

Release of Section 37 funds for the completion of 50 St Joseph - Clover Hill Park

Date: July 24, 2018

To: City Council

From: General Manager, Parks, Forestry and Recreation and the City Solicitor

Wards: Ward 27 - Toronto Centre-Rosedale

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City of Toronto.

The attachment to this report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

Additional funds are required to complete the build out of a new public park at 50 St. Joseph Street, to be known as Clover Hill Park. The need for additional funds is due to the increase in construction costs over time and a dispute over the allocation of certain costs under the Section 37 Agreement for the residential development at 50 St. Joseph Street which secured the construction of this park.

It is estimated that up to an additional \$250,000 will be required to complete the build out of the park. In consultation with the Ward Councillor, it was agreed that section 37 funds from a previously approved nearby development which were secured for parks improvements within Ward 24 (now Ward 27) could be used to address this shortfall. Once costs are finalized, any remaining monies that are not needed to complete the park will be returned to the appropriate Section 37 account.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation and the City Solicitor, recommend that:

1. City Council amend the 2018 Parks, Forestry and Recreation Capital Budget to add a new capital sub-project called Clover Hill Park Improvements in the Park Development project, with a total project cost of \$0.250 million and cash flow of \$0.250 million in 2018 fully funded by Section 37 community benefits from the development at 909, 931, 935 and 945 Bay Street, 14, 16, 20, 26, 30 and 38 Breadalbane Street and 11 and 25 Wellesley Street West (source account: XR3026-3700155).
2. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
3. City Council direct that Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.
4. City Council authorize the General Manager, Parks, Forestry and Recreation to release the required funds for the completion of the base and above base park improvements at 50 St Joseph Street from Parks, Forestry and Recreation's approved 2018 Capital Budget from the Clover Hill Park Improvements sub-project in the Park Development project to Rattling Chain Investments Inc., as necessary, once Rattling Chain Investments Inc. has entered into such agreements with the City as considered necessary by, and to the satisfaction of, the General Manager, Parks, Forestry and Recreation and the City Solicitor, which shall include, but not be limited to the terms set out in Confidential Attachment 1.
5. City Council direct that any funds transferred in accordance with Recommendation 1 that are not required for the completion of the base and above base park improvements at 50 St Joseph Street shall be returned to source account: XR3026-3700155.

FINANCIAL IMPACT

The recommendations in this report will amend the approved 2018 Capital Budget for Parks, Forestry and Recreation by increasing project costs and cash flow in 2018 by \$0.250 million, by creating a new capital sub-project called Clover Hill Park Improvements in the Park Development project.

Authority to negotiate and execute an agreement with Rattling Chain Investments Inc., will enable the City to provide additional funding up to the amount of \$0.250 million to fund park improvements in Clover Hill Park at 50 St. Joseph Street. This cost will be fully funded by Section 37 community benefits from the development at 909, 931, 935 and 945 Bay Street, 14, 16, 20, 26, 30 and 38 Breadalbane Street and 11 and 25 Wellesley Street West (source account: XR3026-3700155).

Any additional maintenance costs resulting from the base and above base park improvements will be submitted for consideration through the 2019 Operating Budget process.

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of March 3, 4 and 5, 2008, City Council approved the official plan amendment and rezoning application for the property at 50 St. Joseph Street, allowing the development of part of the St. Michael's College lands with two high-rise residential condominiums and three 3-storey buildings along Bay Street and St. Mary Street. The development approvals included the expansion of the existing parkette at the northwest corner of Bay Street and St. Joseph Street for a new park that would be conveyed to the City as public park land.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.TE13.10>

At its meeting of April 28 and 29, 2008, City Council approved amending the Parks, Forestry and Recreation Capital Budget to complete the acquisition of the existing parkette at 50 St. Joseph Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX19.14>

At its meeting of August 25, 26 and 27, 2010, City Council authorized the acquisition of the existing parkette.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.GM33.24>

ISSUE BACKGROUND

In connection with official plan and zoning amendments to permit the redevelopment of the property at 50 St. Joseph Street, the City, the University of Toronto's St. Michael's College and the developer, Rattling Chain Investment Inc. entered into a Section 37 agreement dated August 29, 2008 (the "Section 37 Agreement"). The Section 37 Agreement provided for, amongst other things, the construction of a new public park known as Clover Hill Park.

At this time, additional funds are required to complete the build out of the park. The need for additional funds is due to the increase in construction costs over time and a dispute over the allocation of certain costs under the Section 37 Agreement.

After consultation with the local councillor, this report recommends Section 37 funds from a previously approved nearby development at 909, 931, 935 and 945 Bay Street, 14, 16, 20, 26, 30 and 38 Broadalbane Street and 11 and 25 Wellesley Street West, which were secured for parks improvements within Ward 24 (now Ward 27), could be used to complete the build out of the park.

COMMENTS

Increased Costs to Complete the Build Out of Clover Hill Park

Clover Hill Park will be composed of an existing parkette, referenced in the Section 37 Agreement as "Park Land Part 1" and new lands conveyed to the City by the developer, referenced in the Section 37 Agreement as "Park Land Part 2". In accordance with the Section 37 Agreement certain costs in connection with the construction of base park improvements are the responsibility of the developer and certain costs are the responsibility of the City.

The Section 37 Agreement also requires the developer to construct certain above base park improvements for Clover Hill Park based on a park design concept developed in consultation with the local Councillor and approved by the General Manager of Parks, Forestry and Recreation. The Section 37 Agreement provides, however, that the developer's costs to design and construct the above base park improvements is capped at the amount of the Parks and Recreation Development Charges payable in respect of its development (\$897,580.90).

Construction has not yet commenced on the base or above base park improvements for Clover Hill Park, however, it is projected that construction costs will exceed the funds available for construction from the developer's obligations under the Section 37 Agreement and the funds budgeted for the City's portion of these costs.

The primary reason for the increase is the increase in construction costs since the signing of the Section 37 Agreement in 2008, and the approval of the park design concept. In addition, a dispute has arisen as to the allocation of certain costs under the Section 37 Agreement as between the developer and the City, which is commented on in Confidential Attachment 1.

It is not desirable to eliminate elements from the approved park design concept, which was developed in consultation with the local Councillor and community including the Bay Cloverhill Community Association, known as the BCCA.

The total amount of the current funding shortfall to construct Clover Hill Park is not yet known because City staff have not yet received final confirmation of the costs from the developer. For the purposes of this report staff have conservatively estimated that an additional \$250,000 in funding is required to ensure the construction of Clover Hill Park in accordance with the approved park design concept. If the additional funding is approved, funding would be allocated to a maximum of \$250,000 in accordance with the terms set out in Confidential Attachment 1 and based on the final prices obtained by the developer.

Construction of the base and above base park improvements is anticipated to take between 2-4 months. Staff will request that the developer advance the construction of the project so that it is completed before the end of the year.

CONTACT

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SIGNATURE

Janie Romoff
General Manager Parks, Forestry and Recreation

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Information