



Date: Wednesday, July 19, 2023

From: Niall Lobley, Acting CAO/Director of Community & Environmental Services

Subject: Reconsideration of Waste Collection Services for Condominiums at Cobble Beach

Report CES-2023-26

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Recommendation

That the Township of Georgian Bluffs does not extend municipal garbage collection services to the condominium Block 75 at Cobble Beach.

Background

In or around 2008, the Township of Georgian Bluffs approved the development of Block 75 at Cobble Beach into three private condominium developments consisting of up to 87 units. Three agreements were entered in for the Hollow I, Hollow II, and for Blue Bay Villas.

Condominium developments typically provide a developer a more flexible approach to development; as condominiums are private property, servicing within the development is no longer a municipal function and so typical standards associated with elements such as roads, sidewalks, and setbacks can be decreased within a condominium development. The municipality is typically responsible for providing municipal servicing only to the access point to the condominium, where the private road meets the municipally owned, public road. The principal benefit to the developer is that this arrangement typically allows for an increased density of development to occur, over the density that could be supported if municipal standards for municipal servicing were required.

Undertaking a plan of condominium is at the request of the developer, not the Township, and at the time a plan of condominium is approved the developer enters into covenants limiting the services that future residents will have, based on the benefits the developer (and future residents) will gain based on the condominium lifestyle.



The Master Subdivision Agreement and the subsequent site plans for Block 75 indicated, amongst other things, that garbage and recycling responsibility would be retained by the subsequent condominium corporation(s) and would not be the responsibility of the municipality.

Condominiums are very commonly responsible for arranging their own garbage collection and so this was not unusual in nature. The fees associated with services on a condominium (such as common area cleaning, common area maintenance, snow clearing, grass cutting, and waste collection) being paid for by a condominium fee.

The Master Agreement recognized that garbage collection, as a private service, would be challenging to facilitate during development in advance of the condominiums becoming operational. As such, the municipality agreed to provide a centralized collection service on an interim basis while development occurred, collecting from McLeese Drive.

In 2021, staff received a complaint from a resident in respect to the centralized collection of waste on McLeese Drive seeking clarity as to why curbside services were not being provided. At that time, staff recognized that the Township had inadvertently extended its interim approach to collection beyond the initial stage of development to well after the condominium had become operational. As a result, in November 2021, Council asked staff to prepare a report regarding waste collection services.

In March 2022, staff prepared a report for Council recommending that garbage collection services were ceased and that a period of notice was provided to residents to enable adequate time for alternative services to be secured.

In June 2023, residents of the three condominium corporations that manage the Hollow I, Hollow II and Blue Bay Villas delegated to Council seeking to challenge the direction and requesting that a municipal curbside collection be established.

It should be noted that municipal **curbside waste and recycling services have not been provided to residents of Block 75 at any time** and that the request for new curbside collection here represents a request for a new municipal service that has not yet been delivered, nor contemplated for delivery.

Staff believe that the original recommendations made to Council provide an accurate assessment of the roles and responsibilities for garbage and waste collection services and believe the original staff recommendation and Council direction to be aligned with municipal best practices, policy and bylaw at the Township and aligned with the agreements made with the developers of Cobble Beach through the Master Subdivision and subsequent Site Plan agreements.

Staff are not recommending that the direction be changed given that the developer and Township entered into agreements to facilitate development density and manage the



development as a condominium; staff are concerned about potential precedent being set by entering into agreements, and then, later, accepting services that had not been planned for through the planning process.

Analysis

In their delegation, several issues were raised, with the first two being cited as the most critical errors in staff's assessments reflected in the March 2022 report, and, as such, the strongest rationale for a reconsideration.

Vehicles Use, Insurances and Liabilities

Staff acknowledge that the current vehicles deployed under the existing waste management contract are able to physically service these roads.

However, as these roads were not required to be built to municipal standards and requirements, as setbacks may be reduced and as services beneath the road were not reviewed or inspected to assure the municipality that these met municipal standards for regular, long term, weekly heavy good vehicles, there is an unknown risk and assumption of liability if the Township were to direct vehicles into this private property.

The risk is that the vehicles may damage infrastructure, which is private in nature, and that that damage is not under the control of the municipality. Further, there is a risk that the vehicles may be damaged because of accessing private property and delivering services to it.

In both instances, the direction by the municipality that a contractor, on the direction of the municipality enter onto private property in large vehicles, without the assurance that the infrastructure of the roads and/or services beneath them being to a municipal standard, establishes a risk and liability to the Township.

