



Corporate Report

NO: R003

COUNCIL DATE: January 9, 2006

REGULAR COUNCIL

TO: Mayor & Council DATE: January 5, 2006
FROM: General Manager, Planning and Development FILE: 6520-20 (Morgan Creek)
SUBJECT: Completion and Maintenance of Morgan Creek Pathways and
Implementation of Other Amenities

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Approve, in principle, the list of amenities suggested by the Morgan Creek Homeowners Association, as documented in this report;
3. Authorize staff to work with representatives of the Morgan Creek Homeowners Association to further detail the design, location, construction and maintenance costs and priority related to such amenities and, subsequently, to hold another public open house to provide a final opportunity for the public to provide input to the design and priority of the suggested amenities;
4. Instruct staff to forward a report to Council complete with recommendations on the matter after the public open house, but prior to proceeding with construction of the amenities; and
5. Instruct staff to utilize appropriate legal instruments including, without limitation, restrictive covenants and statutory rights-of-way on the title of appropriate lands within the Morgan Creek community that will document the agreement between the City and the owner of the golf course, regarding the pathway system.

INTENT

The purposes of this report are:

- to inform Council about the results of a public information meeting that was held, regarding the possible alternative use of funds that will become available in lieu of the construction of the pathways and other amenities in the Morgan Creek development;
- to advise Council about a proposed resolution in relation to the completion and maintenance of the Morgan Creek pathway system; and
- to obtain Council's authorization to proceed with the actions toward finalizing and implementing other amenities in the Morgan Creek development.

BACKGROUND

Corporate Report No. R108, entitled "Pathways and Other Amenities in Morgan Creek" (copy attached as Appendix "A") was considered by Council at its Regular Meeting on May 2, 2005. The report outlined the status of implementation of the public pathway system in the Morgan Creek development and documented that some sections of the pathway system could not be constructed due to safety concerns. The report further documented that the developer, Morgan Creek Holdings, had offered to provide alternative amenities in the Morgan Creek community in lieu of the unconstructed pathways, based on the value of those pathways. The report included a valuation of the unconstructed pathways and other amenities and a list of some possible alternative amenities that could be considered. The report recommended that Council:

"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 made available in lieu of the construction of the pathways and other amenities in the Morgan Creek development; and

Instruct staff to forward a report to Council after the public information meeting, documenting the results of the meeting and including recommendations".

Council adopted the above-stated recommendations.

DISCUSSION

Public Information Meeting

Morgan Creek Holdings conducted a public information meeting on June 29, 2005 at Morgan Elementary School. Approximately 80 people attended the meeting, from the

Rosemary Heights Central and Morgan Creek neighbourhoods. Comment sheets were made available to those attending the meeting. Forty-one comment sheets were returned.

The information presented at the meeting included plans that illustrated sections of pathways and sidewalks and two pedestrian street crossings within Morgan Creek that are proposed to be constructed in addition to the pathway system that already exists, in order to ensure reasonable connectivity within the community (Appendix "B"). Information was also presented on possible viewpoint locations within the community and on the design of the proposed viewpoints. The viewpoints were proposed to include a landscaped area and seating for pedestrians using the pathway system.

Throughout this review process, staff has had on-going discussions with representatives of the Morgan Creek Homeowners Association about the status of the pathway system. The Association provided four additional suggestions for amenities within the community that were included in the information presented at the public information meeting. These suggestions are to:

- Re-landscape all traffic islands in the Morgan Creek community;
- Create uniform landscaping around the mailboxes in the community;
- Install traffic throats; and
- Install mock entryways.

The proposal to re-landscape all traffic islands and to create more uniform landscaping around the mailboxes is intended to improve the quality and long-term maintenance of these areas. The Morgan Creek Homeowners Association has advised that many existing landscaped areas have become overgrown and are in need of upgrading with more appropriate vegetation.

With respect to the proposal to install traffic throats and mock entryways, the Association recommends installing these traffic-calming measures with a view to minimizing the appearance of accessibility to criminal activity in the community.

Results of the Public Information Meeting

Based on the comment sheets, the suggestions made by the Morgan Creek Homeowners Association were supported by approximately 50% of the respondents. The suggestion of installing viewpoints along the trail system was supported by only 5% to 7% of the respondents. Approximately 39% of the respondents noted the need for additional maintenance on the existing pathways in the Morgan Creek community, while 15% of the respondents suggested that speed bumps be installed on Canterbury Drive. Three respondents suggested that tennis courts be installed in the community.

