# 2
# DEVELOPMENT CHARGES PREPAYMENT OPTIONS AT TIME OF BY-LAW UPDATES AND PHASE-IN OF RATES

**The Finance and Administration Committee recommends:**

1. **Receipt of the communication (April 7, 2010) from Marco Filice, Vice-President & Counsel, Liberty Development Corporation; and**
2. **Adoption of the recommendations contained in the following report dated March 15, 2010, from the Commissioner of Finance.**

## 1. RECOMMENDATIONS

It is recommended that:

1. Regional Council approve a process that would provide the option for proponents to enter into an agreement to prepay Regional development charges at the time of a by-law amendment or phase-in of rates, in accordance with terms and conditions set out in section 4 of this report.

2. Regional Council delegate the execution and approval of prepaid development charge agreements to the Finance Commissioner and Regional Solicitor.

## 2. PURPOSE

The purpose of this report is to establish a process that would provide the option for proponents to enter into an agreement to prepay Regional development charges prior to changes in development charge rates, subject to conditions detailed within this report. This would minimize development charge complaints received from developers who require more time to obtain the necessary approvals that would allow for payment of the development charge but who will be initiating construction imminently.

## 3. BACKGROUND

On December 16, 2009 Regional Council adopted the Regional Official Plan. The Official Plan includes revisions that emphasize the importance of Economic Vitality and balanced growth. The implementation of financial tools that would assist the Region in achieving growth management goals in the Official Plan is consistent with the overall objectives of this report. A prepayment option for Regional development charges is a financial tool that is consistent with the Official Plan's objectives.

In addition, each time the development charge By-law is updated or phased-in rates are increased, Regional staff received a number of prepayment requests under existing policies. Regional staff received a number of requests and complaints from developers whose developments are in the approval process to pre-pay their development charges. In many cases, these approvals are received within a short time period after the adjustment date and as a result, the developers are required to pay the increased rate. Some developers have expressed an opinion that municipalities have contributed to the delay and this may lead to disagreements and potentially Ontario Municipal Board hearings. This situation may result in an unfair advantage or disadvantage amongst developers if the increases in costs are significant.

In the case of non-residential developments, Regional development charges are collected by the area municipality at the building permit issuance stage. The pre-qualification for the building permit process and requirements are lengthy and require extensive up-front work. The proposed payment option will also relieve some of the strain that the local municipality faces during these development charge updates. Financial certainty will be provided regarding Regional development charges during this six month period. Therefore, this would allow the developer to focus their attention on achieving final approval or building permit issuance in the allotted time.

Based on our research for the 2007 By-law, development charges contribute to approximately 11% of the non-residential total project costs.

## 4. ANALYSIS AND OPTIONS

### An option to allow prepayment of development charges is proposed for By-law updates or phase-in of rates

To be consistent with the Official Plan objectives and to eliminate concerns related to timing and approvals when the Region undergoes a development charge By-law update, or when a rate increase is phased-in staff recommends an option for proponents to enter into an agreement to prepay development charges with the Region subject to the following requirements:

Residential In-fill subdivisions and High-rise developments

1. Prepaid development charges will be payable upon execution of the agreement based on rates in effect on the payment date, and
2. In order for this rate to prevail the development must, within six months, meet all criteria (as detailed in Attachment 1) presently in place that would allow for the development charge payment to be accepted by the Region, and
3. The payment of said development charges shall be made directly to the Region, and
4. Any other payment provisions in the By-law shall not apply to the agreement ; and
5. The Region will provide a “proof of payment” for the developer to present to the local municipality at time of building permit issuance, and

6. This agreement is valid for six months from the date noted on the “schedule of agreement”, and
7. If condition 2 is not met, the Region will refund the prepaid development charges paid without interest, after the “proof of payment” expires, and development charges will be payable at the prevailing rate on the effective payment date.

