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**CORPORATE SERVICES (LEGAL SERVICES)
INFORMATION REPORT #2015-05**

TO: Mayor Van Bynen and Members of Council

SUBJECT: Declaration of Surplus Land, Permanent Closure of Highway and Sale of Lydia Street (Ward 2) - Drainage and Flooding Affecting Adjoining Property Owners

ORIGIN: Senior Solicitor, Legal Services

In accordance with the Procedure By-law, any Member of Council may make a request to the Town Clerk that this Information Report be placed on an upcoming Committee of the Whole agenda for discussion.

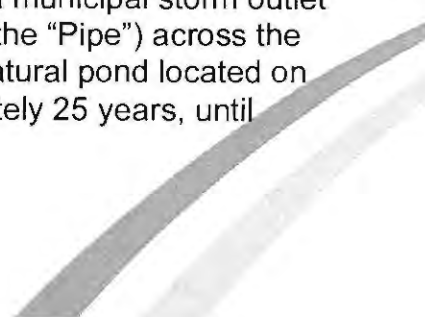
BACKGROUND

This report is intended to provide additional information to Members of Council related to Item 21 on the May 25, 2015 Committee of the Whole public agenda (Potential Declaration of Surplus Land, Permanent Closure of Highway and Sale of Lydia Street (Ward 2) – Corporate Services (Legal Services) Report 2015-02).

On June 1, 2015 Council directed that the lands described as part of Lydia Street on Plan 23 lying east of Muriel Street and north of Gorham Street between 233 and 241 Muriel Street and 763 Gorham Street, and highlighted in yellow on Schedule “A” (the “Lydia Street Lands”) be permanently closed, declared surplus and sold. In response to a public notice that the Lydia Street Lands would be permanently closed, declared surplus and sold, 2 residents raised the issue of drainage and flooding on the Lydia Street Lands.

COMMENTS

Engineering Services has advised that a drainage system (the “Drainage System”) comprised of (i) natural drainage swales at the rear of 816 and 818 Sparrow Road; (ii) a municipal storm outlet located at the rear of 814 Sparrow Road; (iii) a half corrugated steel pipe (the “Pipe”) across the Lydia Street Lands, 233 Muriel Street and 217 Muriel Street; and (iv) a natural pond located on 217 Muriel Street, has been in place and operating properly for approximately 25 years, until about 5 years ago. An aerial map is attached in Schedule B.



The properties impacted by the Drainage System are 814 and 816 Sparrow Road, 763 Gorham Street, the Lydia Street Lands, and 233 and 217 Muriel Street (the "Properties").

It is unclear who installed the Pipe, but it is assumed to have been the developer of the Sparrow Road subdivision as the Town does not have an easement over the area over which the Pipe traverses, does not maintain the Pipe, and does not have any record of its installation.

Over several years commencing in or about 2011 the owner of 763 Gorham Street experienced significant ponding at the back on his property.

In September 2012 the Town retained an engineering consultant to study the issue and provide recommendations. The consultant advised that the natural drainage swales and the Pipe no longer functioned properly due to a lack of maintenance and overgrowth of vegetation. In addition, the consultant recommended a design for improved drainage that would cost close to \$100,000 to construct. Implementation of the new design, which the Town considered undertaking at its cost, required the consent of the owners of the Properties since the Town required access to private property to complete the installation.

All owners, except the owners of 217 and 233 Muriel Street (the "Dissenting Owners") consented to the design. These 2 properties were key to the recommended design given their downstream location. The Dissenting Owners advised the Town that they would consent to the new design subject to a number of costly conditions to the Town. Accordingly, the implementation of the new drainage system did not proceed.

Over the course of 2013 and 2014 the Town and the Councillor for Ward 2 held many meetings with the residents to determine the reason for dissent and to attempt to mediate between the neighbours without success.

In an effort to resolve the drainage problem, while at the same time faced with no clear legal authority to proceed with the new system without the consent of all affected property owners to access their properties, the Town determined that the drainage problem could be improved by compelling residents, through the Town's property standards bylaw, to maintain and clean the ditches and swales on their private properties to encourage proper water flow. The maintenance process was especially important for properties downstream being, 217 and 233 Muriel Street.

The Town and Ward Councillor held further meetings with the residents including the Dissenting Owners, which resulted in the residents, including the Dissenting Owners, cleaning out their respective ditches and swales. Upon this clean out, the system began to flow properly again and resident drainage complaints to the Town subsided.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The Town's approach in attempting to remediate inadequate drainage as amicably as possible among all affected property owners in a fiscally sound manner is in keeping with the Town's vision of being Well-equipped & Managed, as well as with the Town's vision of Living Well.

