

Staff Report

Report To: City Council
Report From: Dana Goetz, C.E.T., Engineering technologist III
Meeting Date: September 26, 2022
Report Code: OP-22-044
Subject: Site Plan Control Agreement for 2125 16th Street East –
Heritage Grove Centre Inc. Cost Recovery

Recommendations:

THAT in consideration of Staff Report OP-22-044 respecting a Site Plan Control Agreement for 2125 16th Street East – Heritage Grove Centre Inc. Cost Recovery, City Council receives the report for information purposes.

Highlights:

- This Agreement is a component of the conditional site plan approval granted to Villarboit (Owen Sound) Holdings Limited Partnership / Heritage Grove Centre Inc. for 2125 16th Street East by City Council approved at the September 9, 2011, regularly scheduled Council meeting.
- The Site Plan Control Agreement contains clauses relating to cost recovery by the City on behalf of Villarboit (Owen Sound) Holdings Limited Partnership / Heritage Grove Centre Inc. from subsequent developers.
- The 16th Street Traffic Signalization cost recovery amount of \$278,920 has been owing for more than ten years, and in comparison with the sunset clause in the recent Highway 26 and 20th Inc Servicing Agreement, it is fair to pay this amount now. The money, ½ of which has been recently received, will be recovered from future developers of abutting lands.

Strategic Plan Alignment:

Develop a framework to attract key industry sector(s) for economic growth and investment that are matched to Owen Sound's economic strengths.

Previous Report/Authority:

City of Owen Sound By-law 2012-149.

[Delegation of Authority By-law](#)

On August 24, 2022, the City Clerk notified staff that as per section 275 of the *Municipal Act, 2001*, lame duck provisions are in effect as the incoming council will include less than three-quarters of the members of the outgoing council.

Background:

Under By-law 2012-149, Council enacted the Site Plan Control Agreement for a development at 2125 16th Street East by Villarboit (Owen Sound) Holdings Limited Partnership/Heritage Grove Centre Inc.

This Agreement contained clauses pertaining to cost recovery for works completed by the Developer and assumed by the City.

The development of the property known as Heritage Grove Centre, located at 2125 16th Street East, required the construction of infrastructure to support the development, specifically 20th Avenue East to full municipal standard including road, curb, sidewalk, watermain, sanitary and storm sewers from 16th Street East southerly along the west side of the Heritage Grove Centre property, 16th Street East road widened with an additional eastbound lane and sidewalk along the property frontage, and improvements to the 20th Avenue East and 16th Street East intersection including the installation of traffic signals. A new watermain, on an easement and assumed by the City, was constructed through the Heritage Grove Centre site to service Heritage Grove and future development to the east.

Construction costs of the 20th Avenue East roadway, 16th Street East upgrading, and the 20th Avenue and 16th Street intersection/ traffic signalization improvements were initially borne 100% by the developer, Villarboit (Owen Sound) Holdings Limited Partnership/Heritage Grove Centre Inc., with a cost-sharing and recovery arrangement for the 16th Street East

and 20th Avenue East intersection upgrading to be split among the abutting property owners as the properties are developed. The City paid the oversizing cost of the watermain that will be recovered by the City from the property's developer immediately east of Heritage Grove Centre.

The City negotiated a repayment clause with the Developer in which the costs of the 20th Avenue and 16th Street East intersection upgrading was divided three ways, with each subsequent developer paying their portion when the properties were developed.

It should be noted that the Servicing Agreement with Heritage Grove Centre Inc. does not contain any "sunset" clauses whereby the City would be obligated to reimburse the developer after a stipulated period of time, regardless of whether development proceeded on the other benefitting properties or not.

Analysis:

The actual cost of the intersection improvements was \$272,266.00 in construction cost plus \$84,818 in engineering cost for a total cost of \$357,084 (2012 \$), which was to be split 3-ways as follows:

PROPERTY OWNER	CPI ADJUSTED COST (2022 \$)	ACTUAL COST (2012 \$)
Villarboit (Owen Sound) Holdings Limited Partnership/Heritage Grove Centre Inc. ARN: 4259040060 13000 – Southeast quadrant	\$139,460.00	\$119,028.00
Halton Place Horse and Country Limited ARN: 4259010006 23210 – Northeast quadrant (future development)	\$139,460.00	\$119,028.00
Hwy 26 & 20 th Commercial Inc. o/a Thompson Centres/Sydenham Heights Centre ARN: 4259010006 22904, 23000, 23101, 23102 & 23103 – Northwest quadrant	\$139,460.00	\$119,028.00

There was no opportunity to recover costs for the 20th Avenue East intersection upgrading (widening and traffic signals) from the southwest quadrant of the intersection as this property owner and developer (Smart Centres/Smart REIT) had fulfilled their development obligations under their previous servicing agreements.