Non-residential developments
1. Prepaid development charges will be payable upon execution of the agreement based on rates in effect on the payment date, and
2. In order for this rate to prevail, the building permit for the proposed development must be issued within six months of the date of execution of the agreement, and
3. The payment of said development charges shall be made directly to the Region, and
4. Any other optional payment provisions in the By-law shall not apply to the development; and
5. The Region will provide a “schedule of agreement” for the developer to present to the local municipality at time of building permit issuance, and
6. This agreement is valid for six months from the date noted on the “proof of payment”, and
7. If the building permit for said development is not issued within six months of the date of execution, the Region shall refund the prepaid development charges without interest, after the “proof of payment” expires. As a result, development charges will be payable at the prevailing rate on the day the building permit is issued.

It is proposed that this prepayment option be made available on all developments. Should developers choose not to enter into a prepaid development charge agreement, they will be subject to the current provisions within the development charges By-law and will be able to take advantage of pre-existing policies specifically the 3 year Retail deferral option and the 18 month Condominium deferral option.

## 5. FINANCIAL IMPLICATIONS

This prepayment option would be limited to Development Charge By-law updates and to increases related to phased-in rates. Future development charge rate changes are subject to annual indexing adjustments in accordance with Statistics Canada Non-residential Construction Price Index as well as DC By-law updates. It is important to note that this option is not available when the Regional development charge By-law undergoes and it’s annual indexing

Typically, By-law updates can result in significant rate changes, as the 2007 DC By-law increased development charges by approximately 20%. Therefore, the prepayment option can result in significant savings to these types of developments that are in the final stage of the approval process and building permit issuance is imminent.

To the extent that this prepayment option is chosen by developers, DC revenues may be somewhat lower than they would have been if payment had to be made at the higher rate. It is difficult to quantify this impact. The benefit of this proposal is to help developers who are very close to completing the approval process and to reduce the possibility of requests, complaints and potential Ontario Municipal Board hearings. This option is proposed to be limited to a six month time period, and is intended to achieve a reasonable balance between the concerns of developers who are at this stage in the approval process and potential DC revenues foregone by the Region.

## 6. LOCAL MUNICIPAL IMPACT

Development charges are the primary funding source for the Region's growth-related infrastructure costs. The prepayment process that is proposed tries to minimize additional requirements for the building permit issuance by the local municipality. This would also relieve some of the increased volume for approval and building permit issuance by local municipal staff.

## 7. CONCLUSION

This report proposes a process that would provide the option for proponents to enter into an agreement to prepay development charges subject to the terms and conditions as set out in section 4 of this report. In addition, it also authorizes the delegation of execution of resulting prepaid development charge agreements.

For more information on this report, please contact Kelly Strueby, Director of Business Planning and Budgets at ext. 1611 or Beth Kodama, Manager of Capital and Development Financing at ext. 1699.

The Senior Management Group has reviewed this report.

*(The attachment referred to in this clause was included in the agenda for the April 8, 2010 Committee meeting.)*

## *Submission Checklist*
## Clearance of Regional Draft Plan of Subdivision Conditions

The following list of materials, along with a completed *'Submission Checklist'*, is required to initiate the process for clearance of Regional Draft Plan of Subdivision Conditions:

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| i. | **Review Fee ($995.00 – Valid until January 31, 2011)**<br>*A review fee is only required where the M Plan submitted represents a 2nd or subsequent Phase. If the subdivision is being developed in a single Phase or the M plan represents Phase 1, no fee is required.* | Fee enclosed:___<br><br>Exempt: ___ |
| ii. | **'Final' M Plan (8 full size copies and 1 reduction)**<br><br>*'Final' M Plan for the purpose of this form and the Regional clearance process is defined as an M Plan wherein both the owner's and surveyor's certificates have been fully signed and dated; this includes the presence of a survey completion date demonstrating that the lands have been fully surveyed/barred. Please note that York Region will initiate the clearance process with a copy of an unsigned 'Draft' M Plan.*<br><br>***However, a 'Final' M Plan must be submitted prior to York Region accepting payment of applicable Regional Development Charges and prior to providing a clearance letter to the local municipality.*** *Further, the submission of the 'Final' M Plan should be accompanied by a signed letter from the Surveyor listing in detail all revisions that have been made to the M Plan between the 'Draft' and 'Final' versions.* | Final M Plans enclosed:<br>_______<br><br>Draft M Plans enclosed:<br>_______ |
| iii. | **'Final' Fully/Duly Executed Local Subdivision Agreement (3 hard copies)**<br><br>*'Final' Fully/Duly Executed Local Subdivision Agreement for the purpose of this form and the Regional clearance process is defined as a Subdivision Agreement that has been fully executed by both the owner(s) and the local municipality. Please note that York Region will initiate the clearance process with 3 Draft copies of the local subdivision agreement (signed and dated by the owner).*<br><br>***However, a 'Final' Fully/Duly Executed Local Subdivision Agreement shall be submitted prior to York Region accepting payment of applicable Regional Development Charges and prior to providing a clearance letter to the local municipality.*** *Further, the submission of the 'Final' Fully/Duly Executed Local Subdivision Agreement should be accompanied by a signed letter from the owner/consultant listing any changes to York Region related provisions/clauses within the agreement that occurred between the draft and final versions.* | Fully/Duly Executed Final Local Subdivision Agreement:<br>_______<br><br>Unexecuted Local Subdivision Agreement:<br>_______ |
| iv. | **Land Area and Use Certificate from Surveyor (1 hard copy)**<br><br>*This certificate shall include a table indicating the land area and specific land use of each lot and block (i.e., single detached dwelling, townhouse block – 8 units) on the M Plan including streets. The table shall also indicate the proposed intended land use of all part lots/blocks. Area sub totals shall also be provided for each type of land use (residential, parks, streets, etc.).*<br><br>*Note: The certificate shall detail the intended use of all future development blocks shown on the M Plan (i.e., type and number of lots/units). This information is required for the purpose of calculating Development Charges and confirming servicing allocation.* | Enclosed:<br>_______ |
| v. | **Confirmation of Water Supply and Sanitary Servicing Allocation (3 hard copies of the Council Resolution & confirmation letter from Local Municipal Staff)**<br><br>*Confirmation of water supply and sanitary servicing allocation shall be provided in the form of a copy of the local municipal Council resolution indicating that adequate allocation has been set aside for the proposed development.* ***The resolution shall be accompanied by correspondence from local Municipal staff advising that the resolution remains applicable.*** | Council Resolution enclosed:<br>_______<br><br>Confirmation Letter enclosed:<br>_______ |

12

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| vi. **Letter from the Owner or Agent detailing how each Regional draft plan condition has or is intended to be satisfied.**<br>*Example:*<br>*Condition 43: The Owner has agreed in the subdivision agreement (Clause 21.5.2) to implement the recommendations of the functional transportation report.* | Enclosed: ___ |

File #: 19__________________ Date: __________________

Owner Contact Information:

Name: ______________________________

Address: ______________________________

______________________________

______________________________

Telephone: ______________________________

Cellular: ______________________________

Facsimile: ______________________________

Email Address: ______________________________

Agent/Consultant Information:

Name: ______________________________

Address: ______________________________

______________________________

______________________________

Telephone: ______________________________

Cellular: ______________________________

Facsimile: ______________________________

Email Address: ______________________________

Area Municipal Contact:

Name: ______________________________

Department: ______________________________

Telephone: ______________________________

Facsimile: ______________________________

Email Address: ______________________________

**Important Note: The Region's subdivision clearance process is outlined in Report 4, Clause 1 of the Planning and Economic Development Committee, adopted by Regional Council at its meeting on April 27, 2006 and the attachments thereto (the "Report"). If there is a conflict between the requirements set out in this checklist, and the requirements set out in the Report, the requirements of the Report will prevail.**

