



Report to: General Committee

Date Report Authored: May 22, 2014

SUBJECT: Development Charge Deferral Request – Mon Sheong Foundation

PREPARED BY: Kevin Ross, Manager, Development Finance (ext. 2126)

RECOMMENDATION:

- 1) That the report titled “Development Charge Deferral Request – Mon Sheong Foundation” be received;
- 2) And that the Development Charge Deferral request in respect of the construction of a Seniors Care Facility at 1 and 2 Sun Yat-Sen Avenue by the Mon Sheong Foundation not be approved;
- 3) And that, should Council approve the Development Charge Deferral request, the Mayor and Clerk be authorized and directed to enter into an agreement with the applicant to secure the following terms of approval:
 - a. Phased payment with a defined timeline of not more than three years for full payment of the development charges,
 - b. Payment of 25% of the total City development charges due for 1 and 2 Sun Yat-Sen Avenue on the issuance of the building permit for the above grade/structural works, with payment of the remaining 75% in three equal annual installments commencing twelve months after issuance of the above grade/structural building permit,
 - c. Refund of 75% of the Area Specific and City Wide Hard development charges paid at the issuance of the below grade building permit which amounts to \$417,529 (75% of the \$556,705 paid),
 - d. The development charges be calculated and paid at the higher of (1) the rate that is in effect at the time of payment, (2) the indexed rate from the date of building permit issuance, (3) the rate in effect at building permit issuance plus accrued interest at the Bank of Canada Prime Business Rate or (4) the rate in effect at building permit issuance plus the average cost of borrowing through the Region of York, if applicable,
 - e. Provision of security in a form satisfactory to the Treasurer to secure the outstanding development charges obligation, in the amount of 110% of outstanding development charges (based on a 3 year term) to protect against any increase in the rates;
- 4) And that staff be directed to do all things necessary to give effect to these recommendations.

PURPOSE:

The purpose of this report is to make a recommendation to Council on a request for a deferral of the City Wide Hard, City Wide Soft and Area Specific Development Charges payable by the Mon Sheong Foundation in respect of the construction of a Seniors Care Facility geared to provide assisted living and long term care living for seniors at 1 and 2 Sun Yat-Sen Avenue.

BACKGROUND:

The Mon Sheong Foundation (“Mon Sheong”) is proposing the construction of a Seniors Care Facility to provide assisted living and long term care living for seniors at 1 and 2 Sun Yat-Sen Avenue in the vicinity of Steeles Avenue and Old Kennedy Road. Long term care will include services such as Emergency Short Term Care, Respite Care, Dialysis and Palliative Care. The proposal includes the construction of four buildings, two to the south of Sun Yat-Sen Avenue (buildings A & B) and two to the north (buildings C & D). The construction of the facilities will be done in two phases, the first phase is comprised of the construction of the underground parking garage along with buildings A & B at 2 Sun Yat-Sen Avenue, while the second phase will include buildings C & D at 1 Sun Yat-Sen Avenue (see Appendix A – Site Map). The gross floor area of all four buildings is approximately 69,000m² (743,000 sq.ft.) with the first phase consisting of building heights ranging from eight to twenty four storeys, and an estimated gross floor area of 41,700m² (448,855 sq.ft.). The second phase is expected to commence six months after the issuance of the above grade building permit for the first phase with building heights up to eight storeys.

In accordance with the City’s Development Charge By-laws, City Wide Hard (CWH), City Wide Soft (CWS) and Area Specific Development Charges (ASDC) for a development being approved via a site plan agreement are payable at the issuance of the building permit. For a high-rise (three or more storeys) development such as Mon Sheong’s, the type of development charges collected is based on the work being authorized for construction; applicants often seek a building permit to commence below grade work followed by a building permit for the above grade work a few months later. In instances where a building permit authorizes the construction of below grade works only, e.g. underground parking garages, the land-based development charges (DCs) are collected, whereas for building permits authorizing above grade construction, the development charges related to the structure, based on gross floor area (GFA), are collected.

In the case of Mon Sheong, the development charges payable on the issuance of the building permit for below and above grade works will be as follows:

- *Below grade building permit* – Payment of the land-based charges, specifically CWH and ASDC which are calculated on a per net hectare basis.
- *Above grade building permit* – Payment of the GFA-based charges, specifically the CWS. The Regional and School Board charges are also GFA-based charges and these are collected at this stage.

Mon Sheong approached the City seeking phased payment or deferral of all the DC’s due on the four buildings. The request is intended to facilitate the smoothing out of Mon Sheong’s cash flow over the period of construction. It is Mon Sheong’s belief that if the City approves a deferral or phased payment of DCs, the Region may reciprocate and do likewise in accordance

with the Regional DC by-laws; this is the main reason for the request being made to the City, as the Regional DCs account for approximately 90% of the total development charges payable.

