

STAFF REPORT: Financial & Information Services



REPORT TO: COUNCIL
MEETING DATE: January 19, 2010
REPORT NO.: FIS.10.06
SUBJECT: Town Wide Development Charges By-law
PREPARED BY: Darcy Chapman, Capital Accountant

A. Recommendations

THAT Council receive Staff Report FIS.10.06 "Town Wide Development Charges By-law" for information purposes.

B. Background

The Town has been going through a comprehensive review and update of the Development Charges Background Study since mid 2008. On May 21, 2009 staff presented the first draft of the Background Study to Council and provided a training session with Hemson Consulting to educate Council on the new study, proposed rates and the changes in philosophy of the new document including the changes to the standard unit approach.

After the initial training session, Council directed staff to present the Background Study to the development community. On July 8 staff made a presentation to the development community with approximately 25 developers, consultants and engineers in attendance.

On September 14th Council held the mandatory public meeting whereby the Development Charge Background Study and draft by-law were released to the public in mid-August. Two developers came to the meeting to address concerns regarding timing of payment of the proposed charges. At this meeting, much discussion broke out through Council regarding the increases in charges and the capital programs that drove the increases. Upon closure of the public meeting, Council directed staff to prepare an educational package and schedule a presentation to allow Council further training on issues brought up at the public meeting.

A Development Charges workshop was scheduled for October 6th at which time Council was informed on the history of the program, the 2005 study, the current capital program, the effects on residential rates and the methodologies used to establish the growth forecasts and proposed Development Charges.

At the request of the Georgian Triangle Development Institute (GTDI), a meeting between the development community including approximately 20 developers and consultants, the Mayor and Deputy Mayor and Town staff was held on October 28th. The topic discussed at this meeting surrounded the development community's concern with the timing of payment of the hard service component of the development charge.

The hard services portion of the Development Charge has historically been collected when the Plan of Subdivision has been registered and soft service charges at the building permit stage. Under the current economic climate, developers are coming up against much pressure to find financing for their projects and in particular the payment of the road, water and sewer components of the Town's charge at subdivision approval. The meeting was well structured and the developers present had a few different ideas as to when the collection of the hard costs could be made but generally agreed that all Development Charges should be collected at the building permit stage of development. It was determined at this meeting that staff would be directed to provide some analysis of the various scenarios discussed and report back to Council.

At the regular Council meeting of November 9, Ron Morrison of Blue Sky Realty addressed Council and spoke about the proposed commercial development charges. Blue Sky Realty is currently working on "Thornbury Village Square", a 4,365 m² (45,265 ft²) commercial development within the Thornbury West service area that would provide space for a new grocery store and a number of smaller commercial outlets. The proponent spoke to Council regarding concerns about the large increase in Development Charges proposed under the new Background Study for the Thornbury West service area in particular. The proponent calculated that the new charge, if passed and imposed, would hinder their development potential due to the impending increase in fees of more than \$500,000. Upon completion of the presentation, Council referred the matter to the Finance and Administration Committee.

At the November 17th Finance and Administration meeting, staff prepared report FIS.09.61 "Prepayment of Development Charges". Discussion by the committee members ensued and the following motions were passed;

(a) THAT the Recommendation in Staff Report FIS.09.61, "Prepayment of Development Charges" be Tabled and the Chief Administrative Officer and appropriate Staff meet with Blue Water Realty and report back to the Committee.

(b) THAT the Committee recommends that Council consider a further review of the commercial development charge rates.

The Town is now in the position of having a completed Background Study and draft by-law that will need to be passed prior to the expiry of the current by-law, being no later than the end of March 2010. Based on discussions with the GTDI, the general development community, the public and Council, the current study and by-laws are generally accepted with only two issues still outstanding – timing of payment and the commercial rate component of the new study.

Timing of Payment

The Development Charges Act, 1997, contains the following sections relating to the payment of a Development Charge;

When development charge is payable

26. (1) A development charge is payable for a development upon a building permit being issued for the development unless the development charge by-law provides otherwise under subsection (2).