This risk could be managed by the condominium corporation/s providing a waiver of any liability that the contractor and municipality may be exposed to by entering onto private property, should Council elect to provide services here.

Private nature of & Suitability of the Roads

The delegation indicated that the staff report erred in its conclusions in respect to private road garbage collection, citing a number of private roads that the municipality does provide garbage and waste service to.

However, the nature of the roads listed within the Waste Management Services contract as 'Private Roads' over which the municipality does provide waste collection services (though it is noted that this is not, in all instances of a curbside nature), are different to the roads within Block 75.



Big Rock Road, Francis Lake Road, North Bass Lake Road, Lakeview Drive, Mallard Street and Shepard Lake Roads are all municipally owned road allowances, over which residents own and maintain private roadways. The roadway is the responsibility of the owners to manage and maintain, however these are municipal rights of way.

Hawthorn Crescent, Ironwood Way, and Sandpiper Lane, making up the roads of Block 75 are not municipally owned rights of way, but are private property under the legal and sole control of the condominiums that own them.

Fundamentally, these are two different types of 'roads' with different legislation and different liabilities for accessing and servicing these spaces.

One of the benefits of condominium development in Block 75, was that the roads did not require to conform to municipal standards. One example of this is that Sandpiper and Ironwood Way, both of which are no through routes, do not terminate in a turning circle which is a requirement for a municipal street, to facilitate the turning of larger vehicles such as waste collection vehicles.

The delegation also indicated concern with respect to the comparison between the internal roadways of Block 75 and a private residential driveway, in that the width differs. The internal, privately owned roadways of Block 75 are approximately 22 ft wide; a municipal road allowance is three times this width at 66 ft with at least 30 ft of travelled width (including on municipally assume roads in Cobble Beach).

Staff acknowledge that the width differs between a private driveway and the internal roads on Block 75, however, the comparison initially made by staff in March 2022 made between a private driveway and these internal roads is accurate. These roads hold the same legal standing as a private driveway, and the municipality has similar (lack of) control over these roads, as it would a private driveway. The internal roadways of Block 75 are privately owned and managed, are narrower than a traditional road allowance, and do not have the setbacks the wider road allowance and travelled portion provides for between infrastructure and the road.

Road Maintenance and Standards

The delegation suggested that as the Subdivision and Site Plan agreements contained clauses that suggested that maintenance and construction 'be to the satisfaction' of the municipality this equated to being built to municipal standards.

This is an erroneous conclusion. As an example, there is a requirement under legislation with respect to the inspection and performance of maintenance on a roadway in all seasons, including winter. Legislated standards, such as the Minimum Maintenance Standards apply to municipal roads. This same legislation does not extend to private driveways and private, condominium roads. This is a set of standards that must be achieved.



The responsibilities for maintenance of these lie solely with the condominium board, over which the municipality has no control, and to which these standards do not apply.

The municipality does retain a degree of influence over these roads, to ensure that the private property remains in a satisfactory condition, such as through the application of property standards, but the level of influence gained through an agreement of 'satisfaction' and a legislated municipal standard, is significantly different.

The maintenance of the property to a satisfactory standard, does not equate to meeting specific, often legislated municipal standards. Municipalities have to provide maintenance to legislated levels; private property owners only have to manage to support their residents rather than the wider public, generally under the Owner Occupier Legislation.

Extension of the Temporary Measure

The delegation contended that the service provision between 2009 and 2021 exceeded a reasonable interpretation of temporary provision of service and, that as such, given the extended term of service provided, that this should be expected to continue.

Staff would agree that at the time agreements were reached in respect to development, it was not anticipated that temporary measures would extend for as long a period as they did. However, staff also believe that it was not intended that development would be as protracted as it has been. As the delegation noted in their presentation, it has only been in recent years that development within the Hollow I, Hollow II and Blue Bay Villas has proceeded with any great speed after a slow start to development and, that only in late 2021 that the roadways were completed to a more complete nature that would facilitate collection within Block 75.

While staff agree that there was never an anticipation that temporary garbage collection by the municipality would extend over so protracted a period, it is noted that, as with other elements of development at Cobble Beach, development has proceeded at a much slower rate than anticipated in the year 2000's, and that the extension of service, while longer than expected, was reasonable.

Staff also note that the service that is being requested is not an extension of the service that was in place in 2021, but a new level of service.

On Site Services and Site Planning

The delegation suggested that as there were no on-site services at Block 75 that this is a reason for the municipality extending services into Block 75.