Recommended Course of Action

Based on the input from the public, it is recommended that Council:

- approve, in principle, the amenities suggested by the Morgan Creek Homeowners Association;
- authorize staff to work with representatives of the Morgan Creek Homeowners Association to further detail the design, location, and construction and maintenance costs related to such amenities and, subsequently, to hold another public open house to provide the public with a final opportunity to provide input on the design of the suggested amenities; and
- to provide a further report, complete with recommendations, back to Council on the matter after the open house, but prior to proceeding construction with the amenities.

It is also recommended that two pathway sections, one sidewalk section, and two pedestrian crossings, as illustrated on Appendix "B", be constructed with the some of the funds that will be made available by the Morgan Creek developer in lieu of construction of other pathways and amenities that were to be constructed in Morgan Creek. These improvements will act to create connectivity in the pathway system within Morgan Creek. This work is generally supported by the community.

Landscape Maintenance

Another concern raised in conversations between City staff and the residents of Morgan Creek during the public information meeting, and which was also documented in the comment sheets that were received after the public information meeting, was the issue of lack of proper maintenance of the existing pathway system in Morgan Creek. Concerns included that the pathway surfacing material was unacceptable in some sections of the pathway system and that some sections of the pathway system are overgrown with grass and weeds and are almost impassable. It was also noted that dead trees or shrubs have not been replaced along the pathways.

As a condition of approval of the various phases of the Morgan Creek development, the developer agreed to construct a pathway system and to maintain it in perpetuity. It is clear that, in some areas, the developer has not been expending sufficient efforts on maintaining the pathway system.

As a result of the concerns raised by the residents and staff observations, staff has met with representatives of Morgan Creek Holdings, the developer, to discuss the pathway maintenance concerns. In response to these meetings, the developer has improved some sections of the pathway system and some dead trees or shrubs have been replaced as part of the developer's winter maintenance program. However, it is recognized that maintenance must be done to a reasonable standard on a regular basis to ensure the on-going utility of the pathway system in the community. The City standards for maintenance of similar facilities throughout the City include regularly scheduled lawn cutting, insect and disease control, fertilizing, pruning and weed control. The developer has agreed to undertake pathway and landscaping maintenance to the City standard, subject to Ministry of Environment restrictions, and that such a maintenance schedule be attached as a condition to the annual business licence for the Morgan Creek Golf Course

operation, which will undertake the pathway and landscaping maintenance on an on-going basis. Under this approach, staff will inspect the pathways on an annual basis, prior to the issuance of the business license to ensure that maintenance is being undertaken to the agreed standard. The developer has further agreed that this approach can be detailed in a restrictive covenant and related rights-of-way that is registered on the title of the appropriate lands.

Legal Review

Legal Services has reviewed this report and has no concerns.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- receive this report as information;
- approve, in principle, the list of amenities suggested by the Morgan Creek Homeowners Association, as documented in this report;
- authorize staff to work with representatives of the Morgan Creek Homeowners Association to further detail the design, location, construction and maintenance costs and priority related to such amenities and, subsequently, to hold another public open house to provide a final opportunity for the public to provide input to the design and priority of the suggested amenities;
- instruct staff to forward a report to Council complete with recommendations on the matter after the public open house, but prior to proceeding construction of the amenities; and
- instruct staff to utilize appropriate legal instruments including, without limitation, restrictive covenants and statutory rights-of-way on the title of appropriate lands within the Morgan Creek community that will document the agreement between the City and the owner of the golf course, regarding the pathway system.

Murray Dinwoodie
General Manager
Planning and Development

SL:saw

Attachments:

Appendix "A" - Corporate Report No. R108

Appendix "B" - Possible Alternative Amenities



Corporate Report

NO: R108

COUNCIL DATE: May 2/05

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **April 25, 2005**
FROM: **General Manager, Planning and Development** FILE: **6520-20 (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.

