

The Corporation of the Municipality of Brockton



By-Law 2023-021

Being a By-Law to Authorize the Conveyance of Land as Approved By By-Law 2013-041 and the Entering into of an Agreement With Barry's Construction and Insulation Ltd.

Whereas Section 9 of the *Municipal Act, 2001, S.O. 2001, c 25*, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

And Whereas Section 11 provides that Sections 10 and 11 shall be interpreted broadly so as to confer broad authority on Municipalities to enable municipalities to govern their affairs as they consider appropriate;

And Whereas By-Law Number 2013-041 authorized the conveyance of Parts 1, 2, 3 and 4 on Plan 3R-9204 ("Brockton land") in accordance with an Agreement between Barry's Construction and Insulation Ltd. ("Barry's") and The Corporation of the Municipality of Brockton ("Brockton") dated April 5, 2013 ("the 2013 Agreement");

And Whereas By-Law Number 2018-045 authorized Brockton to enter into an further Agreement with Barry's dated June 4, 2018 ("the 2018 Agreement") which authorized the conveyance of Parts 3 and 4 on 3R-9204 from Barry's to Brockton and confirmed that Parts 1 and 2 on 3R-9204, now identified as Parts 1 and 2 on 3R-9644, shall remain under the registered name of Barry's Construction and Insulation Ltd. until the earlier of; 1. The deposit of a plan of subdivision creating the agreed public highways; or 2. June 4, 2020, at which time Parts 1 and 2 shall be re-conveyed to Brockton at no cost to Brockton;

And Whereas the 2018 Agreement also authorized the release of Restrictive Covenant Instrument No. BR76600 and Restrictive Covenant Instrument No. BR76449, both registered on June 4, 2013 by Brockton against the Brockton land, to be released from Parts 3 and 4 on 3R-9204 and shall remain on Parts 1 and 2 on 3R-9644. Both of these Restrictive Covenants provide that no dealings shall occur with respect to the Brockton land without the consent of The Corporation of the Municipality of Brockton;

And Whereas Restrictive Covenant Instrument No. BR132061 was registered by Brockton on June 5, 2018, against Parts 1 and 2 on 3R-9644 which provided that no provided that the owner shall transfer the said lands to the Municipality of Brockton if the lands are not developed as a public highway under the Jurisdiction and ownership of the Municipality of Brockton by the earlier of 1. June 4, 2028; 2. The deposit of a Plan of Subdivision which creates public highways of the said lands; or 3. within ninety (90) days of written demand by Brockton;

And Whereas the Restrictive Covenant Instrument No. BR76449 is no longer identified as being registered against Parts 1 and 2 on 3R-9644 despite no Application to Delete Restrictions being registered;

And Whereas Brockton and Barry's have entered into an Agreement of Purchase and Sale on March 12, 2020 (the "Townhouse Agreement of Purchase and Sale") for the lands identified as Part 1 in the draft reference plan prepared by Hewitt and Milne, Ontario Land Surveyors ("draft reference plan") and attached hereto as Schedule "A";

And Whereas Brockton has served Barry's with written notice of its request for Barry's to convey a portion of Part 2 on 3R-9644, being Part 2 on the draft reference plan, in order to provide Barry's with access to the Townhouse Lands at the date of closing for the transaction contemplated in the Townhouse Agreement of Purchase and Sale;

And Whereas in order to facilitate the conveyance of Part 2 on the draft reference plan to Brockton, it is necessary to provide a release of Instrument No. BR76600 and BR132061 from Part 2 identified on the draft reference plan;

And Whereas on March 7, 2022 Brockton entered into an Agreement with Barry's ("Land Use Agreement") wherein Barry's granted Brockton with a right of way and easement across all or a portion of the Lands owned by Barry's for the purposes of facilitating access to Brockton's Property to construct a stormwater management pond and outlet to the tributary to service the East Ridge Business Park. Brockton acknowledges that the work contemplated in the Land Use Agreement has been complete save and except the necessity for ongoing maintenance;

And Whereas Brockton has constructed infrastructure that will benefit both parties in the form of a paved roadway, sidewalks, curbs, sanitary sewers, water servicing, and drainage ditches located on Part 2 of 3R-9644, and further constructed a stormwater management pond on Brockton Property that will accommodate the stormwater flowing from the Townhouse Lands and additional infrastructure within Part 1 of 3R-9644 and Part 3 on the draft reference plan;

And Whereas Council deems it desirable to identify the terms and obligations related to Part 2 on the reference plan and Part 1 on 3R-9644 and Part 3 on the reference plan in the interim until the said land is conveyed to Brockton as well as replace the previous agreements and outline the mutual understanding related to the cost-sharing of various infrastructure within and on the lands owned by both Brockton and Barry's;

Now Therefore the Council of the Corporation of the Municipality of Brockton **Enacts as Follows:**

- 1.0 The Council of the Corporation of the Municipality of Brockton consents to the conveyance of Part 2 on the draft reference plan attached as Schedule "A" hereto, by Barry's Construction and Insulation Ltd. with said transaction to be completed on or before the closing of the Townhouse Agreement of Purchase and Sale.
- 2.0 That Council of the Corporation of the Municipality of Brockton authorizes the entering into of an Agreement with Barry's Construction and Insulation Ltd. substantially in the form proposed and attached as Schedule "B". Council authorizes the CAO to negotiate such further terms as deemed necessary, and to insert any minor revisions as necessary, including the insertion of the Instrument Number of the draft reference plan once deposited in the Land Registry Office. Once finalized to the satisfaction of the CAO, the Mayor and Clerk are hereby authorized to execute the Agreement
- 3.0 That Part 1 on 3R-9644 and Part 3 as identified on the draft reference plan in Schedule "A" hereto shall remain under the registered name of Barry's Construction and Insulation Ltd. until the earlier of; 1. The deposit of a Plan of Subdivision creating the agreed public highways in the name of Brockton or 2. Within ninety (90) days of written request by Brockton.
- 4.0 That the Restrictive Covenant Instrument No. BR76600 registered on June 4, 2018 shall be released from Part 2 on the draft reference plan and shall remain on Part 1 on 3R-9644 and Part 3 on the draft reference plan until the land is conveyed to Brockton.
- 5.0 That the Restrictive Covenant Instrument No. BR132061 registered on June 5, 2018 shall be released from Part 2 on the draft reference plan and shall remain on Part 1 on 3R-9644 and Part 3 on the draft reference plan until the land is conveyed to Brockton.
- 6.0 That the Restrictive Covenant Instrument No. BR76449 registered June 4, 2013 is hereby released from Parts 1 and 2 on 3R-9644, if required.

- 7.0 That the Mayor and Clerk be and are hereby authorized on behalf of the Corporation to execute the Agreement attached hereto and marked as “Schedule B” and all deeds, undertakings, agreements and any other documents as may be required to complete the transfer of Part 2 on the draft reference plan to Brockton, including executing any releases and new Restrictive Covenants or Easements as may be deemed necessary, and to affix the corporate seal as and when required.
- 8.0 This By-Law may be cited as the “Barry’s Construction Subdivision Road Transfer Agreement 2 By-Law”.

Read, Enacted, Signed and Sealed this 14th day of February, 2023.

Mayor – Chris Peabody

Director of Legislative and Legal Services (Clerk) –
Fiona Hamilton