



CITY OF HAMILTON
CORPORATE SERVICES
Legal Services Division

and

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	June 6, 2017
SUBJECT/REPORT NO:	Monitoring Agreement for Grace Christian School, 497 Millgrove Side Road (PED17107/LS17020) (Ward 15)
WARD(S) AFFECTED:	Ward 15
PREPARED BY:	Patrick MacDonald (905) 546-2424 Ext. 4708 June Christy (905) 546-2424 Ext. 5863
SUBMITTED BY:	Nicole Auty City Solicitor, Corporate Services Steve Robichaud Director, Planning and Chief Planner Planning And Economic Development Department
SIGNATURE:	

RECOMMENDATION

With regard to Site Plan Application DA-15-085:

- (a) That Council authorize the Mayor and City Clerk to execute a Monitoring Agreement, substantially in the form attached as Appendix "A" to this Report PED17107/LS17020, with content acceptable to the City Solicitor and the Director of Planning.
- (b) That prior to registration of the Monitoring Agreement, the Owner shall post the financial securities required thereunder to the satisfaction of the Director of Planning and Chief Planner.

EXECUTIVE SUMMARY

The purpose of this Report is to seek Council's authorization to enter into a Monitoring Agreement for the provision of ongoing testing of the private sewage system proposed by the Owner/Applicant, **Canadian Reformed School Society of Flamborough Inc.**, for the future Grace Christian School, located at 497 Millgrove Side Road, Flamborough (the "Subject Lands").

The entering into of the Monitoring Agreement and its registration on title for the Subject Lands is a condition of the amended Site Plan Approval for the Subject Lands.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The City shall require that the Applicant post a financial security equal to one year of testing and reporting requirements. The security would be returned should the Applicant ever upgrade its private sewage system so that it would fall under the jurisdiction of the provincial Ministry of the Environment and Climate Change rather than the City.

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

The Subject Lands are located at 497 Millgrove Side Road, Flamborough. The Owner/Applicant is Canadian Reformed School Society of Flamborough Inc.

In 2015, the Applicant submitted Site Plan Application DA-15-085, to construct a new private school, including upgraded private services, parking and sports field facilities on 3.065 hectares of land. As the Subject Lands are located in an area without full municipal servicing, the Applicant has proposed to provide a private sewage system to facilitate the development of the school on site.

Where the daily capacity of such private sewage systems is over 10,000 L/day, the provincial Ministry of the Environment and Climate Change ("MOECC") would regulate and be the proper approval authority. However, as the Applicant's proposed system does not yet meet that threshold, the MOECC has no authority to accept the application for approval of the private sewage system.

While the design of the private sewage system, as well as certain operational aspects of the system, are under the statutory authority of the Building Division, the *Ontario*

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Building Code does not grant authority to the Chief Building Official to regulate testing for nitrates in such systems.

Conditional Approval was granted by a letter dated August 4, 2015. A further approval letter was provided dated June 3, 2016. This further approval letter noted that all of the conditions of site plan were cleared with the exception of Special Condition #7 (Sewage System Design Report).

Staff with Hamilton Water identified the need for adequate effluent testing of the private sewage system, as well as the installation of monitoring wells on site and a denitrification unit to be included in the approved plans for the private sewage system. The City's Building Division does not have statutory authority to compel such testing, and given the capacity of the system it does not fall under the jurisdiction of the MOECC. Therefore, the Applicant agreed to undertake effluent testing satisfactory to Hamilton Water and to enter into a Monitoring Agreement for ongoing testing and reporting, to be entered into and registered on title prior to occupancy of the school on site.

These obligations were confirmed as a condition of Site Plan Approval by an amending letter dated September 26, 2016, which was signed and agreed to by the Applicant. A copy of this letter is attached as Appendix "B" to this Report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Where the daily capacity of such private sewage systems is over 10,000 L/day, the provincial Ministry of the Environment and Climate Change ("MOECC") would regulate and be the proper approval authority. However, as the Applicant's proposed system does not yet meet that threshold, the MOECC has no authority to accept the application for approval of the private sewage system. As staff with Hamilton Water identified the need for ongoing monitoring of the proposed private services on the Subject Lands, and as this has been reflected in the amended conditions of Site Plan Approval for the Subject Lands, implementing the condition will take place through a Site Plan Agreement, to be registered on title, containing a requirement that the Applicant enter into and register on title a Monitoring Agreement in accordance with Section 23 of the *Municipal Act, 2001*, S.O. 2001, C.25.

