



A People Place, A Change of Pace
SHELBURNE
ONTARIO, CANADA

Meeting Date: Monday, July 12, 2021

To: Mayor Mills and Members of Council

From: **Steve Wever, Town Planner**

Report: P2021-31

Subject: **SPA 17/02 - 301 Col. Phillips Drive
Development Charges Funding
Agreement for Intersection
Improvements – Hwy 10 / Col. Phillips
Drive / Third Line**

Recommendation

1. Be it resolved that Council receive Report P2021-31 as information;
2. Be it resolved that By-law 43-2021, being a by-law to enter into a Municipal Works Funding Agreement with 2477838 Ontario Inc., substantially in the form attached to this by-law, for signalization and other improvements to the existing intersection of Highway 10, Col. Phillips Drive and Third Line, be read a first, second and third time and finally passed, authorizing the Mayor or his designate and the Clerk to execute the agreement.

Background

The subject property at 301 Colonel Phillips Drive is currently being developed for a new commercial plaza in accordance with an approved site plan and a related Site Plan Agreement dated May 13, 2019. The property is owned by 2477838 Ontario Inc. As set out in the Site Plan Agreement, the owner is required to signalize and make other improvements to the existing intersection of Highway 10, Col. Phillips Drive and Third Line, which requires

signalization in part as a result of the cumulative effect of traffic growth related to past development of the Summerhill subdivision and the commercial block.

The owners have completed an Environmental Assessment and detailed design drawings for the intersection works, and have entered into an agreement with MTO to complete the work. The work includes some improvements along Col. Phillips Drive (a local street under the Town's jurisdiction), and also Third Line (Township of Melancthon road) in the vicinity of the intersection. The intersection signalization and improvements have been approved for construction which is currently underway.

Through Development Charges, the Town has collected fees from development to be used towards the cost of growth-related intersection improvements in the Town, including the subject intersection. The approved capital forecast in the Town's 2020 Development Charges Study includes \$941,008 as the eligible DC cost portion of the intersection signalization and improvements. This amount has been indexed to 2021 dollars resulting in a total eligible DC funded portion of \$970,179. The total project cost identified in the 2020 DC Study is \$1,502,874 and the owner has provided the total contract cost which exceeds \$1.6 million. The Site Plan Agreement requires that the owner is responsible for the cost of the work, except for the portion that is DC eligible, and includes requirements and provisions for the owner to request and make submissions for DC funding of the eligible portion of the cost.

Analysis

Pursuant to the Site Plan Agreement and based on the approved capital forecast for intersection improvements in the Town's DC Study, a Municipal Works Funding Agreement has been prepared to establish the terms of payment for the portion of the intersection signalization and improvements cost that is eligible for DC funding.

The agreement provides for the DC funding for the project to be released in three payments to the owner, with the amounts established based on the DC funding proportion of the progress payments that the owner has made or will make to the contractor, with a 25% holdback for 1 year following the issuance of completion of the work to ensure satisfactory performance and maintenance of the works for that period.

The agreement also sets out the documentation required to be provided by the owner prior to any DC funding provided by the Town, including proof of payments to contractors, engineering certifications and progress reports, etc. Regular construction progress meetings are held with the project manager and contractor and the MTO and are attended by the Director of Development and Operations and/or the Town Engineer and the Town Planner.

The MTO holds security for the intersection signalization and improvements. The Town also holds a site plan security for the site works and related improvements along Col. Phillips Drive.

The intersection works are underway and are expected to be completed approximately by the end of August.

Financial Impact

The total DC eligible funded portion of the project is \$970,179 to be paid in four payments in 2021-22 from the applicable DC reserve account. As per the 2020 DC Study these funds are already available on reserve as collected from prior development.

Policies & Implications (if any) Affecting Proposal

Development Charges Study & By-law

Consultation and Communications

The draft funding agreement was prepared by legal counsel and reviewed by the Town Clerk / Director of Legislative Services and the Director of Financial Services / Treasurer.

Council Strategic Priorities

Council's Strategic Priorities has three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

This Report relates to the following Goal:

Target T3: Invest in critical infrastructure

Supporting Documentation

N/A

Prepared by:

Steve Wever, Town Planner

Reviewed by:

Denyse Morrisey, CAO

THE CORPORATION OF THE TOWN OF SHELBURNE

BY-LAW NO. 43-2021

WHEREAS pursuant to the provisions of the Municipal Act, 2001, S.O. 2001 c. 25 as amended, ss. 8 & 9 refers the Town is authorized to enact this by-law;

WHEREAS the Owner entered into a site plan agreement with the Town, dated May 13, 2019 (“the **Site Plan Agreement**”) as a condition of the approval of plans under s. 41 of the *Planning Act*, to permit the development of a commercial facility on lands known municipally as 301 Col. Phillips Drive in the Town;