Special case, approval of plan of subdivision

26. (2) A municipality may, in a development charge by-law, provide that a development charge for services set out in paragraphs 1, 2, 3, 4 or 5 of subsection 5 (5) for development that requires approval of a plan of subdivision under section 51 of the *Planning Act* or a consent under section 53 of the *Planning Act* and for which a subdivision agreement or consent agreement is entered into, be payable immediately upon the parties entering into the agreement.

(Subsection 5 relates to the establishment of hard service charges)

Agreement, early or late payment

27. (1) 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.

It should be noted that the Town's current by-law and new draft by-law contain provisions for payment coinciding with the above noted sections of the Act whereby the Town currently collects the hard service component at subdivision approval. As well, there is a clause relating to section 27 in the Town's by-law that will allow us to provide special terms for payment.

At the October 28th meeting, GTDI and the developers present provided the Town with the reasoning behind the request for changing the current collection policy for hard service costs. The main issue from the developer's perspective is in regard to the economic climate. The ability to get financing to complete development projects has tightened extremely since 2007. Developers are finding it increasingly difficult to finance costs that are not directly attributable to selling a newly created lot. The majority of the developers around the table agreed that getting financing for constructing internal services including roads, water mains and sewer trunks was available, although not always easy. Acquiring funding for the payment of Development Charges however, was nearly impossible or the interest rates applied made the loan very expensive. The GTDI and its members have requested that the Town cease to collect hard service Development Charges at time of subdivision approval and collect them at some point in time in the future. The reason for this request is to allow a development to gain positive cash flow from the sale of lots before the Development Charges are incurred.

The developer group brought forward a number of different scenarios for the collection of Development Charges that differs from the Town's current practice. These methods include;

- Collection of all Development Charges (hard and soft) at building permit, or
- Collection of Hard Service at the earlier time of vacant lot ownership change (from developer to third party) or at building permit, or

- Collection of Hard Service at the earlier time of assumption of subdivision or building permit, or
- At some other point in time in the future.

The biggest issue with any of these proposals surrounds the nature of development in The Blue Mountains. In many cases, a vacant lot can sit for many years before a building permit is issued. In fact, the Town has a healthy stock of vacant serviced lots. Some of these vacant lots were bought on a speculative nature, some are being saved for a future retirement home and others are simply slow to sell because of market conditions. The Town could wait for five, 10 or 20 years before collecting Development Charges on some of these lots if the trigger was at building permit. The Town has a policy that assumption of a subdivision will not occur until the development is at least 75% built out. Again, due to the type of development in the area, this trigger may be many years into the future with no certainty of finalization.

Council will need to weigh the positives and negatives of any change. Most importantly, the development community is concerned that the current collection policy makes it very difficult to develop in The Blue Mountains, especially for the smaller Developers that don't have ready access to cash. The Town may not want to hold back new development in the short term with the possibility that the tightening of financial institutions could go on for an extended period of time until full recovery in the markets. On the other side, the timing of collection is just as important to the Town. We provide construction of new roads, water mains and sewer trunks based on the needs of the development community to service new areas of the Town.

If the Town were to stop collecting hard service charges at subdivision approval there is a strong chance that our Development Charge Reserve Funds could slip into an overall negative position. If this were to happen, the Town would undoubtedly be put into a position of having to borrow funds to complete construction works that would be needed to allow development to move forward. The interest costs to carry the loans would be collectable through Development Charges however, the borrowing of funds to complete development related projects would impact the Town's debt limit and increase future Development Charge for these services.

In an effort to enable the Town to help development progress through these tougher times and still ensure that the Town is protected, staff would recommend that Council enact a policy to be reviewed annually to remedy the short term situation.

The policy should provide for the deferral of hard service Development Charge collections until any one of the following criteria is met;

- Issuance of a building permit, or
- Transfer of a lot to new ownership (from developer to third party), or
- Upon assumption of Subdivision, or
- Within three years from the time of Subdivision registration.

Staff believes this is a workable arrangement in that the Town can still understand cash requirements and short term borrowing needs when the term of repayment is within three years. Although it is desirable to have the money up front, the reality is that the

Town can manage a short term situation such as this by utilizing our borrowing abilities and cash on hand over the next few years.

Staff also understood at the meeting in October that the development community was reluctant to set a specific time limit on the collection. The main reason being, they were afraid that the Town would require a Line of Credit or some other form of security to ensure payment at the end of the time period. If the Town requires cash or a cash equivalent security it would completely defeat the purpose behind allowing an extension of time due to the fact that the developers would still need financing to provide the security.

