

Addendum to Report PDR-PCD-10-15

To: Chair Wright and Members of the Planning and Community Development Committee

From: Randy Scherzer, Director of Planning and Development
Kevin Wepler, Director of Finance

Meeting Date: March 17, 2015

Subject: **Development Charges Deferral Request**

Status: Recommendation adopted by Committee as presented per Resolution PCD43-15; Endorsed by County Council April 7, 2015 per Resolution CC55-15;

Recommendation(s)

WHEREAS Council passed a motion on March 3, 2015 directing staff to prepare a development charges deferral agreement for the Pottawatomie Gardens development in the City of Owen Sound with the development charge payment being due for all the units at the time of issuance of the first occupancy permit(s) to align with the timing of when the City of Owen Sound development charge payment will be due;

NOW THEREFORE BE IT RESOLVED THAT the Addendum to Report PDR-PCD-10-15 which includes an attached draft development charges deferral agreement be received;

AND THAT the draft agreement be brought forward with the appropriate by-law for Council's consideration.

Background

Staff Report [PDR-PCD-10-15](#) was presented to the Planning and Community Development Committee on February 17, 2015 regarding a request to defer the development charge payment for a proposed development known as Pottawatomie Gardens located in the City of Owen Sound. The developer is Graham Design and Construction who requested the development charges be deferred until issuance of an

occupancy permit. The owner of the subject lands is Turbitt Marine Limited. Council passed a motion on March 3, 2015 directing staff to prepare a development charges deferral agreement for the Pottawatomie Gardens development with the development charge payment being due for all the units at the time of issuance of the first occupancy permit(s) to align with the timing of when the City of Owen Sound development charge payment will be due.

Attached to this report is a draft development charges deferral agreement. The agreement has been reviewed as part of the County's agreement review process, which included a review by the County's solicitor. The agreement was also sent to City staff as well as the developer for review and comment. Staff are recommending that the draft agreement be brought forward with the appropriate by-law for Council's consideration.

Financial / Staffing / Legal / Information Technology

Considerations

The agreement includes clauses that would protect the County's financial interests should an owner of the subject lands default on the payment of the applicable development charges. The agreement will also be registered on title.

Link to Strategic Goals / Priorities

The draft Economic Development Action Plan encourages the County, municipal and community partners to be more "open for business". Deferring development charges for certain types of developments could be considered an 'open for business' initiative as it could encourage further growth opportunities which is beneficial for the local economy.

Attachments

[Development Charges Deferral Agreement - Turbitt Marine Limited](#)

Respectfully submitted by,

Randy Scherzer
Director of Planning and Development

Kevin Weppler
Director of Finance

THIS AGREEMENT made this _____ day of _____, 20_____

between:

The Corporation of the County of Grey

a municipality within the meaning of the Municipal Act, 2001 (hereinafter referred to in this Agreement as “the County”),

-And-

Turbitt Marine Limited

(hereinafter referred to in this Agreement as “the Applicant”);

WHEREAS the Development Charges Act, 1997, S.O. 1997, Chapter 27 (hereinafter, the “Act”) authorizes municipalities to pass a by-law for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies;

AND WHEREAS the County, pursuant to the Act, passed By-laws 4744-12 and 4745-12 (hereinafter, Development Charges By-laws) which imposes and provides for the payment of development charges upon issuance of the first building permit to a building or structure on land to which the development charge applies;

AND WHEREAS the County has received a request from the Applicant to defer development charge payments for each residential unit until the issuance of an occupancy permit occurs for a development in the City of Owen Sound known as Pottawatomi Gardens located on lands described in Schedule ‘A’ (hereinafter, the Property) which is a proposal to construct 12 life lease residential units within the former Alpha Street Medical Arts Building;

AND WHEREAS Section 27 of the Act authorizes a municipality to enter into an agreement to provide for a deferral of the applicable development charge;

NOW THEREFORE, in consideration of the matters referred to, the parties agree as follows:

1.0 Definitions

In this Agreement:

- 1.1 “Agreement” means this agreement and its appending schedules.

- 1.2 “The Development” refers to the development known as the Pottawatomi Gardens proposed by the Applicant on the Property described in Schedule “A”.
- 1.3 “The Development Charge” refers to the applicable development charges in accordance with the Development Charges By-laws as identified in Section 3 of this Agreement.
- 1.4 “Development Charges By-laws” refers to By-laws 4744-12 and 4745-12, or any amendments or replacements thereto, passed by the County pursuant to the Act.
- 1.5 “The Property” refers to the subject lands described in Schedule “A”.

2.0 Term

- 2.1 This Agreement shall be effective as of the date of execution and run for a period until the Development Charge identified in Section 3 of the Agreement has been paid in full.

3.0 Payment

- 3.1 The Applicant covenants to pay to the City of Owen Sound to the benefit of the County, in respect of the Development, a total development charge in the amount of FORTY ONE THOUSAND SIX HUNDRED AND TWENTY DOLLARS AND NINETY TWO CENTS (\$41,620.92), (hereinafter the “Development Charge”), subject to annual inflationary indexing consistent with the Development Charges By-laws. The Applicant shall pay the Development Charge upon issuance of the first occupancy permit(s).

4.0 The Development Charge

- 4.1 The Applicant acknowledges and agrees that:
 - a) The Development Charge provided in section 3 of this Agreement is the correct amount calculated and applied to the Applicant’s current building permit application with the City of Owen Sound for the Development;
 - b) The Development Charge referred to herein for payment by the Applicant to the County may not be all of the development charges that may become applicable in respect of the Property as there may be further development charges applicable in respect of other development that may be proposed in the future on the Property;

- c) In the event the Development Charge becomes payable and, in whole or in part, remains unpaid on its due date, then in addition to any other remedy available to the County at law, the amount of the unpaid Development Charge shall be added to the tax roll by the City of Owen Sound in accordance with section 23(3) of the Development Charges By-laws as permitted under the Act and collected as realty taxes;
- d) The Applicant shall not be entitled to have an occupancy permit issued by the City of Owen Sound for the Property until the Applicant has complied with section 6 of this Agreement.

