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Staff Report

Operations Department

Report To: Committee of the Whole
Meeting Date: December 1, 2020
Report Number: CSOPS.20.067
Subject: Request for Winter Maintenance Services at Lowe Properties – Follow Up
Prepared by: Shawn Carey, Director of Operations

A. Recommendations

THAT Council receive Staff Report CSOPS.20.067, entitled “Request for Winter Maintenance Services at Lowe Properties – Follow Up”;

AND THAT Council direct staff to pursue the use of a winter maintenance agreement subject to but not limited to: adequate securities and insurance liability coverage; indemnity clauses; winter maintenance equivalent for a Class 6 road; and, consultation with the local snowmobile club.

B. Overview

This report is being brought forward as a result of Council direction following a deputation by Mr. Lowe. The purpose of this report is to follow up and provide an update to CSOPS.20.044 “Request for Winter Maintenance Services at Lowe Properties” dated September 8, 2020.

C. Background

Staff Report CSOPS.20.044 “Request for Winter Maintenance Services at Lowe Properties” was presented to Committee of the Whole on September 8, 2020 and sought direction on 4 options to address Mr. Lowe’s request to have winter maintenance access to his 2 properties along the 5th Line. Following discussion of the options Council requested staff report back on:

1. Cost sharing that would be required on any road upgrade;
2. The status of the three conditions of provisional approval on the creation of the lots;
3. Whether the improvement of 5th Line could be a local improvement area charge that includes communication with the neighbouring property owners; and,
4. The Town’s liability.

On September 18, 2020, Council received correspondence from Kevin Sly (Attachment #1) and on October 5, 2020, Council referred it to the Operations Department.

Mr. Sly's family owns 2 properties along the same stretch of the 5th Line roughly across the road from Mr. Lowe's properties and has expressed his support of finding a solution to providing year-round access during the winter months. In his letter, Mr. Sly states their family wishes to build year-round permanent residences on their properties and that there is a building permit associated with one of the properties. The Town has no record of a building permit being issued for either property. Staff consulted with the Niagara Escarpment Commission (NEC) and they have confirmed that a Development Permit was issued for Roll #506 in 1987 and 1996 and Roll #505 in 1986. According to NEC, these permits would have lapsed if development did not take place within 3 years of issuance. Staff have asked Mr. Sly for clarification on this matter.

For reference purposes, the chart below outlines the road classifications including the associated winter maintenance objectives.

Class of Highway	Average Daily Traffic	Objective
3	Over 1000	To make best efforts to achieve center bare or track bare pavement.
4	Under 1000	To make best efforts achieve center bare or track bare pavement.
5	Under 1000	To make best efforts to provide a smooth snow covered surface.
6	Under 50	To make best efforts to provide a smooth snow covered surface. Gravel roads in this category may be spot sanded only on hills, curves and intersections.
Seasonal 6	NA	To close these roads and not perform any winter maintenance as signed.

D. Analysis

The following addresses the items Council requested staff report back on:

1. Costing sharing for the road upgrade via Local Improvement Charge

Overview of the Local Improvement Charges Regulation

Local improvements are generally owner-initiated requests for municipal services administered pursuant to the *Municipal Act* (Act). Regulation 586/06 (Local Improvement Charges – Priority Lien Status) of the Act describes the procedures associated with the submission, processing, implementation, and cost recovery of capital works initiated by owners. The Act gives Town Council the authority to set a by-law to collect the abutting property owners' share of the project cost. Under the Regulation, the cost-sharing can be applied to lots that abut the work; lots that do not abut the work but will be immediately benefited by it; or, a combination of

both. Furthermore, the required by-law for undertaking the work will specify the estimated cost of the work, the owners' share of the cost and potentially the municipality's share.

A petition in favour of undertaking the work as a local improvement shall be signed by at least two-thirds of the owners representing at least one-half of the value of the lots liable to be specially charged for the work. Conversely, a petition against undertaking the work as a local improvement shall be signed by at least a majority of the owners representing at least one-half of the value of the lots liable to be specially charges for the work. If the municipality receives a sufficient number of petitions against starting a project, it may, among other things cancel the project and/or apply to the Local Planning Appeals Tribunal for consideration.

Applicability of the Local Improvement Charges to the Reconstruction of the 5th Line

Based on staff's preliminary assessment, there are currently nine properties (Attachment #2) that abut the seasonal (no winter maintenance) portion of the 5th Line. Five of those properties currently have access off other Town roads (i.e. 18th Sideroad, 4th Line and the 5th Line full-year access portion). The remaining four properties are owned by the Sly and Lowe families.

