

Meeting Date: March 22, 2022

Subject: Partial Assumption of Municipal Services, Fernbrook Homes (Etobicoke Creek) Ltd. Anthem Residential Subdivision, Plan of Subdivision 43M-1845, Ward 2

Submitted By: Andrew Pearce, Director, Engineering Services
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Engineering Services Department

RECOMMENDATION

That the roads and municipal services in the Fernbrook Homes (Etobicoke) Ltd., Anthem Residential Subdivision, Plan of Subdivision 43M-1845, Ward 2 be partially assumed save and except the storm water management facility and the concrete acoustic fence along the rear yards of lots 1 to 10 and 177 to 183, inclusive;

That securities in the amount of \$1,200,000 be retained by the Town to guarantee the remediation of the concrete acoustic fence along the rear yards of lots 1 to 10 and 177 to 183, inclusive and the removal of the accumulated sediment in the storm water management facility to the satisfaction of the Town; and

That a by-law be enacted that provides for the partial assumption of the roads and municipal services in Plan 43M-1845.

REPORT HIGHLIGHTS

- The developer has requested partial assumption of the roads and municipal services within the Fernbrook Homes (Etobicoke) Ltd., Anthem Residential Subdivision, Plan of Subdivision 43M-1845.
- The roads and municipal infrastructure within the subdivision have been complete to the satisfaction of Town and Regional staff except for the concrete acoustic fence along the rear yards of lots 1 to 10 and 177 to 183, inclusive and the storm water management facility.
- All applicable Town Departments and the Region have provided the necessary clearances to support the partial assumption of the subdivision.
- Staff are recommending the partial assumption of the roads and municipal services in the Anthem subdivision and the retention of \$1,200,000 in development securities to ensure the works associated with the remediation of the acoustic fencing and the clean out of the storm water management facility are completed in a timely manner to the satisfaction of the Town.
- If the Town approves the partial assumption of the Anthem subdivision, the developer will still be required to remediate the existing concrete acoustic fence and remove any accumulated sediment in the storm water management facility.
- Fernbrook Homes has advised that the partial assumption of the subdivision will trigger the release of the lot grading deposits that were secured through the original purchase and sale agreement between Fernbrook Homes and the first home buyer.

DISCUSSION

This report sets out an approach that would realize the partial assumption of the roads and municipal services in the Fernbrook Homes (Etobicoke) Ltd., Anthem Residential Subdivision, Plan of Subdivision 43M-1845 while ensuring the completion of the remaining deficiencies associated with the construction of the concrete acoustic fencing and the clean out of the storm water management facility.

Background

The Fernbrook Homes (Etobicoke) Ltd., Anthem Residential Subdivision, Plan of Subdivision 43M-1845, is a residential development located west of Kennedy Road and north of Mayfield Rd as shown on Schedule 1.

The Anthem subdivision comprises of 279 lots, eight road segments, storm water management pond and a neighbourhood park. The draft Plan of Subdivision was approved on August 13, 2009 and the subdivision agreement with Fernbrook Homes (Etobicoke) Ltd. was executed on May 12, 2011. The Anthem Plan of Subdivision was subsequently registered on July 13, 2011 as Plan 43M-1845.

The road and municipal services in the Anthem subdivision were substantially constructed by June 2011. House construction took place between 2011 and 2013 followed by the completion of the boulevard, landscape and top asphalt works. By 2014, the subdivision was substantially completed except for the rectification of several remaining deficiencies.

The Region of Peel granted final acceptance of the watermain and sanitary services on July 7, 2015.

Lot grading certification for all lots within Plan 43M-1845 has been provided by the Developer's engineering consultant.

Deficiencies were identified in the concrete acoustic fencing

The Anthem subdivision was designed with acoustic fencing along the rear yards of Lots 1 to 10 and 177 to 183 inclusive, and Lots 198, 210, 275 and 279 as shown on Schedule A. This acoustic fencing was proposed to attenuate sound levels in the rear yard amenity area of the aforementioned lots originating from traffic on Mayfield Road, Kennedy Road and Highway 410.

Based on the submitted design, the acoustic fencing was to be constructed using a pre-cast, modular concrete fencing product manufactured by Duracrete and varies between 1.8 to 2.4 metres in height. The acoustic fencing was installed by Roma Fence in approximately 2013.

Subsequent inspections of the fencing revealed numerous deficiencies in workmanship including posts not being plumb, excessive gaps between the fence panels and posts, and posts not properly aligned in the foundation. The Town directed the developer to repair the noted deficiencies pursuant to the terms of the subdivision agreement. A dispute ensued between the Town and the developer regarding the extent of the deficiencies and the method of repair.

Town took steps to secure the acoustic fence in 2015

In the interest of public safety, the Town took steps to secure the fence in 2015 by removing all the loose concrete fence panels and replacing them with wood planks. Continued talks between the Town and developer failed to establish an acceptable plan to remediate the fence deficiencies, so in June 2016, the Town advised the developer that the Town would be proceeding with removing and replacing the acoustic fencing at the cost of the developer. The Town drew \$770,000 from the developer's securities to fund the design and construction of the new fence.

Town replaced the segment of acoustic fence next to Kennedy Road in 2017

In 2016, the Town retained the consulting engineering firm Greer Galloway to undertake a condition assessment of the existing concrete acoustic fence and prepare the necessary engineering design for the removal and replacement of the fence.

