REGION OF YORK
CLERK'S OFFICE
FILE No. - P04

City of Vaughan
The City Above Toronto

Clerk's Department
2141 Major Mackenzie Drive
Vaughan, Ontario
Canada L6A 1T1

Tel (905) 832-8504
Fax (905) 832-8535

FOR INQUIRIES: **PLEASE QUOTE ITEM & REPORT NO.**

May 25, 2010

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R.M.Y.
CLERK

Mr. Denis Kelly, Regional Clerk
The Regional Municipality of York
17250 Yonge Street, Box 147
Newmarket, ON
L3Y 6Z1

Dear Mr. Kelly:

RE: DEVELOPMENT CHARGE DEFERRAL REQUEST
DONGARA PELLET PLANT LP
WARD 2

Attached for your information is **Item 39, Report No. 21,** of the Committee of the Whole regarding the above-noted matter which was adopted without amendment by the Council of the City of Vaughan at its meeting of May 18, 2010.

Sincerely,

Jeffrey A. Abrams
City Clerk

Attachment:
Extract

JAA/pa

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MAY 18, 2010

Item 39, Report No. 21, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on May 18, 2010.

39 **DEVELOPMENT CHARGE DEFERRAL REQUEST DONGARA PELLET PLANT LP WARD 2**

The Committee of the Whole recommends approval of the recommendation contained in the following report of the City Manager and the Commissioner of Finance/City Treasurer, dated May 11, 2010:

Recommendation

The City Manager and the Commissioner of Finance/City Treasurer in consultation with the Director of Legal Services and the Director of Reserves and Investments, recommends:

1. That the City of Vaughan take a similar position with respect to the deferral of the City's development charges as the Region of York determines appropriate in response to the request received from Dongara Pellet Plant LP for the deferral of Regional development charges, and

2. That this report be forwarded to the Regional Clerk.

Contribution to Sustainability

Together, York Region and Dongara will achieve diversion of up to $100,000 tonnes of waste per year.

Economic Impact

Dongara paid $132,483.68 for City development charges prior to the issuance of the building permit for the facility. Deferral would result in a refund of approximately 50% of this amount.

Communications Plan

The Region of York and Dongara Pellet Plant representatives will be advised of Council's decision.

Purpose

The purpose of this report is to advise the Region of York that the City of Vaughan will take a similar position with respect to the deferral of the City's development charges as the Region of York determines appropriate in response to the request received from Dongara Pellet Plant LP for the deferral of Regional development charges.

Background - Analysis and Options

In June 2007, the City entered into a ground lease with Dongara Pellet Factory Inc. for a parcel of land at the northeast intersection of Highway 27 and Highway 407 for the purposes of building a waste management facility.

In October 2008, Dongara requested the Region of York exempt all or part of the Regional Development Charges paid for the plant under the municipal capital facilities provisions of the Municipal Act. The Region of York entered into an agreement with Dongara to provide waste management services for 100,000 tonnes of residual waste annually. The plant has been operating for approximately a year and a half. The Region's agreement is for 50 per cent (50%) of the capacity of the plant under a 20 year contract.

Section 110 of the Municipal Act allows for the creation of municipal capital facilities. Section 110 (7) provides:

"Despite the Development Charges Act, 1997, the council of a municipality may exempt from the payment of all or part of the development charges imposed by the municipality under that Act land or a portion of it on which municipal capital facilities are or will be located that,

(a) is the subject of an agreement under subsection (1);

(b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and

(c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2006, c. 19, Sched. O, s. 3 (2)."

Regulation 603/06 Section 2(1) defines the services that qualify for possible exemption and they include:

" 7. Municipal facilities for the collection and management of waste and garbage".

The Dongara facility would meet the required definition as an eligible type of service.

On October 23, 2008, Regional staff recommended that Regional Council consider a deferral of the regional development charges, as the Region would only utilize a portion of the facility and the Regional agreement does not extend for the full life of the facility. This report was deferred by Regional Council on the same date. Staff's understanding is that, at the time, there was a question regarding the City of Vaughan's position on this matter.

The land is in the ownership of the City and the City of Vaughan suggests the following conditions be applied if a deferral of Regional development charges is approved:

1. Deferral would be limited to the percentage of the plant capacity for which the Region has contracted;
2. The agreement be registered on title;
3. In accordance with the terms of the contract, the deferral would be executed only after the Region is actively and successfully using the facility;
4. The deferred charges would become payable upon any change in use or ownership;
5. The deferred charges would become payable on the expiry or termination of the Region's contract with the facility for any reason;
6. Should the Region's capacity usage of the facility drop below it's existing percentage that portion of the deferred development charges would become payable immediately; and
7. The proponent pays for the costs of preparing and registering the necessary agreement(s).

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council.

Regional Implications

The Region of York is the main service provider relating to the request from Dongara Pellet Plant, and the City will proceed based on the Region's decision.

Conclusion

Staff recommends that the City of Vaughan take a similar position with respect to the deferral of the City's development charges as the Region of York determines appropriate in response to the request received from Dongara Pellet Plant LP for the deferral of Regional development charges.

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Attachments

None

Report prepared by:

Heather Wilson
Director of Legal Services
Ext. 8389

Clause No. 2 in Report No. 8 of the Finance and Administration Committee was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting on October 23, 2008.