***Updated February 1, 2009***

LIBERTY development

LIBERTY *for all*

April 7, 2010

Regional Municipality of York
17250 Yonge Street, 4th Fl.
Newmarket, ON L3Y 6Z1
Attn: Regional Clerk, Denis Kelly
e-mail: regional.clerk@york.ca
Fax: +1-905-895-3031

Dear Sirs/Mesdames:

**Re: Finance and Administration Committee**
**April 8, 2010 - Revised Agenda, 9 a.m.**
**Report of the Commissioner of Finance**
**Item No. D-2:**
**Development Charges Prepayment Options at Time of By-law Updates and Phase-in of Rates (the "Report")**

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I am writing on behalf of Liberty Development Corporation, a development manager for several developments in York Region, including mixed-use and transit-oriented developments.

While we appreciate staff efforts to recognize that the communication of prepayment options, in the face of a proposed major, and unexpected, DC increase will assist some limited developers and builders, we are concerned with the option for non-residential developments that form part of complex larger intensification developments.

In Section 4 of the report, under the heading 'Non-residential developments' (i.e. I/C/I, including 'office'), the proposed time for permit pulling to benefit from the pre-payment is six months. While in the single storey product, a timeline of six months may be appropriate, we submit respectfully that for complex multi-building hi-rise developments that incorporate office (multi-storey), as desired in centres and corridors, the six months is hugely insufficient.

Where multiple levels of underground parking and phasing of construction of multiple buildings are involved, the six months is insufficient and unfairly penalizes the multi-storey office product from receiving the benefit of this proposed option provided to other product that does not have the same constraint.

 W.A.

The Report does not intend to penalize office product when it states on page 3: "*It is proposed that this prepayment option be made available on all developments.*" Well, all developments are not created equally when it comes to phasing, financing and complexities.

The Region staff through consultation with industry should be applauded for recognizing that larger complex intensification developments are 'different' than the traditional 'ground related' product and the general policies may not always apply. In the April 7, 2010 Region Report of the Planning and Economic Development Committee entitled "Principles for Providing Future Infrastructure; Agenda item "D-3" (the "April 7 'D-3' Report") , the Region 'extended' the standard building permit trigger (for allocation) from 18 months to 30 months; this is an extension of 12 months, recognizing larger construction periods and multi-phased mixed-use projects.

In the same vein, recognizing that our office product is in a 'larger complex intensification development', we submit that the prepayment consideration for non-residential of the requirement to pull a permit in six months be equally extended by an additional 12 months to match the rationale of the April 7 D-3 Report. That same report stated: "*It is important that this practice remain an important element of the Regional servicing protocol in order to promote Regional and local intensification objectives as identified through the respective official plans.*"

An extension of the six months to eighteen months permits the Region to continue to support the intensification principles of Places to Grow, and support office development in the Region.

Furthermore, payment for the capital infrastructure will be more commensurate with the proposed date of the actual use of the service. For example, to permit a prepayment today, whilst the office product may not use the capital infrastructure for 18 – 30 months permits the Region to be in unfairly in receipt of funds that do not correlate with the use of the capital infrastructure by the product, when compared to other product, resulting in a cash flow cost penalty for such hi-rise office product. Conversely, traditional ground related product will have the benefit of the use of the capital investment generally within six months of payment of the DC.

We respectfully submit that in the Report Section 4, page 3, should reflect 18 months, instead of six months, for I/C/I office product. Nonetheless, we continue to welcome communication with finance and other staff to discuss this concern further and have hope that we can come up with some creative suggestions to help devise some financial policies in the DC review that will not result in further disincentives for office development (and loss of assessment revenue) in the Region.

Sincerely,
M. Filice
B.E.S., LL.B., M.B.A.
Vice-President & Counsel