

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 24, 2014

By approving the recommendation contained in the report Commissioner of Finance & City Treasurer and Director of Development Finance & Investments, dated June 16, 2014; and

By receiving Confidential Communication C10 from the Director of Legal Services and the Director of Development Finance & Investments, dated June 24, 2014.

The Finance, Administration and Audit Committee recommends:

- 1) That consideration of this matter be deferred to the Council meeting of June 24, 2014, to enable staff to provide a further report on the issues raised by Committee;
- 2) That the deputation by Mr. Jeff Solly, The Sorbara Group, Steeles Avenue, Vaughan, be received; and
- 3) That Communication C1, from Mr. Edward Sorbara, dated May 26, 2014, be received.

The Commissioner of Finance & City Treasurer and Director of Development Finance & Investments in consultation with the Commissioner of Planning and Director of Legal Services recommend:

1. That Council not approve the request for special consideration received from: Smith Farm Property Holding Inc.

N/A

In accordance with their Development Charge (DC) Prepayment Agreement, Smith Farm Property Holding Inc. ("the proponent") prepaid DCs at the rate in effect prior to the effective date of the new DC By-law of September 21, 2013. The total DCs prepaid amounted to \$409,281.

Should the special consideration request be denied then the proponent would be immediately refunded the prepaid DCs. They would then be required to pay the DC rate in effect at the time of Building Permit issuance. They would still be permitted to take advantage of the phased-in rates approved by Council as a part of the approved transition measures. Therefore, if for example, they achieved Building Permit issuance by March 20, 2015 then they would pay \$855,969. If they do not achieve Building Permit issuance by March 20, 2015 then they would be required to pay at the full rate, which would equate to approximately \$1,050,852.

N/A

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Purpose

This report seeks City Council approval to deny the requests from a proponent for special consideration pertaining to a Development Charge Prepayment Agreement approved by City Council on May 14, 2013.

Background - Analysis and Options

Transition Measures were approved as part of the adoption of the 2013 DC By-law

On May 14, 2013 City Council adopted the 2013 DC By-law with an effective date of September 21, 2013. As part of the passing of the 2013 DC By-law, Council approved various transition measures to help mitigate the impact of the substantial increase in DCs to the development industry and the new home/commercial owner or business tenant. The following transition measures were approved and implemented:

1. Delay of the By-law effective date to September 21, 2013
2. Freeze of the "Engineering Top-up" practice for a two year period
3. Phasing-in of the DC rates over an 18 month period beginning on September 21, 2013
4. Option to enter a DC Prepayment Agreement

The onus was on the Developer/Landowner to meet criteria in the DC Prepayment Agreement

DC Prepayment Agreements were approved by Council whereby developers prepaid DCs at the rates in effect prior to September 21, 2013. These options were designed to deal with those developers that would be affected by the transition to the proposed 2013 DC rates and would have been unable to plan for the increased rates. They were established to benefit those developers whose projects were "in the pipe" and would come to fruition in 2014.

While other projects may have also been in various stages of the planning process, many developers did not take advantage of the prepayment agreement option as they were cognizant of the many criteria that would have to be met in order to maintain their status under the agreement. Namely, they were required to execute/register Site Plan, Subdivision or Letter of Undertaking Agreement by June 20, 2014 and achieve Building Permit issuance by September 20, 2014. Those developers that did not feel confident they could achieve these criteria chose not to enter DC Prepayment Agreements and instead took advantage of the phased-in rates.

The City worked collaboratively with the Landowners/Developers on meeting the Agreement Criteria

All Landowners/Developers who entered in to DC Prepayment Agreements with the City were communicated with on a regular basis regarding their upcoming deadlines in accordance with the Agreements. City Planning, Engineering and Finance staff made every effort to work collaboratively with the industry to ensure that the deadlines would/will be met.

The City entered in to 21 DC Prepayment Agreements: 5 Residential Subdivisions, 4 Residential Site Plans, 8 Non-Residential Site Plan/Letter of Undertaking and 4 High Density Residential or Office Site Plans.

