



Report to: Development Services Committee

Date Report: May 20, 2014

SUBJECT: Highway 48 Flow Control Contribution

PREPARED BY: Abdullah Hossain, Sr. Environmental Engineer, Ext. 2628
Brian Lee, Senior Manager, Special Projects, Ext. 4838

RECOMMENDATION:

- 1) **THAT** the staff report entitled “Highway 48 Flow Control Contribution” be received;
- 2) **AND THAT** staff be directed to refund the surplus amount of the Flow Control Contribution to the original owners who contributed to this project;
- 3) **AND THAT** staff be directed to retain five (5)% of the Flow Control Contribution to cover staff administration cost;
- 4) **AND THAT** the Treasurer be authorized to refund the payments, as detailed in this report, from the Non-DC Growth Reserve Fund;
- 5) **AND THAT** staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to seek Council’s approval to:

- Refund the surplus amount of Highway 48 Flow Control Contribution to the original owners who contributed their share to the project through residential development agreements.
- Authorize the Treasurer to refund the payments from the Non-DC Growth Reserve Fund.

BACKGROUND:

On February 22, 2005, Council approved funding of \$300,000.00 for the design, installation, monitoring and maintenance of a sanitary sewage flow control system to be funded by the pre-DCA Engineering Reserve, and subsequently to be recovered from the development industry (see Attachment A). The Highway 48 Flow Control System (the “Project”) was to utilize a section of oversized sanitary sewer on Highway 48 (south of Highway 407) to act as an in-line storage system which would reduce peak flows entering the York-Durham Sewer System (YDSS) and creates additional sewer capacity to allow 4,099 residential units in Markham to proceed. In order to fund this Project, Council authorized staff to collect a financial contribution from each unit of residential development. Staff started to incorporate a financial contribution requirement of \$100 per unit for plans of subdivision and site plan applications. Over time, it was

estimated that the amount would not be sufficient for the anticipated costs, and the amount was further increased to \$200 per unit. Between 2005 and 2010, the financial contribution from all residential site plan agreements and subdivision agreements came to a total of \$1,126,600.00 (\$417,400.00 from site plan applications and \$709,200.00 from plans of subdivision applications - See Attachment B).

The Project, however, was never implemented because the Region created enough capacity to allow the necessary amount of development to proceed in Markham. The City paid a design consultant \$128,319.61 for the design work that was carried out.

The Cornell Landowners Group recently wrote to the City requesting the surplus amount for the Project be returned to the various land owners. A letter from Kimberly Beckman, Trustee for the Cornell Landowners Group, dated November 7, 2013 is in Attachment C.

Staff have reviewed the request from the Cornell Landowners Group. The Region is undergoing the expansion of the South East Collector of the YDSS and is providing enough yearly sanitary servicing capacity to allow development in Markham. Therefore, the Highway 48 Flow Control System will not be required and the surplus funds should be returned to the original contributors. In addition, staff recommend five (5) % administration fee (i.e. \$ 56,330.00) to be retained to process the reimbursement. Therefore; the surplus amount \$941,950.39 (\$998,280.39 - \$56,330.00) should be returned to the original contributors.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

Non-DC Growth Reserve Fund

The balance of the collected money prior to deduction of the five (5) % administration fee was deposited into the pre-DCA Engineering Reserve Fund (087-2800160). On November 22, 2011 Council approved the closing of the pre-DCA Engineering Reserve Fund (087-2800160) and the 10% Non-DC Growth Reserve Fund (087-2800220) and established a new reserve fund titled Non-DC Growth Reserve Fund (087-2800225) for the purpose of funding the non DC component of growth related projects (see Attachment D). At the time of establishment of the Non-DC Growth Reserve Fund, these developers' contributions were not identified as having any specific conditions or requirements.

The total amount collected	= \$1,126,600.00
Less design fee paid	= \$128,319.61
Less administration fee (5%)	= \$56,330.00
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Balance to be refunded	= \$941,950.39

Staff recommend the Treasurer to be authorized to refund the surplus amount (\$941,950.39) to the original contributors from the Non-DC Growth Reserve Fund as shown in the Attachment B.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable to this report.

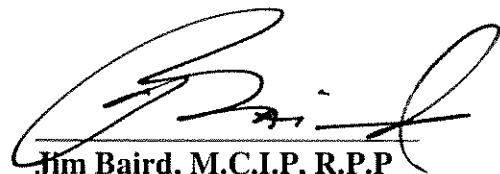
BUSINESS UNITS CONSULTED AND AFFECTED:

The Finance and Legal Departments have reviewed this report and their comments have been incorporated.