The City is permitted to enter into a deferral agreement pursuant to section 27(1) of the *Development Charges Act, 1997* which states:

“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 authority for deferral or phasing of development charges are (1) the DC Deferral Policy and (2) the Community Use Guidelines.

First, staff reviewed the Community Use section of the Development Charges By-laws, as well as the associated Community Use Guidelines, which allow for an indefinite deferral (so long as the use doesn't change) of DCs if a proposed development can reduce future capital and/or operating costs to the municipality by providing a community use to residents/businesses.

In this case, the potential community use (long term care) is not a lower-tier service, therefore staff contacted the Region to ascertain whether the proposed development meets their requirements for either affordable housing or social services. The City's decision in this type of situation, is dependent on the Region's determination of whether the potential community use being provided, satisfies their criteria and qualifies as community use. The Region has determined that this development does not fit their requirements for community use, and therefore, Markham staff cannot recommend a “community use” deferral.

Having ruled out a deferral under the community use provision, staff then assessed the request to ascertain whether it met the criteria as specified in the City's DC Deferral Policy (see Appendix B). The Policy contemplates deferral if a development meets the following criteria:

- 1) Affordable & Special Needs Housing – defined as housing that is eligible to receive applicable Federal, Provincial, and Regional affordable and special needs housing program funding; or
- 2) Servicing Constraints – development with an approved plan is unable to be completed due to servicing constraints that are outside of the applicant's control; or
- 3) Multi-phased construction (for land based DCs) – development will be built in phases and future phases have no executed agreement (i.e. site plan) or building permit applications.

There is also a provision for a deferral where the development has a strategic and direct economic benefit to Markham.

The first two criteria do not apply to the development as a seniors care facility does not qualify as affordable housing and there are no servicing constraints hindering the construction of the entire site. Based on our information, Mon Sheong is proposing a phased construction (criteria #3) as the underground parking garage for the entire site – north and south – along with buildings

A & B will be constructed first, followed by buildings C & D to the north, approximately six months after.

There will be two site plan agreements prepared, one for each phase (north and south), which could put Mon Sheong in a position to qualify under criteria #3 of the DC Deferral Policy. Such a deferral however, could only be for six months until the commencement of the second phase; a deferral of this duration is not feasible for the City to enter into, neither is it beneficial or desired by Mon Sheong who are looking for a three year deferral.

The proposed development has not satisfied the criteria stipulated in the Community Use Guidelines and it is not feasible to offer a deferral under the DC Deferral Policy for reasons described above, therefore staff are unable to recommend a deferral or phasing in of DC payments.

Mon Sheong's request appears to be based on limited financial resources, which is consistent with a deferral approved by Council for St. Barsaumo Syriac Orthodox Church in September 2010. In this case, staff did not recommend a deferral of DCs, however Council deemed it appropriate at the time to offer a deferral to the applicant.

OPTIONS/ DISCUSSION:

Applicable Charges

Mon Sheong is required to pay development charges to the City, Region and School Boards prior to the issuance of a building permit for the construction of the proposed Seniors Care Facility. The estimated development charges for both phase 1 and 2, at the prevailing rates, total \$16,097,371 and are detailed in the chart below.

Jurisdiction	Type of Charge	Rate	Land Area (hectares)	Gross Floor Area (m ²)	Total Estimated Development Charges Due
City of Markham	Hard	\$ 221,111	1.48	-	\$ 327,244.28
	ASDC (8)	\$ 155,041	1.48	-	\$ 229,460.68
	Soft	\$ 11.14	-	68,858	\$ 767,083.24
Total Markham Charges					\$ 1,323,788.20
Region of York		\$ 208.95		68,858	\$ 14,387,975.22
York Region District School Board		\$ 3.77		68,858	\$ 259,596.39
York Catholic District School Board		\$ 1.83		68,858	\$ 126,010.98
Total School Board Charges					\$ 385,607.38
TOTAL ESTIMATED DEVELOPMENT CHARGES DUE					\$ 16,097,370.80

The Regional development charges account for 89.4% of the applicable charges, with the City and School Boards accounting for 8.2% and 2.4% respectively. The land-based development

charges are due prior to the issuance of a permit authorizing below grade construction whereas the structural (gross floor area) based charges are due prior to the issuance of the permit for the above grade works.

Mon Sheong was issued a conditional permit for the construction of the underground parking garage which covers the entire site (north and south) and will be connected under Sun Yat-Sen Avenue. In accordance with the City's requirements, the land-based development charges (CWH and ASDC) of \$556,705 were paid prior to the issuance of the conditional permit, with the amount of \$15,540,666 due on the issuance of the above grade permits for the remaining structures. These amounts are shown in the charts below.