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DEVELOPMENT CHARGE EXEMPTION/DEFERRAL REQUEST DONGARA PELLET PLANT

The Finance and Administration Committee recommends the deferral of the following report, September 29, 2008, from the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that:

1. The request from Dongara Pellet Plant LP for exemption from payment of development charges as a municipal capital facility be denied.

2. A deferral of regional development charges be considered but be limited to the percentage of the plant capacity for which the Region has contracted and be subject to the conditions outlined in this report.

3. The Region enter into an agreement with Dongara Pellet Plant LP setting out the terms of the deferral, subject to approval of the Commissioner of Finance and Regional Solicitor.

4. The Regional Chair and Regional Clerk be authorized to execute the agreement.

2. PURPOSE

To consider a request from Dongara Pellet Plant LP for the exemption from development charges for the Dongara Pellet Plant under the municipal capital facilities provision of the Municipal Act.

3. BACKGROUND

The Dongara Pellet Plant LP has requested an exemption for all or part of the development fees that were collected for the development of the facility at 407ETR and Highway 27 in the City of Vaughan.

York Region has contracted with the Dongara plant to provide waste management services for 100,000 tonnes of residual waste annually. The plant is currently in service demonstration mode and should soon be providing the contracted service. The Region is contracting for approximately 50% of the capacity of the plant under a ten year contract.

The owner had applied for development charge relief at the time of construction on the basis of a miscalculation of the charge. This was reviewed by staff and the owner was advised that an error had not been made. Subsequently, the firm requested consideration for exemption as a municipal capital facility under the Municipal Act. A copy their request is attached (Council Attachment 1).

4. ANALYSIS AND OPTIONS

Section 110 of the Municipal Act allows for the creation of a municipal capital facility and this type of project is eligible under the definitions. The specific conditions that need to be met under the Act related to development charges are detailed in Section 110 (7) which states:

> *Despite the Development Charges Act, 1997, the council of a municipality may exempt from the payment of all or part of the development charges imposed by the municipality under that Act land or a portion of it on which municipal capital facilities are or will be located that,*
>
> *(a) is the subject of an agreement under subsection (1);*
>
> *(b) is owned or leased by a person who has entered an agreement to provide facilities under subsection (1); and*
>
> *(c) is entirely occupied and used or intended for use for a service or function that may be provided by a municipality. 2006, c. 19, Sched. O, s. 3 (2).*

Regulation 603/06 Section 2 (1) defines the services that qualify for possible exemption and they include “7. Municipal facilities for the collection and management of waste and garbage”. The facility would meet the required definition as an eligible municipal service.

The City of Vaughan owns the land on which the facility is located and has leased it to Dongara for a period of 20 years with two optional five year extensions. Staff believe the land ownership differentiates this facility from others with whom the Region may have operating agreements in that it is a municipal facility on municipally owned land.

This application meets the definition of the legislation and would be eligible for consideration. Notwithstanding the fact it meets the definitional requirements, staff are not recommending a full exemption since the plant is not fully used for municipal purposes. However, given the unique nature of the purpose and ownership of the facility and land, Council may wish to consider entering into a deferral agreement for a portion of the Regional development charges for the facility.

The reason for such consideration is that the Region will utilize a portion of the facility and that the regional contract does not extend for the full life of the facility. Therefore, an exemption of this facility could potentially result in an exemption of Regional development charges for a facility that is fully private.

If a deferral of Regional development charges is considered, staff would suggest the following conditions be applied:

1. Deferral would be limited to the percentage of the plant capacity for which the Region has contracted;
2. The agreement be registered on title;
3. In accordance with the terms of the contract the deferral would be executed only after the Region is actively and successfully using the facility;
4. The deferred charges would become payable upon any change in use or ownership;
5. The deferred charges would become payable on the expiry or termination of the Region’s contract with the facility for any reason;
6. Should the Region’s capacity usage of the facility drop below it’s existing percentage that portion of the deferred development charges would become payable immediately;
7. Confirmation by the City of Vaughan that the land and building ownership reverts to the City at the end of the lease;
8. At the time of reversion of ownership to the City of Vaughan if the deferral agreement is still in place it be removed from title;
9. The proponent pay for the costs of preparing and registering the necessary agreement(s).

5. FINANCIAL IMPLICATIONS

The regional development charges related to this facility are $436,444.83. In addition, local and school board development charges were also paid but are not part of any consideration for exemption or deferral as the municipality and school board would need to decide individually.

If a deferral is approved 50% or approximately $218,222.42 of the charges which have been paid would be refunded and set up as a deferral.

6. LOCAL MUNICIPAL IMPACT

There are no direct local implications as this report deals only with the regional development charge portion since the service is regional.

7. CONCLUSION

The Dongara Pellet Plant, which is constructed on land owned by the City of Vaughan, is intended to be used at least partially for the processing of regional residual waste. As such it provides a municipal service. The term of it providing municipal service, however, is not necessarily equal to the life of the facility. Accordingly, exemption of development charges is not recommended but consideration of a deferral of the portion related to the Region’s use of the facility could be considered for deferral for as long as the facility is used by the Region.

For more information on this report, please contact Lloyd Russell, Commissioner of Finance Ext. 1600.

The Senior Management Group has reviewed this report.