Original signed by

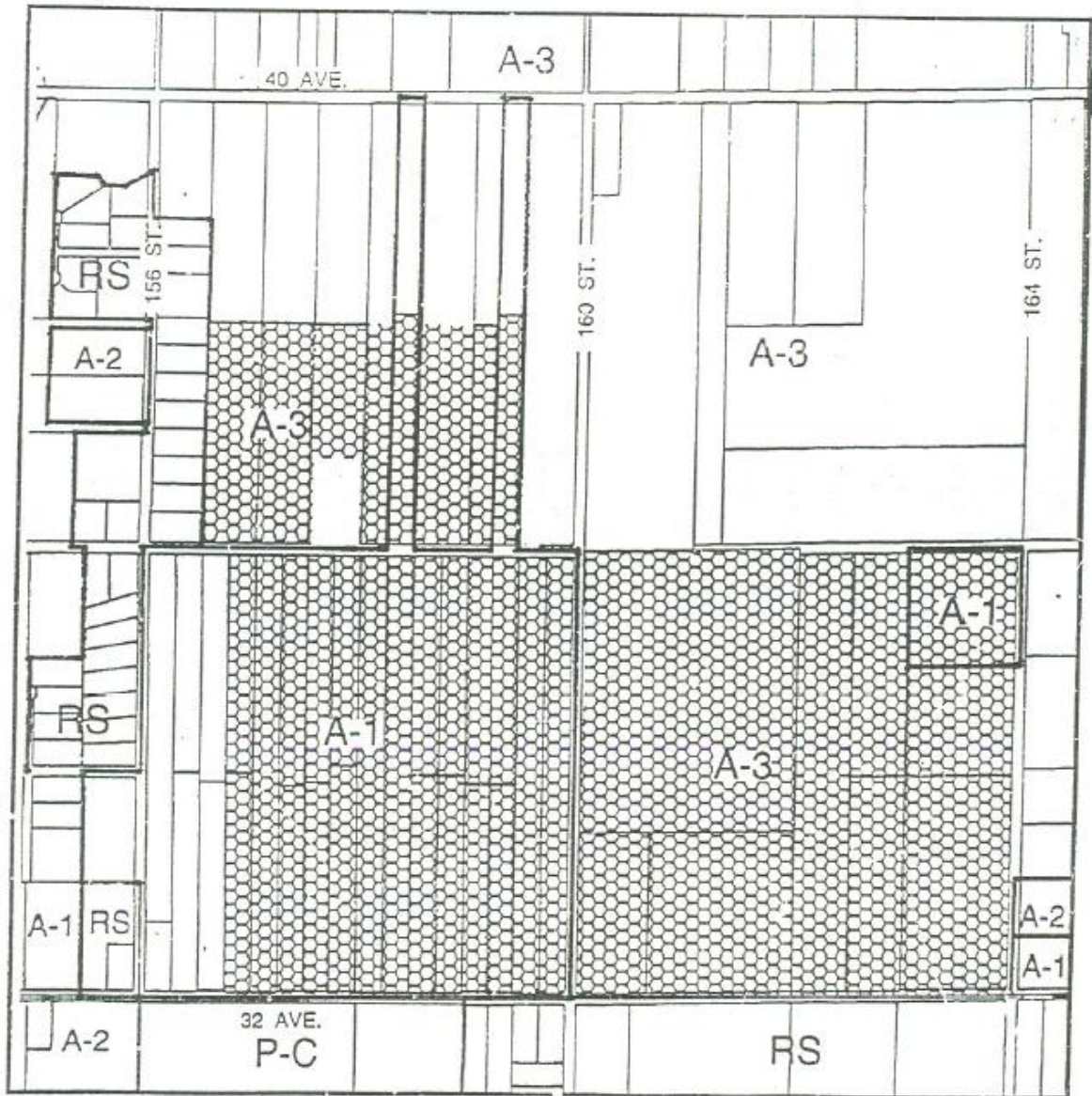
Murray Dinwoodie
General Manager,
Planning and Development

SL/kms/saw

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

Map 1



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BORDEN
LADNER
GERVAIS

January 18, 2005

FILE NO: 507806/000040

BY COURIER

P.D. (DON) MACDONALD
direct tel: (604) 640-4119
direct fax: (604) 622-5819
email: pdmacdonald@blgcanada.com

Morgan Creek Golf Course
504 - 1367 West Broadway
Vancouver, BC V6H 4A7

Attention: Geoff Barker

Dear Sirs/Mesdames:

Re: Public Pedestrian Pathways on
Morgan Creek Golf Course Fairways

You have asked for our preliminary views on issues arising or likely to arise from authorizing public use of existing or future pathways along certain golf course fairways (the "Fairway Pathways"). A summary of our initial observations follows.