Staff feels that there is a realistic option to ensure the Town is protected while giving the development community flexibility. If the developer wishes to postpone payment, the Town could accept newly created lots as a form of security. Upon Subdivision approval the Town would become the registered owner of vacant lots within a subdivision that by fair market appraisal, would cover the Development Charges owed to the Town. The Town would convey the lots back to the developer as the hard service portion of the Development Charges are paid. At the end of the three years the Town would then have the ability to sell any lots still under their ownership to obtain the necessary funds to pay down the outstanding Development Charges. This methodology would ensure that the Town holds a form of security while the developer does not have to find a financing avenue to place a cash security with the Town.

The issue surrounding the timing of payment hinges more on a Council policy directive than it does the passage of the new Development Charges By-Law. The new By-Law will have the option for Council to enter into an agreement for the payment of Development Charges at any time that Council sees fit. Although the By-Law will not change, and any policy would not be entrenched in the Development Charges Background Study or the Development Charges By-law to ensure flexibility in the future, this issue needs to be settled sooner rather than later in order to give staff clear direction for future development applications.

Commercial Rates

Upon completion of the delegation by Blue Sky Realty and the subsequent discussion at Finance and Administration, Council requested further analysis of the Commercial Development Charge component of the Background Study. A complete breakdown of the 2009 rates and the proposed 2010 rate is attached.

The Development Charges Act allows a municipality to charge new development for capital costs related to providing services for new growth to maintain a consistent level of service. The Act is very prescriptive in the methods that a municipality must use to complete a background study which generates the Development Charge rates. The legislation is rigid in some cases and in various areas it allows for flexibility. The Act allows a municipality to make assumptions on growth, capital projects, estimated costs, timing and many other issues but will only allow adaptability if a municipality can defend those assumptions. In an effort to guarantee that the new Background Study would be

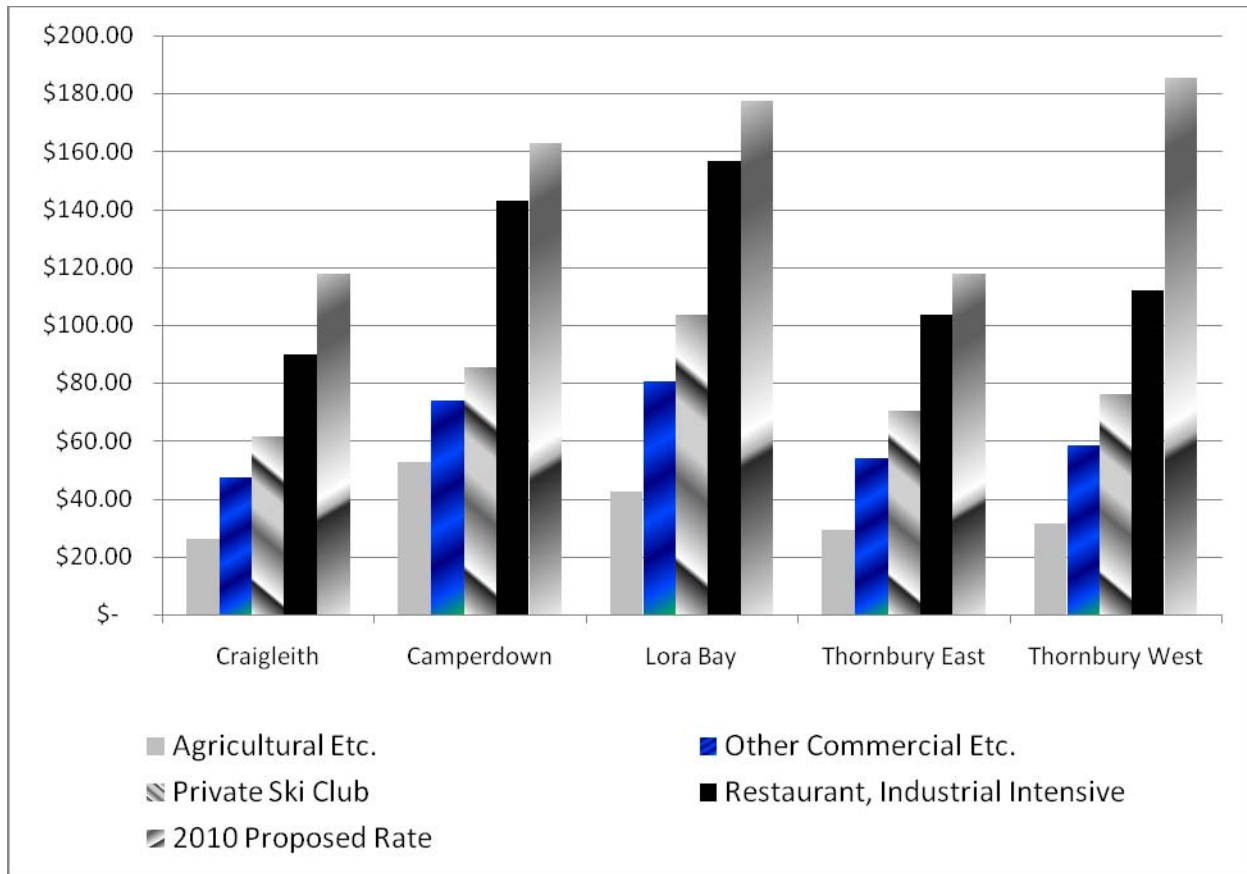
completely defensible at an OMB appeal staff has used all means possible to ensure the document is clear and concise.

