the respective site.

Northstar Development

Northstar Development Company LLC (“Northstar”) submitted a proposal for a single-family home development for Wilson. While Northstar has proposed a purchase price of \$360,000, it is contingent upon the actual costs incurred by Northstar to demolish the building. If the demolition costs exceed \$250,000, the purchase price will be reduced by the amount in excess of \$250,000. Additionally, Northstar has included a “marked-up” Offer in its proposal and indicated that acceptance of the proposal is contingent upon accepting all of Northstar’s

¹ Taft contemplates attached townhomes while Wilson contemplates detached homes.

² Robertson requests an initial 120-day due diligence period, with a subsequent 6-month governmental approval period, which can be extended by up to two (2) 30-day extensions.

changes, or the Offer is subject to re-negotiation.³ Additionally, Northstar is requesting a 90-day due diligence period, with a 90-day governmental approval period.

Loyalty Building Company

Loyalty Building Company, Inc. (“Loyalty”) submitted a proposal for a single-family development at both Taft and Wilson.⁴ Loyalty indicates that the Taft site is contingent upon receiving governmental approvals for 37 lots and the Wilson site is contingent upon receiving governmental approvals for 27 site condo “lots.” Additionally, the offers for both sites are contingent upon all contingencies in Paragraph 10 of the Offer, and once all those contingencies are cleared, better terms may be offered.⁵

Community Housing Network

Community Housing Network, Inc. (“CHN”) submitted a proposal for both Taft and Wilson for the development of low income housing projects at both sites. Both sites would be developed through securing Michigan State Housing Development Authority (“MSHDA”) tax credit financing. Additionally, CHN has proposed an option agreement (as opposed to the Offer included in the RFP) to purchase each site in phases. The initial option term would be one (1) year, with one (1) 6-month extension.⁶ The one major contingency of the CHN proposal is that it is contingent upon being awarded both Taft and Wilson.

Alternate Concept for Taft

Outside of the RFP process, the School District was recently approached by Jack Aronson regarding the potential re-purposing of Taft for a community enrichment program. This alternative use would be through a “lease” or “use” agreement between the School District and Aronson’s group, and it would not entail the sale of the Taft site. Our understanding is that Aronson has indicated his group would upgrade the Taft building and would be responsible for all funding for this community enrichment program.

Next Steps

Based upon the foregoing, it is our opinion that the School District may entertain the following options, or appropriate combinations thereof:

- (1) Direct the Superintendent, or his designee, to continue negotiations with either Robertson, Northstar, Loyalty and/or CHN, within defined parameters, to bring more defined/finalized agreements back to the Board for review and possible approval;
- (2) Direct the Superintendent to make a counter-proposal to either Robertson, Northstar, Loyalty and/or CHN;
- (4) Elect to decline to entertain any of the Robertson, Northstar, Loyalty and/or CHN proposals and either retain both sites or pursue alternative disposition options for both sites; or

³ The proposal also indicates that such renegotiation could affect the purchase price.

⁴ Both Taft and Wilson contemplate detached homes.

⁵ The proposal is not clear as to how the terms would be better.

⁶ We would note that from our experience, the MSHDA financing process can be lengthy and it could add additional time contingencies to the development.

- (5) Elect to decline to entertain any of the Robertson, Northstar, Loyalty and/or CHN proposals for Taft and pursue the Aronson project.

We would strongly advise, however, that the School District should not sign any letters of intent or other similar documents may be presented by these prospective purchasers prior to negotiating the appropriate purchase agreement(s) with the appropriate party, as this could hinder such negotiations with said party since these letters of intent are binding "contracts."

Closed Session

It is our opinion that the Board of Education may meet in closed session to consider the contents of this communication by virtue of §8(h) of the Open Meetings Act. A public body may meet in closed session to consider the contents of an attorney client communication. While not every communication from a lawyer engaged by the School District would fit into this classification, it is our opinion that the discussion within this correspondence is within the attorney client privilege. Accordingly, if the Board were to conduct a roll call vote on a motion to go into closed session "to consider the contents of an attorney client communication" and that motion were to pass with five or more votes, the Board could properly proceed in closed session to consider and discuss the contents of this letter.

