
TO: GENERAL COMMITTEE

SUBJECT: WAIVE PROPERTY RIGHTS AND DISCHARGE DEVELOPMENT AGREEMENT - 305 SAUNDERS ROAD

WARD: 8

PREPARED BY AND KEY CONTACT: P. DYCK BUSINESS DEVELOPMENT OFFICER

SUBMITTED BY: S. SCHLICHTER, DIRECTOR OF BUSINESS DEVELOPMENT

GENERAL MANAGER APPROVAL: Z. LIFSHIZ, EXECUTIVE DIRECTOR OF INVEST BARRIE

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the City of Barrie waive its right to purchase back Lots 65 and 66 on Plan 51M-379 and discharge the registered Development Agreement on title.
2. That the City Clerk be authorized to execute any associated documentation required in a form satisfactory to the Director of Legal Services.
3. That Laguna Trading Ltd. be required to reimburse the City of Barrie for all costs associated with executing the discharge of the Development Agreement.

PURPOSE & BACKGROUND

Report Overview

1. The purpose of this staff report is to seek Council approval to waive the City's right to buy back the lots and to discharge the Development Agreement for a previous City owned industrial property which was purchased in the South Barrie Industrial Park, and is known municipally as 299 – 305 Saunders Road.
2. On June 27, 2005, City Council adopted motion 05-G-386 regarding the Offer to Purchase between the City of Barrie and Laguna Trading Ltd. Laguna Trading Ltd. was in turn going to lease out a new facility to its sister company 'Asured Transport', which operated a long haul vacuum truck transport company. The proposed new facility was to house their head office, maintenance facility and a material recovery facility. At the time, Asured Transport's focus was the capturing of excess water, sand and contaminants from various construction and clean-up sites and then transferring the material to a central site where the liquids are separated and then collected for recycling or disposal.
3. Motion 05-G-386 approved the sale of the lands and set out various terms as per the City's standard Development Agreement. There are several terms specified in the agreement:
 - a) The Purchaser agrees that it will commence construction of an industrial building within one year of acquisition of the Property and complete construction within one year of its commencement.

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- b) If the Purchaser does not start and complete construction within the specified time frame, The City shall have the right to repurchase the lands at 90% of the purchase price.
 - c) Unless the requirements (as per 5a above) have been met, the Purchaser shall not sell the lands or any part thereof, as vacant land, without first offering to sell the lands to the City of Barrie at a price equal to 90% of the original purchase price (sell is also meant to include the sale or disposition of the corporate shareholding of the Owner) without first offering to sell the lands to the City at 90% of the original purchase price.
4. In 2008 Council passed motion 08-G-422 Extension in Period to Start Construction – Laguna Trading; which provided for Laguna to commence construction on or before January 1, 2009 and finish on or before January 31, 2010.
 5. Laguna Trading Limited has been granted the licences required from the Ministry of Environment in order to operate a waste management site on the Property. The footings for the foundation had been installed to satisfy the construction start dates as per the Agreement, and with the anticipation of completing construction on the building the following year. Due to poor economic conditions, followed by the passing of the principal of the company, George Corn, construction of the building was not completed beyond the footings.
 6. The widow of Mr. Corn has been holding the company and has received an offer of purchase of her interest (of shares) in Laguna Trading Limited. The transaction was set to close on February 6th, 2018, when the City's Development Agreement was identified as being registered on title and that the covenant to complete construction on the property had not been met. The purchaser's lender cannot support the financing of the transaction while the City's rights to buy back the property remain. Staff do not have the authority to waive the covenants of the Development Agreement, which would allow the transaction to be completed. This condition in the Development Agreement has rendered the property incapable of being financed or sold, and the City is being requested to waive its rights to the property.

