



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Section 37 and Section 45 Funds Not Received in 2008-2017 Approvals - Update on Additional Outstanding Funds Received

Date: January 23, 2020

To: City Council

From: Chief Planner and Executive Director, City Planning and City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

The report from the Chief Planner dated August 12, 2019 (Item PH8.8) identified five developments where Section 37 cash payments to the City totalling \$701,387 were due, and no records of receipt had been found. Staff have continued to seek outstanding payments from responsive developers. Discussions have resulted in the payment of an additional outstanding \$3,387.44 by one developer and an offer to make a payment of \$100,000 on behalf of a developer whose company has been dissolved.

The purpose of this report is twofold. This report responds to the request to report to City Council with respect to any additional outstanding funds received. It also seeks City Council's instructions respecting the proposed \$100,000 payment noted above and discussed in Confidential Attachment 1.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning and the City Solicitor recommend that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1 from the City Solicitor and the Chief Planner and Executive Director, City Planning.
2. City Council direct that Confidential Attachment 1 to this report from the City Solicitor and the Chief Planner and Executive Director, City Planning remain confidential in its entirety as it contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

The City Planning Division confirms that there are no budget implications resulting from the recommendations in this report. Any additional funds collected will be deposited into the Section 37 Planning Act Reserve Fund (XR3026) for use for the purposes specified in the related enacting by-laws and Section 37 Agreements.

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

DECISION HISTORY

City Council considered item PH8.8 "Response to Auditor General's Outstanding Recommendation Regarding Section 37 and Section 45 Funds Not Received in 2008-2017 Approvals" on October 29, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH8.8>

The Auditor-General forwarded a report dated March 31, 2011 (Item AU2.4) to the May 12, 2011 Audit Committee meeting, relating to the audit of community benefits secured under Sections 37 and 45 of the Planning Act. On June 14, 2011, City Council adopted the report's recommendations without amendment.

The adopted recommendations included the following:

"1. The Chief Planner assess the status of community benefits secured since amalgamation (January 1, 1998) under Sections 37 and 45 of the Planning Act to provide an appropriate level of assurance that all cash and significant non-cash benefits that should have been received, have been received and report any uncollectible benefits to Council."

The following are the relevant links:

Agenda Item AU2.4:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.AU2.4>

Auditor-General's forwarding staff report dated March 31, 2011:

<http://www.toronto.ca/legdocs/mmis/2011/au/bgrd/backgroundfile-37764.pdf>

Appendix 1 to March 31, 2011 report - City Planning Division - Community Benefits Secured under Section 37 or 45 of the Planning Act:

<http://www.toronto.ca/legdocs/mmis/2011/au/bgrd/backgroundfile-37765.pdf>

Appendix 2 to March 31, 2011 report - Management's Response to the Auditor General's Review of City Planning Division, Community Benefits Secured under Section 37 or 45 of the Planning Act:

<http://www.toronto.ca/legdocs/mmis/2011/au/bgrd/backgroundfile-37766.pdf>

Response to Auditor-General's Report: Section 37 and Section 45 Funds Not Received in 1998-2007 Approvals:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PG12.11>

COMMENTS

On October 29, 2019, Council directed the Chief Planner and Executive Director, City Planning to report to City Council in January 2020 on any additional outstanding funds that have been received as a result of staff's efforts to collect unpaid Section 37 and 45 community benefits.

In Attachment 1 to the August 12, 2019 report from the Chief Planner, five developments were listed by address in which a Section 37 cash benefit had been secured, with the cash benefit amount and purpose also listed, and in which records had not been located regarding receipt of the payment. The total amount due and outstanding for the five developments was \$701,387.

Between October 29, 2019, and the date of this report, additional communications were undertaken with respect to the outstanding payments related to those five developments.

In the case of the outstanding indexing payment required for the development at 2388-2398 Lake Shore Boulevard West, the developer Eleven Superior Ltd., has advised that a cheque has been mailed for the required payment of \$3,387.44. As of the date of this report, staff have not received the cheque. Dialogue continues with the developer to ensure that their written undertaking to make the required payment is fulfilled.

City staff also had discussions with Ron Herczeg, one of the three people who partnered together to own Roehampton Birch Properties Inc., the company that developed 359-377 Roehampton Avenue. Roehampton Birch Properties Inc. is no longer the owner of the property but remains indebted to the City in the amount of \$200,000. Mr. Herczeg provided documentation from Sone Rovet Chasson LLP, the former accountants of Roehampton Birch Properties Inc. That documentation noted that Roehampton Birch Properties Inc. was dissolved on January 11, 2016 and that its bank account was closed on June 9, 2016. The company submitted its final corporate income tax return to the Canada Revenue Agency for the year ended August 31, 2015.

Subsequent to City Council's October, 2019 meeting, Mr. Herczeg responded to City staff inquiries in a timely manner and met with City staff for the purpose of finding a resolution to the matter. Mr. Herczeg explained that one of the former owners of Roehampton Birch Properties Inc. had passed away. The third former owner of Roehampton Birch Properties Inc. is of an advanced age and has retired from the industry. Mr. Herczeg remains active in the development industry and is committed to City building and delivering affordable homes to the market.

Mr. Herczeg noted that at no time while Roehampton Birch Properties Inc. was operating did the City request the outstanding payment and he was unaware that the \$200,000 was owing until recently. Mr. Herczeg advises that had the amount been requested in a timely manner, Roehampton Birch Properties Inc. would have made the payment. While Mr. Herczeg does not have a personal obligation to make payment on behalf of Roehampton Birch Properties Inc., he would like to do his part in making this situation right. Accordingly, and even though this issue is over 10 years old, Mr. Herczeg, alone, has offered to pay \$100,000 of the \$200,000 owing through an unrelated company that he is the owner of to resolve this matter.

The remaining three outstanding Section 37 contributions have not been received. Notwithstanding the three instances, to avoid the reoccurrence of non-payments in 2008 the City began implementing improved business processes and producing training material for staff. The implementation changes included direction (among others) that:

- payments being secured at condominium registration be avoided in favour of a clear building permit trigger that plan examination staff have clear oversight over;
- payments always be associated with a clear trigger and that the trigger be specified in the site-specific by-law;
- indexing provisions be articulated in zoning by-laws and related agreements;
- the necessity to index a payment is clearly articulated to plan examination staff in IBMS; and
- the 2016 City Planning Operating Budget included additional funding for the creation of a new Project Coordinator position dedicated to addressing Section 37 payment oversight.

CONTACT

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SIGNATURE

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City Solicitor

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

Confidential Attachment 1 - Confidential Recommendations and Confidential Information