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03-July-2017

To: The Planning Advisory Committee,
City of Kawartha Lakes

Re: Staff Report PLAN2017-049 (Agenda Item 7.4)
-- the reference on page 8 to Staff's intention to implement the Task Force's recommendation that the authority to approve Subdivision Agreements and authorize their execution be delegated to the Director of Development Services and the Mayor.

In Report PLAN2017-049 Director Marshall provides a brief overview of the implementation status of a number of the *Planning Approvals Task Force* recommendations. On page 8 he makes specific reference to one of the recommendations that has not yet been implemented:

> ***VI. Delegation of Authority***
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> In order to help reduce redundancy and application processing time, the Task Force recommended that the Director of Development Services and the Mayor be given delegated authority in the draft plan approval motion by Council to execute the subdivision agreement once conditions of Draft Plan Approval are met. Presently, this subdivision agreement must be presented to Planning Committee and Council after the conditions of Draft Plan Approval are met, which can add approximately two months to the subdivision process.
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> -- Staff has not been able to complete this recommendation as there was an OMB case related to this step in the subdivision process that needs to be researched before this delegation of authority can be adopted by Council.

The Director's comments appear to suggest that it is still his intention to find a way to actually implement this proposal. For reasons that will be addressed herein, as well as during my scheduled deputation, this both troubles and confuses me.

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I'm going to respectfully suggest that the recommendation itself makes clear how badly-briefed the Task Force had been in relation to this matter – and accordingly points to not only how ill-advised but also how ill-conceived such a delegation of authority would be.

As noted, the Task Force had proposed that the Director and Mayor be delegated the authority "*to execute the subdivision agreement once the conditions of Draft approval are met*".

Let's begin with the basics:

> A subdivision agreement is not executed by the Director and Mayor, but rather by the Mayor and Clerk.
>
> - Evidently staff did not bother to inform the Task Force of this.
>
> More to the point: It is not, and has never been, a pre-requisite for the execution of a subdivision agreement that "*the conditions of draft approval be met*".

Rather, the execution of a subdivision agreement is itself one of those Conditions of Draft Approval. Moreover it is typically completed at a point in the process at which some of the other Conditions are still awaiting finalization.

The *actual* step that presupposes all of the Conditions' having been met is not the execution of the subdivision agreement but rather the signing of the Final Plan – which is an authority that has long-since been delegated to the Director.

- Evidently the Task Force, prior to formulating its recommendation, had not been properly briefed on the existing process that it was proposing to modify.
- Accordingly it may be taken for granted that the Task Force did not realize that implementation of this recommendation would actually (and unnecessarily) slow down the process – by making the meeting of all of the other Conditions of Draft Approval a pre-requisite for the execution of the Subdivision Agreement.
- It would equally appear that the Task Force had not been briefed on the commitment that Council had made in the OMB case to which Director Marshall makes oblique reference – notwithstanding that the Minutes of Settlement in which the City made that commitment had been executed long before the Task Force was even constituted.

Given that the Task Force had self-evidently not been properly briefed on the existing processes and constraints, I feel safe in taking it for granted that it had likewise not been briefed on the rationale for the procedures that are currently in place. It is accordingly worth reminding the members of the Committee of the following:

Early in the history of the City of Kawartha Lakes, Council had decided to delegate the authority to approve subdivision agreements to the Director of Public Works; and the Mayor and Clerk were authorized to execute such agreements (along with the Director) based simply on the Director's say-so.[1]

In 2009 the then-CAO, Ms. Reynolds, was provided with detailed information documenting abuses of that delegated authority – including documentation of quid-pro-quo dealings between the then-Manager of Engineering and at least one developer, as well as of the City's financial losses and liability exposures that resulted from those dealings.

These abuses were subsequently further detailed and further documented in a formal report prepared by a private investigator who had been retained by the Council, as well as in the City's pleading in a subsequent court case involving one of the developers who had benefited from these abuses.[2]

The private investigator's report was submitted to Council in Closed Session on January 19, 2010. The following day the Manager of Engineering and the Director of Public Works were summarily terminated.

A few weeks later, on February 16, 2010, Council directed (via CR2010-223) that, on a go-forward basis, "*Subdivision Agreements be reviewed at the Planning Committee meetings for recommendation to Council*". Council's acknowledged intention to was to

[1] . It is to be noted that such a delegation of authority was contrary to the long-established practices in the vast majority of municipalities, which typically require Council review and approval of a subdivision agreement.

[2] Committee members who are interested in those details can presumably obtain copies of both the investigator's report and the City's pleading from the Clerk's office

put in place safeguards that would prevent the sorts of abuses that had been documented as having occurred during the previous three years.

It is no secret, of course, that I myself had strongly supported Council's reclaiming its exclusive authority to approve the finalization and execution of subdivision agreements – notwithstanding that Council's doing so at that particular point in time would have the effect of delaying the approval of my own company's then-pending subdivision agreement by a month.