Consistent with preserving the Board's option to consider a motion to proceed in closed session, I would recommend that this letter not be shared with persons other than the Board trustees and administration prior to a Board meeting where the motion might be considered. One of the ways in which the attorney client privilege is waived is where the document, intended to be a privileged communication, is shared with persons who are not in the attorney client relationship. The same advice would apply following the Board meeting in the event the Board votes to proceed with a closed session at the meeting. Later disclosure may jeopardize the legality of the earlier closed session.

We would be please to further discuss these issues with you at your convenience.

Very truly yours,

CLARK HILL PLC



Jeremy S. Motz

JSM:llm
Attachment

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ATTACHMENT A

RFP Response Analysis

	Community Housing Network, Inc.	Loyalty Building Company, Inc.	Northstar Development Company, LLC	Robertson Brothers Homes
Company Contact Person	Kirsten Elliott; 248-269-1302	John Vincenti; 248-252-1699	Jon Goldman; 248-721-0752	Tim Loughlin; 248-752-7402
<u>LOI Terms</u>				
Purchase Price	Taft- \$500,000.00 Wilson- \$500,000.00	Taft- \$575,000.00 Wilson- \$575,000.00	Wilson- \$360,000.00 *	Taft- \$464,000.00 Wilson- \$525,000.00
Earnest Money Deposit	\$5,000.00 (each site)	\$25,000.00 (each site)	\$25,000.00	\$15,000.00 (each site)
Option Money	*See Note Below	Not provided	Not provided	Not provided
Due Diligence Period	One Year (Option Period)	60 Days	90 Days	120 Days
Other Conditions/Considerations	The purchase of one site is conditioned on approval to purchase the other site. *See below regarding Option Agreement	Not provided	Various changes / redlines made to the proposed "Offer to Purchase Real Estate" in the RFP package.	
<u>Proposed Project</u>				
Number of Lots	Taft- 35 Townhomes (13.6 units/acre) Wilson- "We think site plan will work well for both sites." (Site plan submitted was for Taft only)	Taft- 37 Condos Wilson- 27 Lots	36 Lots	Taft- 62 Townhomes (15 units/acre) Wilson- 30 Homes (lots) (7 units/acre)
Site Plan Details	Taft- Currently Zoned R-1, proposing R-3; developer would convert the school structure to a community center, surrounded by townhomes Wilson-	Overall Site Plan Details not provided; developer did provide rough sketches of the proposed layouts.	Developer plans to create Single Family Homes ranging from 1,500-2,000 square feet.	Taft- attached, single family, 1,500 square foot homes; Wilson- detached garage, single family homes ranging from 2,000-4,000 square feet.
Pricing Plan	"Rents will range from \$285 to \$835 depending on unit size and family income."	Not provided	\$225,000.00-\$280,000.00	Taft- "high \$100,000s" Wilson- "high \$200,000s"
Funding	"Proceeds from the sale of Low Income Housing Tax Credits"	Not provided	Cash	Internal as well as External equity investors; main financing obtained through Flagstar Bank
NOTES	<p>*This developer has proposed using an "Option Agreement" in lieu of the Offer to Purchase Real Estate, which is a part of the RFP package. This developer noted this "Option Agreement" would be similar to the Option Agreement used for the Jefferson School disposition in 2015. Developer has proposed a staggered Earnest Money / Option Money Schedule with \$5,000 at the time the Option Agreement is signed; \$5,000.00 after approval of Phase I; \$5,000.00 after City of Ferndale approval of site plan; \$10,000.00 after receiving all MSHDA applications; \$10,000.00 after receipt of Low Income Housing Tax Credits from MSHDA</p> <p>*See developer's "Proposal Form Rider 1" which breaks down the estimated costs of tear down and a change in the Purchase Price, if and when those tear down costs exceed their estimates. There is also an expectation of a change in the Purchase Price if/when they don't receive approval for all 36 lots proposed.</p>			