Due on Issuance of Underground Parking Garage Permit	Development Charges Paid
City Wide Hard	\$ 327,244.28
Area Specific	\$ 229,460.68
	\$ 556,704.96

On Issuance of Above Grade Permit	DCs Due
City Wide Soft	\$ 767,083.24
Region of York	\$ 14,387,975.22
School Boards	\$ 385,607.38
	\$ 15,540,665.84

Deferral

Mon Sheong has asked for a deferral or phased payment of their City DC's to assist them with their cashflow throughout the construction of the facility. They have also approached the Region, as their DCs account for the largest portion of the charges, and have requested a similar deferral or phased payment. The Region, in accordance with their DC by-laws, can only contemplate a deferral or phased payment of this nature, if the local municipality also provides a deferral or phased payment arrangement. Mon Sheong anticipates that if Council considers this request favourably, the Region may be better equipped to provide a similar deferral or phased payment arrangement in accordance with their DC bylaws.

Below are two options available for the payment of Mon Sheong's DCs.

Option 1 – Payment at Permit Issuance

Mon Sheong has requested a deferral to assist its cash flow over the duration of the construction of the Seniors Care Facility. The deferral request does not meet the criteria as per the City's Community Use Guidelines and, it is not feasible or useful to Mon Sheong to provide one under the DC Deferral Policy due to its very short term. On this basis, staff do not recommend a deferral of the development charges for the construction of the Seniors Care Facility.

With no deferral of DCs, Mon Sheong, in addition to the \$556,705 already paid prior to the issuance of the below grade permit, will be required to pay approximately \$9,400,000 prior to the issuance of the above grade permit for buildings A and B in approximately six months. The remaining amount of \$6,129,348 will be due in twelve months when it is anticipated that the building permits for buildings C and D will be issued. All DC's for the City and Region will therefore be payable within a one year period, as the Region will not offer a deferral or phased payment if the City does not.

It is noteworthy that the development charge rates for the City and Region will be indexed on July 1st, 2014, and therefore, the DCs payable by Mon Sheong will be higher than the aforementioned amounts.

Option 2 – Grant a DC Deferral/Phased Payment

In the event that Council deems it appropriate to approval a DC deferral, staff propose that the following terms be included in the agreement to be entered into between Mon Sheong and the City:

- a. Phased payment with a defined timeline of not more than three years for full payment of the development charges,
- b. Payment of 25% of the total City development charges due for 1 and 2 Sun Yat-Sen Avenue on the issuance of the building permit for the above grade/structural works, with payment of the remaining 75% in three equal annual installments commencing twelve months after issuance of the above grade/structural building permit,
- c. Refund of 75% of the Area Specific and City Wide Hard development charges paid at the issuance of the below grade building permit which amounts to \$417,529 (75% of the \$556,705 paid),
- d. The development charges be calculated and paid at the higher of (1) the rate that is in effect at the time of payment, (2) the indexed rate from the date of building permit issuance, (3) the rate in effect at building permit issuance plus accrued interest at the Bank of Canada Prime Business Rate or (4) the rate in effect at building permit issuance plus the average cost of borrowing through the Region of York, if applicable,
- e. Provision of security in a form satisfactory to the Treasurer to secure the outstanding development charges obligation, in the amount of 110% of outstanding development charges (based on a 3 year term) to protect against any increase in the rates;

If Council approves a deferral or phased payment of DCs, the Region will be in a better position to provide a similar payment option.

FINANCIAL CONSIDERATIONS:

The deferral of development charges is essentially a cashflow issue which results in a delay in the receipt of the funds by the City. If Council agrees to defer the DC's, then instead of \$767,083 being collected in one year (at building permit issuance), it will be collected over a

three year period inclusive of interest or indexing.

If Council approves a deferral or phased payment of the DCs based on Option 2 above, the City will be required to refund 75% of the \$556,705 (or \$417,529) in ASDC and CWH payments already made at the issuance of the below grade building permit.

Consistent with the DC Deferral Policy, if a deferral or phased payment is approved for Mon Sheong, the developer will be required to pay an administration fee for the Legal and Finance Department's costs incurred relating to the review, preparation and administration of the development charge deferral/phased payment agreement. The fee will be structured in the following manner:

- An application fee of \$1,000 plus HST to review the development charge deferral or phasing request;
- A fee equivalent to 1.0% of the value of the deferral request, to a maximum of \$10,000 plus HST payable upon execution of the deferral/phasing agreement. 1% of Mon Sheong's deferral request is \$13,238 therefore this fee will be capped at \$10,000 plus HST.

The development charge reserves are being depleted and staff anticipate that there will be a need for borrowing to fund development charge related capital projects by 2015-2016.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

This report has been reviewed by the Legal Department.

RECOMMENDED

BY:

02/06/2014

02/06/2014

X 

Joel Lustig
Treasurer

X 

Trinela Cane
Commissioner, Corporate Services

ATTACHMENTS:

Appendix A – Site Plan, Mon Sheong Seniors Care Facility

Appendix B – Development Charge Deferral Policy