RELEVANT CONSULTATION

The following were consulted for the writing of this Report:

- Hamilton Water

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Hamilton Water Analysis and Rationale

The re-development of the school can ultimately accommodate a larger number of students compared to the original school's former occupancy. As a result, there is a possibility that that water quality risks originating from their on-site sewage disposal system could arise. To mitigate these risks, the applicant has proposed an "advanced treatment unit" that is not formally recognized in the Ontario Building Code to reduce the contaminants of concern (in this case, nitrate and pathogens). While staff note the potential benefits of these systems, a monitoring agreement is necessary to ensure that the sewage disposal system performs as expected, and that any water quality risks can be properly characterized and predicted so that groundwater users both on site and "downstream" are protected.

Development Planning Analysis and Rationale:

The Subject Lands were rezoned in 2010 to allow for the expansion of the existing school property to 3.25 hectares to allow for more sustainable servicing and to establish a new private school. The Monitoring Agreement is acceptable to the Planning and Economic Development Department as a condition of Site Plan Approval as it will ensure the long term sustainability of the Subject Lands by allowing for upgraded private services and monitoring. The Applicant is fully in support and has agreed to enter into a Site Plan Agreement which will be registered on title for the Subject Lands and which will specify the requirement to enter into the Monitoring Agreement as a condition of site plan approval. As there is no existing delegated authority for Staff to enter into an agreement under Section 23 of the *Municipal Act, 2001*, this Report is seeking instructions from Council to provide delegated authority for this specific Monitoring Agreement.

The Planning and Economic Development Department has included Hamilton Water's requests related to testing for nitrates as amended conditions in the aforementioned amended Site Plan Approval letter dated September 26, 2016. To ensure that the positive obligations for ongoing testing were met and enforceable against future owners of the Subject Lands, Legal Services was consulted for advice.

Legal Analysis and Rationale:

Due to the fact that proper testing of the private sewage system will require ongoing positive obligations on the part of the Owner/Applicant, Legal Services recommends that a detailed Monitoring Agreement be entered into between the parties to provide for such ongoing testing. The Agreement would be registered on title, in conjunction with a brief Site Plan Agreement, to be enforceable against current and future owners.

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Section 23 of the *Municipal Act, 2001*, grants the City the power to enter into an agreement with any person to construct, maintain and operate a private road or a private water or sewage works, including fire hydrants. Therefore, the City has authority under this section to enter into a Monitoring Agreement to provide for testing of the Applicant's private sewage system.

As the final form of the Monitoring Agreement has not yet been finalized, staff are seeking delegated authority from Council to finalize the content of the Monitoring Agreement and to have it executed by the Mayor and Clerk once completed to the satisfaction of the City Solicitor and General Manager, Planning and Economic Development.

Further, Subsection 41(7)(c.1) of the *Planning Act*, provides that as a condition of granting approval of plans and drawings submitted for a Site Plan Application, a municipality may require the owner of land to enter into one or more agreements with the municipality ensuring that development proceeds in accordance with such plans and drawings.

In conjunction with the proposed Monitoring Agreement, Staff will prepare a brief Site Plan Agreement to be registered on title stating that the entering into of the Monitoring Agreement and its registration on title by the Owner/Applicant shall be a means of ensuring that the development of the private sewage system proceeds in accordance with the plans and drawings for the system which were approved by staff and included as a special condition of approval in a Revised Final Approval letter dated September 26, 2016.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

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APPENDICES AND SCHEDULES ATTACHED

- Appendix "A": Draft Monitoring Agreement
- Appendix "B": Site Plan Amendment Letter, September 26, 2016

:PM