



Report to: Development Services Committee

Report Date: May 7, 2013

SUBJECT: Policy on Construction of Municipal Services for Private Landowners

PREPARED BY: Mansoor Ali, Engineering (ext. 2523)

RECOMMENDATION:

- 1) THAT the May 7, 2013 report entitled “Policy on Construction of Municipal Services for Private Landowners”, be received;
- 2) AND THAT Council adopt a policy to permit minor extension of municipal services for private landowners, at no cost to the City, within the City’s urban boundary where the works cannot be undertaken under the Ontario *Municipal Act, 2001* (the “Act”);
- 3) AND THAT Council authorize the Mayor and Clerk to execute construction agreements with private landowners to give effect to the policy in Recommendation 2), in a form satisfactory to the Chief Administrative Officer and the City Solicitor and subject to the conditions outlined in this report and the corresponding report dated March 5, 2013 (Attachment ‘1’);
- 4) AND THAT Council authorize the Mayor and Clerk to execute a Construction Agreement with the landowner(s) of 6810-14th Avenue for the design, construction, and assumption of a municipal sanitary sewer on 14th Avenue, at no cost to the City, in a form satisfactory to the Chief Administrative Officer and the City Solicitor and subject to the conditions outlined in this report;
- 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 provide an update to Council regarding funding and construction of municipal services by private landowners, cost-sharing issues and options for the report entitled “Policy on Construction of Municipal Services for Private Landowners” presented to the Development Services Committee on March 5, 2013 (see Attachment ‘1’).

BACKGROUND:

A report entitled “Policy on Construction of Municipal Services for Private Landowners” dated March 5, 2013 (Attachment ‘1’) was submitted to the Development Services Committee. The Committee referred this report back to staff for more information regarding cost-sharing issues by different benefitting landowners.

OPTIONS/ DISCUSSION:

The issue raised by Council with regard to the March 5, 2013 report was discussed with the Legal Department, and the details are summarised below:

Legislation to Provide Municipal Services

Under the *Municipal Act, 2001* (the '*Municipal Act*'), municipalities can enact bylaws to construct, enlarge, or extend municipal services (sanitary, storm, and water) subject to the approval for such works by at least two-thirds of the residents benefitting from the municipal services. From past experiences, as mentioned in the March 5, 2013 report, the residents generally support the provision of improved municipal services but are reluctant to pay their share of the improvements.

Private Landowner Constructing and Paying for Municipal Services

Subject to approval by the City, a private landowner can construct and pay for municipal services to service its property. This will require a construction agreement to be signed between the City and the private landowner. If a private landowner constructs and pays for municipal services to service its property, there is no process under the *Municipal Act* to obligate those landowners adjacent to or receiving benefit of the 'new' municipal services to pay any share of the construction costs. These 'non-contributors' would only have to pay for the usual fees or costs to the City for a new service connection from the mains to their property.

Once municipal services are constructed, the City cannot refuse written requests for service connection from other landowners as long as they pay the usual fees or costs.

Subsection 86(1) of the *Municipal Act* states that:

"...a municipality shall supply a building with a water or sewage public utility if,

- (a) the building lies along a supply line of the municipality for the public utility;*
- (b) in the case of a water public utility, there is a sufficient supply of water for the building;*
- (c) in the case of a sewage public utility, there is sufficient capacity for handling sewage from the building; and*
- (d) the owner, occupant or other person in charge of the building requests the supply in writing."*

The only exception, under subsection 86(2), is if the supply of the municipal services would contravene an Official Plan.

Outside of the *Municipal Act*, a mechanism to ensure the costs are distributed to all benefitting landowners would be to ask all the benefitting landowners to sign a cost-sharing agreement in advance of the construction. This would commit the property owners to pay their assessed cost when they want to connect into such. In staff's opinion, it would be difficult to obtain benefitting owners signature to such an agreement.