With the above being said, the issue regarding the commercial rates basically consists of the change in philosophy in establishing the rates between the 2005 and 2009 Studies. The 2005 Study assumed certain non-residential developments on individual lands within the Town. Staff went property by property in determining maximum development potential in 2005. This method created potential floor space for varying types of non-residential development based on staff's knowledge of individual developments and potential future uses of vacant or deferred development properties. The main concern from current staff in maintaining this methodology relates to the requirement for many assumptions in determining individual lot development potential. The 2005 data is highly volatile and, in the opinion of current Staff, non-defensible in its methods and assumptions. It also weighted non-residential uses by establishing a base rate for the most intense use of a restaurant and then assumed a rate of 66% for ski lodges, 50% for other commercial and industrial uses and 25% for agricultural buildings and conference centres. The weighting of uses was loosely based on a report provided by Ainley and Associates from 1982 that established unit allocations for water and wastewater plant capacities.

The 2009 study took a more conservative approach used throughout Ontario by municipalities that have not completed a Commercial Impact Study. This method uses most current Stats Canada information to extrapolate potential non-residential development. The stats used are The Blue Mountains specific and are not skewed by Province or Country wide averages.

The chart and bar graph below illustrate the changes in rates between the current by-law and the new Background Study. For illustrative purposes the commercial charges for Castle Glen, Swiss Meadows, Clarksburg and Osler service areas has not been included due to services being unavailable or the non potential for commercial development through OP designated lands.

Total Development Charge Rates						
	Agricultural Etc.	Other Commercial Etc.	Private Ski Club	Restaurant, Industrial Intensive	2010 Proposed Rate	
Craigeleith	\$ 25.89	\$ 47.18	\$ 61.39	\$ 89.79	\$	117.56
Camperdown	\$ 52.83	\$ 73.84	\$ 85.25	\$ 143.09	\$	162.92
Lora Bay	\$ 42.60	\$ 80.62	\$ 103.37	\$ 156.65	\$	177.54
Thornbury East	\$ 29.28	\$ 53.97	\$ 70.44	\$ 103.36	\$	117.86
Thornbury West	\$ 31.45	\$ 58.32	\$ 76.22	\$ 112.02	\$	185.36



The main issue in moving from one method to another relates to the weighting. As can be seen from the illustration below, the most intensive use rate would be affected similarly to the corresponding residential rates in each of the service areas. In most service areas, the current most intensive use charge is only increasing by 13% to 31% however for those developments that are less intensive the charge can be increasing as much as 589%. The chart below shows the percentage increase in Development Charge rates for the proposed by-law:

Percentage Change In Rates					
	Agricultural Etc.	Other Commercial Etc.	Private Ski Club	Restaurant, Industrial Intensive	Residential Rate Increase
Craigleith	454%	249%	191%	131%	122%
Camperdown	308%	221%	191%	114%	111%
Lora Bay	417%	220%	172%	113%	106%
Thornbury East	403%	218%	167%	114%	115%
Thornbury West	589%	318%	243%	165%	150%

Timing of Payments

The Development Charges Act, 1997, contains the following sections relating to the timing of payment of Development Charges under an agreement;

Agreement, early or late payment

27. (1) 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.

