

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON FEBRUARY 5, 2013
FROM:	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	LOCAL IMPROVEMENT CHARGES – POTENTIAL USES

RECOMMENDATION

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, this report be received for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None.

BACKGROUND

Municipal Council at its session on July 24 and 25, 2012 resolved as follows:

“That the Civic Administration BE REQUESTED to review and report back on the potential for municipalities to use the Local Improvement Charges Regulation as a means of acquiring surplus school sites through an additional charge on property tax bills, with such review to not only consider the existing Regulation, but also possible changes to facilitate these types of land acquisitions.”

The legislation which governs the imposition of local improvement charges by a municipality is Ontario Regulation 586/06. The regulation sets out the process whereby a municipality may undertake works on public property and charge the costs, or a portion of the costs to the owners that abut or immediately benefit from the work. The term “work” is defined in the regulation as a capital work and includes the power to acquire an existing work. Traditionally, the local improvement process has been used for works such as water and sewer systems, sidewalks, curb and gutters, noise attenuation walls and street lights. The application of the regulation to the acquisition of a school site has not been tested in the courts.

Amendments were made to this regulation on October 25, 2012 with the filing of Ontario Regulation 322/12. The intent of the amendments appears to be to permit municipalities to undertake works on private property in order to assist property owners to install energy efficiency works or new energy works on their own properties.

The above Council Resolution does not indicate whether the intention would be for the City to own the surplus school site or the property owners in the area to own the site. Both ownership arrangements would appear to involve significant problems. We are not aware of any municipality using the Local Improvement Regulation in the manner indicated in the Council Resolution, and it would appear the regulation including the October 25th amendment may not be designed for this type of use.

School Site ownership by Property Owners

The recent Local Improvement Regulations amendments were designed to enable municipalities to assist property owners in constructing energy efficiency works or renewable energy works on their own property. If the Regulation is to be used to purchase a school site that would be owned by an entity other than the City, the requirements of Part III of the new Regulation would have to be met. One of those requirements is that **all the owners of all the lots that are going to be charged must agree in the writing to the acquisition of the site and the method of apportionment.**

In addition to the requirement that all the property owners sign the agreement imposing any charge for a local improvement on private property, there are several other important issues that would need to be addressed in reference to the particular situation described in the Council Resolution at the beginning of this report as follows:

1. Who would privately own the school site – the property owners in the defined area as individuals or as a corporation?
2. How would the ongoing operating costs of the school site be financed from the property owners?
3. Who is going to enforce collection of the ongoing operating costs of the site from the property owners?
4. Who would maintain all the financial records related to the ongoing operating costs of the site?
5. Why should the City become involved in the acquisition of land by a group of private individuals?

A significant policy issue that Council should consider with respect to any local improvement request on private property would be whether the work is in the general public interest as well as the property owners in the defined area. As noted above, the concept behind the original amendments to the Regulation made by the Province was that local improvements could be approved for works on private property, but that these works would also serve the general public interest by addressing concerns with respect to energy efficiency and renewable energy.

School Site Ownership by City

If the City proceeded to acquire a school site as a local improvement for the benefit of property owners in a defined area with ownership in the name of the municipality, there would be various significant problems to be addressed as follows with respect to any local improvement charge:

1. Local improvements may only be assessed on lots that directly abut the work (in this case the school site) or those that immediately benefit from it. Depending upon the configuration of the school site property, there may be no or only a few lots that abut the site. Depending on the circumstances, it may be difficult to identify lots that would immediately benefit from a work which is a school site;
2. Local improvement charges may only be set using an equal special charge per metre of lot frontage. Charges may not be apportioned by assessment value or any other method;
3. A petition in favour of acquiring a school property would have to be signed by a least two thirds of the property owners and represent at least one half of the value of the lots;
4. A local improvement initiated by the City could be stopped by a petition from a majority of the property owners representing at least one half of the assessment in the area;
5. The City would not have the ability to recover the ongoing operating costs as a local improvement if it owned the site;
6. Items 1 and 2 above would have the potential for involving the City in litigation over the identification of the area and determination of how the costs of site acquisition would be allocated.

Special Levies Under Section 326 of the Municipal Act, 2001

Section 326 permits municipalities to impose a special local municipal levy on particular areas of a municipality for special services. Special service means a service or activity not being provided generally throughout the municipality or being provided at different levels or in a different manner in different parts of the municipality. Section 326 could only be applicable to the acquisition of an asset such as a school site if the school site were acquired in conjunction with the provision of a special service.

Any levy under section 326 would be calculated in the same manner as general municipal property taxes in the area where levy was applicable and would be added as tax levy to all tax bills in the area. A levy under section 326 would be also included in the calculation of the total tax levy for the City and the amount of any tax increase at budget time.

Historically, the City has only imposed a levy under section 326 for public transit. The levy for this special service was discontinued in 2012 when the costs of public transit were fully transferred to the general rate. If the City were to impose a special rate related to the acquisition of a school site, it would be required to specify the special service being provided and identify the area that received the benefit or differential benefit of the service. This would appear to preclude the applicability of section 326 to the acquisition of a surplus school site.

Conclusion

In summary, there would appear to be significant problems that would preclude giving consideration to using the current local improvement regulation to finance the acquisition of a surplus school site either by private property owners or by the City. It is apparent that the current wording as well as the previous wording of regulation 586/06 were not drafted with the concept of acquiring surplus school properties for the benefit of a particular area in mind. In the long term, the costs and any other liabilities related to the property would become the responsibility of whoever owns the property, and it would not be possible to recover ongoing costs as a local improvement regardless of property ownership. If the Council wishes to use the local improvement process or a special services by-law to purchase a particular school site, it is recommended that Council obtain further legal advice and an opinion specifically for that transaction.

This report has been reviewed by the City's Legal Department.

PREPARED BY:	CONCURRED BY:
JIM LOGAN DIVISION MANAGER TAXATION & REVENUE	MIKE TURNER DEPUTY CITY TREASURER
RECOMMENDED BY:	
MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER	

Attach.

- c. J. Smout
- L. Pompili
- C. Resendes