



Report to: General Committee

Report Date: January 2, 2008

SUBJECT: Development Charge Deferral Agreement and Assumption –
H & W Development Corp
PREPARED BY: Barb Cribbett, Ext 4735

RECOMMENDATION:

THAT the report titled “Development Charge Deferral Agreement and Assumption – H & W Development Corp.” be received:

AND THAT the Town consent to an assignment of the Development Charges Deferral Agreement executed by 2015776 Ontario Inc. (Liberty Developments) in favour of its successor in title, H & W Development Corp.;

AND THAT the Mayor and Clerk be authorized and directed to execute an assignment in a form satisfactory to the Town Solicitor

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

EXECUTIVE SUMMARY:

Not applicable

PURPOSE:

The purpose of this report is to seek Council approval to consent to an assignment of an agreement with Liberty Developments allowing for the deferral of the Town of Markham Town Wide Hard Development Charges from the execution of the subdivision agreement to building permit issuance, and the deferral of the Area Specific Development Charges to the execution of the site Plan Control Agreement, to Liberty’s successor in title.

BACKGROUND:

On February 14, 2006, Council passed the following resolution approving the execution of a deferral agreement with Liberty Development Corporation.

“And that the Mayor and Clerk be authorized to execute an agreement with Liberty Development Corporation to defer the payment of the Town’s Town Wide Hard and Area Specific development charges in respect of the development of the residential portion of Phase 1 and all other phases of the development of Block 5, Plan 65M-2668 and Part Lot 10, Concession 4”, to the satisfaction of the Town Solicitor;

And that the agreement provide that the Town Wide Hard Development Charge be deferred until the issuance of a building permit, with payment at that time to be calculated at the rate that is in effect at the time a complete application for a building permit is requested;

And that the agreement provide that the deferral be conditional on the Area Specific

Development Charge being charged and paid on a per block basis;

And that the agreement provide that the Area Specific Development Charges be deferred until the execution of the first Site Plan Control Agreement on each block, with payment at that time to be calculated at and payable in respect of each block, at the rate that is in effect at the time the first Site Plan Control Agreement is executed for each block;"

Copies of the February 2006 report and the deferral agreement are attached for Council's information. The rationale for the deferral was that servicing allocation for a large portion of the remaining residential development would not be available until post 2011. The agreement with Liberty Developments allowed for the deferral of the Town Wide Hard Development Charges from the execution of the subdivision agreement to building permit issuance, and the deferral of the Area Specific Development Charges to the execution of the Site Plan Control Agreement.

Liberty Development Corporation sold Blocks 2 and 4, Plan 65M-3998, south of Clegg Road, to H & W Development Corporation on December 18, 2007. Subsequently, on January 2, 2008 H & W Development Corporation formally requested an assignment of the Liberty Deferral Agreement (attached). Section 18 of the Deferral Agreement provides that the Deferral Agreement may be assigned with the prior written consent of the Town and Section 19 provides for the assignee to enter into an assumption agreement which must be registered on title.

OPTIONS/ DISCUSSION:

The lack of servicing allocation for these lands has not changed, therefore staff recommend that the deferral agreement be assigned to H & W Development Corporation subject to the condition that the agreement is in effect as long as the proposed land use does not change from the approved residential uses.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

As noted in the February 2006 report to Council, the deferral of development charges is a cash flow issue rather than a loss of development charge revenue.

The development charges that will eventually be paid will reflect the Town Wide Hard services development charge rates in effect at the time the building permit is issued, and the Area Specific Development Charges rate in effect at the time the first Site Plan Control Agreement is executed for each block. These development charge rates are currently under review and are expected to increase significantly under the new Town Wide Hard and Area Specific Development Charge By-laws that are expected to be approved this spring.

ENVIRONMENTAL CONSIDERATIONS:

Not applicable.

ACCESSIBILITY CONSIDERATIONS:

Not applicable.

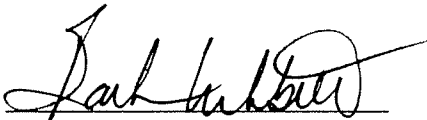
ENGAGE 21ST CONSIDERATIONS:

Not applicable.

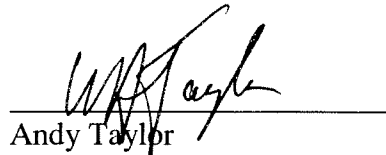
BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services and Planning Dept.

