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STAFF REPORT: ENGINEERING AND PUBLIC WORKS DEPARTMENT



REPORT TO: Infrastructure & Recreation
 Committee

MEETING DATE: September 10, 2013

REPORT NO.: EPW.13.074

SUBJECT: Land Use Agreement with
636697 Ontario Limited (o/a
Scenic Caves Nature
Adventures)

PREPARED BY: Jim McCannell, Manager of Roads
 & Drainage

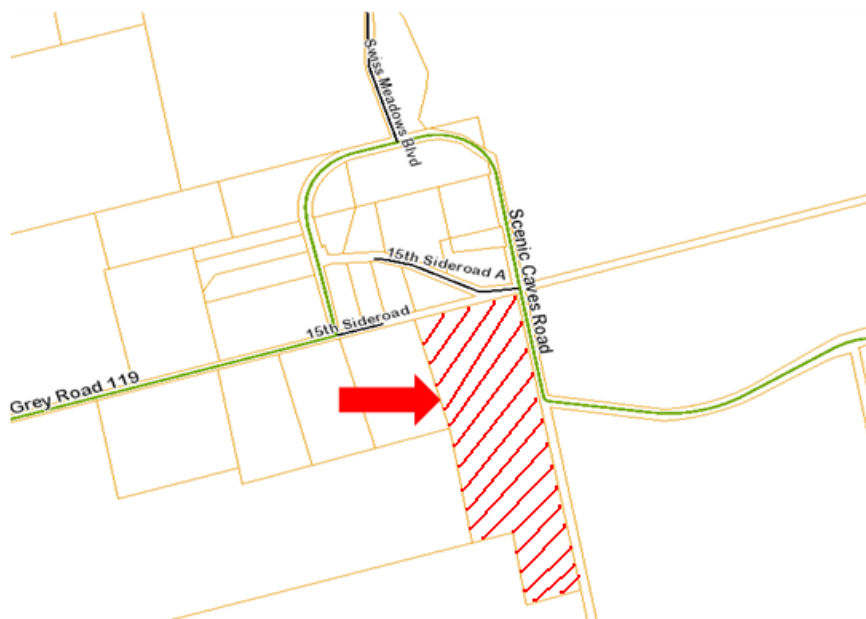
A. Recommendations

THAT Council receive Staff Report EPW.13.074, "Land Use Agreement with 636697 Ontario Limited (o/a Scenic Caves Nature Adventures)";

AND THAT Council authorize the Mayor and Clerk to execute a Land Use Agreement with 636697 Ontario Limited (o/a Scenic Caves Nature Adventures) in the form attached to this Report upon the recommendation of the Director of Engineering and Public Works and the Town's solicitor.

B. Background

636697 Ontario Limited (the Owner) owns lands fronting an unmaintained and unopened portion of the 15th Sideroad to the north. These lands are in part Lot 14 and 15, west of the 2nd Concession and are undeveloped in relation to the operations of Scenic Caves Nature Adventures. The subject lands are shown below indicated by an arrow.



The Owner was given permission by the Town to construct a temporary, summer-only construction entrance to the subject lands from the unmaintained and unopened portion of the 15th Sideroad for the purposes of benefitting construction of a new recreational amenity in the form of a Zip-Line ride on developed lands east of the 2nd Concession.

While permission was originally given for a temporary entrance, the Owner is now desirous of retaining the subject entrance to its lands from the unmaintained and unopened portion of the 15th Sideroad to the north of the subject lands to support current and future recreational amenity operations.

The Town would not usually approve a permanent entrance for lands fronting an unmaintained and unopened portion of a municipal road portion. It should be noted Section 11 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended provides that a Municipality has broad authority over highways under its jurisdiction.