The following table shows the approximate cost of reconstructing the entire portion of the seasonal section of the 5th Line if shared by the nine abutting property owners based on frontage (note this does not include a Town contribution). Attachment #3 identifies the estimated frontage of the potentially affected properties. Staff Report CSOPS.20.044 estimated a cost of \$1,368,000 to reconstruct the entire 5th Line to Class 6 based on the Town's Engineering Standards. This rough estimate is based on the Town's 2020 benchmark costs for capital projects/improvements and includes construction, materials, engineering, geotechnical testing, construction contingency and administrative costs.

<i>Property</i>	<i>Frontage (m)</i>	<i>Estimated Share</i>	<i>% Share</i>
Lowe Family (0517910)	103m	\$95,334.24	6.90%
Lowe Family (0517905)	100m	\$92,557.51	6.70%
Sly Family (0800506)	170m	\$157,347.77	11.50%
Sly Family (0800505)	163m	\$150,868.74	11%
0800500 (access off 18 th Sideroad)	252m	\$233,244.93	17%
0518010 (access off 18 th Sideroad)	293m	\$271,193.50	19.80%
0517900 (access off 4 th Line)	98m	\$90,706.36	6.60%
0519100 (access off 5 th Line south of seasonal section)	152m	\$140,687.42	10.20%

0517801 (access off 4 th Line)	147m	\$136,059.54	9.90%
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It is anticipated that those affected property owners, with existing Town winter maintenance service (which represent approximately 64% of the cost), would not support a local improvement charge for the reconstruction of the seasonal portion of the 5th Line.

2. The status of the three conditions of provisional approval on the creation of the lots;

On September 7, 1989, the Grey County Planning Approval Committee approved the applications for consent for what became Part 2, 16R-4184 (Consent No. B766/89) and Part 3, 16R-4184 (Consent No. B765/89) subject to the following conditions:

1. Applicant entering into a Development Agreement with the Township.
2. Applicant obtaining an entrance permit from the Township Road Superintendent.
3. Applicant obtaining a Development Control Permit from the NEC.

Consent Condition:	Part 2, 16R-4184	Part 3, 16R-4184
Development Agreement	Yes	Yes
Entrance Permit	None Found	Yes
NEC Development Permit	None Found	Yes

The September 7th 1989 Notice of Decisions note that “*where conditions for consent have been imposed and the applicant has not, within a period of ONE YEAR from the giving of this notice fulfilled the conditions, the application for consent shall there-upon be deemed to be refused (The Planning Act Section 52 (20)).*”

A Certificate of Official for both Consents had been issued by the approval Authority for both Parts 2 and 3, 16R-4148 and these lots now legally exist. On the matter of the validity of these Consents based on satisfying conditions, Section 53(42) of the *Planning Act* provides as follows:

(42) When a consent has been given under this section, the clerk of the municipality or the Minister, as the case may be, shall give a certificate to the applicant stating that the consent has been given and the certificate is conclusive evidence that the consent was given and that the provisions of this Act leading to the consent have been complied with and that, despite any other provision of this Act, the council or the Minister had jurisdiction to grant the consent and after the certificate has been given no action may be maintained to question the validity of the consent. 1994, c. 23, s. 32.

As such, regardless of how the Consent conditions might have been fulfilled, once a Certificate of Official has been issued, that Consent is deemed to have met the provisions of the *Planning Act*.

3. The Town's Liability

As discussed in Staff Report CSOPS.20.044 there is no clause in the approvals related to the severance of Mr. Lowe's two lots that commits the Town to any required improvements to the 5th Line.

Based on the information and the assessment of options presented in Staff Report CSOPS.20.044, staff are recommending Council direct staff to pursue the use of a Winter Maintenance Agreement. This option would see the Town enter into an agreement with Mr. Lowe and any current or future property owners such that winter maintenance would be conducted by a 3rd party on behalf of the private owners.

This option was presented as Option 4 in Staff Report CSOPS.20.044 and included the following considerations:

- Terms of the agreement would require the property owner(s) to provide perpetual winter maintenance on a seasonal road without limitation and without an expectation the Town would someday be asked to so or until such time as the road is reconstructed.
- Does not address the current condition of the road and the durability and associated operation and maintenance costs.
- Access by fire trucks and emergency vehicles could be impaired during the winter control period based on the current condition of the road and/or frequency and effectiveness of the 3rd party snow removal.
- Would need to find alternative location for snow storage resulting from Town snow removal along the southern portion of the 5th Line.
- There are significant liability risks to the Town associated with a private entity maintaining Town property under a separate agreement. Even with indemnity clauses, the Town still faces potential risk and liability.
- To reduce the Town's risk of liability, Council may need to enact a by-law to restrict passage over the road (i.e. stop up and close the road).
- Potentially interferes with the Town's current agreement with local snowmobile club for use of the seasonal section of the road during winter control. This agreement is pursuant to the provincial snowmobile trail network.

