

To: Mayor Sendzik, Members of Council

Cc: Shelley Chemnitz, CAO
Senior Leadership Team

From: Tami Kitay, Director of Planning and Building Services

Date: September 25, 2020

Subject: 282 and 285 Ontario Street, Update

Further to the memorandums to Council dated February 24, 2020, March 9, 2020, May 6, 2020, and July 22, 2020, the purpose of this correspondence is to give Council an update on the action items resulting from the January 27, 2020 motion of Council, reproduced below:

WHEREAS residents living around the former GM lands have expressed serious concerns on the state of the GM lands, including property standards and unknown environmental hazards; and

WHEREAS the City of St. Catharines has taken steps to prosecute the current landowner over alleged infractions under the Building Code and Fire Code Act, but these court proceedings may take months to resolve and will not guarantee immediate action on issues on the site;

THEREFORE BE IT RESOLVED that the City of St. Catharines allocate \$125,000 from the Civic Project Fund to create a GM-lands specific budget to:

- Immediately hire an external legal firm to advise Council and staff on the bylaws and provincial legislation, as well as legal precedents and case law, that would allow for cleanup and demolition of a privately-owned industrial site by the city and the mechanisms available of recouping costs from the current landowner through liens and other tools to ensure taxpayers are protected;*
- Contact the Canadian Brownfield Network and ask for an expert to provide a presentation to Council and the public on best practices for brownfield management and remediation for municipalities;*
- Engage a security company on a month-to-month contract to keep people out of the site;*

- *Request an inspection and repair of the fencing on the site that was put up under a previous Emergency Order under the Building Code Act and in a manner that would allow the city to recover costs;*
- *Cover the cost of registration of two Councillors, staff, and a member of the City’s Green Advisory Committee to attend the Canadian Brownfield Network conference in June 2020 in Toronto, and to report back to Council on current best practices, technology, financial tools, programs, and funding for brownfield redevelopment; and*

BE IT FURTHER RESOLVED that staff contact the Ministry of the Environment, three St. Catharines MPPs, local MPs, Niagara Region Public Health and the NPCA for records and a report on how and when conditions on the site are monitored by their agency; and to request water testing, soil quality testing and air quality testing near residential neighbourhoods to be completed within the next month; and

BE IT FURTHER RESOLVED that staff utilize the waste by-law as applicable in the interim; and

BE IT FURTHER RESOLVED that staff be directed to contact the Ministry of the Environment to request that costs be covered for an immediate air quality test, and if the Ministry of the Environment refuses to cover costs within a month, that we engage a local firm to do the air quality testing and this come back to Council to move forward; and

BE IT FURTHER RESOLVED that a political action committee be formed, composed of the Mayor, ward Councillors, City staff and residents to develop a strategy to deal with the site and furthermore, to begin meeting with the Minister of the Environment to encourage the Minister to stress that they take direct remedial action; and

BE IT FURTHER RESOLVED that the City register an official complaint to the Ministry of the Environment on behalf of residents and those listed on the petition presented.

Yeas: Councillors Porter, Siscoe, Sorrento, Townsend, Williamson, Dodge, Garcia, Harris, Kushner, Littleton, Miller, Phillips, and Mayor Sendzik

Nays:

Carried as Amended

The table below reproduces the motion items and advises of the actions taken to date.

Motion Item	Actions Taken
<i>Immediately hire an external legal firm to advise Council and staff on the bylaws and provincial legislation, as well as legal precedents and case law, that would allow for cleanup and</i>	External legal support has been retained. Council received an in-camera update by the City Solicitor on Monday, March 9, 2020 and passed the following motion:

