

LU30.003

DAVID R. MARTIN
MAYOR
CITY OF STAMFORD, CONNECTICUT



TEL: 203 977 4150
FAX: 203 977 5845
E-MAIL: DMARTIN@STAMFORDCT.GOV

To: Planning Board
Board of Finance
Board of Representatives

From: Mayor David R. Martin

Date: September 6, 2017

Re: Proposed Land Swap – 20,000 sq. ft. parcels – Between City of Stamford and BLT

I submit for your approval a 20,000 sq. ft. park land swap at Kosciusko Park. The City will acquire property from BLT that will be added to Kosciusko Park. This property is adjacent to the existing park and Woodland Cemetery. BLT will gain an equal sized portion of current park that is directly adjacent to the former Pitney Bowes HQ (please see the attached map).

Stamford's Land Use Bureau has determined that:

- The City parcel to be swapped is of little use by the City because it is rarely used by Kosciusko park users. It is separated from the main park area by an access road, appears to users to be part of the private former Pitney Bowes HQ (the building surrounds the parcel on three sides), and includes two rock outcroppings.
- The parcel the City receives will help support a public access path into Kosciusko Park from Woodland Cemetery. This advances the City's long term park planning goals by providing an additional walkway/entryway to Kosciusko Park as part of the City's comprehensive waterfront open space system.

The property that the City is swapping away abuts the BLT-owned office building. This exchange will allow for a buffer space between the public area and the offices, the lack of which is a deterrent to occupants of this office building, including security concerns.

Pursuant to Charter Section C6-120-3, please accept this letter as my "written approval" and "request" that the Planning Board, Board of Finance and Board of Representatives approve this transaction. I attach a Staff Report from the Land Use Bureau with additional details.

Thank you for your consideration.



STAFF REPORT

TO: CITY OF STAMFORD PLANNING BOARD
CITY OF STAMFORD BOARD OF FINANCE
CITY OF STAMFORD BOARD OF REPRESENTATIVES
FROM: DAVID WOODS, PhD, AICP, Deputy Director of Planning
SUBJECT: LAND SWAP
ADDRESS: 1 ELMCROFT ROAD
DATE: November 20, 2017

MASTER PLAN: CATEGORY 9: URBAN MIXED USE
ZONE: M-G

SUMMARY

For over 30 years, the City has been working to secure a public walkway along the East Branch connecting the north end of Woodland Cemetery to Kosciusko Park, thereby connecting the East Branch to the West Branch, which will eventually connect to the Mill River Park Trail. One of the sticking points has been how to connect out of Woodland Cemetery to Kosciusko Park. To enhance this connection, this proposal is a straight land swap of a 20,000 square foot parcel of land adjacent to the Build Land Technology (BLT) building and the City-owned land in front of it of 20,000 square feet adjacent to Woodland Cemetery. [Refer to the Aerial below]. These efforts are ongoing between the City and the Woodland Cemetery Association.

STAFF ASSESSMENT

In order to assess whether this proposed land swap is in the public interest, I am applying the following two criteria to this proposal: (1) is it of equal or greater value for the City, and (2) is it a win/win for both sides through advancing mutual planning goals?

Criterion No. 1 Equal or Greater Value

While the City has not done an appraisal (nor is one required legally according to the City Attorney's office) on these two parcels, staff is comfortable that the parcel the City would receive is of equal or greater value for the City for the following reasons:



1 Elmcroft Road
BLT Land Swap - Area shown not to scale

Date: 8/1/2017

1 inch = 200 feet

200 100 0 200
 Feet

1. The parcel that the City is exchanging to BLT is in Master Plan Category 14: Open Space Public Park and is zoned Park (P), which means that unless the owner decides to amend the Master Plan and Zoning classification they are unable to build anything on this parcel.

(Although they are able to credit this 20,000 square feet in their FAR calculations for conformity.) See below for a discussion regarding the geographic constraints on this parcel.

2. The parcel that BLT is exchanging to the City is in Master Plan Category 9: Urban Mixed Use, and is zoned General Industrial (M-G), which means that the City has the flexibility to possibly use this parcel as an ingress/egress connecting the Woodland Cemetery with the park for a future waterfront connection along the Stamford Harbor east branch; negotiations ongoing.

Criteria No. 2 Advances Planning Goals

1. The parcel BLT would receive is separated from Kosciusko Park by an access road and includes two rock outcroppings which make it very difficult for park use. These difficult conditions are also most likely the reason why I.M. Pei designed the building in the shape it is in. BLT would use the parcel for a secondary entry and the parcel would allow them to better control their outdoor amenity space adjacent to this parcel. [Refer to photo of Parcel to the City below that shows both the steep slope and the rock outcropping closest to the building.]

