



Report to: General Committee

Meeting Date: April 23, 2018

SUBJECT: Development Charge Reimbursement Application –
Wismer Commons Developers Group Inc.

PREPARED BY: Kevin Ross, Manager Development Finance, ext. 2126
Alain Cachola, Senior Manager, Infrastructure and Capital
Projects, Engineering, ext. 2711

RECOMMENDATION:

- 1) That the report entitled “Development Charge Reimbursement Application – Wismer Commons Developers Group Inc.” be received;
- 2) That Council authorize a City Wide Hard Development Charge reimbursement of \$2,063,899 to the Wismer Commons Developers Group Inc. for the construction of intersections, the Roy Rainey Bridge and storm sewers on lands located within the Wismer community, as set out in this report;
- 3) That Council authorize Area Specific Development Charge reimbursements of \$1,901,687 from the Wismer and Mount Joy reserves, to the Wismer Commons Developers Group Inc. for the construction of storm and sanitary sewers on lands located within the Wismer community, as set out in this report;
- 4) That Council authorize the Mayor and Clerk to execute a Development Charge Reimbursement Agreement for an immediate reimbursement totalling \$3,149,232 to the Wismer Commons Developers Group Inc. comprised of \$2,063,899 for City Wide Hard and \$1,085,333 for Area Specific Development Charges;
- 5) That the Mayor and Clerk be authorized to execute an Area Specific Development Charge Reimbursement Agreement relating to the Mount Joy area for \$816,354 (\$1,901,687 - \$1,085,333), in accordance with the City’s Development Charge Credit and Reimbursement Policy, with the Wismer Commons Developers Group Inc., or their successors in title, to the satisfaction of the Treasurer and City Solicitor;
- 6) And that staff be directed to do all things necessary to give effect to this report.

EXECUTIVE SUMMARY:

Not applicable.

PURPOSE:

The purpose of this report is to obtain Council’s authorization, in accordance with the City’s Development Charge Credit and Reimbursement Policy, to provide City Wide Hard and Area Specific Development Charge reimbursements for works done by, and on behalf of, the Wismer Commons Developers Group Inc. (the “Group”) in the amount of \$3,965,586, or to their successors in title. The requested reimbursement relates to works

that are included in the 2017 City Wide Hard and Area Specific Development Charge By-laws, and includes the infrastructure identified in Appendix A, as follows:

- a) Design, contract administration and construction cost for the permanent components of Markham Road intersections at Bur Oak Avenue, Castlemore Avenue and Edward Jeffreys Avenue;
- b) Design, contract administration, construction and environmental cost for the Roy Rainey Bridge
- c) Design, contract administration and construction cost for the external storm sewer from Markham Road to the Mount Joy Pond;
- d) Design, contract administration and construction cost for the sanitary sewer drainage from Markham Road to the Regional trunk sewer on 16th Avenue;
- e) Design, contract administration and construction cost for the realignment and restoration of Exhibition Creek.

These works were necessary for the Group to complete the development of the Wismer community. Council's authorization is required as the reimbursement request exceeds the Treasurer's approval authority of \$500,000 or less.

BACKGROUND:

The Group and individual landowners constructed, at their own expense, approved infrastructure required for the Wismer Commons Secondary Plan Area. The secondary plan is comprised of lands south of Major Mackenzie Drive, west of Markham Road, north of Sixteenth Avenue and east of McCowan Road.

Council has previously approved development charge credits to enable the Group to recoup amounts expended on the City's behalf. These approved credits however, did not encompass all the works undertaken, and as such the Group was not in a position to recover the costs of all the works undertaken. Below are the Council authorizations for the Group:

- 1) In 2001 – Credit Agreement for the realignment and restoration of Exhibition Creek
- 2) In 2006 – A staff report was approved for development charge credits for an external storm sewer system infrastructure, intersection works and improvements identified in the 2004 Area Specific Development Charge by-law.

The Group through the 2006 Council approval, received a reimbursement for infrastructure with an eligible capital cost of \$901,064 in December 2007. No further reimbursement or credits were provided to the Group at the time as some of the works were incomplete, and staff had yet to determine if intersection works performed would need to be removed with the reconstruction of Markham Road. It was agreed with the Group that the cost of any works that had to be removed, would not be reimbursed.

While the City went through the process of reconstructing Markham Road, the Group also constructed additional infrastructure (e.g. Roy Rainey Bridge) that was not included in the Council approvals. The subsequent request by the Group for development charge credits or reimbursement for *all* works undertaken by them could therefore not be processed.

