

STAFF REPORT: ENGINEERING AND PUBLIC WORKS DEPARTMENT



REPORT TO: Council
MEETING DATE: October 28, 2013
REPORT NO.: EPW.13.016
SUBJECT: Proposed Public Works Assumption Criteria
PREPARED BY: Reg Russwurm, Director of Engineering and Public Works, on behalf of Development Template Review Committee

A. Recommendations

WHEREAS Councillors Gamble, Martin and McKinlay were tasked by Council as the Development Template Review Committee to review the Town's Development Agreement Templates and provide recommendations to Council, and

WHEREAS Council was presented with Report EPW.12.001 and adopted the recommendations, and

WHEREAS the Committee was instructed to recommend a Municipal Lands Works Permit Process for Council's consideration and enactment,

THIS Committee hereby provides Report EPW.13.016 for Council's consideration and recommends Council adopt a 3 year maintenance period prior to Assumption by:

1. Implementing a Frontage Deposit Process via a Municipal Lands Works Permit; and,
2. Requiring a security deposit to guarantee the performance of the roads for 5 years post assumption equal to 6.5% of the capital cost of the applicable road works; and,
3. Requiring a one-time non-refundable payment for maintenance of the stormwater management system to be determined at the time of Assumption by the Director of Engineering and Public Works based on a formulation established within the Development Agreement.

B. Background

Purpose

The purpose of this Report (EPW.13.016) is to provide background information and consider a suitable means for enacting a cost recovery mechanism to permit relaxing the Town's current subdivision assumption criterion via a Municipal Lands Work Permit process or other suitable means. The goal of such a process would be to address the concerns raised by the development community while still protecting the interests of the general taxpayer.

Issue

In response to a request by the local development industry to modify the Town's current subdivision assumption criterion to facilitate development, Council adopted the recommendations within Report EPW.12.001 which included in part the following:

1. Revise the criteria for the Assumption of Municipal Works within a Subdivision Agreement to two (2) years after the issuance of a Certificate of Preliminary Acceptance of Basic Services consisting of a minimum of one (1) year maintenance period from the Preliminary Acceptance of Basic Services to the issuance of the Certificate of Completion plus a minimum maintenance period of one (1) year to the issuance of the Certificate of Final Acceptance subject to a Municipal Lands Work Permit process being enacted by Council that includes the provision to obtain a frontage deposit;

Deputy Mayor McKinley and Councillors Gamble and Martin were tasked by Council as the Development Template Review Committee (Committee) to undertake a review of the issues related to the Town's Development Agreement Templates and recommend to Council what, if any, modifications should be made to the Development Agreement Templates. All the proposed modifications considered within Report EPW.12.001 were adopted by Council save the one above because it was dependent on a means being found to recover the Town's actual and potential cost risks.

Proposed Subdivision Assumption Criteria

Currently, the Town's Subdivision Agreement states that the Town will not assume ownership of municipal works, and thereby any maintenance costs, until "75% of the buildings permitted to be constructed on lots within the Plan by the Town's zoning by-law have been substantially completed". This means that dwellings must be built and ready to be occupied before the Town will assume the municipal works. The purpose for this clause is to make the Developer responsible for the maintenance and repair of the new infrastructure until a point in time where the risk of additional costs directly related to building construction is limited.

From the Developer's point of view, the 75% assumption clause is overly burdensome because it places a non-defined responsibility on the Developer who may have sold all the lots and has no further interest in the project other than the on-going maintenance and provision of related securities. From a municipal point of view, the purpose of the assumption criterion is to ensure the general taxpayer does not become responsible for costs that come about due to the creation of the development.

The key benefits argued by the local development community for the reduction of the Town's assumption criterion to enable development is to realise the economic development benefits and addition tax revenue from increased assessment.

Although the construction of subdivision infrastructure does provide some economic benefit through the employment of workers and the supply of local materials, the full economic benefit of new development is only realised when housing is constructed and moreover occupied by new residents utilising local businesses for goods and services. It can be argued that the short term economic benefit from creating lots does not fully offset the increased maintenance costs and infrastructure depreciation without occupied housing.

