

CITY OF ORILLIA

TO: Council Committee – June 17, 2019
FROM: Economic Development Department
DATE: June 11, 2019
REPORT NO: ED-19-12
SUBJECT: **Forest Avenue South Working Group Update**

Recommended Motion

THAT the Forest Avenue Working Group be dissolved;

AND THAT staff be directed to draft and circulate a survey to collect feedback from Victoria Point and Grape Island property owners (as described in Schedule “A” of Report ED-19-12) regarding the use of the Forest Avenue South road allowance and municipally owned water lot;

AND THAT Council direct staff to prepare a report outlining options for a solution which take into account feedback obtained through the survey;

AND THAT funding in the amount of \$7,500 for the cost of legal fees be allocated from the Operating Contingency.

Purpose

The purpose of this report is to update Council on matters relating to the Forest Avenue South Working Group (working group) and seek direction as it relates to next steps.

Background & Key Facts

- On January 22, 2018, staff presented to Council report ([ED-18-01](#)) regarding the encroachment matters on the Forest Avenue South road allowance (road allowance) and municipally owned water lot. Report ED-18-01 includes a comprehensive background on the Forest Avenue South encroachment matters and Council is encouraged to review that report in conjunction with this report.
- On January 29, 2018, Council passed a resolution which included direction to establish a working group:
 - “...consisting of the following:
 - up to three Grape Island representatives
 - up to three Victoria Point representatives
 - Ward 1 Councillors
 - Manager of Real Estate and Commercial Development;”

- The working group was mandated to “*to work together to create an amicable solution to challenges within this area*”. (The full resolution is summarized in Report [ED-18-17](#)).
- As part of the resolutions adopted on Jan 29, 2018, Council also directed staff to create a Temporary Use By-law (TUB), which was passed on March 5, 2018, allowing the encroachments to exist for a two year period (i.e. until March 5, 2020) during which time a long-term solution could be explored through the working group.
- On September 10, 2018, the working group sought Council approval to significantly expand the scope of their research, to include a review of all private and municipal properties which could accommodate commercial barging.
- Council approved the request to increase the scope and it was resolved that, due to the increased workload that would result from this change in scope, working group meetings would resume in the second quarter of 2019.
- In October 2018, two of the working group’s GIPOA representatives resigned from the Working Group, one of whom cited an inability to find consensus on a solution amongst GIPOA members.
- In November 2018, the City received correspondence from GIPOA’s newly retained solicitor, Christopher Du Vernet. In his letter, Mr. Du Vernet noted that the GIPOA had retained his services in relation to the Forest Avenue matter. He suggested that all parties identify their legal rights before meeting and he encouraged both the City and the Victoria Point representatives to also retain legal counsel.
- Victoria Crescent working group members expressed concern about the involvement of a solicitor, noting that as members of an informal working group they were not prepared to retain legal counsel.
- City staff advised that as no new actionable information was provided within Mr. Du Vernet’s correspondence, staff would continue with the working group meetings in the second quarter of 2019.
- In April 2019, a resident of Grape Island contacted the City to express concerns that she felt her concerns and priorities were not being adequately addressed by the GIPOA members appointed to the working group, and asked if she (and neighbours who held a similar viewpoint) could participate in the working group discussions.
- Staff contacted the GIPOA in this regard, and were advised that the GIPOA had applied an “assessment fee” to all properties on Grape Island to fund the GIPOA solicitor and that this was done through a vote of the GIPOA membership.
- The GIPOA Secretary confirmed that should GIPOA members choose not to pay this assessment, their account would be considered to be not in good standing, and they would lose access to GIPOA assets, including the dock at Forest Avenue South, the GIPOA parking lot, the community lot on Grape Island (excluding Ivy Lane) and potentially the garbage bins within the Forest Avenue South parking lot.
- It should be noted that the concrete pier abutting the Forest Avenue South road allowance is owned by the City, and would continue to be accessible to Grape Island Residents.

- In May 2019, as staff began preparations to reconvene working group meetings, emails were sent out requesting confirmation of each party's representatives. Victoria Point replied that their representation would remain the same, while the GIPOA indicated that they would be represented by one member plus their solicitor.

Options & Analysis

Staff present the following options for consideration:

Option 1- Recommended

THAT the Forest Avenue Working Group be dissolved;

AND THAT staff be directed to draft and circulate a survey to collect feedback from Victoria Point and Grape Island property owners (as described in Schedule "A" of Report ED-19-12) regarding the use of the Forest Avenue South road allowance and municipally owned water lot;

AND THAT Council direct staff to prepare a report outlining options for a solution which take into account feedback obtained through the survey;

AND THAT funding in the amount of \$7,500 for the cost of legal fees be allocated from the Operating Contingency.

Council recommended that a working group be mandated to "work together to create an amicable solution to the challenges in this area". Council's intent was to allow GIPOA and Victoria Point representatives to work together (facilitated by staff) to come to a consensus on a shared solution. To ensure that these discussions are as productive as possible, it is imperative that all parties attending the discussion feel comfortable sharing potential solutions and openly discussing the issues without threat of legal ramifications.