Public Safety

- By inviting or authorizing the public to use otherwise private property, you will very likely attract a duty of care in law not otherwise there. This duty of care will likely oblige you to take reasonable steps to protect the safety of such users. What are reasonable steps may vary widely given the diverse locations, features and configurations of the Fairway Pathways;
- If you assume this duty in law, you may be subject to an ever increasing standard of care if the initial measures you take for protecting the public prove, in fact, to be insufficient;
- Unlike golfers, the general public will likely be unaware of the true nature of the risk posed, the extent of the danger zone and of the severity of injuries that may be suffered;
- You cannot adequately protect yourself with notices or warnings as these are all too often ignored by users and found inadequate by the courts. (For example, despite repeated notices, the Musqueam Golf Course decided to permanently bar pedestrian access and use of the pathway adjacent to its fairways following repeated injuries to users who ignored such warnings);

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Liability

- Stray golf balls can kill or cause severe injuries. Inviting or authorizing public use of pathways on or adjacent to golf course fairways, an inherently dangerous environment, exposes you to an indeterminate risk of potentially significant loss. (If such pathways were created by registered interests in land in favour of the City of Surrey, we think the City would face a similar exposure);
- In the absence of obtaining adequate insurance and indemnifications against such potential losses, we do not recommend you agree to the public use of golf course pathways. We understand that Surrey's policy and position at this time is that it will not indemnify for the risk of losses or damages suffered by the public while using public walkways on private lands;
- If public use of the pathways is considered to be a desirable or required public good, then the cost of that public good, including any indemnities against losses resulting from that use, should be borne by the public at large, not by one owner of private land;

The foregoing is a brief summary of our initial comments. We would be pleased, at your convenience, to discuss them in detail.

Yours truly,

Borden Ladner Gervais LLP

By:


P.D. (Don) MacDonald

PDM/mmc



*Insurance Brokers
Risk Consultants*

October 25, 2004

Mr. N. Schmalig
Bartrac Holdings Ltd.
#504 - 1367 West Broadway
Vancouver, B.C.
V6H 4A7

Dear Nick:

Re: Morgan Creek Golf Course

We have approached your underwriters to determine if it would be acceptable to them if you granted to Surrey a public walkway right-of-way along your paths throughout your golf course.

We have to advise you that your underwriters will not accept this additional third party liability exposure and we would have difficulty in finding an underwriter who would.

We cannot help but agree with your underwriters position as the increased liability exposure is too great to assume.

Yours very truly,

AON REED STENHOUSE INC.

A handwritten signature in black ink, appearing to read "D. Wotherspoon", is written over the typed name.

PER: DENIS F. WOTHERSPOON
DFW/sr

slr96699.doc

Aon Reed Stenhouse Inc.

900 Howe Street • P.O. Box 7128 • Vancouver, B.C., Canada V6B 3X8
tel: (604) 683-1111 • fax: (604) 682-0026 • www.aon.ca

MORGAN CREEK HOLDINGS INC.

February 2, 2005

The City of Surrey
14245 – 56 Avenue
Surrey, BC V3X 3A2

Attn: - Mayor and Council
- Planning Department

Re: Golf Course Fairway Pathways

The purpose of this letter is to summarize in point form the history and other pertinent issues re the above.

(1) 1994 – Conceptual Plan

In May 1994 Morgan Creek agreed to a conceptual plan for fairway pathways subject to viability with respect to safety (see attached letter dated May 30, 1994), the importance of public safety, with respect to pathways, was also referenced in the Development Permit.

(2) 1994 – Phase 1 pathway constructed and then closed

Pathways were built in Phase 1, including a 500m long path from #1 green to #9 tee, which we subsequently closed the same year due to the hazard of wayward golf balls from fairway #7 and the tee box #8.

(3) No fairway pathways in P.L.As – Potential for injuries

The Planning Department did not include a requirement for fairway pathways in any P.L.A. after Phase 1. We believed that this was due to their being more aware of how these pathways could put pedestrians at risk for serious injuries.

(4) Fairway Pathways – other examples

In our research we could not find other golf courses with fairway pathways. There are three local examples of pathways on adjacent dykes; without going into detail, one is in a high risk location and has never been open; one has been closed down due to pedestrians being hit by balls; and the third is not working as it was intended and it is only a matter of time until someone is injured.