The purpose of the proposed Land Use Agreement as set out in Attachment #1 is to detail the terms and conditions under which the subject entrance might remain. The key terms in the Land Use Agreement are as follows:

The Owner agrees:

- (a) that the entrance from the 15th Sideroad shall be accessed or used only by the Owner and employees and agents of the Owner and shall be kept locked and posted with appropriate signage indicating the entrance is not to be used by members of the public under any condition;
- (b) that the entrance from the 15th Sideroad shall only be accessed or used between April 15 and November 15 in any calendar year and shall be considered a seasonal entrance and shall not be accessed or used at any time other than as herein mentioned.
- (c) not to perform any maintenance or snow removal on the 15th Sideroad and acknowledges the 15th Sideroad may be used by the Town for snow storage purposes during the winter maintenance season.
- (d) that if any future maintenance or upgrading is proposed or requested by the Owner on the 15th Sideroad or entrance that a Municipal Lands Work Permit will be applied for and that no maintenance or upgrading as proposed or requested by the Owner shall be performed until a Permit has been issued by the Town.
- (e) to pay to the Town the amount of FIFTEEN HUNDRED (1,500) dollars for the benefits and covenants contained in this Agreement upon execution of the Agreement.

- (f) to provide written proof of insurance indemnifying and saving harmless the Town and naming the Town as an additional insured in the amount of FIVE MILLION (5,000,000) dollars with such proof of insurance to be provided on an annual basis no later than May 15 in any year so long as the entrance remains.
- (g) this Agreement may be terminated with reason(s) at the sole discretion of the Town and within NINETY (90) days written notice the entrance portion located on the 15th Sideroad shall be removed at the sole cost and expense of the Owner during a time period as noted in Clause (b) above.

Staff recommend Council authorize the Mayor and Clerk to execute a Land Use Agreement with 636697 Ontario Limited (o/a Scenic Caves Nature Adventures) in the form attached to this Report upon the recommendation of the Director of Engineering and Public Works and the Town's solicitor.

C. The Blue Mountains' Strategic Plan

Balancing public and private sector interests for the benefit of the community and Town would meet Goal No. 6, Providing a strong, well-managed municipal government.

D. Environmental Impacts

None. Construction of the subject entrance has been completed. No future works are proposed at this time.

E. Financial Impact

\$1,500 payment to the Town upon execution of the Agreement to be deposited in a Roads reserve.

Permit fees and security deposits are requirements of any future Municipal Lands Work Permit application.

F. In Consultation With

John Metras, Town Solicitor
Reg Russwurm, Director, Engineering and Public Works
Brian Kane, Roads and Drainage Foreman

G. Attached

1. Draft Land Use Agreement for the use of the 15th Sideroad by Scenic Caves for a Seasonal Staff Entrance

Respectfully submitted,

Jim McCannell

Jim McCannell
Manager, Roads and Drainage

Engineering & Public Works
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Reg Russwurm

Reg Russwurm
Director, Engineering and Public
Works

LAND USE AGREEMENT

THIS AGREEMENT made this day of , 2013.

BETWEEN: **636697 ONTARIO LIMITED**
 o/a Scenic Caves Nature Adventures
 (Hereinafter referred to as the "Owner")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter referred to as the "Municipality ")

WHEREAS the Owner owns Lands fronting an unmaintained and unopened portion of the 15th Sideroad to the north with said lands described on Schedule "A" which is hereby declared to form part of this Agreement;

AND WHEREAS the Owner was given permission by the Municipality to construct a temporary summer-only Entrance to its lands from the unmaintained and unopened portion of the 15th Sideroad for the purposes of benefitting construction of a new recreational amenity on its Lands;

AND WHEREAS the Owner is desirous of retaining the subject Entrance to its Lands from the unmaintained and unopened portion of the 15th Sideroad;

AND WHEREAS the Municipality would not approve an Entrance Permit under normal circumstances fronting an unmaintained and unopened portion of any municipal highway;

AND WHEREAS Section 11 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended provides that a Municipality has broad authority over highways under its jurisdiction;

AND WHEREAS the purpose of this Land Use Agreement is to detail the terms and conditions under which the subject Entrance may remain;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants hereinafter expressed and other good and valuable consideration, the Parties hereto covenant and agree one with the other as follows:

PART I

DEFINITIONS AND BASIS OF AGREEMENT

1.1 Definitions

In this Agreement, including the recitals, the following terms shall have the meanings set out below, unless otherwise redefined or where the subject matter or context requires another meaning to be ascribed:

"Agreement" means this Land Use Agreement;

"Entrance" means an entrance constructed by the Owner from the Highway to its Lands;

"Highway" means the unmaintained and unopened portion of the 15th Sideroad fronting the Lands to the north and includes all lands within and between the property lines;

"Lands" means the lands described in Schedule "A";

"Municipal Lands Work Permit" means a Permit issued by the Municipality under By-law No. 99-53;

“Parties” mean the Owner and the Municipality;

All other capitalized terms shall have the meanings ascribed to them in this Agreement.

1.2 Interpretation of Agreement

- (a) The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context otherwise requires, in this Agreement words importing the singular include the plural and vice versa and words importing a gender include all genders.
- (c) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (d) All references to parts, sections, clauses, paragraphs and schedules unless otherwise specified are references to parts, sections, clauses, paragraphs and schedules of this Agreement.

1.3 Lands Affected

This Agreement applies to the Lands.

1.4 Recitals

The Parties agree that the recitals herein are true and accurate and form part of this Agreement.

PART II

TERMS AND CONDITIONS OF THIS AGREEMENT

2.1 Use of the Highway and Entrance

The Owner agrees:

- (a) that the Entrance from the Highway shall be accessed or used only by the Owner and employees and agents of the Owner and shall be kept locked and posted with appropriate signage indicating the Entrance is not to be used by members of the public under any condition;
- (b) that the Entrance from the Highway shall only be accessed or used between April 15 and November 15 in any calendar year and shall be considered a seasonal entrance and shall not be accessed or used at any time other than as herein mentioned.
- (c) not to perform any maintenance or snow removal on the Highway and the Highway may be used by the Municipality for snow storage purposes during the winter maintenance season.
- (d) that if any future maintenance or upgrading is proposed or requested by the Owner on the Highway or Entrance that a Municipal Lands Work Permit will be applied for and that no maintenance or upgrading as proposed or requested by the Owner shall be performed until a Permit has been issued by the Municipality.
- (e) to pay to the Municipality the amount of FIFTEEN HUNDRED (\$1,500) dollars for the benefits and covenants contained in this Agreement upon execution of the Agreement.

- (f) to provide written proof of insurance indemnifying and saving harmless the Municipality and naming the Municipality as an additional insured in the amount of FIVE MILLION (5,000,000) dollars with such proof of insurance to be provided on an annual basis no later than May 15 in any year so long as the Entrance remains.
- (g) this Agreement may be terminated with reason(s) at the sole discretion of the Municipality and within NINETY (90) days written notice the Entrance portion located on the Highway lands shall be removed at the sole cost and expense of the Owner during a time period as noted in Clause 2.1(b), above.

PART III

ADMINISTRATION

3.1 Registration of Agreement

The Parties hereby covenant and agree that this Agreement will be registered upon title to the Lands. The Owner further shall pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Municipality as a result of the registration of any other documents pertaining to this Agreement.

3.2 Governing Law

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

3.3 Successors & Assigns

It is hereby agreed by and between the Parties hereto that this Agreement shall be enforceable by and against the Parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Owners herein contained shall run with the Lands.