Arguments are rationally made that any increase in assessment, and thus property taxes, provides more income for the Town to offset the cost risk of builder caused damage to public infrastructure if the Assumption criteria is relaxed. The Town however operates on a net zero basis and doesn't allocate increased tax revenue from assessment growth into a special fund for builder damage repair. The increased revenue offsets taxes to other Town tax payers for general operations. The Town calculates the cost of carrying on its business and then sets the appropriate property tax rate applicable to all tax payers in the Town. The tax revenue offsetting argument has merit for general maintenance, however, the extraordinary costs incurred to correct damages caused by house construction are not in the Town's base cost of operations.¹ It is debatable whether and how the Town should accept development cost risk similar to a developer who has profit opportunities.

Lot Frontage Deposit

Within Report EPW.12.001, Council considered a lot frontage deposit within a Municipal Lands Work Permit process as a means to offset the cost risk associated with a reduction in the subdivision assumption criteria. A lot frontage deposit is a security that would be collected at the time of application for the building permit.

The Town presently collects securities similar to a frontage deposit whenever an application is made for a new building through the collection of a deposit when a lot grading plan is submitted (grading deposit, By-Law 2002-78), and when a new entrance is constructed or improved in the old township (entrance deposit, By-Law 95-29). Both of these by-laws permit the Town to utilise the securities to make repairs to Town infrastructure. It should be noted the grading deposit does not permit the Town to enter private lands to correct grading deficiencies but instead is returned once the grading is accepted by the Town.

Should it become necessary to expend the lot frontage deposit, the Town must demonstrate that the damage caused to any specific piece of infrastructure is the result of a particular builder's activities. Unless the evidence is unquestionable, the Town will be tested to demonstrate responsibility. The Town does not have the resources to constantly monitor construction sites to witness damages and collect adequate evidence. Staff have incidentally come across and witnessed damages but do not have enforcement tools other than confronting contractors, who often deny responsibility.

¹ The water and wastewater systems are user rate and not relevant to the taxation discussion.

Therefore, a reasonable risk exists that all the damage that may occur on public lands during house construction will not be recovered.

Consideration was given to assigning pre-construction damage on public lands to the fronting lot owner. The conclusion is that it will be difficult to assign any pre-construction costs (before building permit) because the owner may have done nothing to cause the damage or were a victim of trespassing. It will be difficult to hold one property owner responsible for damages caused by others. House builders often utilise adjacent vacant lands to access their construction site for staging materials. Even if equipment doesn't travel onto the adjacent property, a contractor may park equipment (i.e. cement truck) off the travelled roadway in front of another lot resulting in damaged sidewalk.

The types of damages and cost risk that can result due to house construction extend beyond that which may occur at the lots fronting or adjacent to the lot in question. It has become obvious by further consideration and identification of cost risks that much of the actual and possible "off-site" costs risks to the Town by reducing the assumption criterion are not able to be recovered via a lot frontage deposit mechanism alone. The reasoning for this conclusion is outlined in the following discussion.

The main "off-site" costs risks during house construction that are not recoverable via a frontage deposit are: i) road settlement; ii) damages to infrastructure (sidewalk, curb, roads) not assignable; and, iii) construction debris and sediment deposition in the stormwater management system. The Town has experienced all of these events. The three cost areas are expanded upon as follows.

Often times road settlement due to poor soils and/or pipe trench compaction does not become evident until the road is subject to repeated heavy truck loading. In slower house construction areas, it can take several years to get the truck loading necessary to test the road structure fully. The soil may bridge small voids until heavy construction traffic consolidates the voids, or until pore pressure is reduced due to migration of water. It is arguable that road failure is a result of poor construction and/or engineering. Although that can occur, that is not always the case. Sometimes it is just a result of challenging soils. In any event, establishing and assigning those costs to the responsible party will be very difficult and expensive especially after Assumption has taken place.

The most evident damage caused by house construction to public infrastructure is cracked, broken or scarred concrete and asphalt resulting from the movement of heavy equipment and materials. Some of that damage can be recovered through the lot frontage deposit but some of it cannot because it is not directly attributable to a particular builder or lacks sufficient evidence to be assignable.

A cost often overlooked but potentially significant is debris cleanup. At Assumption, the Developer is required to clean the stormwater sewers and the storm water management pond in order that the Town is given a clean system to start its municipal life cycle. After road construction, most of the debris ranging from lumber to erosion sediments (mud), which gets into these systems, happens as a result of house construction. Costs will be incurred to clean out catchbasins and sewers to restores their original capacity.

Furthermore, there are significant costs to clean out a stormwater management pond after it becomes filled with sediments. Typically, a stormwater management pond needs to be cleaned every 20 – 30 years based on normal use once house construction is completed. Depending on the amount of erosion caused during house construction, the pond can become prematurely filled with sediment over a much shorter period.