RECOMMENDED BY:



Barb Cribbett
Treasurer



Andy Taylor
Commissioner, Corporate Services

ATTACHMENTS:

Development Charge Deferral – Liberty Development Corp

Letter from Aird and Berlis

Deferral Agreement – Town of Markham and 2015776 Ontario Inc. (Liberty Development)



REPORT TO General Committee

TO: Mayor and Members of Council

FROM: Andy Taylor, Commissioner of Corporate Services
Barb Cribbett, Treasurer

PREPARED BY: Jennifer Nelson, Manager of Development Finance

DATE OF MEETING: 2006-02-06

SUBJECT: Development Charge Deferral – Liberty Development Corp

RECOMMENDATION:

That the report titled “Development Charge Deferral – Liberty Development Corp.” be received;

And that the Mayor and Clerk be authorized to execute an agreement with Liberty Development Corporation to defer the payment of the Town’s Town Wide Hard and Area Specific development charges in respect of the development of the residential portion of Phase 1 and all other phases of the development of Block 5, Plan 65M-2668 and Part Lot 10, Concession 4”, to the satisfaction of the Town Solicitor;

And that the agreement provide that the Town Wide Hard Development Charge be deferred until the issuance of a building permit, with payment at that time to be calculated at the rate that is in effect at the time a complete application for a building permit is requested;

And that the agreement provide that the deferral be conditional on the Area Specific Development Charge being charged and paid on a per block basis;

And that the agreement provide that the Area Specific Development Charges be deferred until the execution of the first Site Plan Control Agreement on each block, with payment at that time to be calculated at and payable in respect of each block, at the rate that is in effect at the time the first Site Plan Control Agreement is executed for each block;

And that staff be authorized and directed to do all things necessary to give effect to these recommendations.

PURPOSE:

The purpose of this report is to seek Council approval to enter into an agreement with Liberty Development that would allow for the deferral of the Town of Markham Town Wide Hard Development Charges from the execution of the subdivision agreement to building permit issuance, and the deferral of the Area Specific Development Charges to the execution of the Site Plan Control Agreement.

BACKGROUND:

In accordance with the Town’s Development Charge By-Laws, the Town Wide Hard and Area Specific Development charges are payable upon execution of a subdivision agreement, and Town Wide Soft Development charges are payable upon issuance of a building permit.

Liberty Development paid development charges on the 12 storey and 5 storey office buildings and the underground

parking structure currently under construction. Liberty met with Staff to request that the development charges, pertaining to the remainder of the development, be deferred to the issuance of a building permit rather than at execution of their subdivision agreement. The basis of this request is their desire to execute a subdivision agreement for the entire 7.4 hectares of land which contemplates development of 1798 apartment units. Due to servicing constraints, Liberty Development only has the ability to construct 311 of the 1798 units. As the servicing constraint may continue until 2011 or longer, the payment of development charges upon execution of their subdivision agreement, without the ability to fully construct the site, would place a financial strain on Liberty Development.

In accordance with section 27(1) of the Development Charges Act, 1997, "a municipality may enter into an agreement with a person who is required to pay a development charge providing for all or any part of a development charge to be paid before or after it would otherwise be payable".

The Town Wide Hard Development Charges are calculated on a per unit basis, therefore it is recommended that the Town enter into an agreement with Liberty Development to provide for the deferral of these charges to be payable upon issuance of a building permit. The Area Specific Development Charges are calculated on a land area basis. It is therefore recommended that the agreement with Liberty Developments provide for a deferral of these charges on a block by block basis, to be payable upon execution of the first Site Plan Control Agreement for each block. Staff recommends that the deferral be conditional on the Town Wide Hard charge being calculated at the rate in effect at the time the complete application for a building permit is requested, and the Area Specific Development Charges being calculated at the rate in effect at the time the first Site Plan Control Agreement is executed for each block.

FINANCIAL CONSIDERATIONS:

The deferral of development charges is a cashflow issue. The deferral of development charges will be established as accounts receivable that Liberty Development will eventually be required to pay. The deferral simply postpones the Town receiving those funds.