(5) Existing pathways in Morgan Creek

Even without the fairway pathways, Morgan Creek has 3.0 km of public pathways owned and maintained by Morgan Creek and an additional 450m of pathways in the non-roadway sections of 36th-Avenue which were also built and are maintained by Morgan Creek. Please note the following summary for comparison purposes.

	<u>Pathways</u>	<u>Residential Area</u>	<u>No. of Units</u>
Morgan Creek (including multi-family sites)	3,450m	210 acres	873
Rosemary Heights (not including MC multi-family sites)	3,200m	300 acres	1,500+

On an area basis (metres of path/acre), Rosemary Heights has only two thirds the pathways of Morgan Creek, and on a unit basis (metres of path/unit), barely more than half of the pathways of Morgan Creek. As you know, the development of Rosemary Heights was guided by an NCP process which was initiated in 1994 and finally adopted in February of 1997 and thus it incorporates City of Surrey criteria for pathways.

(6) Authorizing off-hours usage

We examined the possibility of authorizing the public use of the cart paths during non-golfing hours but found that our insurance company would not provide coverage for such use (see attached letter), nor will the City of Surrey accept liability or indemnify Morgan Creek for such use.

(7) Compensation for unbuilt pathways

Morgan Creek has negotiated with the Planning Department a plan to provide alternate amenities and cash-in-lieu for the unconstructed pathways based on the estimated construction and maintenance costs of these pathways.

The only item we have not come to an agreement on is the concept that there should be compensation for the land on which the pathways would have been built. We feel that the points against this are as follows:

- (i) Restrictive Covenants are legal instruments used to authorize a land use; they are not the same as holding title to lands.
- (ii) The pathways were intended to be ancillary to the land's primary use as a golf course. A ball landing on a path or in a R/C area is still in play. The golf course does not gain any additional land usage by not granting a R/C nor does the absence

of the fairway pathways and R/C give Morgan Creek more land for any other use, such as residential lots.

- (iv) Perhaps most importantly, this is not a case of us asking for something that the City of Surrey does not want to give. Surrey's desire for fairway pathways in 1994, although well intended, was not a fully informed decision. Upon review, City of Surrey staff share our concerns that mixing golfers and pedestrians will potentially lead to public harm. Issues of liability and insurance aside, one must consider the human cost of losing an eye or suffering a brain injury.

Now that we and the Planning Department agree on the merits of considering alternative public amenities, and have come to an agreement on value for construction and maintenance, to look to us for compensation for an R/C to authorize non-existent pathways would be more costly than the original concept of providing the pathways and would therefore, in our opinion, be punitive.