Therefore, other than damage that occurs on the fronting lots that can be substantiated to a particular construction site, it will be difficult if not impossible to recover the “off-site” costs via a frontage deposit. Thus, a lot frontage deposit mechanism within a Municipal Land Work Permit process alone will not recover a significant enough portion of the actual and potential costs to mitigate the Town’s risk of relaxing the assumption criterion.

Recommendation

The Councillors, along with Troy Speck, CAO, David Finbow, Director of Planning and Building Services, John Metras, the Town’s solicitor, Robert Cummings, Director of Finance and Information Technology Services, and Reg Russwurm, Director of Engineering and Public Works as staff support, reviewed the issue and means on March 25, 2013 by which the Town could adopt a change in the Town’s assumption criterion without significantly increasing the Town’s risk exposure above the status quo.

The Committee was unable to come to a conclusion on the means by which a Municipal Lands Works Permit process alone could be utilised to mitigate a sufficient amount of the Town’s financial risk. The Committee met with a representative group of developers and stakeholders on May 9, 2013 to explore alternate methodologies to address the cost risk. The Committee re-convened on May 15, 2013 to discuss options for modifications to the assumption criteria and means by which to lessen the financial risk. At the conclusion of the meeting, the Committee recommended as follows:

Adopt a 3 year maintenance period prior to Assumption subject to:

1. Implementing a Frontage Deposit Process via a Municipal Lands Works Permit; and,
2. Depositing a security to guarantee the performance of the roads; and,
3. Provision of a one-time payment for maintenance of the stormwater management system.

The implementation of the conditions will be discussed in more detail below.

The Assumption of public works will take place no sooner than three years after the project has achieved Preliminary Acceptance of Basic Services (start of maintenance period). The maintenance period for all finishing works (i.e. surface asphalt, sidewalk, landscaping, etc.) will be at least one year long. The Assumption date will therefore be dependent on the final completion of all works.

Post the May 15, 2013, Staff considered and investigated options to implement the conditions to Assumption in the Committee's recommend, and each is expanded upon as follows.

1. Frontage Deposit: A deposit will be taken at the time of a building permit application for construction that fronts Town road allowances and has potential to result in damage to the municipal infrastructure. The deposit will be based on the type and extent of infrastructure that fronts the property (i.e. rural, urban) and the likelihood of damage. Staff will create a schedule of linear costs that will be straightforward to apply and will not require specialised knowledge to interpret. The deposit will have a set minimum and maximum (\$3000 - \$10,000 suggested). In the event that the damage exceeds the deposit, provisions will be made in the establishing by-law that the Town will have to abilities to collect additional costs by assigning it to property tax.

Consideration was given to when a Frontage Deposit should be taken with respect to Assumption. Since there is a good possibility that the construction of a house will bridge the time of Assumption, the Frontage Deposit will be taken at the time of the building permit application regardless if the development is assumed. Without an appropriate security in place at the time of Assumption, there is no cost recovery method by which the Town can correct post-assumption damages. Consideration could be given for the Developer to transfer or establish a security on the lot owner's behalf; however that will be a complicated process.

The frontage deposit will not be available to the Developer to correct deficiencies for transparency reasons even if it is obvious the house builder is responsible. The Developer has an opportunity to obtain a separate security if they choose through the lot purchase and sale agreement.

Although the by-law will make the applicant responsible for all damage fronting the property and other damages as assigned on adjacent properties, the Town will face challenges to demonstrate responsibility which could be time consuming. A fee structure will be set that will ensure the Town's costs to administer the program will be captured. A preliminary assessment of time reveals that approximately 3 to 7 hours can be expected for each application depending on whether or not there are complications or challenges to any assessment of costs. At \$82.64 (2013) for an inspector, truck and overhead, the non-recoverable frontage fee will be \$410 (5 hrs assumed typical). There is an opportunity to reduce the fee if a 15% administrative allowance is assessed and withheld from the return of security to compensate for Staff time to repair the deficiencies.²

Site inspections will be undertaken pre, interim and post-construction to administer the program.

² A 15% administrative allowance is referenced in this Staff Report because it is the figure used in the Town's Development Agreement as a management fee in the event that the Town undertakes corrective work.

