

Corporation of the Town of Hawkesbury

Recommendation to Council

N° : 2019_REC_21

File N°: 06-02-00400 & 06-02-00403

Date of meeting: May 27, 2019

Subject: Clément Project – Municipal Services on Cartier Boulevard

Recommendation

Whereas the municipality has carried out in April 2014 major infrastructure work on Cartier Boulevard for the replacement of storm sewers, sanitary sewers and drinking water supply lines, including the repair of the circulation lanes on Cartier and Cécile Boulevards, and;

Whereas the developer C H Clément Construction Inc. c/o Charles Clément was applying for amendments to the Official Plan and the Zoning By-law for properties located at 888-920 Cartier Boulevard, designated as parts of Lots 11 and 12 of Plan M-18, Parts 1, 2, 3, 4, 5, 8, 9, 10, 11, 12 & 13 of Plan 46R-1380 and Parts 1, 2 & 3 of Plan 46R-1453, in the city of Hawkesbury, Prescott County, and;

Whereas the proposed project on Cartier Boulevard was a condominium-type residential development that included seven (7) multi-residential buildings of eight (8) units and a multi-residential building of ten (10) units for a total of 66 residential units, and;

Whereas the developer C.H.Clément Construction Inc. c/o Charles Clément as well as the municipality wanted to take advantage of the infrastructure work to be done on Cartier Boulevard to minimize the costs as well as to avoid carrying out work on a newly reconstructed boulevard, and;

Whereas the costs for the construction of additional services on Cartier Boulevard are of the order of \$50,777.86 and that these have never been recognized and are unpaid by the developer C.H.Clément Construction Inc.

Be it resolved that a By-law under section 391 of the Municipalities Act be adopted by the council to ensure that the costs incurred by the municipality are covered by the existing or future owner of the said lands, and as recommended in document 2019_REC_21.

Explanation, history, context

On June 4, 2014, Mr. Clément applied for an amendment to the Official Plan and the Zoning By-law.

The amendments concerned the properties located at 888-920 Cartier Boulevard, designated as the parts of Lots 11 and 12 of Plan M-18, Parts 1, 2, 3, 4, 5, 8, 9, 10, 11, 12 & 13 of Plan 46R-1380 and Parts 1, 2 & 3 of Plan 46R-1453, in the Town of Hawkesbury, Prescott County.

The purpose of these amendments was to redesignate the lands to permit a condominium-type residential development project that included seven (7) multi-residential buildings of eight (8) units and a multi-residential building of ten (10) units for one total of 66 residential units.

Therefore, Amendment No. 3 of the Official Plan (By-law N° 60-2014) and Zoning By-law N° 61-2014 were adopted on October 14, 2014.

During the same year, the municipality began work on the reconstruction of Cartier Boulevard. This project consisted of the replacement of storm sewers, sanitary sewers and drinking water supply lines, including the repair of the circulation lanes on Cartier and Cécile Boulevards.

Following the request of the developer C.H. Clément Construction Inc., the municipality worked jointly with him to ensure that the infrastructure work that was in progress could be modified to accommodate the proposed residential project.

The current problem is that the developer, C.H. Clément Construction Inc. claims that he has never requested the said modifications of the work and that he is not responsible for the costs incurred by the municipality and no payment on his part has been done.

Chronology of the Cartier Boulevard works and discussions with the Developer:

March 11, 2014: Signing and Issuance of Contract with Landrock Excavation Inc.

April 7, 2014: Beginning of work on Cartier Boulevard.

June 27, 2014: Town's response to Mr. Charles Clément regarding the work required to service his properties on Cartier Boulevard.

July 30, 2014: Mr. Charles Clément asks the contractor Landrock, Project Manager, Mr. Claude Carrière, CET if he has any news about the installation of the services on his properties.

October 14, 2014: Adoption of the Official Plan's amendments and the Zoning By-law - Clément project.

November 10, 2014: The Town's Memorandum to Landrock. Purpose: Issuing a Change Order which identifies changes to be made to supply the Clément Project with two (2) waterworks and sewer services at the boundaries of the properties in question.

November 17, 2014: Price provided by Landrock for the Change Order.

December 19, 2014: Signature of Change Order and acceptance of additional costs.

March 16, 2015: Issue of the invoice No. 2884 to C.H.Clément Construction Inc. for the work carried out concerning the addition of 2 waterworks services and a sanitary service to the lands with the following role numbers: 06-02-00400 & 06-02-00403.

The proposed multi-residential project on Cartier Boulevard has never been completed. The developer has built a multi-residential block at 205 Spence. What we know about the properties on Cartier Boulevard is that they are for sale. The proof is that we had a meeting with the real estate agent Jacques Charlebois on December 21, 2018 to discuss another project proposal for the said lands.

As a result, the municipality is left with an unpaid bill in the amount of \$50,777.86 to service two properties following the request of a developer. We believe that at the time both parties acted in good faith for the Town's development. However, it is not the responsibility of taxpayers to defray these costs for lands subject to development.

In order to know our rights about this situation, we have consulted our legal advisors to this effect.

Here's an excerpt from Greggs Meeds, solicitor at Vice Hunter:

Given the oral nature of the agreement to pay, in my view, the Town's best option to ensure collection of the amount is to pass a "fees and charges" by-law (pursuant to s.391 of the Municipal Act). The by-law would impose the charge for the capital cost of the service provided to the land. As the lands are "development ready", the benefit is immediate. In theory, you could require the full payment right away. You may want to consider amortizing it over 3 or 5 years, however, as your chances of recovering may be better. Also, the by-law could specify that the amount is triggered at such time as Site Plan approval is obtained, or building permit issued.

By virtue of the Act, and the by-law you would pass, any amounts would be added to the tax roll in the event of default. If amortized, the annual amounts payable would be shown on the tax roll as future payments required. In that way, any potential purchaser would get notice of the obligation to pay.

You may want to try giving Clement notice that the Town will be proceeding with such a by-law (if he fails to live up to his oral commitment), with amounts added to the tax roll in the event of default. He may decide to make some arrangements to pay.

Options/alternatives

1. That the Town absorb all the cost related to the installation of water and sanitary lateral services for the Clement project during the Cartier Blvd. Reconstruction.

Impact on budget

Phase II Cartier Boulevard Project

Item N° 2-3-31-5070, amount of \$50,777.86

Relevant studies

N/A

Supporting document

- Email exchanges
- Invoice No 2884
- Document including Legal opinion of Vice Hunter, dated February 16, 2017

Department(s) involved

1. Finance department, and;
2. Technical services.

Submitted and recommended by

Guillaume Boudrias, Project Manager, Civil Engineering

May 15, 2019

Comments of the Chief Administrative Officer

I have consulted with Mr. Clement with respect to the reimbursement of the cost of the works and he accepted to repay the municipality once he proceeds with the development of the lands. In addition, he accepts that the outstanding amount is subject to interest cost.

Daniel Gatién, CAO