RECOMMENDED BY:



Alan Brown, C.E.T
Director of Engineering



Jim Baird, M.C.I.P, R.P.P
Commissioner, Development Services

ATTACHMENTS:

Attachment "A": Council Resolution dated February 22, 2005-Servicing Allocation

Attachment "B": List of the developers who contributed to the Project

Attachment "C": Council Resolution dated November 22, 2011- Pre DCA Engineering Reserve Fund and the 10% Non DC Growth Reserve Fund

Attachment "D": A letter from Kimberly Beckman, Trustee for the Cornell Landowners Group, dated November 7, 2013



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EXCERPT CONTAINING ITEM #006b OF THE COUNCIL COMMITTEE (February 22, 05)

Report ">

(2) SERVICING ALLOCATION (5.0) Report

That the correspondence from Joanne Barnett on behalf of Brawley Manor Corporation, and from Ira Kagan representing Times Group, both in support of the allocations, be received;

And that the deputation by Nik Mracic, representing Metrus Development, be received;

And that the February 15, 2005 report entitled "Servicing Allocation," be received;

And that York Region be requested to approve Markham's proposed flow control option, as outlined in this report, at their March 2, 2005, Regional Transportation and Works Committee Meeting;

And that, Markham Council assign servicing allocation for 4732 residential units as noted in Attachment 'C' to the original Council minutes in the office of the Clerk, upon Regional Council approval of the additional allocation to Markham;

And that Attachment 'B' be amended to indicate the Angus Glen allocation, contingent on construction of the bridge and collector road to the satisfaction of the Town, to be determined at the time of draft plan approval;

And that the principles for servicing allocation policies related to low/medium and high density residential development, as outlined in this report, be endorsed in principle with recommended policies to be presented to Markham Council for adoption once York Region has confirmed the amount and timing of future servicing allocation;

And that the principles for a "Use it or Lose it" policy, as outlined in this report, be endorsed;

And that staff report back to Development Services Committee when the next round of servicing allocation is available from the Region for assignment by Markham Council;

And that staff report back to Development Services Committee on the number of houses in Box Grove, Cachet, and Jennings Gate communities that have not converted from wells within 12 months;

And that the Region be requested to exempt severance applications (3 new lots or less) from servicing allocation restrictions;

And that this report and its recommendations be forwarded to Bryan Tuckey, Commissioner of Planning and Development Services and Kees Schipper, Commissioner of Transportation and Works, at the Region of York;

And that the cost to implement, monitor and maintain the flow control option be assessed to the benefiting 4099 residential units;

And that the Director of Engineering be authorized to sole source a consultant and contractor for the installation, monitoring and maintenance of the flow control option;

And further that the Engineering Department's 2005 Capital Budget be revised to include the flow control project at a cost of \$300,000 to be funded by the pre DCA Engineering Reserve and subsequently recovered from the development industry.

CARRIED AS AMENDED

(See following motion to amend)

Moved by Councillor G. McKelvey

Seconded by Councillor A. Chiu

That Clause (2), Report No. 7 be amended as follows:

Paragraph 5

- delete the words ...Appendix 'B'... and replace them with ...Appendix 'C'....

Paragraph 6

- delete the word ...grant... and replace it with ...indicate....