The retention of a solicitor by the GIPOA is anticipated to change the overall tone and productivity of working group meetings. As indicated in Mr. Du Vernet's correspondence, he states his opinion that the issues are "legal in nature". Based on advice from the City's solicitor, it is recommended that City staff do not meet with another party's solicitor without legal representation present, even on a "without prejudice" basis ("without prejudice" is a term that refers to the understanding that communications will not be used as evidence or seen as an admission of liability). It is recommended that if the GIPOA wishes to challenge the City's actions to date, that this be done through the appropriate legal channels as opposed to through the working group. This would ensure that all parties have the opportunity to secure legal counsel and would ensure that the City is adequately represented in these discussions.

As the GIPOA has retained a solicitor to represent the GIPOA, staff is recommending that Council dissolve the working group. This would allow staff to continue working towards a long-term resolution to address the Forest Avenue South encroachment matters.

If Council approves the recommended option, staff would work with Ward 1 Councillors to develop options for Council's consideration.

Staff and Council realize the ongoing importance of considering the feedback of GIPOA and Victoria Point residents and therefore staff recommends that a survey be conducted to gain the feedback of approximately 595 residents within the subject area (as identified in Schedule "A"). This survey would be primarily delivered online, but an option to fill out a hard copy of the survey would be available by visiting the City of Orillia Economic Development Office.

After several years of meeting with the applicants, staff have a clear understanding of the objectives of the property owners surrounding this area. A great deal of information, including correspondence from property owners, meeting minutes, research, and legal opinions exist within the file on this matter, and can be drawn upon as potential solutions are explored. It should be noted that to date, Grape Island and Victoria Point residents have shared conflicting needs and concerns, and therefore it may be difficult to find a solution which satisfies all area residents. If Council chooses the recommended option, staff will work with the Ward 1 Councillors to examine options which strike a balance between these opposing objectives.

To ensure that the City is protected prior to implementation of any long-term solutions, staff is seeking Council's approval to engage the City solicitor to review up to three potential solutions to ensure that they are legally compliant. This legal review would be encompassed within the resulting staff report. Staff anticipate that this report would come forward in the fourth quarter of 2019.

Option 2 - This Option is not recommended

THAT the Forest Avenue Working Group be dissolved;

AND THAT staff be directed to draft and circulate a survey to collect feedback from Victoria Point and Grape Island property owners (as described in Schedule "A" of Report ED-19-12) regarding the use of the Forest Avenue South road allowance and municipally owned water lot;

AND THAT Council direct staff to prepare a report outlining options for a solution which take into account feedback obtained through the survey.

This option would allow staff to bring forward a report with potential options before seeking a legal review to confirm that the options are legally compliant. This option may be more cost efficient, as the legal review would be limited to one Council preferred option, however, Council would not have the benefit of a legal opinion when reviewing various options. This legal opinion could impact Council's decision on a preferred scenario.

Financial Impact

If Council chooses Option 1, approximately \$7,500 would be allocated to legal fees from the Operating Contingency for the review of up to three potential solutions to the Forest Avenue South encroachments.

If Council chooses Option 2, a legal review would not take place prior to Council selecting a preferred solution, but could take place after a preferred solution. Staff would seek funding for this through a subsequent report to Council.

In addition to significant staff time, the City has spent \$7,603.26 on legal expenses related to this encroachment matter.

Consultation

The working group was not consulted during the preparation of this report.

If Option 1 or 2 is approved, staff would undertake a survey of residents of Grape Island and Victoria Point as identified in Schedule "A".

Staff would also consult with commercial operators who may be impacted by the proposed solutions (barging, building material supply stores, etc.).

Economic Development Impact

There is no direct Economic Development impact associated with the recommended option.

Communications Plan

If Council adopts the recommendation identified as "Option 1", staff will create an online mailing list to collect email addresses and contact information for residents of Grape Island and Victoria Point. Staff will encourage residents to participate in this mailing list via direct communication to the Victoria Point Ratepayers Association (VPRA) and the Grape Island Property Owners' Association, through social media and through a press release.

A survey will then be undertaken to gather feedback from impacted property owners. Project updates can also be provided through this dedicated mailing list. These channels of communication will allow for direct input from individual stakeholders. Furthermore, a survey approach will allow parties greater freedom to communicate their priorities openly and without prejudice versus an in-person meeting with a solicitor present.

Relation to Formal Plans, City of Orillia Policy Manual and/or Guiding Legislation

The recommendation included in this report is related to the following formal plans, the City of Orillia Policy Manual and/or guiding legislation:

Schedule "A" Map of Eligible Survey Respondents

Residents of Grape Island and Victoria Point (all residents of Grape Island, residents located between 139 to 503 Victoria Crescent, and all residents of Hayden Avenue).