Of these Agreements it is estimated that only 2 Landowners/Developers will not meet their Site Plan Agreement deadline and Building Permit issuance criteria under their agreements: 1 Residential by Site Plan, and the proponent (Smith Farms Holding Inc.: Non-Residential by Site Plan).

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The other Landowner/Developer who will not be meeting their criteria has not approached the City for special consideration.

Staff recommends that the request for special consideration not be granted

City staff has administered the Prepayment Agreements in a manner consistent with the policies approved by Council. Staff do not have the flexibility to alter the terms of the Prepayment

Agreements. For the proponent who did not satisfy the criteria and is seeking a deadline extension, the Prepayment Agreement was a contract between the City and the Developer. Since the proponent did not satisfy the terms of the agreement; the agreement will be considered terminated on June 20, 2014. Although the proponent had unfortunate circumstances, process issues are not unusual in the approval process. Notice of the DC rate increase and prepayment options was widely distributed through the City's website, at the Building and Development Finance counters, through the Building Industry and Land Development Association (BILD) and other industry stakeholders. There was sufficient communication that developers already engaged in the approval process should have been aware of the impending rate increase and prepayment options.

In staff's opinion, the request received is not considered to be exceptional circumstances given the complex nature that the planning process often entails. The specific issues surrounding the proponent's development (e.g. adjacency to other lands of other authority bodies) were known at the time of entering in to the Prepayment Agreement and were not completely unforeseeable impediments in the planning process.

A number of other developers have paid DCs at the increased rates. Providing special consideration for the proponent identified in this report could result in others coming back to the City to request special consideration, particularly those that have subsequently paid the increased DC rates. In addition, 19 other Landowners/Developers have worked diligently and collaboratively with the City towards meeting the deadlines as outlined in their agreements. Providing an extension to one developer undermines the efforts and good faith work that has gone in to bringing these other developments to fruition under the Council approved transition policies.

Relationship to Vaughan Vision 2020/Strategic Plan

The above recommendations are consistent with the City's goal of organization excellence, and more specifically, to ensure financial sustainability.

Regional Implications

While Regional DCs are unaffected by the DC Prepayment Agreements, it should be noted that Regional Council faced similar requests for special consideration regarding their 2012 DC Prepayment Agreements. At its meeting of June 27, 2012, Regional Council opted to deny all requests for special consideration based on many of the same arguments provided in this report.

Conclusion

A request for special consideration has been received by Smith Farm Holdings Inc. with regard to a DC Prepayment Agreement that was entered in to with the City. The proponent is asking for an extension to deadlines found within that agreement based on their position that they are extenuating circumstances applicable to their development. Staff are recommending against providing any special consideration given that the planning process is known to be complex and consideration should be given to equity amongst those other developers that have and will be paying the higher DC rate going forward.

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Attachments

N/A

Report prepared by:

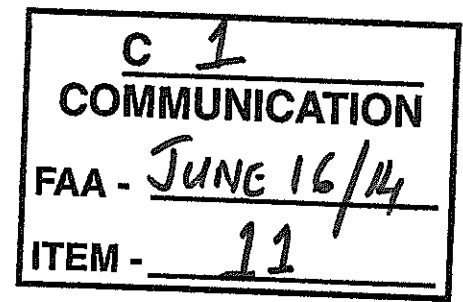
Lloyd Noronha, Director of Development Finance & Investments, ext. 8271

May 26, 2014

Mayor Maurizio Bevilacqua
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario L6A 1T1

Your Worship:

**RE: Proposed Development -7233 Highway 27, City of Vaughan
Development Charge Prepayment Agreement
Smith Farm Property Holdings Inc.
City of Vaughan File # DA.12.0.42**



RECEIVED

MAY 28 2014

CLERK'S DEPT.

I am writing to request the City's consideration to extend the deadline for issuance of site plan approval and a building permit related to a property for which a development charge pre-payment agreement was executed August 20, 2013.