2. Road Guarantee Security: Since road settlement is a function of time and loading, it was felt that a three year maintenance period may not reveal weaknesses in the road structure especially if there has not been sufficient truck loading as typically experienced during house construction. A road guarantee period of five years post assumption will provide more time to show any weaknesses while providing a limited period during which the Developer bears a known obligation for repairs.

The potential remediation costs depend on the extent of roads constructed. It is proposed therefore that the Road Guarantee Security consist of 6.5% of the cost of road construction including the granular road structure, geotextile, sub-drains, asphalt, curbs, and any other works that are considered by the Town to constitute part of the road structure. The 6.5% security percentage was found by estimating the maximum extent of repairs to be 5% of the installed cost of applicable road works plus an allowance for inflation (2.5% for 5yrs), an administrative fee (15%) and the non-recoverable HST.

At five years post assumption, the Developer can apply for the security to be returned. Staff will then undertake an inspection and make repairs as necessary. Any unused security will be returned. The 15% administrative cost will be applied to the actual cost of corrective work. The Developer may have an opportunity to undertake the repairs by agreement to mitigate the use of the deposit.

3. Stormwater Management Maintenance Fee: This one-time non-refundable payment will be calculated by the Director of Engineering and Public Works at Assumption based on the expectant costs of cleaning the stormwater management pond, storm sewers, catchbasins, ditches and any other works considered part of the stormwater management system. In addition, an inflationary factor will be overlaid at the time of setting the fee and will be based on the expected inflation rates for 10 years (net of earned interest) as determined by the Director of Finance and IT Services. A 15% administrative fee will be superimposed on the expected cost of the work to compensate the Town for Staff time. The amount of non-recoverable HST will also be added. The fee will be deposited in a stormwater management reserve or similar as established by the Director of Finance and IT Services.

Staff have done research on how to set the maintenance fee but have not settled on generic figures or methodology. The cost to clean storm sewers will be in the range of \$250 - \$300 per hour, catchbasins \$15 - \$20 each and ditching \$450 - \$500 per hour. Since Staff are not as familiar with cleaning of stormwater ponds, Staff surveyed other municipalities to get budget pricing for cleaning storm water management ponds. The costs received ranged from \$75 - \$500/m³ of sediment removed. An example was found where a municipality required the net present value of 50 years of operational and maintenance costs. Another example set the fee at \$140,000 however the system size and background cost calculations were not available.

What is obvious is that the pond cleaning costs are highly dependent on pond configuration, available drying locations, haul length, landfill fees and presence of contaminants. A cost in the range of \$300/m³ of the sediment storage capacity of the pond seems reasonable for estimation, however Staff will need to undertake additional cost research and consider the specific site circumstances before establishing an appropriate fee.

The fee is recommended to be determined and at Assumption because at this stage of the development process the Town is best positioned to predict the future cost of cleaning based on the conditions at the time. In order to provide an order of cost certainty for the development community, it is proposed that the fee be based on a formulation established during the preparation of the Development Agreement. The general intention is that the formulation will be based upon a per unfinished lot calculation, however this model may not apply in all instances and could vary based on the circumstances of the development proposal. By utilising a formulaic approach, a best and worst case scenario can be determined by the Developer to understand the possible fee range. The fee will be taken at the time of Assumption.

Impact on Town Operations

It must be recognised that any relaxation in the current assumption criteria, places an increased risk of non-recoverable costs on the Town and thus increases the diligence required of Staff to monitor post-assumption construction activities. Although an appropriate fee will be charged to compensate for Staff time, there is lost opportunity time for Staff to undertake other value added work.

A change in the maintenance period is not expected to change Staff's workload with respect to administrating the Development Agreement other than as outlined below. The same primary processes are carried out regardless of the assumption criteria. Since the timeline is shorter some efficiency will be gained because there is less re-familiarisation time required to advance a development.

- A. Frontage Deposit: Engineering and Public Works (EPW) Staff will need to inspect and respond within 10 business days of the building permit application if the pre-inspection is made a condition of the building permit. That may however not be necessary, but the site inspection must be done very shortly thereafter to capture the pre-construction condition of the site. An assessment will be made of any pre-condition damage to ensure that it is not incorrectly assigned. That said however, special note will be made of any recent damage and whether it results from the lot owner's activities. For example, site clearing may have taken place or equipment was mobilised prior to the site inspection. Staff will also have to be observant for contractors changing their work habits to avoid assessment of costs.