The Group appealed the 2013 Development Charges City Wide Hard (“CWH”) by-law as well as the two Area Specific Development Charge (“ASDC”) by-laws that addressed the construction of the works; these are ASDC 45A – Wismer, and ASDC 23 – Mount Joy. The reason for the appeal, was for the Group to get an adequate mechanism in place to recover the costs of works installed on the City’s behalf.

Subsequent to the appeal, City staff engaged the Group to work through the issues raised with the aim of reaching a resolution that is equitable and fair to both parties.

City staff has reviewed the works and associated costs being claimed by the Group, in accordance with the Council approved Development Charge Credit and Reimbursement Policy, and has also verified the scope and costs of the works. This is based on engineering costs at the time the works were undertaken.

The Group is requesting Council approval for a reimbursement of the additional costs incurred by way of reimbursement, as there is no more proposed development slated for the Wismer area.

The City has entered into similar agreements with developers in the past and is empowered to enter into credit agreements by Section 38(1) of the *Development Charges Act, 1997, as amended*, which provides as follows:

“If a municipality agrees to allow a person to perform work that relates to a service to which a development charge by-law relates, the municipality shall give the person a credit towards the development charge in accordance with the agreement.”

Development charge credits and reimbursements have been used in a number of development applications to facilitate the construction of infrastructure in advance of the City’s capital program.

OPTIONS/ DISCUSSION:

In accordance with the Development Charges Credit and Reimbursement Policy, development charge credits and reimbursements will be limited to the lesser of the amount included in the Development Charges (DC) Background Study and the actual cost of the infrastructure. In this instance, the 2017 DC Background Study includes the actual cost of

the infrastructure in the amount of \$3,965,586. This amount was verified by the Engineering department, following a series of reviews of source documentation and records submitted by the Group. The verified amount was less than the original amount claimed by the Group.

The table below provides information on the specific DC reserves from which the eligible infrastructure cost is to be reimbursed. The details of each reserve is as follows:

City Wide Hard

Infrastructure constructed by the Group and landowners with an actual cost of \$2,965,503 is now included in the 2017 CWH DC by-law. Engineering staff has verified that these infrastructure were constructed, and meet the standards as required by the City, and are therefore eligible for reimbursement. These works are deemed to provide a city-wide benefit and hence included in the CWH development charges. The amount to be reimbursed is offset by \$901,604 that was reimbursed to the Group in 2007, as an interim payment towards the cost of the works constructed on the City's behalf. The net amount of \$2,063,899 will therefore be reimbursed from the CWH DC by-law.

ASDC 23 – Mount Joy

Some of the infrastructure constructed by the Wismer Group and landowners also benefits the landowners located in the adjacent Mount Joy area, east of Markham Road. These works consist of sanitary and storm sewers. The portion of the cost attributable to the Mount Joy community is \$816,354 – the cost and allocation has been verified by the Engineering Department.

When landowners within Mount Joy develop their lands, they will be required to pay the ASDC charge which includes the cost recoveries. The City will thereafter reimburse the portion of the charge related to the storm and sanitary sewers to the Group once the funds are collected. The Group will have to wait until the Mount Joy community develops to recoup these costs.

ASDC 45A – Wismer

Development within this community is complete, and the Group agreed that there was no need to renew this ASDC by-law as a part of the 2017 DC Background Study Update. The Group however requested that payments made into the by-law for the sanitary and storm sewer constructed by them be reimbursed, as they essentially “double paid” for the infrastructure. Staff concur with this position, and Finance staff reviewed and verified the calculation of \$852,833 (\$815,239 + \$37,594) submitted by the Group for these specific works.

The City also executed a credit agreement for the restoration of Exhibition Creek in the amount of \$232,500 with the Group, however no credits were provided when lands were developed, mainly as the signatory landowners on the agreement were not the ones that developed the properties. This amount is therefore still outstanding and staff have agreed to provide the credits to the Group in the form of a reimbursement. The new agreement to be prepared will supersede the Exhibition Creek credit agreement. The total amount to be reimbursed from this ASDC for works constructed by the Group is therefore \$1,085,333

Overall, the Group is eligible for DC reimbursement totalling \$3,965,586 from the three reserves (CWH - \$2,063,899, ASDC 23 - \$816,354 & ASDC 45A - \$1,085,333) as described above. The timing of the reimbursement will vary however, as the amount to be recovered from the Mount Joy ASDC will only be available when paid by developing landowners in this area.

