

TOWNSHIP OF EDWARDSBURGH CARDINAL ACTION ITEM

Committee: Committee of the Whole – Community Development

Date: September 7, 2021

Department: Community Development

Topic: Telecommunications Tower, 8072 County Rd 44 (Forbes Bros and Freedom Mobile on behalf of Allen)

Purpose: To review a letter of undertaking as an alternative to a Site Plan Control Agreement for the construction of a telecommunications tower at 8072 County Road 44.

Background: The Township received an application for a site plan control agreement made by Forbes Bros. on behalf of Freedom Mobile, agent for property owners Joan and Victor Allen. The application was deemed complete on May 18th, 2021.

At the June 7th meeting of the Committee of the Whole – Community Development, the Committee reviewed an application for Site Plan Control to install a telecommunications tower, as per the Township's usual process. With Committee's recommendation, Council passed bylaw 2021-35 to enter into an agreement with the property owners. The agreement has not been executed (signed).

Freedom Mobile has entered into a lease agreement with the property owner. While the lease agreement places responsibility for construction, maintenance and removal of the tower on Freedom Mobile, a site plan control agreement places this responsibility on the land owner.

The applicant, Forbes Bros., notes a few concerns with the property owner entering into the Site Plan Control Agreement:

1. *As a federal undertaking the telecommunications infrastructure is not subject to site plan control, therefore site plan bylaws have no effect on or do not apply to antenna sites*
 - a. *A note on this – it is possible that the proponent of the facility (Freedom Mobile) voluntarily enter into site plan agreement but we cannot ask the landowners to take on the legal responsibilities outlined in the SPA.*
2. *The agreement is worded in a way which places the responsibilities for construction, maintenance etc. with the landowners. The landowners have leased the land to Freedom Mobile which enables and requires Freedom to*

construct and maintain the site without interference from other parties – based on the lease agreement the landowners do not have any control over what Freedom does in the leased area.

The Federation of Canadian Municipalities (FCM) published a [Telecommunications and Rights of Way Handbook for Municipalities](#), last updated in Fall 2018. The resource includes that Municipalities cannot use their legislative powers (adopt bylaws, establish procedures, etc.) to specifically or directly regulate telecommunications matters. Further to this, Municipalities cannot incidentally or indirectly affect telecommunications undertakings in such a way as to interfere with core aspects of their operations. Municipalities can adopt bylaws (or policies, procedures, etc.) that affect telecommunications, as long as such bylaws are intended and actually operate as a bylaw of general application.

The Eastern Ontario Regional Network (EORN) has recently published a [Tower Siting Resource Guide](#) to assist municipalities in developing Tower Siting Protocols. The Guide provides current protocols in place in various Ontario municipalities. It appears that a common practice is for Municipalities to accept a Letter of Undertaking from the proponent.

The Letter of Undertaking may include many of the same conditions that are contained in the Site Plan Control Agreement, including a site plan and elevation drawings, details for facility access, and removal of waste as a result of the construction. The main difference is that there is no longer an agreement with the land owner registered to the title of the property.

Freedom Mobile has provided a draft Letter of Undertaking for the Committee's consideration. Legal Counsel for the Township has reviewed the letter and advises that while they generally have no issues with its contents, it is only binding to Freedom Mobile Inc.. In the event that Freedom Mobile is dissolved, the Township would have no one to enforce against.

The Township has requested that a clause be added to the Letter:

FREEDOM agrees that the TOWNSHIP may issue a request to clarify that the Antenna System is still required to support communication network activity. The network operator will respond within 30 days of receiving the request, and will provide any available information on the future status or planned decommissioning of the Antenna System.

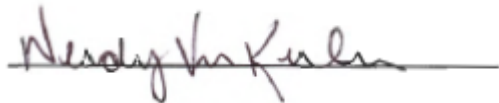
Where FREEDOM concurs that an Antenna System is redundant, the network operator and the TOWNSHIP will mutually agree on a timeframe to remove the system and all associated buildings and equipment from the site. Removal will occur no later than 2 years from when the Antenna System was deemed redundant.

Policy Implications: The Township does not have an established tower siting protocol in place, although the site plan control agreement process has been used since at least 2014. In the absence of a formal municipal protocol, the requirements of Innovation, Science and Economic Development Canada (ISED) are to be followed and met.

In accordance with the ISED public consultation process, mailings were sent to property owners of land within 3x the height of the tower and a notice was placed in the Recorder and Times to notify residents of the proposed tower. As required by ISED, the application also demonstrates how the proposal complies with Health Canada's Public Radio Frequency Exposure Guidelines (Safety Code 6); the Canadian Environmental Assessment Act; and Transport Canada's requirements for aeronautical safety.

Financial Considerations: The applicant has submitted the required fee for a Site Plan Control Agreement to the Township.

Recommendation: That Committee recommend that Council repeal bylaw 2021-35 to enter into a Site Plan Control Agreement with property owners Joan and Victor Allen and that Council accept a Letter of Undertaking from Freedom Mobile Inc. to construct a telecommunications tower at 8072 County Road 44, subject to the review of the final draft by the Township's Legal Counsel.

A handwritten signature in dark ink, appearing to read "Neelaj Kumar", is written over a horizontal line.

Community Development Coordinator