Amount of charge payable

27. (2) The total amount of a development charge payable under an agreement under this section is the amount of the development charge that would be determined under the by-law on the day specified in the agreement or, if no such day is specified, at the earlier of,

- (a) the time the development charge or any part of it is payable under the agreement;
- (b) the time the development charge would have been payable in the absence of the agreement.

In this context, the Town can enter into an agreement with a developer at any time. The agreement cannot back date a development charge to a previous year however it can “lock in” a current rate for a developer that may not be completely through the development process. The Town could exercise this ability to ensure that a current residential or non-residential development that is in the planning process would pay the current 2009 rate even though the final approvals would not be completed until 2010. As was discussed in FIS.09.61 “Prepayment of Development Charges” a request of this nature, if granted, would set precedent for any developer to approach Council regarding their own initiatives. The issue then becomes compounded as staff try to estimate Development Charges for any number of developers that want this advantage.

Additionally, the Town underwent an early renewal of their DC By-law because Development Charges calculated in the Town Wide Development Charge By-law 2005-27 were no longer in line with the actual costs to build the capital infrastructure for growth. The new proposed By-law takes into consideration the recent actual costs of construction and a stronger growth estimate to calculate a relevant Development Charge for the expected growth of the Town. Every development that pays Development Charges under the 2005 By-law is generating a shortage in the future service levels or putting pressure on taxation to pay for growth. As this By-law is currently in effect, the Development Charges contained in it are the charges the Town must live with until the more relevant proposed By-law is adopted.

Rate Calculations & Methods of Reducing Rates

It must be made very clear that the Background Study calculates the rates based on the capital programs contained within it. The rates calculated if deemed to be correct through review of the capital projects, are the actual rates and cannot be massaged. The current study indicates a 95% - 5% split between residential and commercial rates. This split is based on the anticipated growth forecasts for both the ten year plan and more importantly the maximum build out plan.

The commercial rates are generated based mainly on the requirements for roads, water and sewer services to build out. The hard service component of the commercial rate forms between 84 to 90% of the overall rate, depending on service area, due mainly to the fact that the Town can't recover Development Charges from non-residential development for Library or Parks & Recreation costs.

As an example, if the Town were to remove the roads component found in the study for all upgrades to and around the Castle Glen area, the total capital cost would be reduced by \$18,850,000 or 24% of the overall roads capital program of \$76,467,000. Conversely, due to the inability to service that area, the Town would then have to reduce the overall build-out growth projections by 1,900 units from 8,919 to 7,019 equating to a reduction of 21%. In this example the net effect of making a change such as this would only change the overall road component of the charge by 3% for the remaining 7,000 units.

Council may also wish to phase in or discount the development charges. Discounting relates to charging less than the calculated rate for the entire term of the five year by-law. In essence the Town would charge a percentage of the rate over each of the five years. Phasing of the rate allows the Town to establish a less than 100% calculated rate at the beginning of the by-law with the intention of eventually collecting the fully calculated rate. Grey County uses this method whereby the rate was phased in at 25% for year 1, 50% for year 2, 75% for year 3, and 100% for years four and five. Discounting or Phasing of rates can be done for both residential and non-residential together or separately. It should be noted that phasing of a charge cannot be made for one specific service area. This is due to the fact that we calculate the rates through one Background Study and by-law. As an example, if Council wished to phase in a rate for the Craighleith area only, a separate study and area service by-law would need to be established.

Council must be aware that utilizing a discount or phase in would result in a net deficit of collected revenues. Being that the rates are established through the Background Study as per the framework of the Development Charges Act, there is only one possible way to recover the shortfall of monies.

