

55 Mac Frost Way – Zoning Amendment and Draft Plan of Subdivision Applications – Supplementary Report

Date:	January 17, 2013
To:	Scarborough Community Council
From:	Director, Community Planning, Scarborough District
Wards:	Ward 42 – Scarborough-Rouge River
Reference Number:	12 117140 ESC 42 OZ and 12 117151 ESC 42 SB

SUMMARY

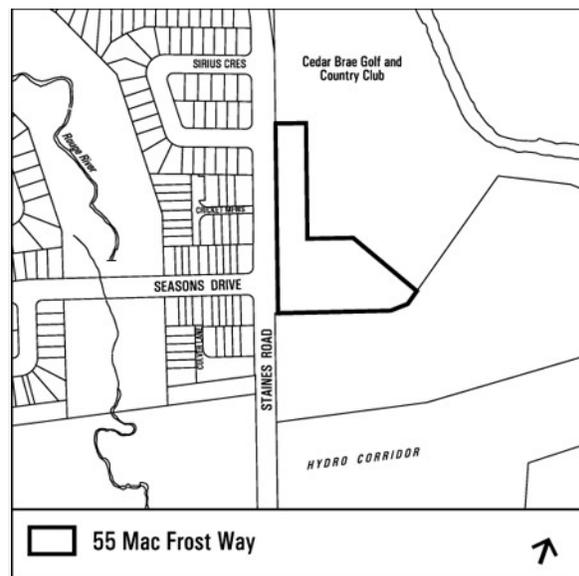
On November 27, 2012, City Council referred the rezoning application and associated residential draft plan of subdivision application for 55 Mac Frost Way back to the Scarborough Community Council meeting of January 22, 2013. City Council also directed City Planning to report further on the proposed draft plan of subdivision condition dealing with the sharing of development costs incurred for the development of the Morningside Heights Community.

This report responds to City Council's request regarding the proposed draft plan of subdivision condition and has been prepared in consultation with Legal Services and Technical Services.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council maintain Condition 5 from the conditions of draft plan of subdivision contained in Attachment 7 to the report (September 14, 2012) from the Director, Community Planning, Scarborough District.



Financial Impact

The recommendations in this report have no financial impact.

ISSUE BACKGROUND

In February 2002, the City entered into a Core Services Agreement with 5 landowners/developers, listed in the agreement, to complete certain municipal services within the Morningside Heights Community. The owner of Cedar Brae Golf and Country Club was not a party to this agreement.

The Core Services Agreement further required that these 5 landowners/developers enter into a private Cost Sharing Agreement. Neither the City or the Cedar Brae Golf and Country Club are parties to the private Cost Sharing Agreement.

The City agreed, in the Core Services Agreement, to hold final registration of any plan of subdivision of the 5 landowners/developers until the City received confirmation that each owner had entered into the private Cost Sharing Agreement. The City did not agree to require all future developers of land in the Morningside Heights Secondary Plan Area to enter into the private Cost Sharing Agreement as a condition to subdivision approval, nor did the City agree to make any cost recovery efforts on behalf of the 5 landowners/developers.

At the Public Meeting on the subject applications on October 5, 2012, a representative of the Morningside Heights Landowners Group (MHLG) raised issue with Condition 5 of the draft plan of subdivision as it did not require Cedar Brae Golf and Country Club to become party to the Cost Sharing Agreement prior to the registration of the plan of subdivision. There was also an issue raised regarding trees. Scarborough Community Council deferred consideration of the applications until November 6, 2012 at which time Community Council adopted the staff report without amendment.

The Core Services Agreement between the City and the 5 landowners/developers was not a front-ending agreement entered into pursuant to the Development Charges Act. Such a front-ending agreement provides notice to all potential benefitting landowners in a specified area that they will be required to pay for services when and if they apply to redevelop their lands. The Development Charges Act stipulates that all parties receiving notice have a right to appeal their inclusion in the front-ending agreement to the Ontario Municipal Board (OMB).

COMMENTS

Staff from City Planning and Technical Services convened meetings with representatives from the Cedar Brae Golf and Country Club and the MHLG in an effort to understand the core services costs contained in the private Cost Sharing Agreement between the 5 original developers. Further, to determine which of the core services had a direct and local relationship to the proposed development from which the owner would receive benefit. Staff encouraged the two parties to discuss matters with each other in order to reach a settlement. Staff however had not received an indication of a settlement at the time this report was prepared.

Although City staff received and reviewed the information provided by the representatives of the Cedar Brae Golf and Country Club and MHLG, it is difficult to accurately confirm the local services that benefit the proposed development or their related costs. Staff must rely in large part on the accounts of the MHLG. These financial calculations are not supported by the owner of the Cedar Brae Golf and Country Club, who suggests that a much lower proportionate share is warranted. Considering the amount of time that has passed and relatively small size of the proposed development of 37 residential units, it would be very difficult for the City to determine a fair and reasonable share of servicing costs to impose on the applicant. If the City decided to impose a cost-sharing condition as part of the subject subdivision approval, it would be difficult for the City not to take a similar position in similar instances moving forward.

Although the City is not obligated to impose a subdivision condition requiring Cedar Brae Golf Club to pay a proportionate share of certain servicing costs, they have indicated that they are satisfied with Condition 5 as worded. For that reason, it may be helpful to maintain the current condition as is and encourage the two parties to continue to negotiate amongst themselves to reach a mutually agreeable outcome.

If the City does not modify Condition 5 regarding cost-sharing prior to subdivision registration, the MHLG may still attempt to recover additional funds for the core services either through a negotiated settlement or an appeal through the OMB. Staff have been made aware that the MHLG has initiated a civil lawsuit against the Cedar Brae Golf and Country Club for the recovery of a proportionate share of the core service costs for the Morningside Heights Community.

Conclusion

Planning staff propose to maintain Condition 5 of the draft plan of subdivision conditions contained in Attachment 7 to the staff report (September 14, 2012). The City is not obligated to become involved in this private dispute. Imposing a condition for additional core service costs in the Morningside Heights Community could establish a precedent for other similar instances in the City. In this instance, however, the applicant had agreed to Condition 5.

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SIGNATURE

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