Greer Galloway produced several versions of the condition assessment report, but all versions were consistent in identifying the following concerns:

- Vertical alignment deficiencies between the top and bottom of multiple posts exceed industry standards for concrete fencing
- Excessive gaps exist between the post and fence panels due to vertical misalignment of the posts
- Missing panels and post caps
- potential deficiencies between the design of the post foundation and what was constructed

In 2017, the Town removed the existing concrete fencing on the lots next to Kennedy Road. The Town chose to replace the fence with a wood standard rather than a concrete one. During the deconstruction work, Greer Galloway documented the condition of the foundations of the existing posts. Greer Galloway identified deficiency in workmanship including undersized footings, inadequate reinforcing steel in the footings, and unsuitable construction practices. After removal of the existing fence, the Town replace it with a new wood acoustic fence in accordance with the current Town standards.

The Town subsequently made several attempted to remove and replace the balance of the concrete fencing on Lots 1 to 10 and 177 to 183, inclusive. Unfortunately, the Town was unsuccessful in obtaining the necessary permissions from all the property owners to allow the work to proceed. Several property owners expressed concerns with the construction impacts to their rear yards and the use of a wood fence standard to replace the existing concrete one. To date, these two segments of acoustic fencing have not been remediated.

Renewed discussions established a path forward

This unresolved fencing issue was an impediment to finishing the municipal services in the subdivision so final assumption could occur. In early 2021, Town staff and the developer began renewed discussions with the objective of finding a path forward to complete the subdivision.

It was agreed that the most effective approach to completing the subdivision works was to implement two parallel processes that would separate the fencing issue from the remaining works in the subdivision. This would facilitate the timely completion of the outstanding works in the broader subdivision while a strategy to remediate the existing concrete fencing was being finalized. This would create an opportunity for the Town to assume most of the subdivision in early 2022, except for the concrete acoustic fence. The developer would then undertake the necessary repairs and rehabilitation works to the existing concrete fencing in the summer of 2022.

Broader subdivision works are now complete

In the spring of 2021, Town staff and the Developer's consulting engineer conducted the necessary inspections of the municipal services in the subdivision and generated a list of outstanding works and deficiencies. Over the 2021 construction season, the developer rectified all the noted deficiencies except for the completion of a bathymetric survey of the storm water management pond and the removal of any accumulated sediment. It was thought that this pond work had already been done but upon further review it was determined it had not been. By the time this was discovered, it was too late in the season to perform the bathymetric survey so the works will need to be deferred to the spring 2022. Notwithstanding the outstanding works in the storm water management facility, the other municipal services in the broader subdivision are now considered acceptable so staff are recommending partial assumption of the municipal services in the Anthem subdivision, excluding the storm water management facility and concrete acoustic noise fencing.

Developer to undertake remaining works in 2022

The developer has committed to complete the remediation of the concrete acoustic fencing and remove any accumulated sediment in the storm water management facility during the 2022 construction season in accordance with the subdivision agreement.

The proposed remediation of the acoustic fence along lots 1 to 11 on Gentle Fox Drive and lots 177 to 183 on Sleepy Meadow Drive will involve the following basic steps:

1. A reinspection and identification of the visible deficiencies will take place when weather and conditions permit
2. A construction work plan will be developed and coordinated with the effected stakeholders and property owners
3. As an initial step, the existing posts that exceed industry tolerances for plumbness will be removed and replaced
4. The foundation of the removed posts will be inspected and compared against the original design specifications
5. If the post foundations are deemed to be deficient, then additional posts will need to be removed and replaced.
6. Once the fence posts have been remediated, then the concrete fence panels will be reinstalled along the fence line. Additional fence panels will need to be manufactured.
7. All work will be inspected and certified by qualified professional engineer(s).
8. The developer will be required to warrantee the completed work for a period of two years.
9. Annual reinspection's will take place during the warrantee period.

Staff are recommending that the Town retain \$800,000 of the developer's financial securities to ensure the concrete acoustic fence is rehabilitated to the satisfaction of the Town.

With respect to the clean out of the storm water management facility, the developer will arrange to have a bathymetric survey of the pond completed in the spring 2022. This survey will identify the quantity of sediment that needs to be removed from the ponds to reestablish the original retention/detention volumes in the facility. The removal of any accumulated sediment will take place during the 2022 construction season, subject to securing the necessary permits. This facility is located within both a regulated area and the City of Brampton, which will require additional time to coordinate the works and obtain the necessary permits. Based on experience, it is estimated that the cells within the storm water facility could contain as much as 1,000 cubic metres of sediment. The work associated with the sediment removal and the reinstatement of the facility typically costs approximately \$400 per cubic metre of material. Staff are, therefore, recommending that the Town retaining financial securities from the developer in the amount of \$400,000 to ensure the pond clean out works are satisfactorily completed in a timely manner.

Accordingly, staff are recommending that the roads and municipal services in the Anthem subdivision be partially assumed except for the storm water management facility and the concrete acoustic fence along the rear yards of lots 1 to 10 and 177 to 183, inclusive. The developer will be responsible for completing these remaining works in the subdivision as described in this report, and the Town will hold development securities in the amount of \$1.2 million to ensure the works are satisfactorily completed in a timely manner.

FINANCIAL IMPLICATIONS

The Town currently holds \$1,823,264.68 in development securities for the Anthem subdivision, Plan 43M-1845. Should Council approve the recommendations of this report, the development securities will be reduced to \$1,200,000 pursuant to the terms of the subdivision agreement to ensure the concrete acoustic fencing is rehabilitated and the storm water management facility is cleaned out to the satisfaction of the Town.

COUNCIL WORK PLAN

Sustainable Growth

ATTACHMENTS

Schedule A: 43M-1845 Location Map