The Act allows a municipality to discount or phase in, however those lost revenues must be borne by the ratepayer. Ultimately the lost revenues will need to be funded through taxation, user fees or reserves. The following section of the Act gives direction in this matter;

Restriction on rules

6. (3) If the development charge by-law will exempt a type of development, phase in a development charge, or otherwise provide for a type of development to have a lower development charge than is allowed, the rules for determining development charges may not provide for any resulting shortfall to be made up through higher development charges for other development.

In the event that Council decides it is in the best interest of economic development to phase in the rate, staff have completed a calculation of the potential losses in

Development Charge revenues that would need to be collected through taxation, user fees or reserve contributions.

The chart below outlines the potential non residential development that may occur in 2010 as well as the current 2009 development charge applicable, the proposed 2010 rate calculation and the total difference in overall costs. This non residential growth information is based on current plans underway or from information established through initial plan reviews at the Development Review Committee. As well, the planning and building departments were consulted for accuracy.

Planned Non-Residential Development 2010						
	Floor Area (m2)	Ski Club	Other Commercial Institutional	2009 DC Bylaw Charge	2010 Proposed Charge	\$ Change
Craigleith	500	350	150	\$ 28,564	\$ 58,780	\$ 30,217
Thornbury East	950	0	950	\$ 51,272	\$ 111,967	\$ 60,696
Thornbury West	4365	0	4365	\$ 254,567	\$ 809,096	\$ 554,530
TOTAL	5815	350	5465	\$ 334,402	\$ 979,843	\$ 645,442

In the event that this development occurs and the rate were to be phased in, the overall impact on Development Charges that would have to be collected through taxation or user rates is illustrated in the chart below:

Discounting or Phasing in of Rates based on anticipated Development for 2010					
Rate Structure					
	Calculated Rates	90% of rate	75% of rate	66% of rate	50% of rate
Craigleith	\$ 117.56	\$ 105.80	\$ 88.17	\$ 77.59	\$ 58.78
Thornbury East	\$ 117.86	\$ 106.07	\$ 88.40	\$ 77.79	\$ 58.93
Thornbury West	\$ 185.36	\$ 166.82	\$ 139.02	\$ 122.34	\$ 92.68
Cost to Taxpayer					
	Calculated Rates	90% of rate	75% of rate	66% of rate	50% of rate
Craigleith	\$ -	\$ 5,878	\$ 14,695	\$ 19,985	\$ 29,390
Thornbury East	\$ -	\$ 11,197	\$ 27,992	\$ 38,069	\$ 55,984
Thornbury West	\$ -	\$ 80,910	\$ 202,274	\$ 275,093	\$ 404,548
TOTAL REQUIRED	\$ -	\$ 97,984	\$ 244,961	\$ 333,147	\$ 489,922

As can be seen from the chart above a discount factor of 34% for only the first year of the five year by-law would result in a potential cost to ratepayers of \$333,000. This cost is not included in the current 2010 budget and would be considered an unfinanced liability at the end of 2010. The costs could be recovered through taxation over a four or five year period in order to lessen the burden on a single year budget.

Lastly, the Act allows adaptability for special “one off” projects. Council can establish the rates at 100% or at a lower amount and still have the ability to further discount the rate for an individual development. Although the Act is accepting in this matter, the burden of any short fall will still rest on the ratepayer.

As can be seen, the Development Charges Act is prescriptive in nature as to the way in which the rates are calculated however it allows Council flexibility in managing its own pressures contained within the final calculation of rates.

C. The Blue Mountains’ Strategic Plan

Providing a strong, well managed municipal government.

D. Environmental Impacts

N/A

E. Budget Impact

This Background Study will provide the Town with the ability to better manage capital works and will ensure more accurate costing of future projects. As well the growth related numbers are more in line with current conditions and will provide a better understanding of the Town’s cash flow requirements in relation to Development Charge eligible projects.

Changing the method of collecting hard services at subdivision agreement could potentially impact the Development Charge Reserve Fund balances and force the town to borrow money to complete development related capital projects. This could affect the overall short and long term debt for the Town.

Providing for discounts or phasing in Development Charges will ultimately cost the existing taxpayers as any deficit in fund will be due from other sources, namely taxation and reserves. There has been no inclusion for funding shortfalls in Development Charge collections for the 2010 budget and as such any shortage would remain as an unfinanced amount until the 2011 budget process.

F. Attached

Respectfully submitted,

Signature

For more information, please contact:

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