CARRIED

List of Developers: Site Plan Applications

SC #	Name	Contributed Amount	Amount to be Refunded
2005 021356 000 00	2078823 Ontario Inc.	\$ 300.00	\$ 250.83
2005 015777 000 00	45 Rouge Street	\$ 100.00	\$ 83.61
2006 113115 000 00	594607 Ontario Limited	\$ 200.00	\$ 167.22
2006 112729 000 00	Amber Plains Investments Ltd - D. Raymer House	\$ 100.00	\$ 83.61
2005 011523 000 00	Circa Inc - Circa Tower Phase II	\$ 39,100.00	\$ 32,691.51
2007 134596 000 00	Daleridge Developments	\$ 8,200.00	\$ 6,856.02
2004 028488 000 00	Daniels Swan Lake Phase 4 (Chancery Town Manors)	\$ 9,600.00	\$ 8,026.56
2005 016188 000 00	Donatop and Anna Maria Le Donne (20 Pomander Rd)	\$ 100.00	\$ 83.61
2006 130766 000 00	F. S. Swan Lake Development Ltd	\$ 1,400.00	\$ 1,170.54
2005 026195 000 00	Forest Bay Homes Limited	\$ 31,900.00	\$ 26,671.59
2005 021056 000 00			
2006 134969 000 00			
2004 023810 000 00	Fram Building Group	\$ 8,200.00	\$ 6,856.02
2005 019840 000 00	Joe DiMartino	\$ 100.00	\$ 83.61
2005 007799 000 00	Leo Perciasepe	\$ 100.00	\$ 83.61
2005 015805 000 00	Nastasi Developments Ltd	\$ 100.00	\$ 83.61
2004 009105 000 00	Old Kennedy Village	\$ 13,500.00	\$ 11,287.35
2004 014176 000 00	Remington Group	\$ 113,700.00	\$ 95,064.58
2006 107107 000 00			
2006 107107 001 0			
2005 022404 000 00	Rodeo Fine Homes Inc	\$ 200.00	\$ 167.22
2007 111191 000 00	Romfield Circuit Homes Inc.	\$ 600.00	\$ 501.66
2005 007146 000 00	Sierra Lane Town Villas Inc.	\$ 16,300.00	\$ 13,628.43
2005 017391 000 00	Team GTC Inc	\$ 3,400.00	\$ 2,842.74
2007 127148 000 00	Times Group Corp	\$ 91,400.00	\$ 76,419.55
2004 011279 001 00	Times Markham Centre	\$ 53,200.00	\$ 44,480.53
2008 121350 000 00	Townhouses of Thornhill Village	\$ 25,600.00	\$ 21,404.16
Total		\$417,400.00	\$348,988.19

List of Developers: Subdivision Applications

SA #	Name	Contributed Amount	Amount to be Refunded
2008 112185 02B 00	1039554 Ontario Limited	\$ 2,200.00	\$ 1,839.42
2006 122072 002 00	1039954 Ontario Limited	\$ 2,100.00	\$ 1,755.81
2006 129949 001 00	1297482 Ontario Limited (Noble Estates)	\$ 1,500.00	\$ 1,254.15
2007 133406 002 00	1473092 Ontario Inc	\$ 9,400.00	\$ 7,859.34
2007 122989 001 00	1477677 Ontario Limited	\$ 4,200.00	\$ 3,511.62
2007 118255 001 00	1696913 Ontario Inc (Clara Holdings Ltd)	\$ 10,900.00	\$ 9,113.49
2006 122073 002 00	16th & McCowan Holdings Limited and Amber Plain Investments Limited	\$ 2,750.00	\$ 2,299.28
2005 011811 001 00	973125 Ontario Limited & Constantinos Pallas	\$ 1,500.00	\$ 1,254.15
2007 129059 002 00	Amber Plain Investments Limited	\$ 9,250.00	\$ 7,733.93
2006 113590 004 00			
2010 109187 002 00	Angus Glen Village Ltd	\$ 25,600.00	\$ 21,404.16
2006 135215 01A 00			
2006 130464 002 00	Balgreen Holdings Inc. & Winter Garden Estates Inc.	\$ 22,950.00	\$ 19,188.50
2006 134645 001 00	Ballygaven Homes (Newmarket) Limited	\$ 1,200.00	\$ 1,003.32
2010 108691 001 00	Box Grove Hill Developments Inc	\$ 81,700.00	\$ 68,309.38
2009 118625 2B2 00			
2006 131744 002 00	Brawley Manor Corporation	\$ 29,000.00	\$ 24,246.90
2007 131625 006 00			
2006 117954 002 00			
2006 129552 003 00	Cathedral Town Ltd. and 404 Developments Inc.	\$ 6,000.00	\$ 5,016.60
2006 126174 002 00			
2006 113079 002 00	Cornell Rouge Development Corporation	\$ 45,400.00	\$ 37,958.95
2008 107066 001 00			
2010 108844 002 00	Country Wide Homes at Victoria Square Ltd.	\$ 18,400.00	\$ 15,384.24
2007 107832 02B 00	Danvest Wismer Investments Limited and Dovcom Realty Inc	\$ 5,300.00	\$ 4,431.33
2008 110411 001 00	Fairglen Homes Limited	\$ 3,600.00	\$ 3,009.96
2005 016892 003 00	Grand Life Boulevard Corporation	\$ 2,600.00	\$ 2,173.86
2006 126159 001 00	GTM2 Developments Inc	\$ 1,800.00	\$ 1,504.98
2006 130470 001 00	Home Sport Properties Ltd	\$ 4,950.00	\$ 4,138.70
2006 135220 001 00	Kylemore Post Road Ltd.	\$ 7,000.00	\$ 5,852.70
2006 109809 001 00	Lasseter Development Inc	\$ 2,700.00	\$ 2,257.47
2006 110505 002 00	Lindvest Properties (Cornell) Ltd	\$ 27,000.00	\$ 22,574.70
2006 129554 002 00	Mackenzie Builders and Developers Ltd	\$ 2,950.00	\$ 2,466.50
2007 110712 001 00	Majorwood Developments Inc	\$ 12,200.00	\$ 10,200.42
2007 129052 001 00	Matroundola , Blackmore, Pacitto & Rizzi	\$ 13,400.00	\$ 11,203.74
2005 022999 002 00	Mattamy (Country Glen) Limited and Wykland Estates Inc.	\$ 45,050.00	\$ 37,666.31
2008 107080 001 00			
2006 129549 002 00	Monarch Corporation	\$ 58,750.00	\$ 49,120.88
2006 135218 001 00			
2006 135417 001 00	Ninth Line Developments Limited	\$ 19,100.00	\$ 15,969.51
2007 113035 002 00			
2006 113654 002 00	Norvalley Homes Limited	\$ 1,600.00	\$ 1,337.76
2007 122486 001 00			
2007 107661 002 00	Oxnard Boxgrove Ltd.	\$ 3,600.00	\$ 3,009.96
2005 025943 04B 00	PAM GREY HOLDINGS LTD	\$ 5,900.00	\$ 4,932.99
2006 106053 001 00	Pineshore Developments Wismer Limited	\$ 3,750.00	\$ 3,135.38
2007 108102 001 00	Ruland Properties Inc	\$ 171,300.00	\$ 143,223.95
2006 109792 001 00	Sky Homes Corporation Ltd. and Centennial Baptist Church	\$ 4,100.00	\$ 3,428.01
2007 110014 2BC 00	Wismer Markham Developments Inc	\$ 10,600.00	\$ 8,862.66
2005 015433 003 00	Woodbine Mackenzie Developments Limited	\$ 3,100.00	\$ 2,591.91
2007 131933 001 00	World Tech Construction Inc	\$ 13,800.00	\$ 11,538.18
2005 015141 003 00			
2005 026143 001 00	Wykland Estates Inc	\$ 6,500.00	\$ 5,434.65
2008 118575 03B 00			
2007 110320 203 00	Wynberry Developments Inc	\$ 4,500.00	\$ 3,762.45
Total		\$709,200.00	\$592,962.20