Staff do not agree with this assertion. It was clear, since before development started, that the onus of responsibility for arranging for garbage collection within the Hollow I,



Hollow II and Blue Bay Villas lay with the owner (developer), and subsequent owners (the condominium corporations). This is found in the Master Subdivision Agreement and Site Plans.

The delegation indicates that in the absence of a specific requirement to include an 'On Site Service' (as there is for features such as wastewater), it could be concluded that the municipality erred in not making this a requirement, and as a result, is now liable for the provision of that service.

The municipality is not responsible for planning developments. It is responsible for reviewing those plans, making comments, and ensuring they meet legislation and policy requirements.

Nor is the municipality responsible for asking how a private property owner intends to deliver services to its residents. There is no requirement that the municipality has to specify how private waste is collected and stored on private property. However, at several points while plans were reviewed, staff did note the absence of a centralized collection area and provided this feedback to developers, as a courtesy – there was no requirement that they incorporate one or more such facilities.

As such, there was no obligation on the municipality to seek, permit, or ask for a centralized waste storage area; the condominium and property owner could, for example, be arranging for private curbside collection, rather than centralized collections.

While, as noted in the staff report from March 2022, it is usual that condominiums provide centralized collection services, it is not the only way of providing services and there are examples where condominiums arrange and pay for curbside services to their residents.

In the absence of a planned central location, despite seeking information on this, staff can only assume that the intention of the developer was that the eventual condominium owner would arrange for curbside services to residents.

Township Responsibility

The delegation indicates that the Township has a responsibility to provide waste collection services, and, by extension, that this responsibility includes provision of a new service to residents on Block 75 in respect of curbside collection.

One of the many services that Municipalities provide is waste management. Different municipalities provide this in different ways, and indeed, within the Township, this is provided in different ways.

Many municipalities provide curbside services, others provide for depot collections (where residents, frequently across a large geographical area, bring waste and garbage



to a centralized location). The Township provides curbside for many residents, but some are required to bring garbage seasonally or year-round to centralized collection points, and do not receive curbside services.

While the Township provides for this service, there is no obligation to provide for it and the Townships Waste Management bylaw provides for no service to be provided if it is in the best interests of the Township to not provide such service. As noted in the legal opinion, there is no obligation to collect garbage from a private property if the Township so determines, and there is certainly no obligation to enter onto privately owned operated and maintained property to provide for curbside collections.

Service Equity

The delegation indicated that there was a service inequity established between taxpayers in a condo as apposed to those in a private residential dwelling. This is true of all condos to some extent.

Condominium residents pay property taxes, established by the municipality, based on the assessed value of their home. Their home is valued independently by MPAC (the Municipal Property Assessment Corporation) who use a different tool for assessing condominium values from freehold home values. Residents on a condominium also pay a condo fee for services shared amongst residents in the condominium. At times, the services covered by the condo fee are like services that freehold property homeowners receive from the municipality.

Condominium residents benefit from enhanced services often provided by condo management boards such as enhanced shared space amenity management, and their property assessments are undertaken differently to freehold homes. There are a great many factors at play, and it is not always the case, but often, a similarly sized freehold and condo property in the same area will see a lower capital cost of purchase, and lower assessed value of the condo versus the freehold home, leading to lower property taxes.

Many residents, regardless of property type or value in the Township commonly share concerns that they do not benefit equally from their property taxes and service provision. Property taxes are not established based on the sum of all services delivered to an individual property, but rather are based to establish a socially acceptable standard to a community, meaning that residents see different value to their taxes depending on the services most relevant to them.

Higher Density

The delegation argued that the presence of a condo and the associated higher density, resulted in a higher tax base. This argument may hold true, but the taxable value of an



area of land under residential development is affected by many elements and is far more complex than a simple case of greater density derives greater tax benefits.

The higher density achieved through condominium style development serves many benefits such as greater accessibility and affordability to residents, higher amenity management standards, and, for developers, potentially a greater return on investment.

The benefit to the tax base is not a consideration in approving a plan of condominium as part of a development.

Carbon Footprint

The final argument put forward by the delegation was that the municipality, by not extending a curbside waste service to Block 75 was acting against its cited commitment to address climate change by forcing residents to drive their waste to Owen Sound for disposal.

This is simply inaccurate. Waste and garbage collection is, and was always intended to be, under the care and control of the owners (developers and then condominium boards) in Block 75, as established through the site plans and subdivision agreements. This could be delivered on a centralised basis, or a curbside basis as determined by the condominium boards, who remain able to arrange for, and establish their own collection in any way they choose. Indeed, the condo management board could establish far more rigorous environmental practices by providing more flexibility in collection, lower waste collection limits and different water separation practices than the municipality currently provides for.