The development charge reserves are currently being depleted at a rate quicker than revenues are being received. Staff are currently reviewing the potential need for external borrowing to fund development charge related capital projects. In the borrowing analysis, Staff are only assuming development charge receipts based on the upset limit of the servicing constraints. Although, the receipt of development charges from Liberty Development would assist in reducing the potential need for borrowing, the deferral of payment does not increase the burden as these funds are over and above the upset limit of the servicing constraint.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Department has reviewed this report.

ATTACHMENTS:

Map of Site

Barb Cribbett, Treasurer

Andy Taylor, Commissioner of

Corporate Services

AIRD & BERLIS LLP

Barristers and Solicitors

John Mascarin
Direct: 416.865.7721
E-mail: jmascarin@airdberlis.com

January 2, 2008

Our File No.: 97389

Ms. Barb Cribbett
Town Treasurer
Town of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Dear Ms. Cribbett:

Re: Development Charge Deferral Agreement and Assumption

We are solicitors for H & W Development Corp. ("H & W").

Further to the above-noted matter and to our telephone conversation on December 18, 2007, this is to advise that H & W purchased lands legally described as Blocks 2 and 4, Plan 65M-3998, Markham (the "Lands") from 2015776 Ontario Inc. ("2015776"). The Lands were transferred on December 18, 2007 by a Transfer/Deed registered as Instrument No. YR1103980.

2015776 entered into a Development Charge Deferral Agreement ("Deferral Agreement") dated June 15, 2006 with The Corporation of the Town of Markham ("Town") which was registered as Instrument No. YR833048. The Deferral Agreement defers the payment of development charges pursuant to the Town's Town-Wide Hard Services Development Charge By-law No. 2004-222 and the Area Specific 42B-6 Development Charge By-law No. 2004-239.

Section 5 of the Deferral Agreement provides that the owner may elect to prepay its development charges with notice to the Town.

Section 18 provides that the Deferral Agreement may be assigned with the prior written consent of the Town and Section 19 provides for the assignee to enter into an assumption agreement which must be registered on title.

2015776 has agreed to assign all of its right, title and interest in the Deferral Agreement as it relates to the Lands and H & W has agreed to assume the Deferral Agreement as it relates to the Lands. As noted, Section 18 of the Deferral Agreement provides that the Town can consent to the assignment of the Deferral Agreement.

On behalf of our client, we are requesting that the Town consent to the assignment of the Deferral Agreement. We submit that the Town is not prejudiced in any way by consenting to an assignment of the Deferral Agreement. The Town would not be placed in any different position than it was in prior to the Lands had not been transferred.

Furthermore, by consenting to the assignment of the Deferral Agreement, the Town would effect an equitable treatment of all landowners in this area. Our client had been advised that the development charges on the Lands had been deferred and it was its expectation that it would be entitled to the deferral arrangement. Our client's development proposal and its allocation of resources were also based on a deferral of the development charges.

Moreover, our client has not prepared or submitted plans and drawings for any development on the Lands and, therefore, it would not at present be possible to even quantify the development charges that would be exigible under the Town Wide Hard Services Development Charge By-law in any event.

To this end, we have taken the liberty of drafting a simple assignment and consent agreement which we enclose herewith for your consideration. Our client is prepared to have this agreement registered on title.

We would be pleased to provide such further information as may be required by the Town. We kindly request that you please keep us apprised of any consideration to be given to this matter at any Council or Committee meetings in order that we may have an opportunity to attend and address any questions that any elected officials or staff members may have.

Yours very truly,

AIRD & BERLIS LLP



John Mascarin



JM/len

c. Andrew Webster

3489218.2

This Agreement made this 9th day of May, 2006.

B E T W E E N:

THE CORPORATION OF THE TOWN OF MARKHAM

Hereinafter called the "Town"

- and -

2015776 ONTARIO INC.

Hereinafter called "the Owner"

WHEREAS Section 27(1) of the *Development Charges Act, 1997*, S.O. 1997, c.27, as amended ("the *Act*") authorizes a municipality to enter into agreements with a person who is required to pay development charges providing for the payment of all or any part of a development charge to be paid after it would otherwise be payable;

AND WHEREAS the Owner is the owner of the Lands described as Block 5, Plan 65M-2668 and Part of Lot 10, Concession 4, in the Town of Markham, Regional Municipality of York, and is situated at the south east corner of South Town Centre Blvd. and Highway 7 (the "Lands");