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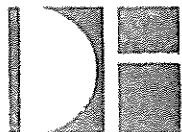
EXCERPT CONTAINING ITEM #006a OF THE COUNCIL COMMITTEE (November 22, 11)

(2) PRE DEVELOPMENT CHARGES ACT ENGINEERING RESERVE FUND AND THE 10% NON DC GROWTH RESERVE FUND (7.11) <a

Report

- 1) THAT the report dated November 14, 2011 entitled "Pre DCA Engineering Reserve Fund and the 10% Non DC Growth Reserve Fund" be received; and,
- 2) THAT a new reserve fund be established titled Non DC Growth Reserve Fund for the purpose of funding the non DC component of growth related projects; and,
- 3) THAT the Pre DCA Engineering Reserve Fund (087-2800160) be closed and the remaining balance of approximately \$10.1M be transferred to the Non dc Growth Reserve Fund; and,
- 4) THAT the 10% Non DC Growth Reserve Fund (087-2800220) be closed and the remaining balance of approximately \$6.2M be transferred to Non DC Growth Reserve Fund; and,
- 5) THAT any future transactions related to the Pre DCA Engineering Reserve Fund be deposited into the Non DC Growth Reserve Fund; and,
- 6) THAT staff report back regarding a funding strategy for the Non DC Growth Reserve Fund; and further,
- 7) THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

CARRIED



Davies
Howe
Partners
LLP

Lawyers

The Fifth Floor
99 Spadina Ave
Toronto, Ontario
M5V 3P8

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November 7, 2013

By E-Mail Only to CConrad@markham.ca

Please refer to: **Kim Beckman**
e-mail: kimb@davieshowe.com
direct line: 416.263.4512
File No. 931538

Legal Department
City of Markham
Markham Civic Centre
101 Town Centre Blvd
Markham, ON L3R 9W3

Attention: Catherine Conrad
City Solicitor

Dear Ms. Conrad:

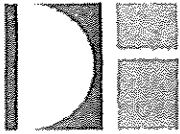
**Re: Cornell Landowners Group
Return of Highway 48 Flow Control System Contributions**

I am writing in my capacity as the Trustee for the Cornell Landowners Group (the "Cornell Landowners") to address the issues raised by Brian Lee in his recent discussions with Robert Webb, the Cornell Landowners' group manager. Those discussions focused on the Highway 48 Flow Control System contributions (the "Highway 48 FCS Contributions") remitted to the City by some of the Cornell Landowners.