Please note: As shown on the third photo below, the second rock outcropping closest to the roadway includes the stairway amenity to the top of the rock outcropping and is not included as part of this exchange. This rock outcropping will remain as part of Kosciusko Park for public use.

2. Parcel close to Woodland Cemetery is useful to the City for at least the following reasons:
 - a. As stated above, the talks with the Woodland Cemetery Association are ongoing, but this parcel would be a potential alternative to help the entry into Woodland Cemetery to create a walkway through or along the cemetery to Kosciusko Park as part of a comprehensive waterfront open space system [See Aerial below]. Other access options would require negotiations with the Army Corps of Engineers which has part of the waterfront and cemetery access fenced off for Hurricane barrier operations.
 - b. If not, possible easement to allow pedestrians and bicyclists another alternative to pass through
 - c. As the parcel the City would receive is less impacted by rock outcroppings, it would also lend itself more easily to a park related use.

Staff recommends: approval of this land swap



Woodland Cemetery
 Pedestrian trail connecting the trail to the north with the Park to the south is being negotiated

Date: 8/1/2017

1 inch = 333 feet

330 165 0 330

Feet

**Photo of City Parcel to be transferred to BLT, including:
The building in the background, steep slopes and first rock outcropping**



**Photo of BLT Parcel to be transferred to the City
Including the Woodland Cemetery fence barrier
and a corner of the Army Corp of Engineers Shed**



The Second Rock Outcropping closest to Park Driveway
will remain as part of the City Park



LAND SWAP AGREEMENT

THIS LAND SWAP AGREEMENT (this “**Agreement**”) is dated as of this ____ day of October, 2017, by and between the City of Stamford, a municipal corporation (the “**City**”) and One Elmcroft Stamford LLC, a Connecticut limited liability company (“**Elmcroft**”), concerning a proposed swap of equivalently sized tracts of approximately, and not to exceed, Twenty Thousand (20,000) square feet of land (the “**Transaction**”). The City and Elmcroft are sometimes hereinafter referred to as a “**Party**” or, collectively, the “**Parties**”.

RECITALS

WHEREAS, City is the owner of Kosciuszko Park (the “**Park**”) and Elmcroft is the owner of property commonly known as 1 Elmcroft Road (the “**Elmcroft Property**”), each in Stamford, Connecticut.

WHEREAS, the City desires to secure land from Elmcroft for the City’s creation of a public walkway connecting an existing public walkway along the East Branch of Stamford Harbor to the Park.

WHEREAS, Elmcroft is willing to cooperate with the City’s effort subject to the Elmcroft Property receiving an equal area of land in return with such return land being properly incorporated into the zoning and tax lots for the Elmcroft Property, all on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and conveyances set forth below, the Parties hereby agree as follows:

1. Tracts. The tract to be conveyed by the City to Elmcroft (the “**City Tract**”) and the tract to be conveyed by Elmcroft to the City (the “**Elmcroft Tract**”) are each shown on Exhibit A to this Agreement. The parties acknowledge that the legal descriptions of such tracts will be documented with a formal metes and bounds survey and be equivalent in area. In no event, shall the size of either tract exceed Twenty Thousand (20,000) square feet in area.
2. Form of Conveyance. Each tract shall be conveyed by quit claim deed.
3. As Is Conveyance. Each Party shall be solely responsible for its due diligence with respect to the tract being conveyed to it. The tracts are to be conveyed in “AS IS” condition. No representations or warranties are made with respect to either conveyance, except to the extent expressly set forth in this Agreement.
4. Conditions Precedent. The proposed Transaction is subject to the following conditions precedent:

- a. The City shall have obtained, at its sole expense, all approvals required to authorize the proposed Transaction, which approvals shall be final beyond appeal.
 - b. The City shall have obtained, at its expense, all approvals required to incorporate the City Tract into the remaining Elmcroft Property, and remove the Elmcroft Tract from the Elmcroft Tract, such that following the Closing (defined below) the Elmcroft Property, as so amended, shall have suffered no reduction in area and continue to have uniform zoning and master plan designation satisfactory to Elmcroft in its sole discretion. All such approvals shall be final beyond appeal.
 - c. Elmcroft shall have obtained a survey based on Exhibit A setting forth the formal metes and bounds descriptions for the City Tract and Elmcroft Tract, which survey shall have been signed and sealed by the surveyor (and certified to each of the Parties, and any title company and mortgagees) and be acceptable to each of the Parties in their sole discretion.
 - d. Elmcroft shall have obtained the approval of any mortgagee secured by the Elmcroft Tract. It is noted that the Elmcroft Tract is subject to a mortgage in favor of Webster Bank National Association.
 - e. The City Tract and Elmcroft Tract shall each be free and clear of any leases or other third-party rights of occupancy.
 - f. The City shall have obtained from Woodland Cemetery with respect to the City Tract a release, in recordable form, of the restrictions and obligations set forth in Deed recorded at Volume 518, Page 525 (e.g., concerning park use, maintenance of the fence installed by the City and availability of police service).
 - g. Each Party shall otherwise be satisfied with its due diligence of the tract it is to receive.
5. Closing. The simultaneous conveyance of the City Tract and Elmcroft Tract (the "**Closing**") shall occur, subject to satisfaction of the conditions precedent, within sixty (60) days following the City's having obtaining all of the approvals specified in Sections 4.a and 4.b above. In the event the Closing shall not have occurred for any reason by [REDACTED], either Party may terminate this Agreement. Each Party shall deliver such documentation as First American Title Insurance Company ("**Title Company**") may reasonably require to effectuate (a) the recording of the deeds and (b) with respect to the tract being delivered by such Party, a customary owner's affidavit for the removal of the standard exceptions for mechanics' liens and rights of tenants or other parties in possession from any title insurance policy being issued or updated with respect to such tract as of the Closing.

6. **Representations.** In connection with any Closing, the Parties shall be deemed, automatically concurrent with each Party's delivery of its deed, to have made the following representation and warranty attributable to such Party, which representation and warranty shall survive the Closing.
 - a. The City represents and warrants to Elmcroft, concurrent with Closing, that (1) the City has obtained all approvals required to authorize the City's execution, delivery and performance of this Agreement, including the conveyance of the City Tract to Elmcroft, and (2) the City's execution, delivery and performance of this Agreement, including the conveyance of the City Tract to Elmcroft, does not violate any agreement, instrument, order or other legal obligation to which it is bound.
 - b. Elmcroft represents and warrants to the City, concurrent with Closing, that subject to the City obtaining the approvals specified in Sections 4a and 4b above, (1) Elmcroft has obtained all approvals required to authorize Elmcroft's execution, delivery and performance of this Agreement, including the conveyance of the Elmcroft Tract to the City, and (2) Elmcroft's execution, delivery and performance of this Agreement, including the conveyance of the Elmcroft Tract to the City, does not violate any agreement, instrument, order or other legal obligation to which it is bound.
 - c. The Elmcroft Tract and City Tract shall each be vacant and free of any tenancies and other rights of occupancy by third parties.
7. **Transaction Costs.** The City shall be responsible for all costs associated with the recording of deeds and any related documents, including without limitation, any recording fees or transfer taxes. The cost of the survey described in Section 4.c shall be shared equally by the Parties. Each Party shall be responsible for its own counsel fees, as well as the cost of any survey, title insurance policy or other due diligence that it may desire with respect to the tract it would be acquiring. Elmcroft shall be responsible for any costs associated with obtaining the consent of its mortgagee.
8. **Further Assurances.** In the event that after Closing either Party determines a defect in the performance of the conveyances contemplated by this Agreement, each Party agrees to execute and deliver such instruments and take such further actions as either Party may, from time to time, reasonably request in order to correct such defect so as to effectuate the purposes, and to carry out the terms, of this Agreement.
9. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which counterparts when so executed and delivered shall be deemed to be an original, but all of which counterparts together shall constitute one and the same document.

10. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RIGHT TO A JURY TRIAL IN ANY DISPUTE ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT.

11. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the proposed Transaction and supersedes and terminates all prior understandings or agreements (written or otherwise) concerning the same.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

The City of Stamford

By: _____
Mayor, duly authorized

One Elmcroft Stamford LLC,
a Connecticut limited liability company

By: _____
Carl R. Kuehner, Authorized Signatory,
duly authorized

Approved as to form:

Corporation Counsel

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Personally appeared the City of Stamford _____, a _____ acting herein by _____, its Mayor, duly authorized, signer and sealer of the foregoing instrument, who acknowledged the same to be his free act and deed and that of said City, before me.

Commissioner of the Superior
Court/Notary Public

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Personally appeared One Elmcroft Stamford LLC, a Connecticut limited liability company acting herein by Carl R. Kuehner, its Authorized Signatory, duly authorized, signer and sealer of the foregoing instrument, who acknowledged the same to be his free act and deed and that of said limited liability company, before me.

Commissioner of the Superior
Court/Notary Public