AND WHEREAS the Owner is entering into a subdivision agreement with the Town which contemplates development of 1798 apartment units, two office buildings and a high rise hotel;

AND WHEREAS the Owner has requested the deferral of the payment of the Town's Development Charges for the proposed development;

AND WHEREAS the Town has enacted By-law Nos. 2004-222, 2004-234 and 2004-236 under the *Act* (the "By-laws");

AND WHEREAS the Development Charge By-laws impose Development Charges on developments;

AND WHEREAS the Development Charges are payable for development of land upon execution of the subdivision agreement for the development in accordance with the *Act* and the By-laws;

AND WHEREAS the Council of the Town has deemed it appropriate to enter into an Agreement with the Owner to authorize the deferral of the payment of the Town's development charge(s) respecting the proposed construction to a date later than the execution of the subdivision agreement;

NOW THEREFORE the parties hereto covenant and agree as follows:

DEFINITIONS

1. In this Agreement, unless there is something in the subject matter or context to indicate otherwise, the following terms shall have the meanings set out below:
 - (1) "Act" means the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended;
 - (2) "Agreement" means this agreement;
 - (3) "Development" means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of increasing the size or changing the use

thereof from non-residential to residential or from residential to non-residential and includes redevelopment;

- (4) "Development Charges" means those development charges payable pursuant to the Development Charges By-law;
- (5) "Development Charges By-law" means By-law Nos. 2004-222, 2004-234 and 2004-236 of the Town;
- (6) "Proposed Development" means the construction of the buildings, building expansions and facilities shown on the site plan approved by the Town, application no. SC 04 027623 and draft plan of subdivision for 19TM-0300010;
- (7) "Sale or transfer of the Lands" shall not include the giving of a mortgage or charge of the Lands, but shall include a sale or disposition of the Lands by a mortgagee or chargee under the terms of such mortgage or charge and an application by a mortgagee or chargee (or assignee thereof) to foreclose the equity of redemption of the mortgagor or chargor in the Lands.

2. The parties represent and warrant to each other the accuracy of the recitals set out herein.

PAYMENT OF DEVELOPMENT CHARGES

- 3. The Owner acknowledges and agrees that it is required to pay Development Charges to the Town for the Proposed Development in accordance with the *Act* upon execution of the subdivision agreement.

DEFERRAL OR TIMING OF PAYMENT

4. Notwithstanding Section 26(2) of the *Act*, the Town agrees that the Development Charges otherwise payable by the Owner with respect to the Proposed Development will not be payable until the following:
 - (a) Town Wide Hard Development Charges will be deferred until the issuance of each building permit, with payment at that time to be calculated at the rate that is in effect at the time a complete application for a building permit is requested or the date the Development Charges are paid, whichever is greater; and
 - (b) Area Specific Development Charges will be deferred until the execution of the first site plan control agreement on each block, with payment at that time to be calculated at and payable in respect of all of the Development proposed for that block, at the rate that is in effect at the time the first site plan control agreement is executed for that block.

5. Notwithstanding the above, the Owner may elect to prepay its Area Specific Development Charges in full upon written notification, in advance, to the Town. If the Owner elects to prepay its Area Specific Development Charges, all Areas Specific Charges outstanding within the Proposed Development shall be paid in full. The Town Wide Hard Development Charges will continue to be payable upon issuance of each building permit.

TIMING OF PAYMENT

6. Notwithstanding section 4, the Development Charges otherwise payable by the Owner with respect to the Proposed Development shall be paid forthwith at the rate that is in effect on the day the payment is received by the Town, upon any one of the following events:
 - (i) the sale or transfer of the Lands or any portion thereof;

- (ii) the use of the facilities, proposed development or any portion thereof for a purpose other than solely for community use by the Owner.

