



Corporate Report

NO: R108

COUNCIL DATE: May 2, 2005

REGULAR COUNCIL

TO: Mayor & Council DATE: April 25, 2005
FROM: General Manager, Planning FILE: 6520-20
 and Development (Morgan Creek)
SUBJECT: Pathways and Other Amenities in Morgan
 Creek

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information; and
2. Instruct the developer to work with City staff in organizing and conducting a public information meeting to obtain input from the public with respect to the possible alternative use of the funds that will be available in lieu of the construction of the pathways and other amenities in the Morgan Creek development; and
3. Instruct staff to forward a report to Council after the public information meeting, documenting the results of the meeting and including recommendations.

INTENT

The purpose of this report is to inform Council about the matter of pathways and other amenities that were to be constructed in the Morgan Creek development as part of the approved Development Permit and to seek Council authorization to hold a public information meeting to seek public input, regarding the matter, including the possible alternative use of the funds that will become available in lieu of the construction of the pathways and other amenities by the developer.

BACKGROUND

The Morgan Creek neighbourhood is a master-planned golf course community bounded by 40 Avenue to the north, 160 Street and 164 Street to the east, 32 Avenue in the south and 156A Street and 156B Street to the west. The development was initiated in 1992 and consists of single-family suburban type lots and a number of townhouse developments.

The development is almost complete, except for a few suburban single-family lots that remain to be subdivided in the northeast corner of the development, near the intersection of 40 Avenue and 164 Street. As part of the development permit for the original phases of the Morgan Creek development, the developer was required to construct a network of pedestrian walkways, complete with viewpoints throughout the community. The walkways were, in part, to be constructed along the edges of several of the golf course fairways and in part on restrictive covenant areas within the residential areas of the community.

The original phases of the development consisted only of lands bounded by 32 Avenue, 164 Street, 36 Avenue and 38 Avenue and approximately 158 Street, as illustrated in Appendix I. As the Morgan Creek developer acquired more land, the development was expanded up to 40 Avenue and 156 Street. Development Permit No. 6792-0106-00

(Appendix II) was approved by Council in February 1995, for the original phases of the development, which included the location and design of the walkway and viewpoint system throughout this master-planned community.

In the first few years, as development of the neighbourhood and golf course occurred, construction of various sections of the pathway system was completed. However, in more recent years, further construction of the pathway system and viewpoints has not occurred. The sections that have not been completed are primarily within the golf course fairways or along environmental areas. The developer has indicated an unwillingness to complete these sections, due primarily to the liability that they believe will result from the inherent dangers associated with introducing pedestrians in a golf course setting while golf is being played on the golf course (i.e., golf balls could hit unwary pedestrians with the potential for serious injuries and significant liability to result). As a result, the pathway system, as it exists today, deviates substantially from the requirements of the original Development Permit No. 6792-0106-00 (Appendix II).

Since the development is nearing completion, this anomaly between the requirements of the Development Permit and the current state of the pathway system needs to be resolved. It is noted that the City continues to hold securities from the developer for the completion of the pathway system and viewpoints.

DISCUSSION

Original Pathway Plan and Modifications

The approved Development Permit (Appendix II) illustrates an overall subdivision concept for the original phases of the Morgan Creek development, including a pedestrian pathway system and viewpoints. The pathways on the approved Development Permit measure approximately 5,069 metres (16,630 feet) in total length throughout the development and include other features, such as a gazebo and viewpoints. The pathway system and other amenities were to be constructed by the developer and were to be covered by a Restrictive Covenant to allow public access to the pathways and amenities and to specify that the developer was responsible for the ongoing maintenance of these features.

As the Morgan Creek development has evolved over the past 10 years, approximately 1,504 metres (4,900 feet) of walkways have been constructed. Currently, 3,565 metres (11,700 feet) of the originally proposed pathway system remain unconstructed. Of this length, Morgan Creek Developments is responsible for 3,205 metres (10,500 feet) and the developer of the Wedgewood townhouse development is responsible for the remaining 360 metres (1,180 feet). Appendix III illustrates the sections of pathway and the location of the other amenities that remain to be constructed, based on the original Development Permit.

