SUBJECT: Site Plan Control Application DA-02-207 - 155 Stone Church Road West - Completion of Incomplete Works (PED06229) (Ward 8)

RECOMMENDATION:

(a) That staff be authorized and directed to facilitate the partial completion of incomplete works on private property at 155 Stone Church Road West to only the amount of available secured funding plus funding made available from homeowner’s through new home warranty coverage provided by the Tarion Warranty Corporation.

(b) That Public Works staff be authorized and directed to include installation of concrete sidewalk across the frontage of 155 Stone Church Road West as part of the Stone Church Road reconstruction project (Capital Budget Number 4030519101) scheduled for 2007, at a marginal cost of $8,800, including GST, funded from the levy.

(c) That, if requested in writing by Wentworth Condominium Corporation No. 362, the City agrees to amend the Site Plan Agreement to delete the requirement for curbing on the private condominium roadway and the ornamental fencing along Stone Church Road West. Otherwise, these requirements will remain on the title of the lands as an obligation of the Condominium Corporation to complete, at its cost.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

Council, at its meeting of March 13, 2003, gave 1403288 Ontario Inc. (John Rubino) conditional approval to Site Plan Control Application DA-02-207 for the residential condominium development at 155 Stone Church Road West. The project, which included 12 single detached dwellings on a private (condominium) road, was initiated in 2003. Basic servicing was completed the same year which allowed for occupancy by the current home owners, who formally own the property under Wentworth Condominium Corporation No. 362. In 2004, the City was contacted by the Condominium Corporation concerning a number of incomplete works at this development. As a result, the City issued a Notice of Default, sent by registered mail on January 24, 2005, to 1403288 Ontario Inc. advising the Corporation of its obligations under the Site Plan Agreement. To date, no response has been received.

The Condominium Corporation has obtained an estimate of $146,200, including GST, from a private contractor to complete the outstanding works. Of the total monies required to complete, approximately $68,000 in securities are held by the City and Tarion Warranty Corporation has advised that their warranty program will cover specific items totalling $39,000 leaving a shortfall of funds of approximately $39,000 to complete all works required under the Site Plan Agreement.

Staff considered two alternatives to resolve the issue; Alternative 1 would involve partial completion of the incomplete works on private property to the value of funds available from securities and coverage by Tarion and, if requested by the Condominium Corporation, amending the Site Plan Agreement to delete the outstanding curbing and fencing works; and, Alternative 2 would involve completion of all incomplete works on private property in accordance with the Site Plan Agreement with the City making up the shortfall of $30,200 funded from the Unallocated Capital Levy Reserve.

For both alternatives, the reconstruction of Stone Church Road scheduled for next year will proceed but will require City funds to be expanded to complete the requirement within the Stone Church Road road allowance; i.e. sidewalk construction at an estimated cost of $8,800, includes GST. Completion of this requirement of the Site Plan in this way can be rationalized because the sidewalk is within the public road allowance and benefits all taxpayers. It can also be constructed more cost effectively by taking advantage of the economies of scale on a major project.

Staff does not recommend Alternative 2 because it would require expending taxpayer funds, in the amount of $30,200, for works on private property and would set an undesirable, unmatched precedent for defaults of works on other private projects.

Staff recommends Alternative 1, as leaving certain private works incomplete would not significantly jeopardize the overall aesthetics of this development or create any safety issues for the residents, and more importantly, would not require City funds to complete other than the sidewalk on Stone Church Road.
SUBJECT: Site Plan Control Application DA-02-207 - 155 Stone Church Road West - Completion of Incomplete Works (PED06229) (Ward 8) – Page 3 of 6

The Department is agreeable to amend the development agreement to delete the private roadway curbing and ornamental fencing along Stone Church Road, if requested, in writing, by the Condominium Corporation. However, if Council directs otherwise to proceed with Alternative 1, then the City funds required to complete the private works would be sourced from the Unallocated Capital Levy Reserve at an amount of $30,200.

BACKGROUND:

Council, at its meeting of March 13, 2003, gave conditional approval to Site Plan Control Application DA-02-207 for the development of lands at 155 Stone Church Road West. The Site Plan was finalized on June 6, 2003 and the agreement for the proposed development was registered as WE168078 on June 24, 2003. The project, which included 12 single detached dwellings on a private (condominium) road, was initiated in 2003.

Basic servicing was completed the same year which allowed for occupancy by the current home owners, which now formally own the property under Wentworth Condominium Corporation No. 362. In 2004, the City was contacted by the Condominium Corporation concerning a number of incomplete works at this development. As a result, the City issued a Notice of Default sent by registered mail on January 24, 2005 to 1403288 Ontario Inc. (John Rubino) advising of its obligations under the Site Plan Agreement. To date, no response has been received.

Since that time, Condominium Corporation has requested the City’s assistance in completing the outstanding works. These works include:

- surface course asphalt
- curbing
- grading and sodding of lots
- landscaping
- perimeter fencing abutting adjacent development
- ornamental fencing along Stone Church Road West
- concrete sidewalks on Stone Church Road West
- correction of underground deficiencies (i.e. repair damaged water shut off valves, completion of drainage appurtenances, etc.)