Voluntary Contribution

The only option to recover from benefitting property owners their fair share of municipal services financed by one or more upfronting property owners is for the Corporation to try and

collect such prior to permitting a property owner to connect into a sewer or watermain. While the Corporation has no legal means to force such payment, it would be fair and equitable to attempt such. This Corporation has in the past had "Best Efforts" to collect from developers for municipal infrastructures upfronted by another developer. This "Best Effort" process has had numerous administrative problems and is no longer utilized.

If Council wishes staff to attempt to recover for an upfront property owner, then staff strongly recommend the Construction Agreement clearly denotes that the Corporation will attempt to recover and if it fails to do such for whatever reason, the upfront property owner would have to save the Corporation harmless.

Conclusion

Once the municipal services are constructed, there is no legislation for the City to refuse a service connection for any of the properties along the new supply line.

If Council wishes to have staff endeavour to collect from benefitting property owners their fair share of the municipal infrastructure when they want to connect into such, then staff recommend appropriate clauses in the Construction Agreement be inserted to indemnify the Corporation if we are not successful.


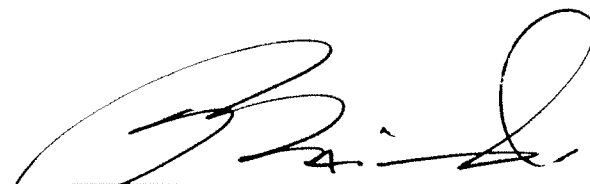
FINANCIAL CONSIDERATIONS AND TEMPLATE:

There is no financial impact to the City.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Legal Department has reviewed this report and they concur with the recommendations.

RECOMMENDED BY:


Alan Brown, C.E.T.
Director of Engineering
Jim Baird, M.C.I.P., R.P.P.
Commissioner, Development Service

ATTACHMENT:

Attachment '1' - Report entitled "Policy on Construction of Municipal Services for Private Landowners" dated March 5, 2013



ATTACHMENT '1'

Report to: Development Services Committee

Report Date: March 5, 2013

SUBJECT: Policy on Construction of Municipal Services for Private Landowners

PREPARED BY: Mansoor Ali, Engineering (ext. 2523)

RECOMMENDATION:

- 1) THAT the March 5, 2013 report entitled "Policy on Construction of Municipal Services for Private Landowners", be received;
- 2) AND THAT Council adopt a policy to permit minor extension of municipal services for private landowners, at no cost to the City, within the City's urban boundary where the works cannot be undertaken under the Ontario *Municipal Act, 2001* (the "Act");
- 3) AND THAT Council authorize the Mayor and Clerk to execute construction agreements with private landowners to give effect to the policy in Recommendation 2), in a form satisfactory to the Chief Administrative Officer and the City Solicitor and subject to the conditions outlined in this report;
- 4) AND THAT Council authorize the Mayor and Clerk to execute a Construction Agreement with the landowner(s) of 6810-14th Avenue for the design, construction, and assumption of a municipal sanitary sewer on 14th Avenue, at no cost to the City, in a form satisfactory to the Chief Administrative Officer and the City Solicitor and subject to the conditions outlined in this report;
- 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 authority:

- (i) to establish a policy to extend municipal services (sanitary sewers, storm sewers, or watermain) for private landowners, at no cost to the City, where undertaking such projects under the *Municipal Act, 2001* have not been successful; and,
- (ii) to give authorization to the Mayor and Clerk to execute construction agreements with the landowners requesting the municipal services.

This report also seeks Council's approval for the design, construction, and assumption of a municipal sanitary sewer on 14th Avenue, east of the Old 9th Line for the landowner(s) of 6810-14th Avenue.

BACKGROUND:

The City initiated three different planning and design assignments to provide sanitary sewers to the Box Grove, Victoria Square, and Cachet Estate communities after receiving petitions from the residents in these communities under the former *Local Improvements Act, R.S.O. 1990, c. L.26*. City staff engaged engineering consultants to prepare preliminary design and cost estimates. In the end, the projects did not proceed by way of local improvement because the residents declined due to the high cost of the projects. Nonetheless, there are still requests by certain residents to connect to municipal services. This report proposes an approach to address these requests.