In 2013, the City of Vaughan updated their Development Charge by-law and increased the Development Charge rate for industrial buildings. As part of that DC review process, there was provided the ability for an applicant to pre-pay the Development Charge at the then current rate, provided that the developer enter into an agreement that provided that the developer achieve a site plan agreement by June 22, 2014 and a building permit by September 20, 2014. If the developer did not meet those deadlines, the developer would have to pay the Development Charge at the rate in place when the building permit is issued.

In August, 2013, Smith Farm Holdings Inc. entered into a pre-payment agreement with the City and paid \$409,280.82 in Development Charges.

By way of context, Smith Farms Property Holdings Inc. applied in May 2012 for Site Plan Approval for the development of two industrial buildings at 7233 Highway 27 (Highway 27 and Steeles Avenue West).

The site plan approval process for this property is unique and challenging, because of its location as it is subject to multiple jurisdictions. Site access is off Steeles Avenue West, and is subject to jurisdiction by the City of Toronto. The site is bounded by Highway 27 to the west and 407 to the north and therefore subject to the jurisdiction of MTO. Finally, sanitary and water services are provided by the City of Toronto and are subject to a servicing agreement that has been a political football for a number of years.

While most of the site plan issues have been addressed, the issue of the site servicing agreement is the critical path item required to be completed to meet the agreement dates, however, that process is out of our hands and is the reason Smith Farms is asking for the extension. The agreement needs to be executed by the City of Vaughan, Region of York and City of Toronto. We understand that a draft of the agreement

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has been prepared by the City of Toronto and has been circulated to staff. Even if staff were prepared to recommend to Council to enter into the agreement, the nature of getting the item in front of Vaughan's Council, then York's, then Toronto's Councils is such that the dates can't be physically achieved.

At the time of executing the prepayment agreement, we recognized that the critical path item that needed to be resolved was the execution of the tri-party Sanitary and Water Servicing agreement between the City of Vaughan, Region of York and City of Toronto. We recognized the importance of this agreement and originally requested this agreement in October 2012, and we have not yet seen a draft of an agreement.

We entered into the prepayment agreement for 7233 Highway 27 in good faith, based on discussions we had with the City of Toronto and the City of Vaughan. We agreed that we would work cooperatively to address the comments and requirements of our application and by doing so, we could achieve the deadlines stipulated in the agreement. At this point, it doesn't seem fair that we be faced with the prospect of paying a 100% increase in the DC rate due to circumstances beyond our control.

Since the tri-party agreement has not been within our control and has delayed our ability to meet the prepayment deadlines, we are respectfully requesting that the City of Vaughan grant us a one (1) year extension to the prepayment agreement. Within the year, we would finalize the site plan and tri-party agreement for June 22, 2015 and pull a building permit by September 20th, 2015.

With respect to the means of implementing our request, we suggest that Vaughan Council approve a motion to permit a one (1) year extension to the prepayment agreement between the City of Vaughan and Smith Farms Holdings Inc. Smith Farm are also open to any other suggestion that may be made to allow the extension to be granted.

We have made our best efforts to meet the prepayment deadlines and we ask that you please consider our fair and reasonable request as the delay was out of our control.

Thank you for considering our request.

Yours very truly,

Edward Sorbara

EKS/af

DEVELOPMENT CHARGES PREPAYMENT AGREEMENT: REQUEST FOR SPECIAL CONSIDERATION**Recommendation**

The Commissioner of Finance & City Treasurer and Director of Development Finance & Investments in consultation with the Commissioner of Planning and Director of Legal Services recommend:

1. That Council not approve the request for special consideration received from: Smith Farm Property Holding Inc.

Contribution to Sustainability

N/A

Economic Impact

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Communications Plan

N/A

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Attachments

N/A

Report prepared by:

Lloyd Noronha, Director of Development Finance & Investments, ext. 8271

Respectfully submitted,

John Henry, CPA, CMA
Commissioner of Finance & City Treasurer

Lloyd Noronha, CPA, CMA
Director of Development Finance & Investments