ANALYSIS

7. The proposed purchaser (Apex Environmental Solutions Inc.) of the shares in Laguna Trading Limited are in the same type of waste management business and have recently acquired the former Cyanide Destruct Systems also operating a waste management facility on the adjacent site – 293 Saunders Road. Apex Environmental Solutions does not intend to utilize 299-305 Saunders Road for any of its cyanide processing & reclamation. However, there will be some transport of material across property boundaries.
8. Laguna Trading Ltd. received its building permit in 2006 and development charges were paid at that time. The amount of \$91,712 in DC's was paid on the design of approximate 8,500 sq.ft. building. Apex Environmental intends to commence redevelopment of 299-305 Saunders Road by the fall of 2018 utilizing the existing permit which is still valid today. Apex Environmental has indicated that Laguna Trading had spent approximately \$900,000 in preparatory site work and for obtaining permits.
9. The purchase of the business is expected to add an additional five full-time skilled labour jobs to support the operation, with an additional ten required upon completion of the development. Title to the Property will not change, as Laguna Trading Limited will remain the sole owner of the land.
10. Laguna Trading has received Certificates of Approval from the Ministry of the Environment. The certificates are dated 2007 & 2009 and are for a waste disposal site (transfer & processing) which provides authorization to process only specific kinds of waste. The 2009 Certificate of Approval provided for a liquid industrial waste, hazardous waste and solid non-hazardous waste transfer and processing facility. The 2007 & 2009 Certificates of Approval are still valid today.

11. When Laguna purchased the Property in 2005, the lands were zoned M2-Heavy Industrial which at the time permitted outside storage without the requirement of a principal building being present. The lands are currently zoned General Industrial (GI) which permits the use of a Material Recovery Facility but requires that all storage is wholly within the building. The bylaw change occurred in 2009 (bylaw 2009-141), which was well after Laguna Trading purchased and began its operations on site. The current use would therefore be considered 'legal-nonconforming'. However, Laguna's building design would still be required to meet City code including environmental and fire.
12. The City sold the 2.07 acre property to Laguna Trading in 2005 for the purchase price of \$58,000 per acre, or for a total purchase price of approximately \$120,000. A recent 2017 appraisal that was requisitioned by the City for other properties on the east side of Hwy 400 (along Rawson Avenue) indicated a value range of \$250,000 - \$275,000 per acre for somewhat similarly constrained lands. Subsequent to its purchase, Laguna Trading had spent approximately \$200,000 to grade and fill the property. The existing foundation can be considered a detriment to the Property value given that the design is specific to a building size and configuration. As such, any redesign would essentially require a new permit process and the potential removal of the existing foundation.
13. Laguna Trading had intended on constructing and completing a facility as far back as 2005 and again in 2009, and had subsequently demonstrated this by submitting the necessary permits and completed substantial works to the Property in preparation for a new build. The property is adjacent to Environmentally Protected lands and requires Conservation Authority approvals and, the existing foundation would be very expensive to remove. Given the review of the property and the efforts put forward by both Laguna Trading and Apex Environmental Services to develop the property, it is not recommended that the City exercise its right to buy back the lots at 90% of their original purchase price (buy back would be approximately \$108,000). It is further recommended that staff be authorized to discharge the current Development Agreement given the length of time since the original agreement was struck and that it is in the City's best interests to retain no further interest in the lands.

ENVIRONMENTAL MATTERS

There are no environmental matters related to the recommendation.

ALTERNATIVES

14. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could exercise its right to repurchase the lands. Given that Laguna Trading has invested considerably in the lands to address grading and soils in addition to constructing the footings for foundation, it would not be reasonable for the City to buy-back the lands at 90% of value. The Property is subject to development guidelines of the Lake Simcoe Region Conservation Authority, the City's building & fire regulations as well as the MOE's requirements outlined in the Certificates of Approval.

Alternative #2

General Committee could choose not to discharge the Development Agreement. There are multiple clauses in the agreement which reference the rights and options of the City relating to the buy-back. Laguna Trading has however, met the majority of the requirements under the agreement with the exception of completing the building. Given there is no legal or financial reason to exercise the buy-back provision, staff therefore recommend discharging the City's interest.

FINANCIAL

15. Annual municipal realty taxes as per the 2017 BMA study would be \$6,885 based on a total build out of 8,500 sq.ft. of industrial space. One time municipal development charges were paid in 2006 in the amount of \$91,712.
16. The legal costs associated with discharging the development agreement would be reimbursed by Laguna Trading Limited.

LINKAGE TO 2014-2018 STRATEGIC PLAN

17. The recommendation(s) included in this Staff Report support the following goals identified in the 2014-2018 Strategic Plan:
 - Vibrant Business Environment

APPENDIX "A"

Aerial of 299-305 Saunders