OPTIONS/ DISCUSSION:Legislation to Provide Municipal Services

Under the *Municipal Act, 2001*, municipalities can enact bylaws to construct, enlarge, or extend municipal services subject to the approval for such works by at least two-thirds of the residents benefitting from the municipal services. From the Engineering Department's experience, the residents generally support the provision of improved municipal services but are reluctant to pay their share of the improvements.

Examples of Previous Unsuccessful Local Improvement Projects in the City

As mentioned earlier, the City has initiated planning and design assignments in Box Grove, Victoria Square and Cachet Estate communities. In February 12, 2008, a report entitled "Box Grove Sanitary Sewer System" was presented to Council for the construction of local municipal sanitary sewers on 14th Avenue and the Old 9th Line to service the existing residential lots. The Engineering Department retained a consultant to prepare the design and to estimate the project cost. The residents requested the City to subsidize the project in order to reduce the financial contribution of each resident. Council did not agree to pay for any portion of this improvement. In the end, this project did not go forward as the required minimum number of residents willing to proceed was not met. See Council Resolution in Attachment "1".

In September 27, 2011, a report entitled "Victoria Square and Cachet Estate Local Service Improvements" was approved by Council for installation of municipal services in Victoria Square and Cachet Estate communities. Similarly, the project also did not proceed as residents were not willing to pay the full project costs. However, in that report, Council permitted individual landowners to construct or extend municipal services to service their lots under certain conditions. See Council Resolution in Attachment "2".

Requests by Individual Landowners to Extend Municipal Services

Although the City did not have any recent success in those local improvement projects, staff continue to receive requests by individual landowners for provision of municipal services. In general, these landowners are located in close proximity to existing sewers and the extension of a new sewer to their property frontage is not a costly undertaking.

City-wide Policy for Projects to be funded by Individual Residents or Resident Groups

Staff prefer projects to be undertaken under the *Municipal Act* as the legislation offers a framework for cost sharing by benefitting property owners. When residents do not support projects under the *Municipal Act* provisions, then staff recommend the City not proceed to extend/construct municipal services. However, there is a need to establish a City-wide policy for individual landowners who may wish to pay for a portion of such projects to obtain municipal services subject to City review and approval. Such a policy was established by Council for Victoria Square and Cachet Estates communities in the September 2011 report, but that policy does not apply to other parts of the City.

Advantages of Permitting Services to Individual Landowners

- Individuals who are re-constructing their houses and wish to construct/extend municipal sanitary sewers located adjacent to their lots can take advantage of a City wide policy.
- There is no cost to the City and staff can recover full cost for the administration of the design review and inspection.
- Municipal services are preferred over private water/sanitary systems because of environmental considerations and better services to the residents.
- It allows municipal services to be provided to these communities or any part of these communities, even if such a project cannot be implemented under the *Municipal Act*.

Disadvantages of Permitting Services to Individual Resident

- Landowners adjacent to existing municipal services will be able to connect at a lower cost compared with landowners further away, making it more expensive for landowners further away from existing services to connect.
- Landowners extending the services will have to over design (oversize and/or extra depth) to accommodate future expansion to the whole service area at their expense.
- There is no mechanism for any cost recovery from future landowners if they benefit from such a project.

Conditions for Extending Municipal Services

Subject to Council endorsement of the policy permitting the extension of municipal services to service private property within the City's urban boundary, the following conditions are recommended:

- (i) The Owner shall retain a profession engineer who will prepare all engineering submissions, including any oversizing, in compliance with City's design standards and to the satisfaction of the Director of Engineering;
- (ii) The Owner shall pay all costs related to the design, construction (including oversize and/or extra depth), and maintenance prior to Assumption of the municipal services;
- (iii) The Owner acknowledges and agrees that the City shall not be responsible to recover any costs from other landowners who wish to connect or to extend this municipal services, in future; and

- (iv) The Owner shall enter into a construction agreement with the City to the satisfaction of the Director of Engineering, the City Solicitor, and the Chief Administrative Officer. The construction agreement will include appropriate engineering fees, letter of credit, indemnification, etc.