CONSULTATION

Legal has consulted the Engineering Department regarding this matter.

HUMAN RESOURCE CONSIDERATIONS

Staffing levels are not impacted as a result of matters discussed in this report.

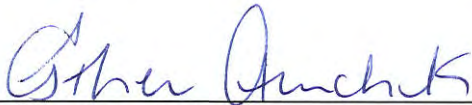
BUDGET IMPACT (CURRENT AND FUTURE)

There was no budgetary impact in seeking to remediate the drainage problem through self maintenance of the existing drainage system by the affected property owners.

CONTACT

For more information on this report, please Antonietta Mollicone, Senior Solicitor (905) 953-5300 ext. 2435; amollicone@newmarket.ca.

Respectfully submitted;



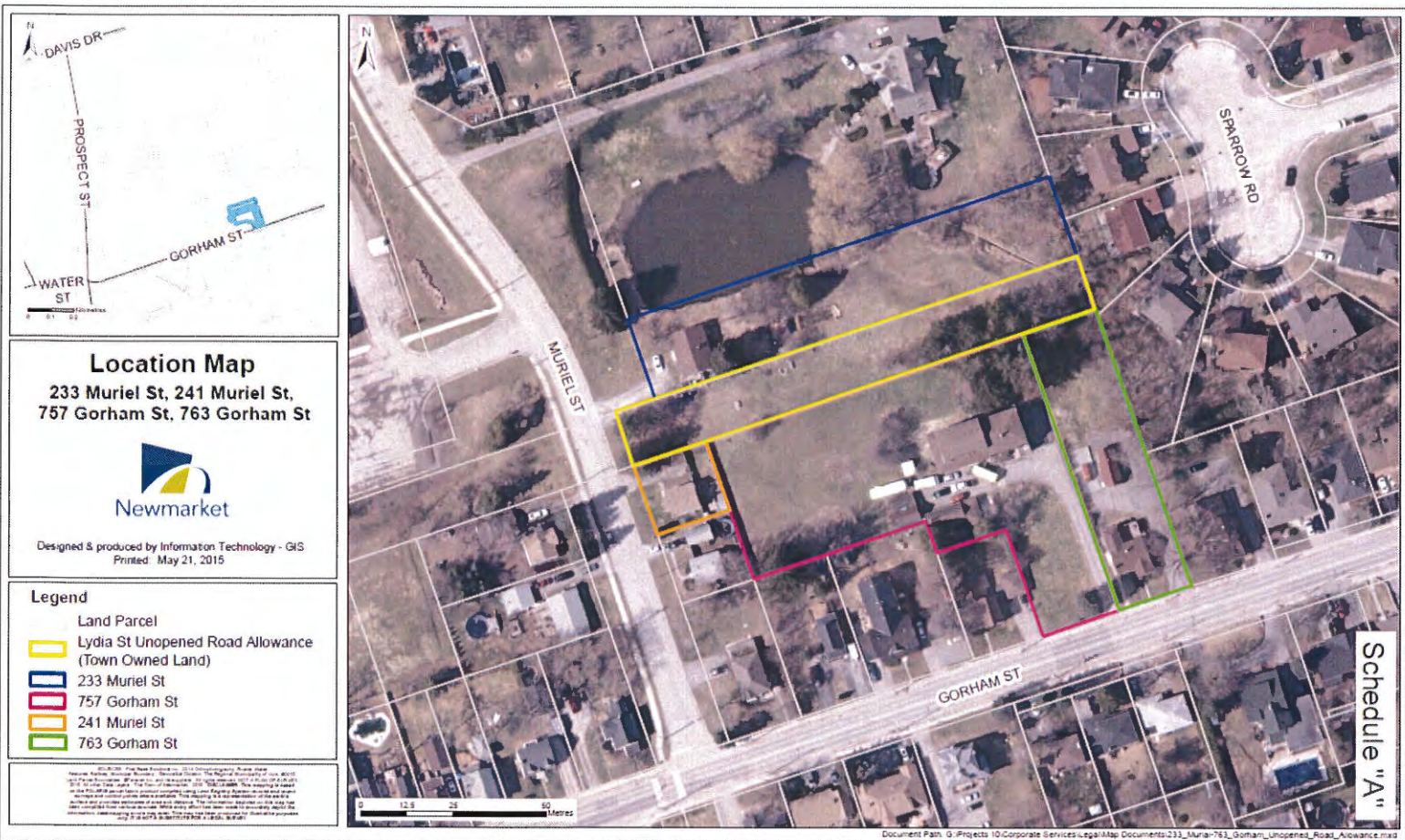
Esther Armchuk
Director of Legal Services/Municipal Solicitor