Projects	Development Charge Reimbursement Recommendation			
	City Wide Hard By-law	Area Specific DC By-law - Mount Joy	Area Specific DC By-law - Wismer	Total DC Eligible Infrastructure Cost
Markham Road Intersections and Related Infrastructure	\$ 1,878,594	\$ -	\$ -	\$ 1,878,594
Roy Rainey Bridge	\$ 804,542	\$ -	\$ -	\$ 804,542
Exhibition Creek	\$ -	\$ -	\$ 232,500	\$ 232,500
Storm Sewer				
ASDCs Paid - Markham Road to Mount Joy Pond	\$ -	\$ -	\$ 815,239	\$ 815,239
Markham Museum + ROW	\$ 282,367	\$ -	\$ -	\$ 282,367
External East Sewer - ASDC Area 23	\$ -	\$ 233,909	\$ -	\$ 233,909
Sanitary Sewer				
Drainage East of Markham Road - ASDC Area 23	\$ -	\$ 582,445	\$ 37,594	\$ 620,039
Subtotal	\$ 2,965,503	\$ 816,354	\$ 1,085,333	\$ 4,867,190
Payment issued in 2007	\$ (901,604)	\$ -	\$ -	\$ (901,604)
Remaining Reimbursement	\$ 2,063,899	\$ 816,354	\$ 1,085,333	\$ 3,965,586

.....\$1,901,687

..... \$3,149,232

The Group will be required to provide the City with an indemnity and assurance that individual landowners who paid for infrastructure will be made whole through the reimbursement process.

The cost of the works described above (see Appendix A), are being recovered through the following by-laws, and a total of \$3,965,586 is recommended to be paid to the Group as follows:

- CWH and ASDC Reimbursement totalling \$3,149,232
 - The reimbursement is from the CWH in the amount of \$2,063,899 and the Wismer ASDC (45A) in the amount of \$1,085,333 as shown in the table above.
- Future ASDC Reimbursement in the amount of \$816,354
 - As per the table above, the amount due from the Mount Joy ASDC for storm and sanitary sewer works will be paid by the developers through development charges in the future, and forwarded to the Group.

Timing of Recommended Reimbursement

The works related to the CWH and Wismer ASDC have been completed, the cost and scope verified by staff, and staff recommend that the Group reimbursed immediately upon approval by Council. The verified cost will be reduced by the initial payment of \$901,604 for a recommended reimbursement of \$3,149,232.

The infrastructure cost of \$816,354 for the Mount Joy ASDC, benefits the landowners in this community, and will be reimbursed in a more protracted manner, as and when collected from developing landowners.

Upon approval by Council, the Group will withdraw their appeal, prior to the City providing the reimbursement, and entering into the Reimbursement Agreement.

Financial Security

The City is holding securities for infrastructure works that have not been assumed (i.e. Roy Rainey Bridge) under separate construction or subdivision agreements, to cover the warranty period in compliance with the City's standards for design and construction.

FINANCIAL CONSIDERATIONS

There is no net financial impact to the City. Development charge credits/reimbursements are provided to developers in exchange for the construction of works included in the City's Development Charges Background Study, in compliance with the Development Charge Credit and Reimbursement Policy.

The Engineering Department has reviewed the scope and actual cost of the works provided by the Group and these are in alignment with the City's expectations.

Consistent with the City's Development Charge Credit and Reimbursement Policy, the Group will be required to pay an administration fee for the Engineering, Legal and Finance Department's costs incurred relating to the review, preparation and administration of the development charge credit and reimbursement. The fee is structured in the following manner:

- A fee equivalent to 1.0% of the value of the credit request or a maximum of \$10,400. For this application, the fee is \$10,400 plus HST and is payable upon credit or reimbursement of the approved amounts.

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

This is consistent with the City's goal of efficient service delivery.

BUSINESS UNITS CONSULTED AND AFFECTED:

Finance, Engineering and Legal Services Departments.

RECOMMENDED BY:

2018-04-17


X

Joel Lustig
Treasurer
Signed by: cxa

2018-04-17


X

Trinela Cane
Commissioner, Corporate Services
Signed by: cxa

2018-04-17


X

Loy Cheah
Acting Director, Engineering
Signed by: cxa

2018-04-17


X

Brian Lee
Acting Commissioner, Development Services
Signed by: cxa

ATTACHMENTS:

[Appendix A – Wismer Infrastructure](#)