



STAFF REPORT INFORMATION ONLY

Development Charge Complaint for 3700 Midland Avenue

Date:	November 5, 2008
To:	Executive Committee
From:	Acting Deputy City Manager and Chief Financial Officer
Wards:	Ward 41
Reference Number:	P:\2008\Internal Services\SP\ec08012SP (AFS # 8660)

SUMMARY

Executive Committee has previously deferred consideration of this complaint in order to allow the complainant to arrange further discussions with staff. A number of meetings have since been held and a further written submission made by the complainant.

After very careful and thorough review of the complaint, which focussed on both technical and public policy considerations, staff continue to recommend that the complaint be dismissed.

Financial Impact

The financial implications associated with this complaint are identified in a concurrent report before committee. There are no financial implications associated with the recommendations contained in this report.

DECISION HISTORY

Executive Committee deferred the staff report, entitled "Complaint Pursuant to Section 20 of the Development Charges Act, 1997 - 3700 Midland Ave.", to its meeting of November 10, 2008 to afford the complainant an opportunity to engage in further discussions with City staff.

COMMENTS

Staff have reviewed the written submission provided by the complainant (enclosed as Attachment 1) and continue to recommend that the complaint be dismissed. Although the submission does not relate to the Section 20 complaint filed by the complainant because there is no credit available to be used, staff have the following comments.

The works benefit the Kreadar development primarily

The construction of Silver Star Boulevard is consistent with the former City of Scarborough Milliken Employment District Secondary Plan, which was in effect at the time the work was approved and constructed. The Secondary Plan identified Silver Star Boulevard as a continuous road from Midland Avenue to Steeles Avenue. The link between Passmore Avenue and McNicoll Avenue did not exist, and a portion of it was required to be constructed to conform to the Plan.

As a condition of approval of an application to amend the Zoning By-law in 2001, Kreadar Enterprises Ltd. (Kreadar) was requested to enter into a Servicing Agreement to construct, at their sole cost, Silver Star Boulevard from McNicoll Avenue to the northerly limit of Kreadar property, with a total length of approximately 375 metres. A drawing showing the proposed road extension was contained in the October 24, 2001 staff report to Scarborough Community Council and is reproduced as Attachment 2 for ease of reference. The construction of Silver Star Boulevard as a fully serviced public road up to the northerly limit of the Kreadar lands primarily benefits the Kreadar development as it allows for the creation of various configurations of fully serviced parcels of land with municipal road frontage.

The road extension to the northerly limit provides the necessary municipal frontage to the interior parcels of the Kreadar lands, providing flexibility for future development of the lands. The road currently provides truck access to the loading bays for the property at 3750 Midland Ave., which access is located adjacent to the north boundary. The properties on the west side of Silver Star Boulevard were pre-serviced by Kreadar for the future needs of smaller parcels. The storm, sanitary, and water services for these properties are within 50 metres of the north boundary of the development.

Non-compliance with the technical guidelines for development charge eligibility

The 2004 Development Charge Background Study contains specific guidelines for determining the eligibility of the various elements of infrastructure for development charge funding. Based on these guidelines, the road and services constructed by Kreadar are considered to be internal to the development to service a 'local' need within the development. Although the municipal road and services can be extended to service lands to the north, no over-sizing of any of works was necessary to allow for such extension. As such, the works constructed by Kreadar are deemed to be a developer responsibility.

Details respecting the works constructed by Kreadar are provided as Attachment 3.

2002 Servicing Agreement did not provide for a credit

Section 415-9 C of the development charge by-law provides that "Nothing in this article prevents Council from requiring, as a condition of approval given under the *Planning Act*, that the owner, at the owner's expense, install such local services and local

connections as Council may require and are related to the development”. Thus, the City is not required to provide a development charge credit simply because a specific work is identified in a Development Charge Background Study.

In the present case, a 2001 planning report acknowledged that part of the extension of Silver Star Boulevard was identified in the 1999 Development Charge Background Study. However, the City and the developer did not agree to a development charge credit in exchange for the work to be performed. At that point in time, there was no development charge for non-residential development; however, the City and Kreadar could have entered into an agreement to provide for such a credit in the event that development charges became payable in future. A decision to retroactively renegotiate a development charge credit, for works already constructed by a developer, could have significant negative precedent setting implications.

Further, in the 2002 Servicing Agreement providing for the extension of Silver Star Boulevard, the Owner agreed that the extension “was critical to the efficient and effective functioning” of the proposed development. The Agreement further provided that in the event no building permit was issued for the Kreadar lands and the City included the works in an approved Capital budget, the complainant would no longer be obligated to construct the extension of Silver Star Boulevard. It is, therefore, evident that in 2002, the complainant had acknowledged the importance of the extension of services to its lands, and the City and complainant had reached an agreement as to the responsibility for the costs of the extension. The fact that this retail development is now required to pay development charges, pursuant to the 2004 development charge by-law, does not alter these legal arrangements.

Conclusions

In view of the above, staff advise that the development charge by-law was correctly applied and continue to recommend that the complaint be dismissed.

The City Solicitor was consulted in the preparation of this report and concurs with the recommendations contained within the report.

CONTACT

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SIGNATURE

Cam Weldon
Acting Deputy City Manager
and Chief Financial Officer

Attachments

Attachment 1: Letter from Cassels Brock & Blackwell dated October 2, 2008
Attachment 2: Drawing of the extension of Silver Star Blvd. constructed by Kreadar Enterprises Ltd.
Attachment 3: Discussion of works constructed by Kreadar Enterprises Ltd.

**Attachment 2:
Drawing of the proposed extension of
Silver Star Blvd.**



Proposed Lot Division N/W Corner of Midland Ave. and McNicoll Ave.
 Applicant's Submitted Drawing File # TF CMB 2001 0008

Not to Scale
 7/9/01
 JOB No. CON20010036-6

↗ Attachment 1

Attachment 3:
Discussion of works constructed by Kreadar Enterprises Ltd.

1. Silver Star Boulevard (Road): As indicated in this report, the Silver Star Boulevard was designed and constructed to the north limit of Kreadar property. The road is located entirely within the Kreadar development block. To provide a fully serviced road the sanitary sewer and watermain were also extended to the north boundary.

The 23.17 metre width of right-of-way with a 12.80 metre width of the road is a standard cross section for an industrial road in the Scarborough District and no increase in width was designed for any future development considerations.

2. Sanitary sewer: The sanitary sewer can be extended to service the properties to the north; however, the 250 mm diameter pipe size constructed is the minimum size required by the City. The minimum size of sanitary sewer that would be eligible for development charge funding based on the guidelines in the 2004 Development Charge Background Study is 450 mm.

3. Storm sewer: The storm sewer terminates 60 metres south of the Kreadar property boundary and does not service any potential lands north of the boundary. While the storm sewer meets the 2004 minimum size criteria of 450 mm for potential development charge funding, it is clearly designed and constructed to service only the Kreadar lands; as such, it provides no benefit to external lands and is deemed to be a local service.

4. Watermain: The 300 mm watermain was constructed to the north limit and can be extended to service the properties to the north; however, the 300 mm diameter pipe size was constructed as the minimum pipe size requirement for a long dead end system.