PART IV

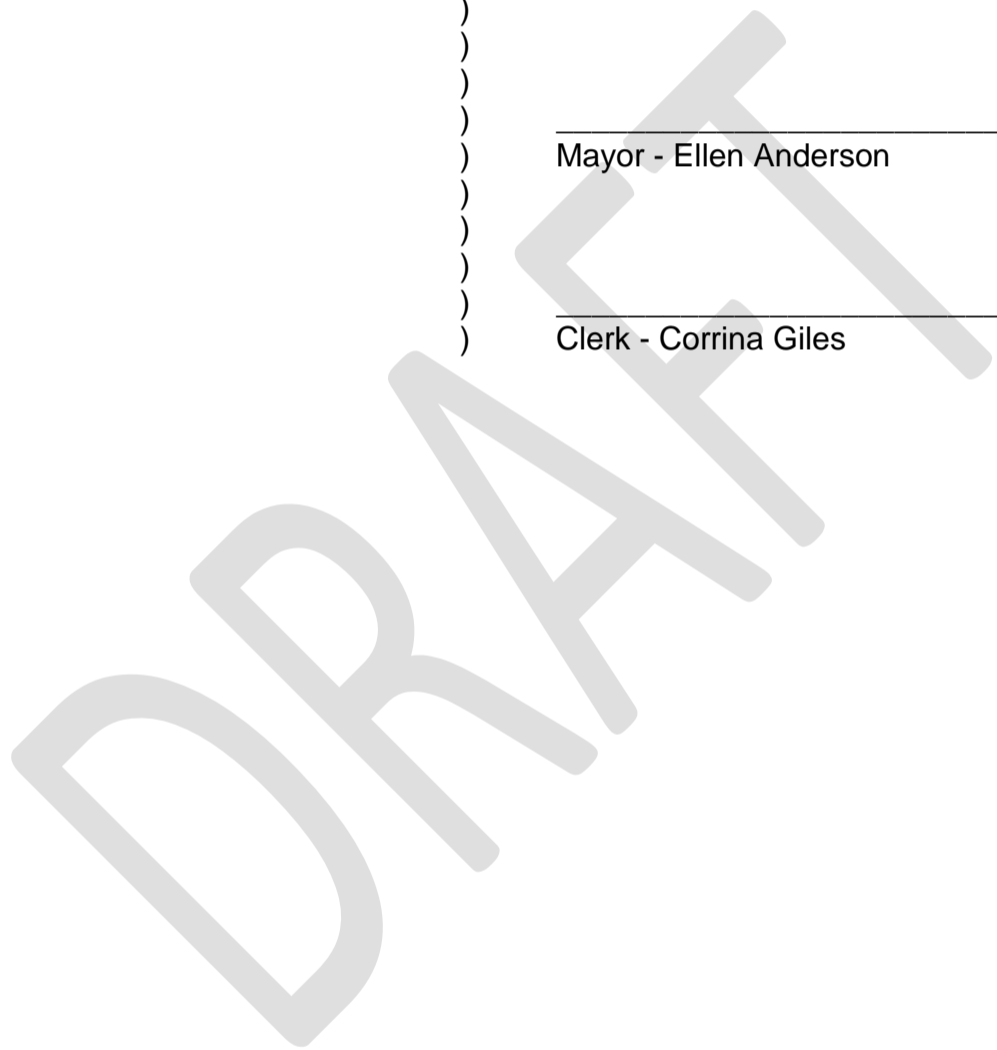
LIST OF SCHEDULES

The following schedules are attached hereto and form part of this Agreement:

"SCHEDULE A" being a Description of the Lands;

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested by the hands of their proper signing officers in that behalf.

) SIGNED, SEALED AND DELIVERED
)
) **636697 ONTARIO LIMITED**
) **o/a Scenic Caves Nature Adventures**
)
)
)
) _____ c/s
) Name:
) Title:
) I have authority to bind the corporation.
)
) **THE CORPORATION OF THE TOWN**
) **OF THE BLUE MOUNTAINS**
)
)
)
)
) _____
) Mayor - Ellen Anderson
)
)
)
) _____ c/s
) Clerk - Corrina Giles



SCHEDULE "A"

**This schedule forms part of a Land Use Agreement between
636697 Ontario Limited, o/a Scenic Caves Nature Adventures**

and

The Corporation of the Town of The Blue Mountains

DESCRIPTION OF THE LANDS

Town of the Blue Mountains (formerly Township of Collingwood), County of Grey

Part of Lots 14 and 15, Concession 3, Assessment Roll No. 42-42-000-5-004

DRAFT