6810-14th Avenue

The landowner of the above property wishes to extend the sanitary sewer on 14th Avenue, east of the Old 9th Line to service his proposed new house. A 200 mm municipal sewer is available in the vicinity, and can be extended easterly for about 37.0 metres to reach the frontage of the property. City staff have reviewed this proposal and found it to be technically feasible. The design of the sewer takes into consideration the future drainage boundary.

Staff seek Council's authorization for the Mayor and Clerk to execute a Construction Agreement with the landowner(s) of 6810-14th Avenue for the design, construction, and extension of municipal sanitary sewer on 14th Avenue, at no cost to the City, in a form satisfactory to the Chief Administrative Officer and the City Solicitor and subject to the conditions given in this report above.

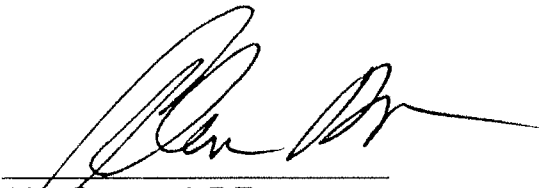
FINANCIAL CONSIDERATIONS AND TEMPLATE:

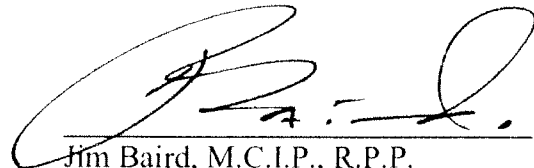
There is no financial impact to the City.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Asset Management and Legal Departments have reviewed this report and they concur with the recommendations.

RECOMMENDED BY:


Alan Brown, C.E.T.
Director of Engineering


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

ATTACHMENTS:

Attachment "1" - Council Resolution dated February 12, 2008

Attachment "2" - Council Resolution dated September 27, 2011

Attachment "3" - Proposed Sanitary Sewer Servicing for 6810-14th Avenue

Attachment “1”

Council Resolution dated February 12, 2008

THAT the report entitled “Box Grove Sanitary Sewer System” be received;

AND THAT the Town not support the May 4, 2007 petition request from the residents on the east side of 9th Line north of 14th Avenue;

AND THAT the Town not support the request from the Box Grove Community Association Sewer Committee and Box Grove Community Association for the Town to subsidy a portion of the costs of a sanitary sewer local improvement in this area;

AND THAT the Town’s position be reported to the Box Grove Community Sewer Committee and Box Grove Community Association;

AND THAT Staff present the proposed Grinder Pump solution and estimated costs to the Box Grove Community Sewer Committee and Box Grove Community Association;

AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

Attachment “2”

Council Resolution dated September 27, 2011

- 1) That the report entitled “Victoria Square and Cachet Estate Local Service Improvements” be received; and,
- 2) That the proposed Local Service Improvement Projects for Victoria Square North, Victoria Square South and Cachet Estate not proceed at this time; and,
- 3) That staff be authorized to cancel Request for Tender 196-T-10, Victoria Square North Community Local Service Improvement, which closed on September 15, 2010; and,
- 4) That the final cost for the study and design in the amount of \$ 15,752.20 along with the Engineering fees for time spent to date on the Victoria Square and Cachet Estate local service improvement projects be charged to the corresponding accounts as outlined in this report; and,
- 5) That the Mayor and Clerk be authorized to enter into agreement(s) with individual residents and group of residents who have requested installation of sanitary sewer and/or watermain for their properties subject to conditions outlined in this report; and further,
- 6) That the staff be authorized and directed to do all things necessary to give effect to this resolution.

Conditions for Future Local Service Improvement

- All work will have to meet the Town of Markham design standards and be approved by the Engineering Department;
- The residents need to understand that the cost for the project maybe higher or lower than the feasibility study estimate;
- The Town will not be responsible to recover costs from other property owners who wish to connect into the sewer or watermain;
- All work will require a maintenance period to ensure its proper operations prior to assumption by the Town.
- The residents will enter into an agreement with the Town to the satisfaction of the Director of Engineering, Town Solicitor and CAO;

Attachment "3"

Proposed Sanitary Sewer Servicing for 6810-14th Avenue