<p><i>demolition of a privately-owned industrial site by the city and the mechanisms available of recouping costs from the current landowner through liens and other tools to ensure taxpayers are protected;</i></p>	<p><i>That Council receive the advice given In-Camera by the City Solicitor; and</i></p> <p><i>That staff proceed as directed during the In-Camera session.</i></p>
<p><i>Contact the Canadian Brownfield Network and ask for an expert to provide a presentation to Council and the public on best practices for brownfield management and remediation for municipalities;</i></p>	<p>The Canadian Brownfield Network presented to Council on February 24, 2020.</p>
<p><i>Engage a security company on a month-to-month contract to keep people out of the site;</i></p>	<p>Starting on February 26, 2020, Cantec Security Services undertook perimeter patrols of the site between 5pm and 8am, 7 days a week. The contract provided security for a period of 12 weeks, at which time the service and budget were re-evaluated.</p> <p>The contract ended on Friday, May 15, 2020. There were no reported instances of trespassing during the security contract. As such, surveillance services have not been extended.</p>
<p><i>Request an inspection and repair of the fencing on the site that was put up under a previous Emergency Order under the Building Code Act and in a manner that would allow the city to recover costs;</i></p>	<p>Internal legal counsel has prepared documentation to commence an Application to obtain a court order to recover costs incurred by the City under the Emergency Order. This work commenced prior to the January 27, 2020 meeting of Council. The Application has been postponed upon closure of the court system due to the COVID-19 emergency. We are now in a position to commence such an Application in this matter.</p> <p>The property owner has secured the perimeter of the property, including installing new fencing and boarding windows the weeks of February 10 and 17, 2020.</p> <p>Municipal Works staff continue to undertake regular inspections of the perimeter fence.</p>

<p><i>Cover the cost of registration of two Councillors, staff, and a member of the City's Green Advisory Committee to attend the Canadian Brownfield Network conference in June 2020 in Toronto, and to report back to Council on current best practices, technology, financial tools, programs, and funding for brownfield redevelopment; and</i></p>	<p>Due to the COVID-19 emergency, the Canadian Brownfield Network conference has been rescheduled to June 2021.</p>
<p><i>BE IT FURTHER RESOLVED that staff contact the Ministry of the Environment, three St. Catharines MPPs, local MPs, Niagara Region Public Health and the NPCA for records and a report on how and when conditions on the site are monitored by their agency; and to request water testing, soil quality testing and air quality testing near residential neighbourhoods to be completed within the next month; and</i></p>	<p>Completed on January 29 and January 30, 2020.</p> <p>The CAO and Senior Staff met with the NPCA on February 10, 2020. The NPCA's Water Quality Monitoring Program currently monitors 12 Mile Creek at stations upstream from the site (at Decew) and downstream (Martindale pond) and has done so since 2001. Testing for items beyond their standard protocols may necessitate cost recovery contributions from the City. As such, we are working with the MOECP to prevent duplication of efforts.</p> <p>Results of the NPCA's Water Quality Monitoring Program since 2005 are available on their website at this location: https://npc.ca/conservation#conservation-reportcards</p> <p>The Mayor, CAO, and Senior Staff met with the NPCA on September 22, 2020. The NPCA has agreed to undertake PCB testing and analysis at upstream and downstream locations on 12 Mile Creek and will provide the City with results, when available.</p> <p>Asbestos falls under the jurisdiction of the Ministry of Labour and the MOECP has reached out to the MOL in this regard. The Ministry of Labour previously advised (Spring 2016) the MOECP that they did not have concerns about the asbestos removal plan for the site. The Ministry of Labour's mandate is initiated once workers are on site.</p> <p>The Ministry of the Environment, Conservation, and Parks (MOECP) undertook surface water</p>

collection samples from 12 Mile Creek on February 13, 2020. On July 16, 2020, the MOECP advised the City that [the results have been received](#). The memorandum advised: “there are no concerns with the general chemistry, volatile organic compound, and acid base neutral (semi-volatile) results.” There are some exceedances of metals and polycyclic aromatic hydrocarbons at one or two of the sources tested but no impact was indicated at the downstream testing locations. The results are characteristic with what the MOECP has previously identified in the watercourse and are typical for stormwater runoff in urban environments. As the testing was completed during a snow melt event, the MOECP recommended undertaking sampling during a dry event to provide further interpretation. The MOECP will be undertaking the additional testing in September 2020.

At the August 10, 2020 meeting of Council, Mayor Sendzik requested that the MOECP attend a future meeting of Council to present on the content of their July 16, 2020 correspondence. The MOECP has advised that once the additional surface water testing and air particulate collection exercises have been completed and results received, the MOECP will attend Council to present on their findings. At this time, timing is anticipated to be Q1 2021.

