

Town of Whitby

Staff Report

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Report Title: Assignment and Transfer of Part Block K, Plan M1133, designated as Part 2 on Plan 40R-30532, being all of PIN 26515-0401 (LT) from Victorian Order of Nurses Durham Region Community Corporation to Hospice Whitby

Report to: Committee of the Whole

Date of meeting: February 26, 2024

Report Number: LS 03-24

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of
Legal and Enforcement Services/Town
Solicitor

Acknowledged by M. Gaskell, Chief Administrative Officer

For additional information, contact:

Laura Scott, Real Estate Law Clerk
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1. Recommendation:

1. That Council direct staff to negotiate and enter into an assignment and assumption agreement with Victorian Order of Nurses Durham Region Community Corporation (“VON”) and Hospice Whitby to provide consent to the assignment and transfer of title of the lands legally described as Part Block K, Plan M1133, designated as Part 2 on Plan 40R-30532, Town of Whitby, being all of PIN 26515-0401 (LT) (the “Property”) to Hospice Whitby.
2. That Council direct staff to alter the condition in the Right of First Refusal Agreement so that the owner would only be required to offer the Property back to the Town if construction of the hospice does not commence by December 31, 2024, to the satisfaction of the Commissioner of Legal and Enforcement Services/Town Solicitor, or designate.

3. That the Commissioner of Legal and Enforcement Services/Town Solicitor, or designate, be directed to register the Assignment and Assumption Agreement and/or Right of First Refusal Agreement on title to the Property, as required.
4. That the Commissioner of Legal and Enforcement Services/Town Solicitor and Commissioner of Financial Services and Treasurer be authorized to take all actions and execute all documents necessary to give effect thereto.

2. Highlights:

- On September 24, 2021, as directed by Council, the Property was donated by the Town and title transferred to VON to develop a residential hospice (the “**Hospice**”).
- In December 2023, Staff were advised that title to the Property is to be transferred from VON to Hospice Whitby (“**Hospice Whitby**”). To facilitate the transfer, VON has requested the Town’s consent to allow the transfer of the Property and assignment of the related agreements to Hospice Whitby, including the Right of First Refusal and Repurchase Rights Agreement dated September 22, 2021 between VON and the Town (the “**Right of First Refusal Agreement**”).
- Following Council’s previous direction, construction of the Hospice was required to commence by December 31, 2021, otherwise, in accordance with the Right of First Refusal Agreement, VON was to offer the Town the opportunity to take back ownership of the Property.
- As a result of funding delays and project planning challenges, VON, and Hospice Whitby request that the construction commencement date of the Hospice be moved to December 31, 2024.
- Subject to Council direction related to this report, the Town Solicitor and Treasurer will execute an assignment and assumption agreement and all other required documents to provide the Town’s consent to the extended construction commencement date, as well as consent to the assignment and title transfer of the Property.

3. Background:

As directed by Council through Reports CS 20-18, CS 43-18, and LS 05-20 the land donation of the Property was finalized on September 24, 2021, by registration of a transfer from the Town, as vendor, to VON, as purchaser, of the Property. In addition, in accordance with By-law # 7421-18, on September 24, 2021, restrictive covenants were registered on title to the Property to confirm that the Property shall not be used for any purpose other than a hospice.

Further, the Town entered into a Right of First Refusal Agreement with VON which confirmed that construction of the building on the Property was to commence on or before December 31, 2021, and should construction of the building on the Property not commence by that date, the Town would have the right of first refusal to repurchase the Property from VON in accordance with the terms of that agreement.

The Town has been advised that title to the Property is to be transferred from VON to Hospice Whitby. Hospice Whitby was incorporated on November 2, 2023 under the *Not-For-Profit Corporations Act, 2010* for the purpose of continuing the development of the Property and operating the residential hospice facility. Currently, the VON Board of Directors is the same as the Hospice Whitby Board of Directors. As of the date of the transfer and assignment, VON will be released from all of its obligations and commitments relating to the Hospice, and Hospice Whitby will then assume all of the obligations, commitments, and liabilities and will agree to observe and perform all of the obligations of VON, including the continuation of the development applications to the Town for the Hospice.

Town staff recommend entering into an assignment and assumption agreement to allow the transfer from VON to Hospice Whitby and also recommend extending the construction commencement date to December 31, 2024 to allow Hospice Whitby time to finalize funding and commence construction of the residential hospice on the Property.

4. Discussion:

The Town has already completed the donation of the property. The completion of the transaction followed Council's directions as noted above, including the registration of a restrictive covenant on title to ensure the Property is only used for residential hospice facilities.

However, there was a requirement from Council that the agreement include a condition that the property be offered back to the Town should the development of a residential hospice not proceed. The deadline for the commencement of construction of the building was originally given as December 31, 2020 in Report CS 20-18 and further extended to December 31, 2021 in accordance with Report LS 05-20.

Due to funding challenges, VON has advised that financial and project delays meant that it was unable to commence construction of the hospice by December 31, 2021, and VON and Hospice Whitby are now requesting a revised construction commencement date of December 31, 2024.

Staff are agreeable to this request, in consideration of current funding challenges and the progress to date in obtaining the necessary site plan approvals for construction of the Hospice. The community need for a hospice is such that staff recommend agreeing to the requested flexibility.

5. Financial Considerations:

None.

6. Communication and Public Engagement:

As the changes to the Right of First Refusal are largely technical in nature, staff did not undertake any public engagement as a part of this matter.

7. Input from Departments/Sources:

Legal Services has reviewed this report and provided advice regarding the completion of this matter and will be facilitating the negotiation and completion of this transaction if approved by Council.

8. Strategic Priorities:

This report supports Strategic Pillar 1: Whitby's Neighbourhoods, Objective 1.3: Provide accessible and inclusive municipal services and programming, and in particular Action 1.3.1, Continue to collaborate with non-profit organizations to anticipate and delivery changing community program and service needs.

9. Attachments:

None.