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Date: February 3, 2017
To: Mayor and Council
Author: G.A. Plancke / Director of Municipal Services
RE: Mettawas Lane Development Deficiencies
Report No.: MS 2017- 09

AIM

To provide Council an update and overview of planned actions to correct the outstanding deficiencies within the Mettawas Lane Development

BACKGROUND

Council originally entered into a Development Agreement with 1147160 Ontario Limited in May of 2005 passing By-Law 40-2005 to create 31 lots on lands within Part Lots 1 through 6, 28 to 32, Blocks B, C, and D on Plan 965 and Parts 1 to 3 on 12R-17281 in the Town of Kingsville. This Development is known as the Mettawas Lane Development.

Although there was a subsequent amending By-Law 65-2009 representing a request for an extension of the conditions of development the following section/subsection remained unchanged

As per section 25.10 of said agreement(s): *"In the event that the owner fails to observe, perform or fulfill any of the terms and conditions of this Agreement or neglects to proceed with the construction of the works or services required for the subject lands by May 24th, 2007 (or two years from the date of execution of the agreement as amended by 65-2009 November 09, 2009), or in the event that the work and services are not constructed or located in the manner provided for in the engineering drawings and other drawings or in accordance with the specifications approved by the Town, then upon the Municipal Clerk giving fourteen (14) days' notice by prepaid registered mail to the Owner with respect thereto, the Town may, but not need not, without further notice enter upon the subject lands and proceed to supply all materials and do all necessary works (including the repair or reconstruction of faulty work and the replacement of defective materials not in accordance with the specifications or the drawings) and to charge the cost thereof together with the requisite fees for any engineering and administration to the Owner who shall*

forthwith pay the same on demand. If the Owner shall fail to pay the cost thereof within fifteen (15) days of demand, the Town shall be at liberty to recoup its costs by recovering the same by realizing on the Performance Securities deposited by the Owner without requiring the consent of the Owner before taking action in that connection. Any entry upon the subject lands by the Town for this purpose shall not be deemed for any purpose of the Agreement or for any purpose whatsoever as an acceptance of or an assumption of the service or works by the Town. The rights set forth herein are in addition to any other rights the Town may have in pursuance of this Agreement or at law or in equity.”

DISCUSSION

As Council is aware, many Mettawas Lane residents have approached individual council members as well as petitioned Council directly in an attempt to rectify the outstanding issues and concerns related to the deficiencies of the Development.

Since amending By-law 65-2009 the extension date has expired (November 09, 2011), repeated attempts to engage some action from the Developer to address these outstanding deficiencies has been frequent over the last five (5) years.

In an effort to move forward, Municipal Services retained a third party engineering firm to review the outstanding deficiencies and identify logistics and estimates as appropriate to satisfy the terms of the Development Agreement.

An engineering summary of outstanding deficiencies and related costs was prepared and provided to the Developer for his information and possible action. In the anticipation of further non-action, the Town is in the process of preparing a Tender package for these outstanding works wherein all costs associated with the engineering, construction, and project management would be charged back to the Developer. In the event of nonpayment by the Developer, the Town will take the necessary steps to realize payment from the Performance Security on file.

Municipal Services does not take actions like this lightly, however we have been advised on many occasions that the partners representing 1147160 Ontario Limited are in legal dispute and we should not expect any movement regarding correcting the deficiencies until such time as the legal dispute has been resolved. There has been no definitive timeline for dispute resolution provided by either partner representing 1147160 Ontario Limited. Without a definite timeline for dispute resolution and action to satisfy the conditions of the Development Agreement which are now in excess of 5 years in arrears, Municipal Services is obligated to act. The residents of the Development expect and are entitled to a completed Development, and they are looking to the Town to enforce the conditions of the Development Agreement.

LINK TO STRATEGIC PLAN

To provide safe, adequate, and affordable municipal services and infrastructure.

FINANCIAL CONSIDERATIONS

Engineers estimate to address outstanding deficiencies is valued at \$214,700

Actual tender unit prices and construction costs in conjunction with relative project management and contract administration costs will be assumed by 1147160 Ontario Limited in accordance with the Development Agreement.

In the event 1147160 Ontario limited defaults on payment of works as undertaken by the Town, the Town will take steps to realize payment from the Performance Security on file. The Town is currently in possession of the original Subdivision Bond in the amount of \$224,244.18.

CONSULTATIONS

Director of Corporate Services
Municipal Services staff
N.J.Peralta Engineering Inc. – Heide Mikkelsen, P. Eng.
1147160 Ontario Limited
William Jean P. Eng. representing 1147160 Ontario Limited

RECOMMENDATION

That Council concur with the action direction of Municipal Services, to prepare and issue the Tender documents based on the engineering summary of outstanding deficiencies for the Mettawas Lane Development as prepared by N.J. Peralta Inc. immediately, and to proceed to enter into a contract with the successful tender as submitted in order to correct all outstanding deficiencies as defined as soon as practicable.

Respectfully submitted,

G.A. Plancke

G.A. Plancke Civil Eng. Tech (Env)
Director of Municipal Services

Peggy Van Mierlo-West

Peggy Van Mierlo-West, C.E.T.
Chief Administrative Officer