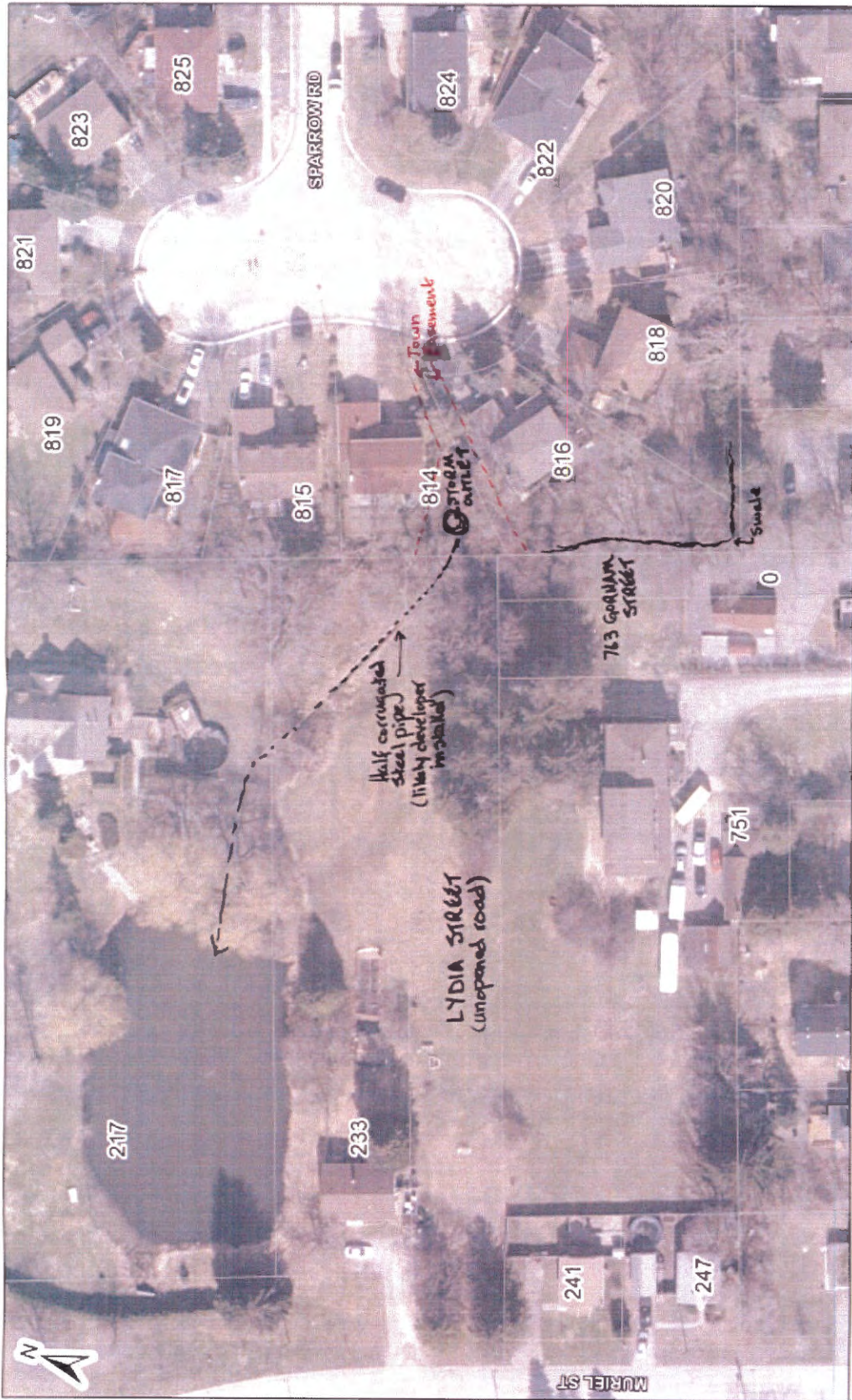
Antonietta Mollicone, Senior Solicitor



Anita Moore
Commissioner of Corporate Services



Schedule "B"



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TOWN OF NEWMARKET