Given the considerations listed above, staff under direction from Council, can pursue the use of an agreement subject to but not limited to adequate securities and insurance liability coverage; indemnity clauses; winter maintenance equivalent for a Class 6 road; and, consultation with the local snowmobile club. The Town has winter maintenance agreements in place in other locations and under similar but unique circumstances such as Camperdown Road south. In this situation, the provisions of the proposed agreement would be specific to the circumstances along the 5th Line.

E. Strategic Priorities

1. Communications and Engagement

We will enhance communications and engagement between Town Staff, Town residents and stakeholders.

2. Organizational Excellence

We will continually seek out ways to improve the internal organization of Town Staff and the management of Town assets.

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

4. Quality of Life

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

F. Environmental Impacts

Reconstruction of all or a portion of the 5th Line will require tree removal to accommodate the proper road design and installation of drainage upgrades. Pursuing the option of a winter maintenance agreement does not present any known environmental impacts.

G. Financial Impact

If reconstruction of the applicable portion of the 5th Line were to proceed under a Local Improvement Charge, the capital project would be funded by the property owners but would be a Town-run project and therefore would require a Town employee as the project manager. In addition, the Town would be cash flowing the project until it is billed back to the property owners. These represent lost opportunity costs as it may delay other capital priorities due to the lack of project manager time and cash flowing abilities.

To date the approximate cost associated with staff time meeting on site, town backhoe and operator to facilitate geotechnical investigation, coordinating locates for test pits, invoice for the geotechnical investigation and report and evaluating the various options amounts to \$4700.

H. In Consultation With

Trevor Houghton, Manager of Community Planning

Sam Dinsmore, Deputy Treasurer / Manager of Accounting & Budgets

Will Thomson, Director of Legal Services

Jim McCannell, Manager of Roads & Drainage

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. Comments regarding this report should be submitted to Shawn Carey, directorops@thebluemountains.ca.

J. Attached

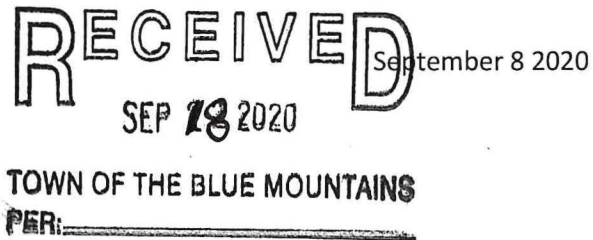
1. Correspondence from Kevin Sly
2. Map of Properties Abutting Seasonal Portion of the 5th Line
3. Map of Properties Abutting Seasonal Portion of the 5th Line with Estimated Frontage

Respectfully submitted,

Shawn Carey
Director of Operations

For more information, please contact:
Shawn Carey
directorops@thebluemountains.ca
519-599-3131 extension 260

Town of The Blue Mountains
32 Mill Street, P.O. Box 310
Thornbury, ON N0H 2P0
Attention Mayor Soever and Council



Dear Honorable Friends

Re: CON [REDACTED] PT LOT [REDACTED] RP [REDACTED] PART [REDACTED]

We have been made aware of a deputation request by the property owners of two residential lots located at Concession 5 Part Lot [REDACTED] reference Plan [REDACTED] Part [REDACTED], wherein they seek to present to the Honorable Council a reasonable basis for consideration of winter maintenance on at least an additional length, if not all of Concession 5 so as to render residential access viable during the winter months.