Section 2.1 of the Site Plan Agreement stipulates

“The owner shall complete or cause to be completed the required facilities, works or matters to the satisfaction of the City within the earlier of: three months after first occupancy; or, issuance of a “Garage D” licence (where applicable); or, the issuance of a licence by the City for any other use of the Land; or, twelve (12) months after commencement of construction, including buildings”.

"The owner shall complete or cause to be completed the required facilities, works or matters to the satisfaction of the City within the earlier of: three months after first occupancy; or, issuance of a “Garage D” licence (where applicable); or, the issuance of a licence by the City for any other use of the Land; or, twelve (12) months after commencement of construction, including buildings”.

These works include:

- surface course asphalt
- curbing
- grading and sodding of lots
- landscaping
- perimeter fencing abutting adjacent development
- ornamental fencing along Stone Church Road West
- concrete sidewalks on Stone Church Road West
- correction of underground deficiencies (i.e. repair damaged water shut off valves, completion of drainage appurtenances, etc.)
The Condominium Corporation has obtained a cost estimate from a private contractor for the incomplete works. The cost estimate has been reviewed by staff and the unit prices are reasonable and reflective of current pricing. The estimate is $146,000, including GST.

Tarion Warranty Corporation has been contacted by the owners and will be eligible for coverage in accordance with their new home warranty. Through consultation with City staff, Tarion has indicated coverage of selected items at specific properties, estimated to be approximately $39,000.

Per the Site Plan Agreement, the developer posted a cash security with the City, in the amount of $70,500, representing 75% of the cost estimate for the exterior works. To date, approximately $68,000 in securities are still being held by the City and are available to complete the works. (A portion of the security has already been used to correct a water pressure problem at Unit #1).

With the securities and warranty coverage available there is still a shortfall of approximately $39,000 to complete the works in accordance with the Site Plan Agreement. Factors attributing to the shortfall of funds include an increase in labour and material costs since 2003. In addition, there are damages to water shut off valves which need to be corrected prior to the completion of the above ground works. The cost for this was not part of the original security requirement because water and sewer servicing under Site Plan is implemented through the permit process.

**ANALYSIS/RATIONALE:**

See Alternatives for Consideration.

**ALTERNATIVES FOR CONSIDERATION:**

There are two alternatives:

**Option Recommended by Staff:**

1. Partial completion of the incomplete works on private property to the value of funds available from securities and coverage by Tarion and, if requested by the Condominium Corporation, amending the Site Plan Agreement to delete the outstanding curbing and fencing works.

**Option Not Recommended by Staff:**

2. Completion of all incomplete works on private property in accordance with the Site Plan Agreement and the City makes up the shortfall of $30,200 funded from the Unallocated Capital Levy Reserve.

Both alternatives require expending taxpayer funds on the concrete sidewalk requirement on Stone Church Road West, at an approximate cost of $8,800, including
GST. With the reconstruction of Stone Church Road scheduled for next year, it will provide an opportunity to complete the sidewalk requirement. Completion of this requirement of the Site Plan with City funds can be rationalized because the sidewalk is within the public road allowance and benefits all taxpayers. It can also be constructed more cost effectively by taking advantage of the economies of scale on a major project.

Staff is recommending that the following works not be completed with securities/warranty based on the shortfall of funds:

- Curbing on the private condominium roadway – deletion will not affect the functionality of the road.
- Ornamental fencing along Stone Church Road West – proposed planting along the frontage of Stone Church Road West will provide adequate separation between private and public land.

Not completing these works would not significantly jeopardize the overall aesthetics of this development or create any safety issues for the residents.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial – Alternative 1 has the effect that some of the private works will not be completed and defers the completion and cost of public works, namely the construction of sidewalk, as described above.

Alternative 2 requires the completion of all incomplete private works (curbs on the private road and ornamental fencing) and public works (sidewalk on Stone Church Road). This alternative requires a funding source for the private works. The City should not be spending taxpayer (levy) monies for works on private property. The funding would come from the Unallocated Capital Levy Reserve. Funding for the sidewalk would be deferred until reconstruction of Stone Church Road proceeds in 2007. The marginal cost to the levy and overall budget of this project would be $8,800, includes GST.

Staffing – N/A.

Legal – N/A.

**POLICIES AFFECTING PROPOSAL:**

Current practice of calculating securities requirements for Site Plan Control Applications is based on 75% of the exterior works. The sanitary sewer and watermain servicing requirements for the private development sites are not included in the calculation as they are constructed under the Sewer and Water Permit process.
During the house construction, it is common that damages to the sewer and water appurtenances (i.e. bent water shut off valves) occur. These are recommended to be corrected prior to the completion of the above ground works.

Staff will review its method of calculating security requirements on Site Plan Control Applications to include a component for the sewer and water works required.

**RELEVANT CONSULTATION:**

- Budgets and Finance, Corporate Services Department
- Legal Services, Corporate Services Department
- Capital Planning and Implementation, Public Works Department

**CITY STRATEGIC COMMITMENT:**

By evaluating the "**Triple Bottom Line**", (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.** ☒ Yes ☐ No
The public are involved in the definition and development of local solutions.

**Environmental Well-Being is enhanced.** ☐ Yes ☒ No
Existing services will be used as part of this development proposal.

**Economic Well-Being is enhanced.** ☒ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines? ☒ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☒ No

:SY-L