The City collected the Highway 48 FCS Contributions from Cornell Landowners between December 2005 and September 2008 for the purpose of funding the construction of the Highway 48 Flow Control System. Funds were collected by the City when subdivision agreements were entered into with the Cornell Landowners. The following or similar clause was included in the subdivision agreements of seven Cornell Landowners during the noted time period:

The Owner covenants and agrees to pay \$[xx]/unit as its proportionate share for the cost of the Hwy 48 Flow Control System which is required to create sanitary sewer capacity for this plan of subdivision.

Attachment "1" to this letter is a chart prepared in January, 2012 that details the Highway 48 FCS Contributions made by the Cornell Landowners to the City.



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The City determined, following consultation with the Region of York, that the Highway 48 FCS is not required and will not be constructed.

Based on comments made by Brian Lee to Robert Webb, the Cornell Landowners understand that the City may be considering the reallocation of the Highway 48 FCS Contributions to future servicing works. For the City to be justified in reallocating the Highway 48 FCS Contributions, it would be necessary to establish that those servicing works were required for the contributing subdivisions to develop. Because the subdivisions referenced on Attachment "1" are already developed, there can be no additional servicing requirements that are necessary for them to develop. Therefore, the City does not have the legal authority to utilize the Highway 48 FCS Contributions for any alternative purpose and the Highway 48 FCS Contributions must be returned to the contributing Cornell Landowners.

Should it be of assistance to you, Robert Webb and I would be pleased to meet with you and City staff in order to discuss this matter further. Regardless, I would ask that you provide confirmation regarding the staff recommendation to Council regarding the proposed treatment of the Highway FCS contributions.

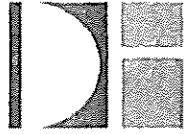
Sincerely,

DAVIES HOWE PARTNERS LLP

Kimberly L. Beckman
Professional Corporation

KLB:DS

copy: Mr. Alan Brown, Director of Development Engineering
Mr. Brian Lee, Manager, Development Engineering & Transportation
Mr. Robert Webb, Group Manager, Cornell Landowners Group
Cornell Landowners Group



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Attachment "1"**Summary of Contributions
Hwy 48 Flow Control Systems
Cornell Subdivision Agreements****January 23, 2012**

Land Owner	Phase	Date	Contribution	Amount	Notes
Law	1		No	\$ -	
Law	2		No	\$ -	
Law	3		No	\$ -	
Law	4		No	\$ -	
Law	5		No	\$ -	
Dipoce	1		No	\$ -	
Aspen Ridge	58	21-Oct-02	No	\$ -	
1473092 Ont Ltd. (Metrus)	1	12-May-04	No	\$ -	
1473092 Ont Ltd. (Metrus)	2	29-Apr-08	Yes	\$ 9,400	\$200/unit
1473092 Ont Ltd. (Metrus)	3	27-Jul-10	No	\$ -	
Cornell Rouge Development Corp. (CRDC)	1	10-Nov-05	No	\$ -	
Cornell Rouge Development Corp. (CRDC)	2	11-Apr-07	Yes	\$ 20,400	\$100/unit
Cornell Rouge Development Corp. (CRDC)	3	6-May-08	Yes	\$ 25,000	\$200/unit
Cornell Rouge Development Corp. (CRDC)	4A	15-Sep-10	No	\$ -	
Wykland Estates Inc. (Mattamy)	1	25-Jun-04	No	\$ -	
Wykland Estates Inc. (Mattamy)	2	2-Dec-05	Yes	\$ 21,800	\$100/unit
Wykland Estates Inc. (Mattamy)	3A	3-Apr-08	Yes	\$ 22,500	\$200/unit
Wykland Estates Inc. (Mattamy)	3B	18-Aug-08	Yes	\$ 6,500	\$200/unit
Lindvest Properties	1	28-Apr-05	No	\$ -	
Lindvest Properties	2	17-Nov-06	Yes	\$ 27,000	\$100/unit
TOTAL				\$ 132,600	