Yours truly,



Geoff Barker

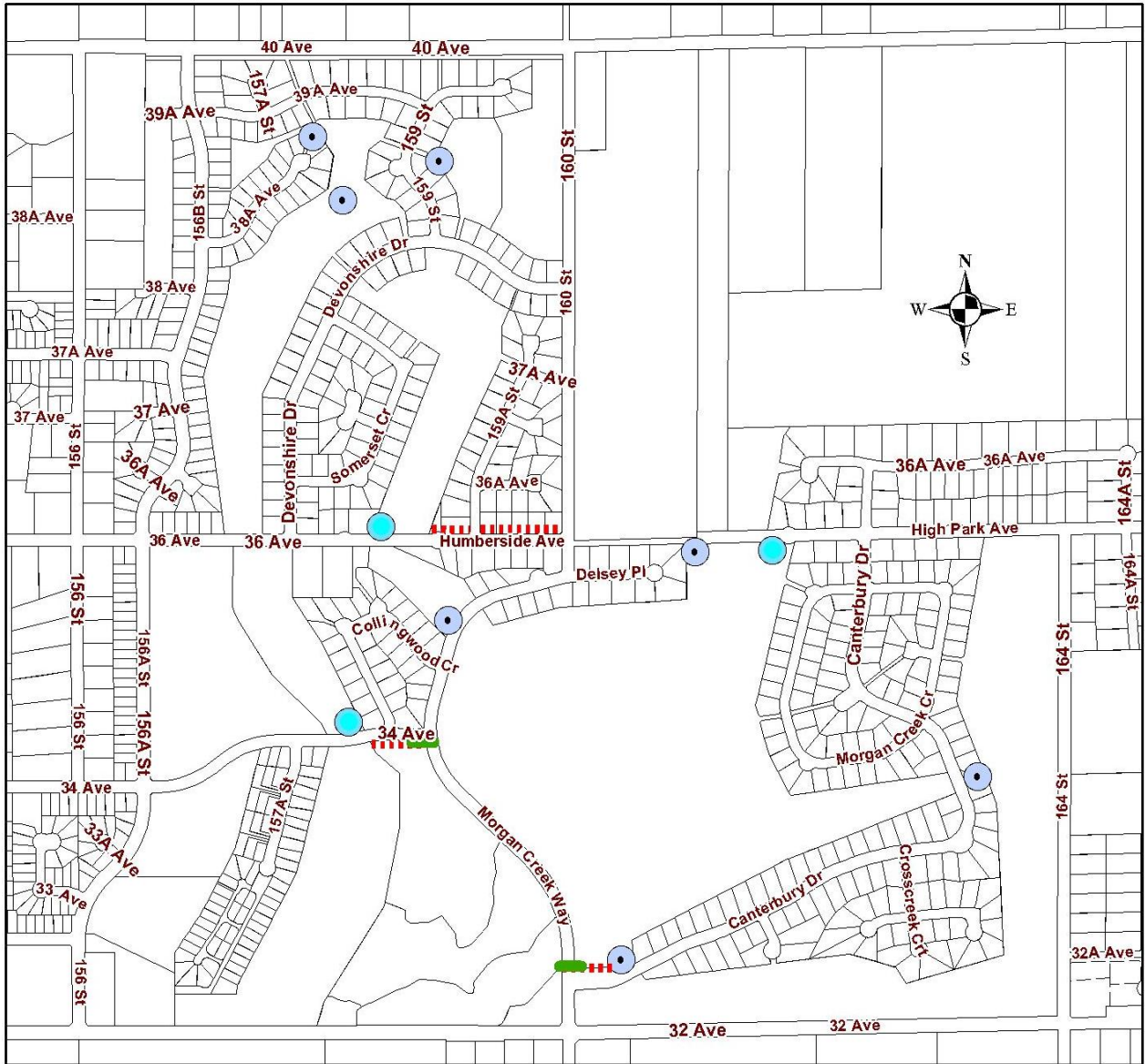
**Morgan Creek Pathways
Deficiencies and Estimated Costs
Feb 15/05**

Pedestrian System Item	Development Permit Deficiencies	
	Morgan Creek Holdings	Dawson Lakewood
Pathway	3,205 m.	360 m.
Gazebo	1	0
View Points (Lookouts)	3	0

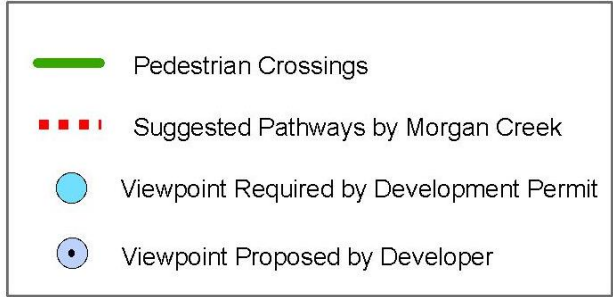
Morgan Creek Holdings			
<u>Pathway</u>	<u>Net Path Length</u> (metres)	<u>Cost/Linear metre</u> (\$)	<u>Estimated Cost</u>
Limestone path	3205	37	\$ 118,585.00
Landscaping	1480	39	\$ 57,720.00
Sub-total			\$ 176,305.00 \$ 176,305.00
<u>Twenty Year Pathway Maintenance Costs</u>			
\$1.69 X 3,205 metres X 20 years			\$ 108,329.00 \$ 108,329.00
<u>Gazebo and Viewpoints</u>			
1 Gazebo	(@ \$20,000/gazebo)		\$ 20,000.00
3 Viewpoints	(3 X \$4,000 each)		\$ 12,000.00
Sub-total			\$ 32,000.00 \$ 32,000.00
Total for Morgan Creek Holdings			\$ 316,634.00