Conclusion

Staff believe that the delegation mischaracterized the issues at hand in many instances, arguing that the municipality should engage in a service it has never provided.

Staff remain confident that throughout the planning and approval process it was clear that the intention was always that the collection and management of waste and garbage on Block 75 was a private matter, to be addressed by the condominium owners and that a temporary service was offered during the initial stages of development, recognizing the ability of the municipality to provide a service where the condominium would have struggled. The municipality has never offered curbside collection to this community and to do so would be an entirely new service, which staff do not believe there is any obligation or requirement to undertake, and, that if it was undertaken, would expose the municipality to liabilities.

Further, developing a condominium development provides for and allows for certain development benefits, such as a density that could not be achieved following municipal standards. There is a very real concern that precedent could be established whereby



further condominium development could occur in the Township, with the expectation that municipal services be offered to those developments as well.

Council is being asked to extend a new service onto private property. While condominium development is relatively new to the Township of Georgian Bluffs, it is very well utilized tool in Ontario and, as a common tool, used by developers to seek exemption from certain municipal standards. The value of condominium development is typically, as it is in this instance, to seek an increased density of development, thereby generating a higher return for the developer. Condominiums offer advantages to residents, who often gain access to privately held and managed amenities which may prove attractive to new residents. They provide certain advantages to municipalities who benefit from communities that are established beyond the requirement of municipal services.

Staff do not contend that the municipality can assume responsibility for garbage collection at the Hollow I, Hollow II and Blue Bay Villas; it is within the ability of the Township existing bylaws and frameworks to provide this service. However, staff do not recommend commencing garbage collection on private property:

- There is no requirement for the Township to provide services to private property.
- There was no intention through the planning, development, and approval process on the part of the Township or developer, that this would be a municipal service to the private property.
- There is, from a legal perspective, no difference between a condominium roadway and a private driveway; the Township does not provide waste collection on private driveways.
- There is an assumption of liability that the Township would be making, if it were to enter onto private property, where no service is being provided to date, to provide a new municipal service.

Options Considered

As noted, staff do not recommend a change to existing conditions, and do not recommend assuming responsibility for garbage collection. However, if Council so chose, a service could be offered, contrary to this recommendation. A number of options could be considered. These are listed from least preferred to most preferred.

- 1) Full curbside municipal services in respect to waste and garbage collection be extended onto private property and all costs, liabilities and risks associated with that be assumed by the municipality. It is anticipated that the costs for this new service to the municipality would be approximately \$13,000 annually for 87 dwellings.



- 2) That the level of service previously extended on a temporary basis be extended; this would see residents continue to bring recycling and garbage to the municipal curbside on McLeese Drive in one or more locations. This option is not preferred as with 87 properties, the amount of garbage weekly on McLeese Drive would be significant.
- 3) That the municipality enter into a shared service agreement, whereby curbside municipal services are provided for on private property as part of the municipal contract, but that the fees associated with this, including an administrative fee, be charged to the condominium boards. Risks and liabilities would be assumed by the municipality under this model. Staff anticipate the flow through costs to be in the order of \$15,000 annually billed to the condominium corporation(s).
- 4) Identical to the above approach but seeking a waiver of risk against the municipality to absolve both the contractor and municipality of any risks and liabilities established by entering into the collection on private property.
- 5) That the municipality work with the condo board and the municipality's existing waste management contractor to facilitate an independent contract between the municipality's contractor and the condo board that would allow, under separate contracts, the provision of services from the same contractor. (Staff have connected with Waste Management Services on this option, but at the time of writing do not know if this approach is possible)
- 6) Staffs recommended approach; that, as intended, the condominium boards manage their own waste and garbage independently and privately and no municipal waste collection services be extended to the property.

Financial Impact

There is no financial impact based on the recommendation in this report.

Strategic Priorities

Deliver Effective and Cost Efficient Services

Conclusion

A delegation of residents has asked that Council reconsider a previous direction to cease the temporary, centralized collection of garbage and recycling from a municipal roadway outside of Block 75, a condominium development, at Cobble Beach. The residents are asking the Township to assume a new service and provide a curbside waste and recycling collection to the privately owned streets within the Block 75 development. Staff, after carefully considering the points raised by the delegation, and on review of past process, policy and the planning and development process for the



condominiums on Block 75 at Cobble Beach, support the conclusion reached in 2022 and the direction of Council to not provide services to this condominium.

Respectfully Submitted: Niall Lobley, Acting CAO/Director of Community & Environmental Services