
Subject: Lakewood Beach Development - Municipal Responsibility Agreement for On-Site Water & Wastewater Communal Systems

Report to: Planning and Economic Development Committee

Report date: Wednesday, March 10, 2021

Recommendations

1. That Report PDS 16-2021 **BE RECEIVED** for information; and
2. That Report PDS 16-2021 **BE CIRCULATED** to the Township of Wainfleet.

Key Facts

- The purpose of this report is to inform Council of the Municipal Responsibility Agreement (MRA) with the Township of Wainfleet and Lakewood Beach Properties Ltd. for the on-site water and wastewater communal system for the Lakewood Beach Development in the Township of Wainfleet which has been prepared through consultation between staff in Planning, Legal Services, Finance and Public Works to the satisfaction of the CAO, Commissioner of Public Works and Director of Legal and Court Services and is now ready for execution.
- Regional staff have been working on the MRA collaboratively with the Lakewood Beach Development group and the Township of Wainfleet since 2018 and it was finalized in Q4 2020 to the satisfaction of staff at the Region and the Township of Wainfleet.
- The Lakewood Beach Development is a residential condominium development consisting of 41 single detached units on approximately 14 hectares of land located at 11705 Lakeshore Road in the Township of Wainfleet.
- The on-site communal water and wastewater system was determined to be the required servicing solution in the Planning process and in an Environmental Assessment in 2015/2016 with the Ministry of Environment, Conservation and Parks requiring the Niagara Region enter into a MRA with the applicant (Lakewood Beach Properties Ltd.).
- Planning requirements for this development have been subject of planning applications and approvals since 2007/2008 and it is anticipated that final approval of the Condominium Agreement with the Township of Wainfleet will take place in early 2021 with construction targeted for later in 2021.

- Staff are relying on the authority to sign the MRA based on Section 8 of Schedule “A” to Execution of Documents By-law as the MRA is a condition of approval under the Planning Act for the Lakewood Beach Development.

Financial Considerations

The MRA requires that a Capital Reserve for the on-site communal water and wastewater system be established as well as an Operation & Maintenance (O&M) Reserve to be managed by a qualified Trustee and funded by a condominium corporation, once created and by its members. Regional staff have been working with the Trustee and the Lakewood Beach group to ensure that the appropriate level of understanding of the Trustee’s role and responsibilities are clear in the MRA. The Capital and O&M Reserves provide a funding source if the MECP were to order the Niagara Region to ensure operation of the water and wastewater (W&WW) services for this development in the event that the condominium corporation failed to maintain the system to the standards required by the MECP.

The reserves will be established initially with funding from the owner and then will be the responsibility of the condominium corporation when formed to maintain the required balances through recovery of fees from the property owners. The amounts required for the Capital Reserve are based on an independent engineering study that provided for a minimum balance as well as the replacement of the system at the end of life cycle. Reserve reporting will be provided to the Region annually by the Trustee with an option to engage an independent auditor at the owners’ expense should any further analysis or verification of compliance be required.

Niagara Region would access these funds through the Trustee to ensure operating services were provided to this development if required by the MECP until an alternative method of recovering from owner/condominium corporation/property owners is established. Furthermore, Niagara Region/Wainfleet has the ability to directly charge the owner/condo corporation for costs related to the operation and maintenance of the water and wastewater system in the unlikely event of default whereby the MECP orders the Niagara Region to operate these systems.

Security in the form of a letter of credit for the full cost of the on-site water and wastewater communal system are required to be provided to the Region prior to construction and will be released upon completion of the project to the satisfaction of the Region and MECP in accordance with the agreement. The MRA allows the Region to retain an Independent Engineer to inspect the onsite Water and Wastewater system

and to review any reporting and submissions for the life of the system with the cost paid for by the owner.

Analysis

The purpose of this report is to inform Council of the Municipal Responsibility Agreement (MRA) with Lakewood Beach Properties Ltd. and the Township of Wainfleet for the on-site water and wastewater communal system for the Lakewood Beach Development which has been prepared through consultation between staff in Planning, Legal Services, Finance and Public Works to the satisfaction of the CAO, Commissioner of Public Works and Director of Legal and Court Services and is now ready for execution.

The Lakewood Beach Development has had a long planning process with various planning applications and approvals since 2007/2008 with receiving approval of the Draft Plan of Condominium in July 2017. The extensive planning process provides a number of opportunities for public awareness and comment. The final registration and condo agreement for this development is almost complete and will be recommended to the Township of Wainfleet Council for approval in early 2021. Township staff have been informed about this report.

In June 2009, Report PWA 58-2009 was approved by Regional Council to permit a communal private sanitary servicing system for the Lakewood Beach Development as part of an Official Plan Amendment. The recommended and approved policies considered that *“in the event that the Ministry of Environment requires the Region to be included in an assumption agreement with the Condominium Corporation for these systems, the condition of the assumption agreement shall be to the satisfaction of the Region, and the Township of Wainfleet shall be responsible for full cost recovery for the communal water and sewer services.”*

The Wainfleet Official Plan has a site specific section for this development:

3.3.3.12 Notwithstanding any other policies to the contrary, on lands located in part of lots 16 and 17, Concession 1, a residential development on approximately 10.3 hectares of land shall be:

- a) Permitted to a maximum of 41 units; and*

b) Permitted through a plan of condominium on sustainable private services subject to the following servicing requirements:

i) The Condominium Corporation shall be responsible for the operation, maintenance and costs associated with the sustainable private services with adequate provision for replacement of these systems in the future;

ii) In the event that the Ministry of the Environment requires the Region to be included in an assumption agreement with the Condominium Corporation for these systems, the conditions of the assumption agreement shall be to the satisfaction of the Region, and the Township of Wainfleet shall be responsible for full cost recovery for communal water and sewer services;

Subsequently for the Draft Plan of Condominium for Lakewood Beach Development, a specific Regional draft plan condition was identified:

“34. That the owner enters into a Municipal Responsibility Agreement with the Regional Municipality of Niagara to address potential future requirements for the servicing of the site. This agreement needs to be reviewed and approved by the Region of Niagara prior to registration of development.”