The originally proposed pathway system has not been fully completed for the following reasons:

- Conflict between the alignment of the pathways through or along environmentally-sensitive areas, such as at the east end of Fairways 17 and 18 (west of Morgan Creek Crescent);
- Concerns with the potential for criminal activity in the Deer Run Townhouse development if the existing walkway through this development was connected to 32 Avenue;
- Potential for serious injuries to unwary pedestrians using the pathways along the lengths of Fairways 8, 9, 11, 12, and 13, due to errant golf shots if such walkways are constructed;
- Concerns with crime and safety by single-family homeowners who do not wish to have walkways constructed adjacent to or behind their homes;
- Sidewalks were constructed instead of pathways along some sections of streets in Morgan Creek;
- Site planning and subdivision layout modifications; and
- Concerns about possible conflict between pedestrians on the pathways and golf carts and golf course maintenance equipment.

Safety and Liability Issues

One of the major concerns, related to the completion of the originally planned pathways has been the issue of safety and liability. Morgan Creek Holdings has consulted their lawyer and insurance underwriter on the issue of allowing public access on the pathway system.

The lawyer for Morgan Creek Holdings expressed concern over the ability to adequately protect and educate the general public with respect to the dangers of walking next to a golf course. The lawyer further advised that allowing the public to use the pathways along the golf course exposes Morgan Creek Holdings and the City of Surrey to an indeterminate risk of potentially significant loss, especially in the absence of adequate insurance and indemnifications against potential losses (Appendix IV).

The insurance representatives for Morgan Creek Holdings have also advised that their underwriters will not accept additional third party liability exposure if the pathways within the golf course allow for public right-of-passage (Appendix V). The City has requested that Morgan Creek Holdings save the City harmless from claims arising from the use of the subject pathways and Morgan Creek Holdings, the developer, has requested that the City save Morgan Creek Holdings harmless from claims arising from the use of the pathways, if the City directs that the pathways be installed.

In response to the issue of unfinished pathways, Morgan Creek Developments submitted a letter, dated February 2, 2005, that outlines the history of the Morgan Creek development and their opinion relative to the completion of the pathway system (Appendix VI). The letter states that, throughout the past 10 years of developing Morgan Creek, various pathways were constructed, as required by the Development Permit; however, possible injury to pedestrians became evident on many sections of the pathway system and, particularly, on pathways proposed along the length of fairways. Morgan Creek Holdings further advised that to compensate for not constructing some of these original pathways, additional pathways were included in subsequent phases of the development. They have also committed to working with the City to provide alternative amenities and/or cash-in-lieu for the unconstructed pathways so as to compensate for the intended amenity in the community.

Based on a detailed review of the proposed pathways and the opinions provided by the developer's lawyer and insurance provider, it is recommended that the pathways within or along the Morgan Creek golf course fairways not be constructed and that the developer be required to provide on a "value for value" basis other amenities in the Morgan Creek area or cash in lieu of the unconstructed works for use in providing other amenities to the neighbourhood.

Alternative In Lieu of Pathways on the Golf Course

City staff and the developer, Morgan Creek Holdings, have had extensive dialogue regarding the means by which the developer could provide amenities within the Morgan Creek community in lieu of the unconstructed pathways and amenities, as specified in the approved Development Permit. The developer has advised that they do not intend on taking any action to prohibit the informal use by pedestrians of the extensive system of paved cart paths throughout the golf course during times when golf is not being played on the golf course. Such informal use is taking place now on a regular basis by residents of the Morgan Creek and Rosemary Heights neighbourhoods. However, the developer does not want to formalize this arrangement related to the golf cart paths for liability reasons, similar to those forming the basis for not constructing the walking paths.

Value of Unconstructed Works

A cost estimate was undertaken to determine the value of the pathways and other amenities that have not been constructed by the developer, based on the original Development Permit requirements. The unconstructed works include:

- 3,205 metres of limestone pathway;
- landscaping along various sections of the pathway;
- one gazebo; and
- three viewpoints.

A value for the ongoing maintenance of the pathways, which was also the responsibility of the developer under the Development Permit, was also calculated. Based on unit estimates provided by the Parks Division, it has been calculated that the unconstructed works, including ongoing maintenance for a 20-year period, have a total value of \$316,634. No value was included for property, since the pathways were being constructed generally within the golf course lands and the deletion of these pathways will not result in additional development potential in the Morgan Creek development. Details of the cost estimates are contained in Appendix VII.

