

NO: R195

COUNCIL DATE: October 19, 2009

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **October 19, 2009**
FROM: **General Manager, Planning and Development** FILE: **7909-0005-00**
SUBJECT: **Partial Discharge of Land Use Contracts**

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information; and
2. Continue to consider applications for the discharge of Land Use Contracts on a case by case basis and request that staff review in relation to each application the merit of extending the discharge to additional properties, prior to forwarding the application to Council for consideration.

INTENT

The purpose of this report is to respond to Council's request for information on the existing procedure for processing proposals for a partial discharge of a Land Use Contract ("LUC") and to examine the feasibility and merits of exploring, in each case, the potential for discharging the LUC from all properties covered by the LUC.

BACKGROUND

At the June 15, 2009 Regular Council - Land Use Meeting, Council considered an application for a partial discharge of LUC No. 372 for the property at 6701 - 132A Street (Application No. 7909-0005-00), to allow construction of an enclosed garage. Council approved the application to proceed and, in addition, passed the following resolution:

"RES.R09-1068 - That staff prepare a Corporate Report that discusses the merits, when an application is received by the City that requires the discharge of a land use contract from a single lot, of canvassing the owners of all of the lots that are covered by the same land use contract to determine if there is broader interest in having the land use contract discharged from other lots and if such broader interest exists to take action toward discharging the Land use contract from those lots at the same time".

DISCUSSION

Land Use Contracts

In the late 1960s and early 1970s the *Municipal Act* enabled local governments to enter into LUCs to accommodate land development with a greater degree of flexibility than was possible under the typical zoning regulations of the day. Land owners would apply to enter into a LUC through a Council approved process, much like rezoning. However, where a LUC was approved, the LUC became the governing land use control, and the underlying zoning, which remained in place, is invalid and has no force or effect. If a LUC is discharged, the underlying zoning comes into effect. In the late 1970s, the Province amended the *Local Government Act* to eliminate the provision related to LUCs.

LUCs are considered legal agreements and are registered on the title to the land and cannot be terminated or amended by a Local Government unilaterally. These agreements are set in perpetuity and cannot be changed and/or updated by the City and, as such, cannot be updated to reflect current market conditions and City development goals. Because of this inflexibility, staff have considered it good practice, wherever possible, to discharge the LUC and revert to the underlying zone.

LUC Discharge Process Review

Section 930 of the *Local Government Act* allows any landowner to apply to Council to modify or discharge a LUC from their property without the consent of the other property owners affected by the same LUC. These proposals require Council by-law approval and a public hearing, similar to rezoning. As mentioned above, staff encourages applicants seeking to modify a LUC to discharge it from the property to gradually reduce the number of properties covered by LUCs. Council has requested that staff review the potential for the City to extend the discharge of a LUC to cover all properties covered by the LUC when any owner within the LUC area applies for discharge of the LUC from their particular lot; however, such a process is not considered practical in most circumstances for the following reasons:

1. Generally, a LUC covers a large number of properties. Therefore, it would not be time or cost-effective for one property owner to undertake an endeavour to obtain permission from all property owners to discharge the LUC. Many LUC discharge applications are made in order to accommodate simple building changes, such as minor modifications or additions to the existing building. Given the small scale of these projects, the complexity of associated with a broad LUC discharge is not reasonable; and
2. Individual owners of lots covered by a LUC would seek independent information and consider site specific implications for a discharge pertaining to their own individual needs. The amount of time and effort that would need to be expended in properly informing all parties would greatly complicate the process and it would likely be difficult, if not impossible, for the City to address all the needs and issues.

Notwithstanding the above comments, staff will look for opportunities to extend the discharge of LUCs to the remaining properties covered by the LUC on a case by case basis where such an expansion appears to be reasonable. This may include situations where there are very few properties affected by the LUC, or where common ownership or interest in the discharge affecting other properties is more easily demonstrated.

CONCLUSION

Based on the above discussion, it is recommended that Council continue to consider applications for the discharge of LUCs on a case by case basis and request staff to review in relation to each application the merit of extending the discharge to additional properties, prior to forwarding the application to Council for consideration.

Original signed by
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