Under this agreement, the estimated total amount recoverable from the developers on the north side of 16th Street East is \$278,920.00, including HST and the Construction Price Index (CPI) adjustment (2022 \$).

Under the Servicing Agreement with Hwy 26 & 20th Commercial Inc. they will pay a net total of \$69,730 for the previous intersection upgrades with the remaining \$69,730.00 to be recovered from two 17th Street East properties on the north side of 17th Street East at 20th Avenue East. To summarize, the City will recoup the cost recovery amount of \$278,920.00 from future developers in the following manner:

- \$139,460 plus Construction Price Index (CPI) adjustment as a capital contribution for intersection upgrades from Halton Place Horse and Country Limited (ARN: 425901000623210) at the time of development.
- \$69,730 plus Construction Price Index (CPI) adjustment as a capital contribution for intersection upgrades from Highway 26 & 20th Commercial at the time of development.
- \$34,865 plus Construction Price Index (CPI) adjustment as a capital contribution for intersection upgrades from David Fieldstone (ARN: 425901000623100) at the time of development.
- \$34,865 plus Construction Price Index (CPI) adjustment as a capital contribution for intersection upgrades from Chris Gavaris (ARN: 425901000623200) at the time of development.

One of the four restrictions on Council during the “lame duck” period is that they are unable to make expenditures or incur any other liability that exceeds \$50,000 if Council had not approved it in the budget. The Delegation of Powers and Duties By-law provides that, during the lame duck period, the City Manager and Director of Corporate Services, acting jointly, can approve expenditures exceeding \$50,000. Staff must provide a report to Council advising of action(s) to be taken.

Under the Servicing Agreement with Hwy 26 & 20th Commercial Inc., the City has recovered and will reimburse Heritage Grove Centre Inc. the amount of \$139,460 for the 2012 intersection upgrading.

This leaves an amount of \$139,460 (2022 \$) yet to be recovered from the future development of the northeast quadrant of the intersection that would be reimbursed to Heritage Grove Centre Inc.

Given that ten years have passed since this intersection was upgraded, recent discussions and negotiations with Villarboit (Owen Sound) Holdings Limited Partnership representatives and City Senior Leadership Team staff have been held in relation to the cost recovery set out in their Servicing Agreement.

In consideration of the Servicing Agreement with Hwy 26 & 20th Commercial Inc. that sets out that certain capital contributions would be reimbursed by the City at 5 or 10 years after the execution of the Servicing Agreement, regardless of whether development proceeds on other benefitting properties or not, and in keeping with a principle of fairness and working with the City's development partners, staff are recommending that the remaining \$139,460 portion for the 2012 intersection upgrading by Heritage Grove Centre Inc. be reimbursed at this time, that being ten years following the completion of the works assumed by the City.

The above-noted cost, which would now be front ended by the City, would be recovered as noted in this report.

This report is to provide Council with notice that the City Manager and Director of Corporate Services will authorize the additional and final payment of \$139,460 to Villarboit (Owen Sound) Holdings Limited Holdings/Heritage Grove Centre in accordance with the Delegation of Powers and Duties By-law.

Financial Implications:

The final reimbursement of \$139,460 to Heritage Grove Centre Inc. will be funded from reserve expensed in the current year capital program. Ultimately the funding source for this expenditure will be recommended at year end once all capital project surpluses and deficits are known. In the likely event there is not a capital surplus that is sufficient to fund the transfer, the capital reserve will be the recommended funding source.

Ultimately, the amounts noted in this report, indexed for inflation to the year in which they are recovered, are to be fully recovered from future developers of the properties abutting the 2000 block of 20th Avenue East and the 1900 and 2000 blocks of the 17th Street East road allowances. These amounts will be carried in the capital budget in the year that they would come due for reimbursement to Hwy 26 & 20th Commercial Inc. and front-ended by the City that if the development of the other subject properties does not proceed and cost recovery is not possible until those developments do proceed.

Any future funds received will be returned to the capital reserve.

Communication Strategy:

Published in agenda and presented at a regularly scheduled meeting of City Council.

Consultation:

The City Manager, Director of Public Works and Engineering, Director of Corporate Services, City Clerk, and Manager of Engineering Services were consulted in the preparation of this report.

Attachments:

None

Recommended by:

Mike Crone, Director of Public Works and Engineering

Submission approved by:

Tim Simmonds, City Manager

For more information on this report, please contact Mike Crone, Director of Public Works and Engineering, mcrone@owensound.ca or 519-376-4440, ext. 1201.