

MEMORANDUM

DATE: September 19, 2017
TO: Development Services Committee
cc. Executive Leadership Team
FROM: Stephen Chait, Director, Economic Growth, Culture & Entrepreneurship
SUBJECT: **Donation of Sculpture of “Charity” by Romandale Farms Limited.**
Status Update

The purpose of this Memo is to update Development Services Committee (DSC) regarding the “Artwork Donation Agreement”, the status of the installation of the sculpture, and to provide a brief chronology of the process to-date including copies of relevant meeting minutes as requested by DSC.

The Artwork Donation Agreement

At the June 14/16 Development Services Committee (DSC) meeting, DSC recommended that the Mayor and Clerk be authorized to execute an agreement with the Donor for the donation, installation, and maintenance of Charity to be installed in Crescent Park. Council approved this recommendation on June 14/16 (Attachment A). An “Artwork Donation Agreement” (the Agreement, Attachment B) was executed by Romandale Farms Limited (the Donor) and the City of Markham on September 4, 2016. The Agreement sets out the terms by which the City agrees to accept the donation of a work of art (“Charity” or the Sculpture) independently commissioned by Romandale Farms from the artist Ron Baird, and which the Donor wishes to donate to the City, at no cost to the City, for display as public art within the City of Markham.

The Agreement specifies that:

- It is the intention of the parties that the Sculpture be installed in Crescent Park.
- Certification by a consulting structural engineer licensed to work in the Province of Ontario, and retained by the City, is required before Final Acceptance of the Sculpture by the City of Markham.
- Final Acceptance of the Sculpture shall occur when:

- The Sculpture has been delivered and installed at the Installation Site, and
- The Sculpture has been certified by the Structural Engineer, and
- The City has inspected the Sculpture and confirms the Sculpture to be in accordance with the terms and conditions of the Agreement, and
- The Director, Culture & Economic Development has issued a letter to the Donor acknowledging the final acceptance.
- The City reserves the right after the Date of Final Acceptance to remove from public display or relocate the Sculpture if deemed necessary or desirable by the City (in the City's sole discretion). Reasons may include but are NOT limited to the following:
 - Public safety, or
 - Compliance with applicable by-laws, laws and regulations
- The City will consult with the Donor prior to any final decision being made regarding the Sculpture's removal or relocation. However, the decision of the City shall be final.
- If the decision is made by the City to relocate the Sculpture or remove the Sculpture from public display, the City will advise the Donor in writing and the Donor shall have the right of first refusal to obtain ownership of the Sculpture at no cost to Donor (save and except those costs associated with the removal and transportation of the Sculpture).

The Status of the Installation of the Sculpture

Over the course of the winter of 2016/17, City staff assisted the Donor and her team (including the artist, fabricator, site designer and installation contractor) to develop an installation plan and schedule. As per the approved and signed "Artwork Donation Agreement", a recommended installation plan (Attachment C) was approved by the Commissioner of Development Services, the Commissioner Community & Fire Services, and the structural engineering consultant retained by the City for this project (Quinn Dressel Associates).

Following a lengthy delay due to wet ground conditions (in late winter and through April and May), site work was completed and the installation of the Sculpture was partially completed in July 2017. During the construction, the City received complaints from some residents and concerns from individual members of Council regarding the height of the cow, the safety of the installation, the potential risk to the public from breakage and vandalism, and questions about the

possible loss of real estate value of surrounding homes. Construction was halted, voluntarily by Romandale Farms at the request of the City staff, pending discussions and receipt of further direction by Council.

As input to Council discussion and for the purpose of carrying out further inspections and responding to specific questions regarding structural integrity and safety, City staff have requested the donor to provide the City's structural engineering firm (Quinn Dressel Associates) with physical access to the sculpture and to facilitate discussions with the artist, fabricator and installation contractors. The Artwork Donation Agreement provides that the sculpture be inspected by the structural engineer and that the structural engineer confirms the sculpture to be in accordance with the terms and conditions of the Agreement before final acceptance of the sculpture by the City.





Chronology of Events

February 13/15 Minutes from Varley Art Acquisitions Committee Meeting. (Att. D).

