

COMMITTEE OF THE WHOLE - FEBRUARY 1, 2011

PROVISIONAL CERTIFICATE OF APPROVAL AMENDMENT – 10525 KEELE STREET WARD 1

Recommendation

The Commissioner of Engineering and Public Works, in consultation with the Commissioner of Legal and Administrative Services, recommends that:

1. The Ministry of Environment be advised that the City of Vaughan objects to the transfer of Certificate of Approval A22306334 from Waste Excellence Corporation to 2260225 Ontario Inc. for the reasons set out in this report;
2. The City Clerk forward a copy of this report to: Application Processor, Client Services Section, Ministry of Environment, Operations Division, Environmental Approvals and Assessment Branch, 2 St. Clair Avenue West, Floor 12A, Toronto, Ontario, M4V 1L5 prior to January 19, 2011; and,
3. A copy of this report be forwarded to the Regional Municipality of York, as soon as possible.

Contribution to Sustainability

N/A

Economic Impact

There is no negative economic impact associated with this report. Any opportunity of recovering the outstanding \$427,095, owed for municipally-incurred clean up costs following the fire of 2004 may be significantly impaired if the Ministry transfers the Certificate of Approval as proposed.

Communications Plan

The Ministry of Environment has posted the proposed changes to the Provisional Certificate of Approval on the Environmental Registry (www.ebr.gov.on.ca), for a 30 day public consultation. Comments must be received by the Ministry by January 19, 2011. Staff has requested an extension to this deadline in order to allow the City to provide formal comments.

Purpose

To advise Council on the proposed transfer of the Certificate of Approval for 10525 Keele Street to a different corporate entity and provide for Council's comments.

Background - Analysis and Options

10525 Keele Street is the address of a privately owned waste transfer station. A Certificate of Approval was issued to Rail Cycle Incorporated in 1994 to operate the site as a Waste Disposal Site (Processing/Transfer). In October and November of 2004, there were two significant fires that took place at this site. As a result of those fires, the Ministry of Environment (MOE), suspended the Certificate of Approval (C of A), for the site. After a significant clean-up, the Ministry reinstated the C of A to the Waste Excellence Corporation (WEC) in March of 2006. As a result of the fires, the City incurred, through Public Works Dept. and Fire Rescue Services, significant clean up costs in the amount of \$854,190.

As part of the reinstatement of the C of A, at the insistence of the City, a number of conditions were imposed that the new owner/operator had to comply with. The City imposed as condition of Site Plan Approval that a Promissory Note in the amount of \$854,190, be provided to the City, along with four post-dated cheques of \$213,547, payable annually starting in 2006. The first two cheques (2006 & 2007) were processed by the City.

In August 2007, WEC applied for and obtained a modification to their C of A to increase the number of rail cars permitted on site, and for some definitional and tonnage restriction modifications. The result of which was to expand their capacity. The City strenuously objected to the changes requested. MOE amended the C of A as requested by the Owner.

On September 18, 2008, having learned that the bank account upon which the cheques had been written was closed out, the City requested replacement cheques and put WEC on notice regarding the default of payment. On October 6, 2008 the City received Notice of Application that secured creditors of WEC (Starnino Holdings Limited, Brovi Investments Limited, Romeo Di Battista, Sr., and R. Di Battista Investments Inc.) had brought an application seeking the appointment of a Receiver in respect of the Waste Excellence facilities. In November 2008, the Court appointed a receiver.

On January 4, 2011, the City was notified by the MOE that they had received a request to transfer the C of A for 10525 Keele Street from the Waste Excellence Corporation to 2260225 Ontario Inc. As part of this process, the MOE has proposed changes to the original C of A to bring it up to date.

Staff have reviewed the proposed C of A, and compared it to the one issued to Waste Excellence Corporation. The significant points of the C of A are noted below:

- The amendment will not take place until the Order to Pay Costs #7872-6LYRKR dated March 1, 2006, has been paid in full.
- The types of waste entering the site remain unchanged. The site is licenced to handle non-hazardous waste from industrial and commercial sources, including construction material, demolition waste, recyclable material, and non-hazardous contaminated soil. They are not allowed to handle "putrescible" waste such as organic wastes.
- Third party inspectors are still required to inspect the site and the waste entering the site.
- No waste will be accepted from individuals and/or companies that were banned on the previous C of A.
- Financial assurances in the amount of \$442,500 is required with \$100,000 being in cash, and an irrevocable Letter of Credit for \$342,500. This is significantly higher than previous requirements.
- No more than 500 tonnes per day of "Incoming Waste" is allowed, excluding non-hazardous contaminated soil.
- No more than 500 tonnes per day of non-hazardous soil is allowed per day.
- No more than 1,500 tonnes of "Incoming Waste Material, Residual Waste and Processed Material" as defined in the C of A, shall be stored on site at any one time. This includes waste stored in rail cars. No waste can enter the site once this maximum amount has been reached.
- The owner is required to make all reasonable efforts to ensure that at least 70% of the waste leaves the site by rail, with the remaining waste to leave by truck.

- The hours of operation remain the same, i.e. 6 a.m. to 6 p.m. Monday through Saturday, but outgoing waste will still be allowed to leave the site until 9 p.m. Monday through Friday, and until 6 p.m. on Saturday.
- Signage requirements outside the site informing the public as to the owner of the site, the hours of operation, and a 24 hour complaint phone number etc., all remain unchanged.
- As per the March 2006 C of A, there is still a requirement for the Owner to have a Public Liaison Committee, made up of 2 City representatives, 2 representatives from the Regional Municipality of York, the president of each of the 6 public interest or neighbourhood associations selected for this purpose by the City of Vaughan, of which at least 5 shall be registered ratepayers associations. The PLC is to meet quarterly for the first year of operation, semi-annually for the second year of operation, and annually thereafter.

As can be seen above, the proposed amended C of A, is basically the same as the previous C of A issued in March of 2006. The 'Financial Assurance' conditions built into the reinstated C of A (and referenced in the C of A proposed to be transferred) is a reference to amounts in favour of the Ministry, not the City of Vaughan.

With the transfer of the C of A, the operational aspect of the facility changes hands, and with it, the opportunity for any revenue stream from which to reimburse the City is lost. If the MOE will not impose as a pre-condition of any transfer the full and final payment of the outstanding \$427,095, the City should oppose the transfer.

Based on the above, the City of Vaughan should oppose the transfer of the C of A.

Relationship to Vaughan Vision 2020/Strategic Plan

This report supports responsible financial oversight of the City's receivables.

Regional Implications

In the past, the Region did not comment on this C of A until the City had put forward its comments to the Ministry. As such, it is recommended a copy of this report be sent to the Region for their review, and they can then provide their comments to the Ministry.

Conclusion

The historic operations at 10525 Keele Street have had a significant negative impact on the City, and the residents living near to this site. The proposed transfer of the C of A will remove the remaining opportunity for the City to obtain reimbursement of the outstanding \$427,095, which WEC, the existing operator, has defaulted on. As such, it is recommended that the City of Vaughan object to the transfer of Certificate of Approval A22306334 from Waste Excellence Corporation to 2260225 Ontario Inc. for the reasons set out in this report.

Attachments

N/A

Report prepared by:

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Respectfully submitted,

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Commissioner of Engineering & Public Works

Janice Atwood-Petkovski
Commissioner of Legal and Administrative
Services & City Solicitor

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