



STAFF REPORT ACTION REQUIRED

Development Charge Agreement – South-West Corner of Midland Avenue and Lawrence Avenue East

Date:	May 19, 2009
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	Ward 37
Reference Number:	P:\2009\Internal Services\SP\EC09008SP (AFS # 9166)

SUMMARY

The purpose of this report is to seek Council authority to provide Arsandco Investments Limited with relief from the parks and recreation, water, sanitary sewer and storm water management components of development charges payable.

In 1988, Arsandco Investments Limited elected to pay, under a prepayment option offered by the former City of Scarborough, the amount of \$568,908.56 in development-related charges for a proposed development at the south-west corner of Midland Avenue and Lawrence Avenue East. Based on this prepayment of development-related charges, Arsandco Investments Limited may now be provided with an exemption from the payment of the specific components of development charges to which its prepayment related.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. Council authorize entering into an agreement to provide Arsandco Investments Limited with an exemption from the payment of the parks and recreation, water, sanitary sewer and storm water management components of development charges payable with respect to the development of its lands at the south-west corner of Midland Avenue and Lawrence Avenue East, such agreement to be substantially in the form attached as Appendix 1 to this report, and in a form satisfactory to the City Solicitor.

2. Council direct and authorize appropriate City staff to take necessary action to give effect thereto.

Financial Impact

Adoption of the recommendations contained in this report will result in the City providing Arsandco Investments Limited with an exemption against the parks and recreation, water, sanitary sewer and storm water management components of development charges payable. At current rates and for the proposed development mix, total development charges payable amount to approximately \$6.55 million. Of this amount, approximately \$2.15 million would be the reduction afforded the landowner by the proposed development charge exemption.

ISSUE BACKGROUND

Arsandco Investments Limited (“Arsandco”) entered into a subdivision agreement, dated October 29, 1969, with the former Corporation of the Borough of Scarborough for lands owned by it at the south-west corner of Midland Avenue and Lawrence Avenue East. Subsequent to partial development on the lands, Arsandco applied for a rezoning, an Official Plan amendment and site plan approval for increased density on the site.

On July 13, 1988, the City of Scarborough adopted a new development charge regime and updated rates. Further, the City offered developers that had applied for development approvals prior to August 1, 1988, the option of prepaying development-related charges at the rates then in effect, provided the prepayment was made on or before September 1, 1988.

On August 31, 1988, Arsandco elected to exercise its option to prepay and paid \$568,908.56, for the proposed development resulting from its applications for rezoning, an Official Plan amendment and site plan approval. The payment was made in respect of a sewer impost, sewers and park development levies.

COMMENTS

In 2006, Arsandco approached the City to confirm that the prepayment of City levies in 1988 in connection with their project continues to satisfy the municipal requirements in this respect.

The Scarborough Council decision that allowed prepayment of development-related charges in 1988 did not include an express statement with regard to the effect of the prepayment – whether the prepayment provided an applicant a complete exemption from any and all future development charges, or whether the prepayment would be an

admissible credit against future development charges payable at building permit issuance. In the absence of a clear articulation of the benefit that the prepayment would afford an applicant who had prepaid, staff proposed to provide Arsandco with a development charge credit in the amount of the prepayment. Arsandco rejected the proposal outright, highlighting the fact that the payment was made over 20 years ago and that the City has benefitted from the availability of those funds over the entire period. In the course of the ensuing discussions, and with a view to avoid a potentially lengthy and costly litigation, staff explored the following other approaches in the matter.

Complete exemption

Arsandco initially took the position that its prepayment of \$568,908.56 in 1988 shielded it completely from the requirement to pay any future development charges on the subject lands. However, the City today levies development charges for services in addition to those to which the prepayment was made and hence staff was not prepared to support a complete exemption from the payment of development charges, which at current rates are estimated to be \$6.55 million.

Reduction in development charges by the indexed value of the prepayment

An alternative approach considered was to provide Arsandco with a pro rata reduction in development charges payable based on the indexed value of the prepayment. This approach essentially recognizes the time value of money; however, determination of an acceptable discount rate proved difficult. The rate of return earned by the City on its investments is different from the rate of return acceptable to Arsandco, as are the costs of capital for the City and Arsandco. In both instances the City's rates are lower than the corresponding rates for Arsandco. Given that over 20 years have elapsed since the prepayment was made, even small differences in the rates utilized to determine the indexed value of the prepayment by Arsandco and the City left significant differences that could not be bridged.

The value of the prepayment plus interest at the Bank of Canada prime (business) rate compounded annually amounts to \$2.23 million as of April 2009.

Exemption against specific components of development charges payable

Based on the option offered by the City of Scarborough in 1988 to prepay development-related charges and Arsandco's payment of such charges in the amount of \$568,908.56 at that time, staff can support an exemption from the specific components of development charges to which the prepayment related, namely, the parks and recreation, water, sanitary sewer and storm water management components of the development charge. This option is viewed as the most reasonable and equitable approach to the treatment of the prepayment.

By way of estimating the financial implications of this option, planning approvals for the site permit the construction of 1,007 units. Assuming a 50:50 split between 1-bedroom or bachelor units and 2-bedroom or large units, at current rates, total development charges payable amount to \$6.55 million. Of this amount, approximately \$2.15 million would be the development charge exemption against the parks and recreation, water, sanitary sewer and storm water management components. In the event that the number and composition of units constructed change, the amount of development charge payable and the value of the exemption would change accordingly.

Development Charge Agreement

A Development Charge Agreement (“Agreement”) has been agreed to by Arsandco and City staff. Salient terms of the Agreement include the following:

- a. Arsandco will be provided an exemption from the payment of the parks and recreation, water, sanitary sewer and storm water management components of development charges payable on future development on the Arsandco lands;
- b. The exemption will be limited to the development utilizing current zoning permissions and densities;
- c. Arsandco will be entitled to transfer or assign its rights under the Agreement to any new owner if the Arsandco lands are transferred in future;
- d. The Agreement will be registered on the Arsandco lands at the owner’s expense; and
- e. Arsandco will agree that, other than as set out in the Agreement, it will have no other entitlements or claims regarding future payment of development charges arising from any previous development agreements, or previous payments of any amounts, levies, impost fees or any other development related charges relating to the Arsandco lands.

Conclusion

This report recommends that an agreement be entered into between Arsandco Investments Limited and the City, which provides Arsandco with an exemption from the payment of the parks and recreation, water, sanitary sewer and storm water management components of development charges payable on future development on the Arsandco lands.

CONTACT

Joe Farag
Director, Special Projects Division
Tel: 416-392-8108; Email: jfarag@toronto.ca

SIGNATURE

Cam Weldon
Deputy City Manager and
Chief Financial Officer

ATTACHMENTS

Appendix 1: Draft Development Charge Agreement