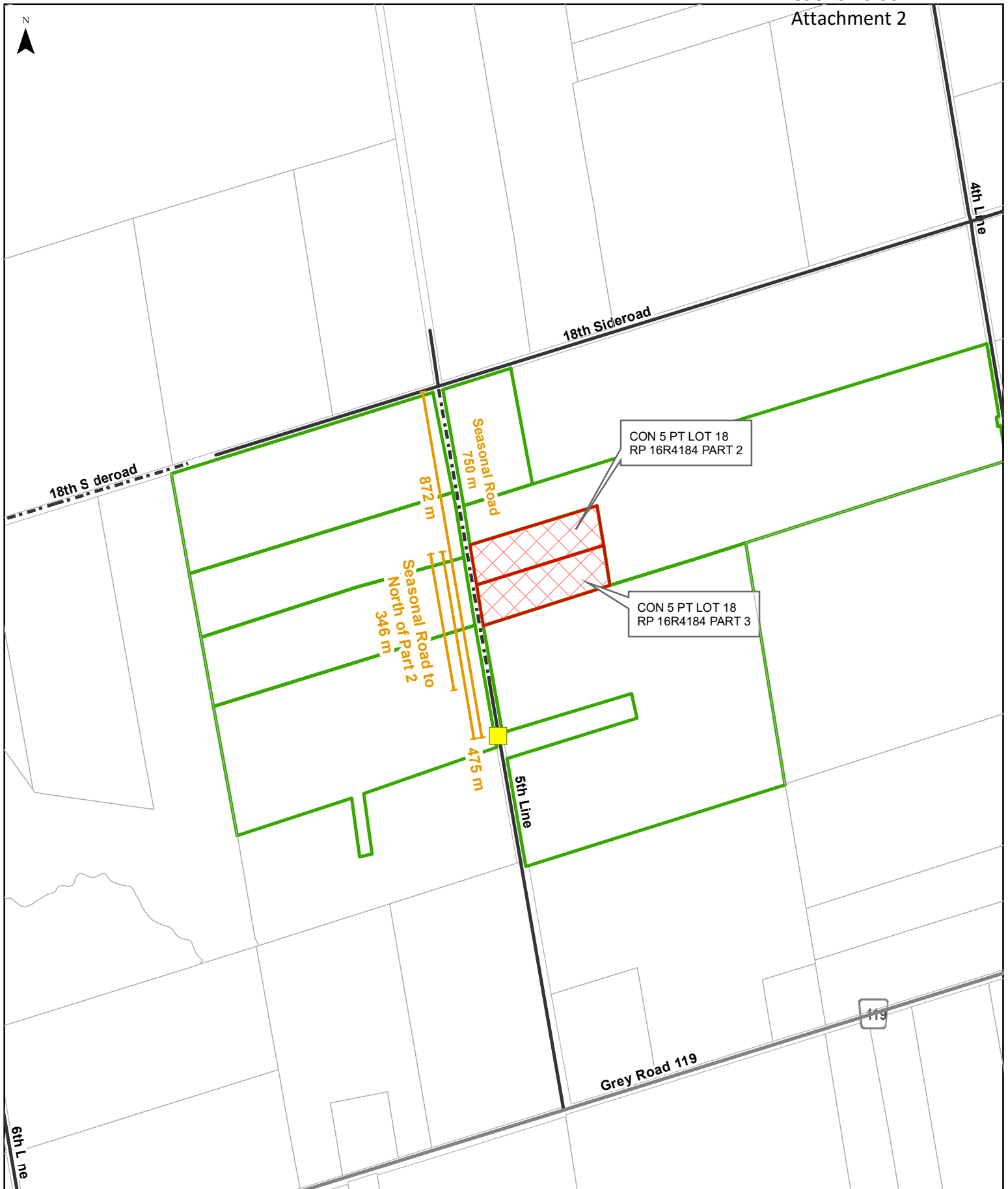
The purpose of this letter is to enthusiastically voice support for the applicant. As a property owner of the aforementioned, our property is located roughly west of the [REDACTED] property. This acreage and one of equal size adjacent to it, owned by my sister, has been in our family for decades. As you are aware the property is for all intends and purposes without access for the duration of the winter in light of the current boundaries for snow removal. It is our respectful submission that without a great deal of comprise and adjustment to current boundaries the concerns currently upheld by the municipality can be served while yet providing us year round access.

The position held by the applicant are of vital interest immediately while ours remains somewhat less acute. That notwithstanding we wish to advise the municipality that both my sister (who already has a building permit) and I desire to build year round permanent residences on the subject properties in the not too distant future which is why we wish to support the applicant and seek a solution that would mitigate for this long time difficulty.

As mentioned above we are aware of the concerns and considerations advanced by the municipality but wish to reinforce that it is our view a reasonable solution can be achieved if the invested parties merely undertake to review the circumstances with an eye towards conciliation and a reasonable outcome.

Yours truly,


Kevin Sly
c. Mr. S Carey
Director of Operations
Town of The Blue Mountains



119 County Road

Local Road

Seasonal Road



Subject Lands



Assessment Parcel



No Winter Maintenance Sign










Properties adjacent to the Seasonal Road

0 125 250 500 m

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-  County Road
-  Local Road
-  Seasonal Road
-  Subject Lands
-  Assessment Parcel
-  No Winter Maintenance Sign
-  Properties adjacent to the Seasonal Road

0 115 230 460 m

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