5.0 Indemnification

- 5.1 The Applicant will and herein does indemnify, save, defend and keep harmless at all times the County of, from and against all actions, causes of action, interest, claims, demands, cost, charges, damages, expenses and loss which the County may at any time bear, incur, be liable for, sustain or be put into for any reason or on account of or by reason of or in consequence of entering into this Agreement. This section shall survive the termination of the Agreement.

6.0 Registration of Agreement

- 6.1 The Applicant shall immediately register this Agreement on title of the Property at its own expense and provide the County with evidence of the registration of this Agreement. The Applicant will also supply the Applicant's lawyer's Certificate satisfactory to and in favour of the County that the legal description of the Property attached hereto as Schedule A is a complete and registerable legal description of all of the land which comprises the Development and that there is no charge or lien of any kind against the Property that has priority over the payment to the County of the Development Charge.

7.0 Termination

- 7.1 Notwithstanding any provision in this Agreement to the contrary, in the event of any default or breach of this Agreement by the Applicant, this Agreement will terminate with or without notice to the Applicant by the County, and the deferred Development Charge become due and payable to the County in full immediately. Such payment shall be made to the City on behalf of the County.

- 7.2 For the purposes of this Agreement, a default under or breach of this Agreement by the Applicant shall be deemed to include, but not limited to the following:
- a) Where a mortgage, charge, lien, execution or other encumbrance affecting the Property becomes enforceable against the Property; or
 - b) Where the Applicant becomes bankrupt, whether voluntary or involuntary, or becomes insolvent, or a receiver/manager is appointed with respect to the Property.
- 7.3 Upon the expiry or termination of this Agreement, any obligation of the Applicant under this Agreement that remains unsatisfied, in whole or in part, shall, nevertheless, continue until so satisfied.

8.0 Notice

- 8.1 Any notice required to be given, served or delivered must be in writing and sent to the other party at the address indicated below, or to such other address as may be designated by notice provided by either party to the other.

For the County:

County Clerk
County of Grey Administration Building
595 9th Ave E
Owen Sound, ON N4K 3E3
Fax Number: 519-376-8998
Email: countyclerk@grey.ca

For the Applicant:

Owen Realty Company Limited
c/o Jim Turbitt, Turbitt Marine Limited
317144 Highway 6 & 10
RR 3 Chatsworth, ON N0H 1G0

- a) Any notice to be given by either party to the other shall, in the absence of proof to the contrary, be deemed to have been received by the addressee if
- b) delivered personally on a business day, then on the day of delivery;
- c) sent by prepaid registered post, then on the second day following the registration thereof;

- d) sent by ordinary mail, then on the fifth business day following the date on which it was mailed; or
- e) sent by facsimile or email, upon confirmation of successful transmission of the notice.

9.0 Agreement not Waiver

- 9.1 This Agreement is made entirely for the convenience and benefit of the Applicant and is in no way to be construed as a waiver or surrender of any rights or remedies that the County may have to recover its Development Charge by any lawful means from present and future owners of the Property or as taxes upon the Property.

10.0 Governing Law

- 10.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

11.0 Severability

- 11.1 Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

12.0 Entire Agreement

- 12.1 This Agreement constitutes the entire agreement between the parties with respect to the Development Charge and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the Development Charge except as provided in this Agreement and the attached Schedule(s).

13.0 Amendment of Agreement

13.1 None of the terms, conditions or provisions of this Agreement shall be held to have been changed, waived, varied, modified or altered by any act or statement of either party, their respective agents, servants or employees unless done so in writing signed by both parties.

14.0 Successors and Assigns

14.1 All covenants and conditions contained in this Agreement shall be deemed to be covenants running with the Property and shall be binding on the Applicant and the Applicant's heirs, executors, administrators, successors and assigns and upon all future owners and occupants of the Property.

15.0 No Partnership

15.1 Nothing in this Agreement gives rise to a partnership, joint venture or an employment relationship between the County and the Applicant.

16.0 Dispute Resolution

16.1 A dispute between the parties relating to the interpretation or implementation of this Agreement will be addressed through good faith negotiation, with or without the assistance of a mediator. The parties agree that in the event that they are not able to reach a resolution of all the matters in dispute after mediation, then the matters remaining in dispute will be finally determined by arbitration in accordance with the provisions of the *Ontario Arbitrations Act*.

16.2 The location for any such arbitration hearing will be within the County of Grey at a location to be determined by the County.

17.0 Discharge

17.1 Upon payment in full of the Development Charge then the Applicant shall be entitled to a discharge of this Agreement. The discharge shall be signed by the County and prepared/registered by the Applicant at the expense of the Applicant.

IN WITNESS WHEREOF THE PARTIES hereunto attested by the hands of the proper officers duly authorized in that behalf as of the day and year first written above.

The Corporation of the County of Grey

Kevin Eccles, WARDEN

Sharon Vokes, CLERK

Turbitt Marine Limited

Name:

Title:

Name:

Title:

I/We Have the Authority To Bind Turbitt Marine Limited.

Schedule A

Legal Description of the Property:

PT PARKLT B EAST END OF HALF MILE STRIP OWEN SOUND; PT PARKLT M
EAST END OF HALF MILE STRIP OWEN SOUND AS IN R138213; S/T R81985;
R82271; OWEN SOUND

PIN: 370490018

Civic Address: 850 Alpha Street, City of Owen Sound