- On January 27/15 Helen Roman-Barber (HRB) made a formal application to donate a sculpture to the City of Markham to be located in Crescent Park in Cathedraltown. The sculpture is fully fabricated and ready for installation. On Feb. 13/15 the Varley Art Acquisitions Committee received a presentation about Charity from the Public Art Coordinator. The Committee determined it did not have enough information to make a decision.

March 17/15 Varley Art Acquisitions Committee Minutes (within May 11/15 minutes) (Att. E)

- On March 17/15 the Varley Art Acquisitions Committee approved in principle the donation of the sculpture of Charity to the Public Art Collection of the City of Markham. However, the Committee expressed concern about “the work’s extreme height and ensuing issues of safety, security and maintenance”.

March 25/15 Public Art Advisory Committee Minutes (Att. F)

- Public Art Advisory Committee received information submitted by the Donor relating to her donation of the Charity statue to the City of Markham. The Committee chose not to endorse acceptance of the statue as presented and agreed to advise the sculptor Ron Baird of the Committee’s concerns and ask him to make a presentation to the Committee at a future meeting.

May 27/15 Public Art Advisory Committee Minutes (Att. G)

- Public Art Advisory Committee received a presentation by sculptor Ron Baird and landscape architect Paul DiProfio (both are consultants to the Donor). The Committee voted to recommend to Markham Council that the statue of Charity not be accepted as proposed. The Committee voted to decline the donation of the statue due to concerns about design, height, safety, maintenance costs and location. City staff subsequently asked the Donor to address these concerns.

Oct. 14/15 Public Art Advisory Committee Minutes (Att. H)

- Public Art Advisory Committee noted that Ron Baird will be meeting with Mayor to discuss sculpture. The Committee had declined the donation at its May 27/15 meeting.

April 13/16 Public Art Advisory Committee Minutes (Att. I)

- City staff provided an update, advising the Committee that “a recommendation is being made by staff to accept the donation of the Charity Sculpture. If Council accepts the donation, all costs including installation of the sculpture will be covered by the Donor. Staff are working with the City’s Legal Department to draw up a donation agreement.”

June 14/16 Development Services Committee Minutes (Att. J and K)

- DSC received the Public Art Advisory Committee Minutes from April 13/16. DSC then received a presentation by the Commissioner of Community Services displaying photos and renderings of the art donation of “Charity” for Crescent Park. DSC recommended that the Mayor and Clerk be authorized to execute an agreement with the Donor for the donation, installation, and maintenance of Charity to be installed in Crescent Park. It was suggested that a safety barrier be placed around the base and that the donor be responsible for alternate installation if the stilt platform is not feasible.

June 14/16 Council Minutes (Att. A)

- Markham Council directed that the Mayor and Clerk be authorized to execute an agreement acceptable to the City Solicitor, Commissioner, Community & Fire Services and Commissioner, Development Services with the donor for the donation, installation, and maintenance of the public art titles ‘Charity’ to be installed in Crescent Park.

September 4/16

- An “Artwork Donation Agreement” (the Agreement, Attachment B) was executed by Romandale Farms Limited (the Donor) and the City of Markham on September 4, 2016. The Agreement sets out the terms by which the City agrees to accept the donation of a work of art (“Charity” or the Sculpture) independently commissioned by Romandale Farms from the artist Ron Baird, and which the Donor wishes to donate to the City, at no cost to the City, for display as public art within the City of Markham.

Mid-June 2017

- Site preparation commenced in Crescent Park. Work was late in starting due to wet spring weather. City of Markham construction notice was installed advising residents of work underway to install sculpture of Charity, and providing contact info.

July 2017

- Charity was installed on the stilts as designed. Further construction was halted, voluntarily by Romandale Farms at the request of City staff pending further direction by Council. The

base and pavers have not been installed. The site is cordoned off (for safety) by a temporary fence. The City has not taken ownership of the statue.

Aug. 10/17 Special Council Meeting Minutes (Att. L)

- A group of concerned area residents attended a Special Council meeting that was scheduled to discuss other matters.
- Council advised the public that the “Charity” art donation would be discussed at the Sept. 25/17 DSC meeting. It was further discussed that Deputy Mayor Heath, Regional Councillor Armstrong and Councillor Ho and any other interested Members of Council would meet with the Donor and report back to the Sept. 25/17 DSC meeting.