The developer of the Wedgewood Townhouse development (Dawson Lakewood Developments) has also committed to providing the necessary funding for 360 metres (1,190 feet) of pathway, which was that firm's responsibility under the Development Permit approved for that development. The estimate for this work was based exclusively on the construction cost of a limestone path, since the area through which the pathway was proposed to be located has been well landscaped with the development of the townhouses. Maintenance was not factored into the estimate since the maintenance responsibility would have been eventually transferred to the townhouse development. On this basis, the value of the unconstructed pathway for which Dawson Lakewood Development is responsible is \$13,320.

Therefore, the total value of the unconstructed pathways and other amenities in comparison to the requirements of the original Development Permit is \$329,954.

Construction of Other Amenities in Lieu of the Original Development Permit Requirements

The developer has advised that, in lieu of constructing the pathways or paying cash in lieu, he is prepared to construct other amenities in the Morgan Creek community with the same value as the unconstructed pathways and amenities, as specified in the original Development Permit (i.e., "value for value" balance). To demonstrate "good faith" in this regard, the developer has provided a list of possible alternative amenities that he could construct within the community. These include:

- three sections of pathway away from the golf course fairways;
- two enhanced pedestrian crossings within the Morgan Creek development; and
- seven additional viewpoints.

These suggested alternative amenities are illustrated on Appendix VIII.

Staff has also reviewed possible amenities that could be constructed (in advance of when they might otherwise be constructed) in the Morgan Creek area. These amenities include:

- development of a neighbourhood park at 15473 – 34 Avenue; and
- development of a neighbourhood park at 3965 – 155 Street (Nicomekl Blueways Launch site).

Community Input To Date

Both the Morgan Creek Home Owners Association and Rosemary Heights Residents Association have recently been in contact with staff of the Planning and Development Department, regarding the construction of the pathways and other amenities in Morgan Creek and alternatives that may be proposed in lieu of the construction of these unconstructed works. Both Associations have requested an opportunity to provide input to the City, prior to a final decision by City Council. Similarly, a spokesperson for the residents of the Deer Run Townhouse development has advised that the residents of that complex are concerned with the construction of certain sections of the walking paths that may jeopardize the security of their development. The City has also received several communications from the members of the Morgan Creek Golf Club, who have expressed strong concerns with the construction of the public walkways within the golf course, related to the safety of the people using the walkways and potential liability that may accrue to golfers using the golf course.

Public Consultation

If Council approves the recommendations of this report, Planning staff will work with the developer in arranging a Public Information Meeting ("PIM") to present information to the public, regarding the matter, including the value and location of the unconstructed pathways and amenities and possible alternative amenities that could be constructed in the community in lieu of the unconstructed works. The PIM would also provide an opportunity for the public to provide input to the City, regarding their views and opinions on the possible use of the "cash-in-lieu" funds and any other comments they may have. A comment sheet will be made available at the PIM for the public to provide written feedback to the City.

The Morgan Creek Home Owners Association, the Deer Run Residents Association, the Morgan Creek Golf Course Club Captains, the Wedgewood Townhouse Residents Association and the Rosemary Heights Residents Committee will be notified regarding the date and time of the public information meeting, at least two weeks in advance of such a meeting.

The results of the input received at the meeting will be summarized in a further Corporate Report to Council, along with recommendations for Council's consideration.

Legal Services has reviewed this report.

CONCLUSION

Based on the above, it is recommended that Council instruct the developer to work with City staff in organizing and conducting a public information meeting to provide information to the public about the walkways and other amenities that have not been constructed and to obtain input from the public about possible alternative amenities for which the funds that will be available in lieu of the construction of the pathways and other amenities in Morgan Creek could be used and instruct staff to forward a report to Council after the Public Information Meeting, documenting the results of the meeting, along with recommendations for Council's consideration.

Murray Dinwoodie
General Manager,
Planning and Development

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Attachments:

- Appendix I Initial development phase for Morgan Creek
- Appendix II Development Permit No. 6792-0106-00
- Appendix III Pathways Built and Not Built
- Appendix IV Letter from Morgan Creek's lawyer

Appendix V	Letter from Morgan Creek's insurance representative
Appendix VI	Letter from Morgan Creek summarizing history of pathway development
Appendix VII	Calculation of Deficiencies and Estimated Costs
Appendix VIII	Proposed Possible Alternative Amenities by Morgan Creek

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Appendix I



Appendix II





Appendix IV











Appendix VII

Appendix VIII



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