The MOECP collaborated with Municipal Works, Engineering, Facilities, and Environmental Services, and Regional staff on identifying upwind and downwind monitoring locations to undertake air particulate collection operations. The City did not divulge the locations of the testing equipment to prevent sabotage and vandalism. The MOECP’s testing in this regard ran the month of August 2020 and continues to run in September and available samples have been forwarded to the Ministry’s laboratory for analysis.

The MOECP has advised that they have found no indication of impacts from the site after

	responding to 2 dust complaints lodged by the public in the last year.
<i>BE IT FURTHER RESOLVED that staff utilize the waste by-law as applicable in the interim; and</i>	Council adopted By-law 2020-106 on August 10, 2020. By-law Enforcement staff have initiated enforcement efforts under the new by-law.
<i>BE IT FURTHER RESOLVED that staff be directed to contact the Ministry of the Environment to request that costs be covered for an immediate air quality test, and if the Ministry of the Environment refuses to cover costs, this come back to Council to move forward; and</i>	To date, this action has not been necessary. The MOECP has undertaken air particulate testing in August 2020 and the samples are currently being analyzed. The monitoring continues through the month of September.
<i>BE IT FURTHER RESOLVED that there be the formation of a political action committee composed of the Mayor, ward Councillors, City staff and residents to develop a strategy to deal with the site and furthermore, to begin meetings with the Minister of the Environment to encourage the Minister to direct his staff to take direct remedial action; and</i>	Staff efforts to engage with the MOECP, NPCA, and MOL to date have been positive and constructive. Furthermore, Minister Yurek, Minister of the Environment, Conservation, and Parks has responded that Ministry staff are already meeting with staff and members of the public. The need for a Political Action Committee at this time is unclear as it may duplicate efforts already in progress. This initiative should be put on hold.
<i>BE IT FURTHER RESOLVED that the City register an official complaint to the Ministry of the Environment on behalf of residents and those listed on the petition presented.</i>	Completed on January 30, 2020. Response received from Minister Yurek, dated February 27, 2020 acknowledging that the MOECP has been working with staff and local residents.

In the January 27, 2020 Council motion reproduced above, Council directed that \$125,000 from the Civic Project Fund be allocated to support the actions listed above. To date, the following moneys have been committed and/or spent:

Item	Funds Committed To Date
External legal counsel	\$40,000
Security patrols from 5pm to 8am, 7 days a week for a period of 12 weeks beginning February 26, 2020 up to May 15, 2020.	\$30,000
Canadian Brownfield Conference, estimated costs for 5 attendees including registration, travel, meals, etc. (deferred until 2021)	\$10,000

Hold for potential partnership with NPCA on 12 Mile Creek testing, if MOECP surface water test results warrant.	\$20,000
SUBTOTAL Committed to Date	\$100,000
Remaining	\$25,000

The remaining monies may be required for additional external legal counsel, external environmental consultants, and/or investigative operations. The remaining, uncommitted balance of \$25,000 is insufficient to undertake all of these efforts.

Additional Efforts

In 2020, Municipal Works staff have undertaken 9 visits to the properties for grass cutting and weed clearing and By-law Enforcement staff have undertaken 4 visits to the property for graffiti complaints. A contractor has been brought in twice to remove graffiti on the site. These efforts have been invoiced to the property owner and if not paid, added to the tax bill for the lands.

The City has previously commenced legal action against the Owner with respect to the non-compliance with Fire Code and Building Code Orders arising from the conditions of the site. This has not progressed due to the closure of the Provincial Offences Court. It will proceed once the Courts start rescheduling matters postponed due to the COVID public health emergency.

The City has published a website to keep the public informed of the actions being taken on the lands. Please see: https://www.stcatharines.ca/en/governin/Action_Plan_for_282-285_Ontario_Street.asp

If you have any questions with regards to the above, please feel free to reach out to me at tkitay@stcatharines.ca.

Tami Kitay, MPA MCIP RPP
 Director of Planning and Building Services