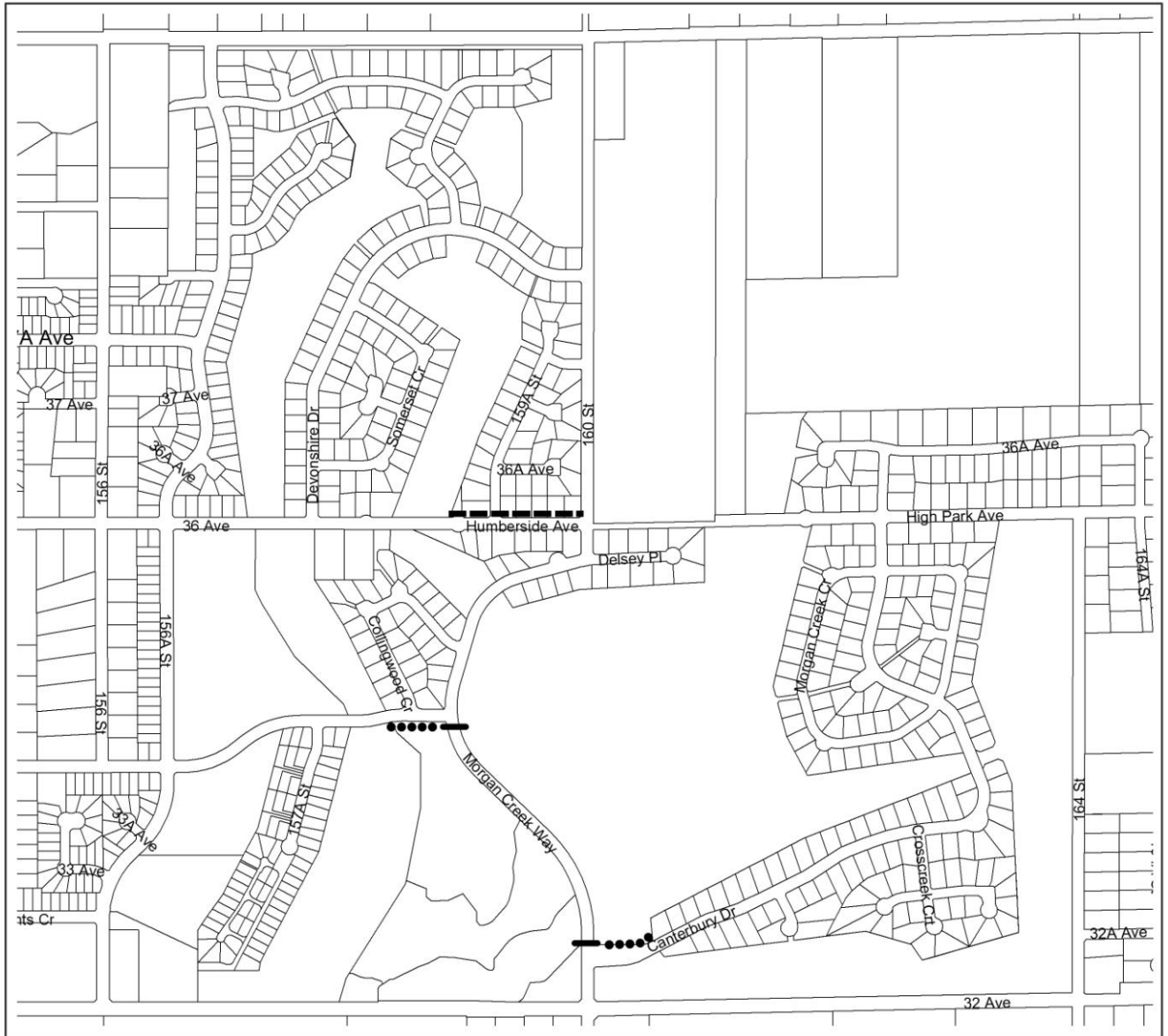
Dawson Lakewood Development			
<u>Pathway</u>	<u>Net Path Length</u> (metres)	<u>Cost/Linear metre</u> (\$)	<u>Estimated Cost</u>
Limestone Path	360	37	\$ 13,320.00 \$ 13,320.00

Grand Total	\$ 329,954.00
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**MORGAN CREEK
POSSIBLE ALTERNATIVE AMENITIES**





MORGAN CREEK
 Recommended Sections to Complete Pathway System



 PEDESTRIAN CROSSINGS
 SIDEWALK
 PATHWAYS