AMOUNT OF DEVELOPMENT CHARGES

- 7. The amount of the Development Charges payable to the Town shall be the amount determined under Town of Markham Development Charges By-law on the day such Development Charges are received by the Town, pursuant to this Agreement.
- 8. The provisions of Section 7 shall apply notwithstanding the Development Charges By-law has been amended by a by-law passed by the Town subsequent to the execution of this Agreement.
- 9. Subject to Section 10, if at the time Development Charges are payable pursuant to this Agreement, the Development Charges By-law has been repealed and not replaced with any other by-law passed pursuant to the Act or similar or successor legislation, the amount of the Development Charges payable with respect to the Proposed Development shall be the amount of the development charges determined under the development charges By-law repealed on the day immediately before such repeal.
- 10. If at the time Development Charges are payable pursuant to this Agreement, the Development charges By-law has been replaced by new development charges by-law or by-laws, the amount of the Development Charges payable with respect to the Proposed Development shall be the amount determined under the new or replacement development charges by-law on the day such Development Charges are payable pursuant to Sections 4, 5 or 6. Nothing in this Section prejudices the rights of the Owner to appeal the provisions of any new development charges by-law in accordance with the applicable legislation.

FURTHER DEVELOPMENT CHARGES

11. In the event that the Owner further develops or redevelops the Lands beyond the Proposed Development and such further development or redevelopment requires any one of the following:

- (a) the passing of a zoning by-law or of an amendment to a zoning by-law under Section 34 of the *Planning Act*;
- (b) the approval of a minor variance under Section 45 of the *Planning Act*;
- (c) a conveyance of land to which a by-law passed under subsection 50 (7) of the *Planning Act* applies;
- (d) the approval of a plan of subdivision under Section 51 of the *Planning Act*;
- (e) a consent under Section 53 of the *Planning Act*;
- (f) the approval of a description under Section 50 of the *Condominium Act*, or
- (g) the issuing of a permit under the *Building Code Act, 1992*, in relation to a building or structure;

further development charges may be payable with respect to such further development or redevelopment in accordance with the Development Charges By-law or any other development charges by-laws enacted by the Town under the *Act* or any similar or successor legislation.

NOTICE

12. If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be delivered by mail to:

2015776 Ontario Inc.
505 Highway 7 East
Suite 303
Markham, Ontario L3T 7T1

Attention: Fred Darvish

or such other address as the Owner may provide to the Town's Clerk, in writing.

13. Any notice sent by registered mail as aforesaid shall be deemed to have been received by the Owner within 5 days of mailing, regardless of whether the Owner actually receives the notice or not.
14. If any notice is required to be given to the Town by the Owner with respect to this Agreement, such notice shall be delivered to:

The Corporation of the Town of Markham
101 Town Centre Blvd.
Markham, Ontario L3R 9W3

Attention: Town Clerk

REGISTRATION

15. This Agreement shall be registered on the title to the Lands at the expense of the Owner and may be enforced by the Town against the Owner.

16. The Owner hereby agrees to procure and provide to the Town any postponement agreements which the Town Solicitor considers necessary to ensure that this Agreement shall have a priority over any other interest in the Property.
17. Upon execution of this Agreement, the Owner shall pay to the Town the costs incurred or to be incurred by the Town in connection with the registration of this Agreement on title to the Lands. The Owner shall further pay to the Town such reasonable disbursements, if any, as may be incurred by the Town in connection with the registration of any postponements or discharges required to be registered to give effect to the terms of this Agreement including registration fees and conveyancer's fees.



ASSIGNMENT

18. This Agreement, or any of its provisions, shall not be assigned by the Owner without the prior written consent of the Town.
19. In the event that the Town provides a written consent to the assignment of any of the Owner's obligations under this Agreement, the Owner shall ensure that the Assignee of said obligations enters into an Assumption Agreement with the Town, assuming said obligations. Any Assumption Agreement shall be registered on title to the Lands.

GENERAL

20. The Owner shall indemnify and save the Town harmless from any and all claims, actions, damages, or interest, which may arise directly or indirectly as a result of the deferral of the payment of the Development Charges.

21. In the event that Town of Markham Development Charges are not paid pursuant to this Agreement, the amount unpaid after the due date may be added to the tax roll and may be collected as taxes, pursuant to Section 32(1) and (2) of the *Act*.
22. This Agreement may be amended from time to time by agreement in writing of the parties.
23. This Agreement shall enure to the benefit of and be binding on the parties hereto and their administrators, assigns, successors and/or successors in title.

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals,
duly attested to under the hands of their respective officers authorized in that behalf.

SIGNED, SEALED AND DELIVERED) 2015776 ONTARIO INC.

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Name:

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Name:

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) **THE CORPORATION OF THE TOWN OF**

) **MARKHAM**

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MAYOR – DON COUSENS

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CLERK – SHEILA BIRRELL

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