It is noted that a Frontage Deposit concept would have been proposed regardless of a change in the Town's Assumption criteria. The change to the Assumption criteria though dramatically increases the number of inspections that will be necessary. Inspections prior to Assumption though will not be necessary because the Developer is expected to correct all deficiencies at Assumption regardless of cause.

To estimate the scale of Staff effort, assume that 50 building permits (post assumption) annually trigger inspection activities and it takes on average 5 hours to complete the process - a total of 250 staff hours. That translates to 12% of an annual full time equivalent field staff. The net effect of this additional workload will be to lessen the available time for the Engineering technical staff to manage capital projects. Consideration will be given to Road and Drainage Staff undertaking a portion of the inspections however their time is fully allocated already, and therefore at best, would provide a small portion of the effort required. Once operational experience is gained with the frontage deposit process, staffing needs will be evaluated with respect to achieving the goals of the Engineering Division.

- B. Road Guarantee Security: The calculation of the amount of security (6.5% of the cost of the road works) is straightforward because the figures will have been determined for other purposes. The additional effort will come when the security reduction is required and to correct deficiencies as necessary.
- C. Stormwater Management Maintenance Fee: The calculation of this fee will be complicated because it will be site specific and non-recoverable. The Town must be confident that the fee is adequate to protect the Town from cost overruns while not being excessive. Effort will be required during the preparation of the Development Agreement to establish the case by case formulation that will be used at Assumption to determine the fee. The developer's consulting engineer may be asked to provide a recommendation based on the erosion potential of the site. Since the maintenance work may not be carried for ten years or more, the estimation of costs is filled with uncertainty and will demand Staff time to provide a fair estimation of costs. Input from the Town's stormwater management peer reviewer and local contractors may also be considered. Road and Drainage Division Staff will coordinate the various cleaning activities when required.

Other Considerations

Developers who feel their developments will advance expediently and do not want to incur the securities and fees envisioned by the above proposal may wish to remain with the current 75% Assumption Criteria. Although the current plan is to treat all development projects in the same manner, Council may wish to entertain an option to permit a developer to elect which means by which their development proceeds to Assumption – 75% Built or 3 year time period.

The Town should expect that developments that have proceeded on the Town's current Assumption Criteria (75%) will wish to take advantage of the proposed change in the assumption process. The Committee has no recommendation at this time however suggests that it be considered once the Town has some experience with the revised Development Agreement.

Summary Recommendation

The Committee recommends Council adopt a 3 year maintenance period prior to Assumption by:

1. Implementing a Frontage Deposit Process via a Municipal Lands Works Permit; and,
2. Requiring a security deposit to guarantee the performance of the roads for 5 years post assumption equal to 6.5% of the capital cost of the applicable road works; and,
3. Requiring a one-time non-refundable payment for maintenance of the stormwater management system to be determined at the time of Assumption by the Director of Engineering and Public Works based on a formulation established within the Development Agreement.

Next Steps

Depending on the direction of Council, Staff will undertake the warranted research, prepare the appropriate supporting documentation, and/or prepare a subsequent Report for Council's consideration. For example, a subsequent report will be required to outline the particulars of the Frontage Deposit Process and recommend the adoption of an enforcing by-law.

Within Report EPW.12.001 Staff was delegated authority to prepare a revised Development Agreement Template based on the resolutions of Council. The resolution of Report EPW.13.016 or subsequent report as directed concerning Assumption will be incorporated into the template as warranted. The revised template will be reviewed by the Town's solicitor and Directors of Planning and Building Services, Finance and Information Technology, and Engineering and Public Works. That reviewed document will be circulated to the development community for comment. Once comments are received, the above persons will consider the comments and modify the template documents as warranted.

C. The Blue Mountains' Strategic Plan

This report furthers the Town's Strategic Goal #2 "Addressing the Town's municipal infrastructure needs" and Strategic Goal #6 "Providing a strong well managed municipal government".

D. Environmental Impacts

None.

E. Financial Impact

The recommendation within this Report will minimise the cost transfer risk to the Town by relaxing the public works assumption criterion.

F. In Consultation With

Deputy Mayor Duncan McKinlay
Councillor R.J Gamble,
Councillor Michael Martin
Troy Speck, CAO
David Finbow, Director of Planning and Building Services
John Metras, Town Solicitor
Robert Cummings, Director of Finance and Information Technology Services
Reg Russwurm, Director of Engineering and Public Works

G. Attached

None.

Respectfully submitted,

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