The MRA with the Niagara Region and Lakewood Beach Properties Ltd. includes the Township of Wainfleet as a party to the agreement. Wainfleet has been involved in the drafting of the MRA for their review and comment as well as ensuring compliance with the planning conditions for this development. As identified in the MRA, Wainfleet has agreed to the responsibility of billing property owners for the system operating and capital costs in the event that the Region was required to operate the system as well as addressing any outstanding balance through property tax arrears. The MRA will be registered on title and included in every purchase and sale agreement.

In September 2018, Report PDS 32-2018 was received by Regional Council to provide the background and update of the MRA in anticipation of finalizing the MRA to the satisfaction of the Commissioner of Public Works and Director of Legal and Court Services. The process was delayed primarily due to difficulties initially faced by the developer in obtaining a Trustee with the initially described requirements in the MRA and when a Trustee satisfactory to Niagara Region was identified, ongoing discussions were necessary to finalize the Trustee Agreement which was to form part of the MRA.

On-site Communal Water and Wastewater Systems

The communal on-site wastewater system consists of an extensive treatment system with gravity sewers and a sewage pumping station for the 41 units which has been reviewed and approved by the MECP pursuant to the provisions of the *Environmental Protection Act, R.S.O. 1990, c. E. 19* and the *Ontario Water Resources Act, R.S.O. 1990, c. O.40*. A formal Environmental Compliance Approval with governing conditions and reporting requirements (Approval No. 0581-BQHNVC) for the onsite wastewater system was approved on July 21, 2020.

The communal on-site water system consists of water distribution mains to the 41 units as well as storage tanks with a chlorination booster system. Additionally, Wainfleet has reached an agreement with the proponent to include Fire Cisterns along Lakeshore Road with this water system to enhance fire protection to the overall community. This water system will be fed by the Long Beach Private Water System which is governed by the *Safe Water Drinking Act* and the MECP. The on-site water system for the condominium is considered “plumbing” under the Ontario Building Code and doesn’t require a formal approval from the MECP; however, a third party engineering review paid for by the proponent for this water system was completed for due diligence on behalf of both Wainfleet and the Niagara Region.

Clearford has designed the communal on-site water and wastewater systems and has extensive experience with these systems in Ontario and internationally. The proponent will have Clearford provide operation and maintenance (O&M) for these systems for the next 5 to 10 years. The future condominium corporation will be required to have a firm like Clearford provide O&M on an on-going basis with formal contracts.

The general site plan showing the locations of the on-site communal water and wastewater system are provided in Appendix 1.

Over the last 3 years, the MRA has been finalized through discussions, correspondence and meetings between Niagara Region Director level staff in finance and planning and legal counsel and the Developer’s legal and consulting team. The CAO, Commissioner of Public Works and Director of Legal and Court Services are satisfied with the final agreement.

By-law No. 09-2016, being a By-law to Govern the Execution of Documents and to Delegate Certain Administrative Powers and Duties to Staff, Schedule A, Section 8, provides authority for the CAO and Commissioner to sign this MRA on behalf of the Niagara Region. Section 8 identifies agreements imposed or required in satisfaction of

any condition of approval under the Planning Act in connection with the development of land including, without limitation, subdivisions, site plans and rezonings where the Regional Corporation is not the applicant, and Releases and Acknowledgments of Compliance pursuant to any such agreements. The requirement for the Niagara Region to enter the MRA with the applicant was identified as part of the Planning process and a condition of approval, and has been finalized to the satisfaction of the Niagara Region. This is the first MRA approved by Niagara Region and as such the first document of this specific type to be approved pursuant to Section 8 of Schedule “A” to the Execution By-law. Recognizing that this was a first time MRA combined with the fact prior reporting had been limited to previous Councils, staff considered it prudent to make Council aware of the project.

Alternatives Reviewed

No alternatives were reviewed as Regional Council provided approval from a planning perspective of the concept of a development requiring an MRA in June 2009. Over the last number of years, substantial effort and review by all parties have gone into finalizing the MRA which is one of the final steps prior to commencement of this development project.

Relationship to Council Strategic Priorities

This report supports Council’s Strategic Priority for Responsible Growth and Infrastructure Planning.

Other Pertinent Reports

- **PWA 58-2009** – June 15, 2009 – Official Plan Amendment 18, To Permit a Communal Private Sanitary Servicing System, Lakewood Beach Properties Ltd., Wainfleet
- **PDS 32-2018** – September 5, 2018 – Lakewood Beach Development – Municipal Responsibility Agreement for On-Site Water & Wastewater Communal System

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Appendices

Appendix 1 General Site Plan