AND WHEREAS the Site Plan Agreement provides that the Owner is responsible for the cost of certain roadway modifications and intersection improvements (“the **Improvements**”) in the vicinity of 301 Col. Phillips Drive, except for the portion of the cost thereof that is eligible for development charge funding;

AND WHEREAS the Town has determined that a portion of the Improvements are eligible to be funded by development charges previously collected by the Town;

AND WHEREAS the development charge-eligible components of the Improvements constitute municipal capital facilities for the purposes of s. 110 of the *Municipal Act, 2001*;

AND WHEREAS the Owner has made arrangements to construct the Improvements at its expense and, subsequently, has applied to the Town for reimbursement of the development charge-eligible component of the cost of the Improvements;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Shelburne hereby enacts as follows:

1. THAT the Corporation of the Town of Shelburne enter into a Municipal Funding Agreement with 2477838 Ontario Inc. for roadway modifications and intersection improvements in the vicinity of 301 Col. Phillips Drive dated as of July 12th, 2021, substantially in the form attached to this by-law and initialed by the Clerk for identification.
2. THAT the Mayor or his designate and the Clerk are hereby authorized to execute the agreement and all documents necessary to complete the matters authorized by this by-law.

BY-LAW READ A FIRST AND SECOND AND THIRD TIME AND ENACTED THIS THE 12TH DAY OF JULY, 2021.

.....
MAYOR

.....
CLERK

Municipal Works Funding Agreement

THIS AGREEMENT made this 12th day of July, 2021

BETWEEN:

2477838 ONTARIO INC.

("Owner")

Party of the FIRST PART

-and-

THE CORPORATION OF THE TOWN OF SHELBURNE

("Town")

Party of the SECOND PART

WHEREAS the Owner entered into a site plan agreement with the Town, dated May 13, 2019 ("the **Site Plan Agreement**") as a condition of the approval of plans under s. 41 of the *Planning Act*, to permit the development of a commercial facility on lands known municipally as 301 Col. Phillips Drive in the Town;

AND WHEREAS the Site Plan Agreement provides that the Owner is responsible for the cost of certain roadway modifications and intersection improvements ("the **Improvements**") in the vicinity of 301 Col. Phillips Drive, except for the portion of the cost thereof that is eligible for development charge funding;

AND WHEREAS the Town has determined that a portion of the Improvements are eligible to be funded by development charges previously collected by the Town;

AND WHEREAS the development charge-eligible components of the Improvements constitute municipal capital facilities for the purposes of s. 110 of the *Municipal Act, 2001*;

AND WHEREAS the Owner has made arrangements to construct the Improvements at its expense and, subsequently, has applied to the Town for reimbursement of the development charge-eligible component of the cost of the Improvements;

AND WHEREAS the Town has determined that the development charge eligible component of the cost of the Improvements is \$970,179;

NOW THEREFORE in consideration of mutual covenants, agreements and promises herein contained and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby acknowledged) and other good and valuable consideration and the mutual agreements contained herein, the parties hereto covenant and agree as follows:

1. Subject to the Owner fulfilling the requirements of paragraph 2 to the satisfaction of the Town, the Town agrees to reimburse the Owner for the development charge-eligible components of the cost of the Improvements on the following schedule:
 - a. Upon execution of this agreement: \$165,765.58
 - b. On or after July 31, 2021: \$414,413.96
 - c. Upon the issuance of a letter of completion with respect to the Improvements by the Town, pursuant to the Site Plan Agreement: \$248,648.37

- d. On the date that is 1 year after the issuance of a letter of completion with respect to the Improvements by the Town, pursuant to the Site Plan Agreement: \$141,351.09.
- 2. Prior to the Town making any payment set out in paragraph 1 of this agreement, the Owner shall provide the following, all of which shall be to the satisfaction of the Town in its sole discretion:
 - a. A written request for payment under this agreement;
 - b. Evidence that the construction of the Improvements is proceeding in accordance with the approved construction schedule for the improvements;
 - c. Certification from the Owners' consulting engineer that all work undertaken on the Improvements to date has been in accordance with the drawings and specifications approved by the Town;
 - d. A statutory declaration to the satisfaction of the Town to the effect that all contractors, subcontractors, suppliers and consultants involved in the construction of the improvements have been paid for all work done or materials supplied to date; and
 - e. Such other matters as the Town may require, in its sole discretion;

IN WITNESS WHEREOF, the parties hereto have affixed their corporate seals as attested by the signatures of their duly appointed signing officers.

2477838 ONTARIO INC.

Per: _____ c/s

Authorized Signing Officer

I have authority to bind the corporation.

**THE CORPORATION OF THE TOWN OF
SHELBURNE**

Wade Mills, Mayor

Jennifer Willoughby, Town Clerk