What is equally no secret, however, is that during Mr. Taylor's subsequent tenure as Director of Development Services the safeguards that Council had tried to put in place ended up, bit by bit, being undermined. By September of 2013 his department had already adopted procedures and practices that enabled them to effectively circumvent Council's 2010 direction – the result being that, for all intents and purposes, staff have already appropriated a *de facto* delegation of subdivision agreement approval authority.

If the Committee has any doubt in this regard, it need consider only the following:

- Only in the rarest of cases have the Committee and Council been permitted to review an actual completed version of a proposed subdivision agreement.
    - Instead they have typically been provided with only an incomplete draft … and then asked to approve a Recommendation that a final agreement "*substantially in the form*" of the draft agreement appended to the staff Report "*be approved and adopted by Council*".
    - The upshot is that, in each such instance, Council has agreed to approve and adopt a subdivision agreement that it has never actually seen (and never will see).
    - More to the point: In numerous instances, once Council had issued its approval, staff thereafter exploited the wiggle-room accorded by the qualification "*substantially in the form*" to then make substantive changes to the terms of that agreement prior to its execution. In some cases those changes amounted to completely reversing certain key financial terms that had been incorporated into the draft agreement that had been submitted to Council. Moreover, it is a matter of record that in at least some (if not all) such instances, the Director failed to inform the Clerk of these changes prior to asking her to execute the revised subdivision agreement.
- It is equally to be noted that on two occasions – one in September of 2013 and the other in December of 2015 – senior staff sought and obtained approval for bypassing Planning Committee's review of an agreement prior to its going to Council. The claim was that this was necessary in order to prevent the agreement's execution from being delayed -- which, it was claimed, would in turn prevent the developer from meeting its home-construction timetable.

  What is further to be noted is that in each of these instances the beneficiary of this accelerated processing was Bromont Homes. In this regard it is also worth noting that:
    - Over the years Bromont has had only two (2) subdivision agreements processed and approved. Neither of them was required to conform to the procedure that has been in effect for everyone else since February of 2010.
    - In each of these instances, subsequent to Council's having rubber-stamped the incomplete draft agreement that had been presented to it, staff then proceeded to make major alterations to its financial terms -- these changes being to Bromont's benefit and the City's detriment. Moreover, in at least one instance those alterations

included a change that explicitly contravened the governing legal authority. *[I will elaborate on this below.]*

- As to the alleged grounds on which staff had based their request for taking these agreements straight to Council, the subsequent record makes it clear that there was in fact no such need:

  - The proposed agreement for Bromont's Country Club subdivision was not presented to Planning Committee for review. Instead, as recorded in the Minutes of that Committee's September 11, 2013 meeting:

    > *"Director Taylor provided a verbal report on the Draft Subdivision Agreement - Bromont Homes. He stated that this agreement process is approaching its end and that, in order to move forward, staff is recommending that the final Draft Subdivision Agreement be forwarded directly to Council at the September 24, 2013 Council meeting. He noted that the Draft Subdivision Agreement follows the City's standard development agreement template. Director Taylor advised that this verbal report is being presented to address a matter of procedure."*

    Planning Committee agreed to the Director's request. And Council then approved and adopted the Bromont agreement at its September 24, 2013 meeting.

    What is to be noted, however, is that the Bromont subdivision agreement (which by then had undergone major revisions) was not actually executed until December 13, 2013 -- being almost three months later.

    The upshot, of course, is that there had been more-than-ample time for this agreement to have been reviewed by Planning Committee (and then Council) in October – by which time, of course, there would have been no excuse for its not being in final form. Evidently it had simply been preferred that this not be allowed to occur.

  - As it happens, the circumstances relating to Bromont's second subdivision proved to be even more egregious.

    The Minutes of the December 2, 2015 Planning Committee meeting indicate that a draft version of the staff report and agreement was provided to the members the day before the meeting; and it is further indicated that the proposed Schedule "D" was only circulated at the meeting itself. Obviously this afforded the Committee no opportunity to actually review these documents

    The Minutes then state that, in support of his request that the incomplete draft agreement go directly to Council for approval:

    > *"Acting Director Rojas stated that the developer's request is driven by the demand for home sales, noting that the developer anticipates being fully built out by spring of 2016 and the timely approval of this Subdivision Agreement will give them an additional 25 units to carry their home sales through to the end of next year."*

    Council in turn granted this request and accordingly approved the draft agreement that was submitted to it by Director Rojas on December 8, 2015.

    To be clear: Mr. Rojas' stated justification for by-passing standard procedure was the need to enable Bromont to actually complete development of the subdivision and home construction in 2016.

    In point of fact, however, that subdivision agreement was not actually executed until **December 16, 2016** – being more than a year later!

> It goes without saying, therefore, that there had been no need for the agreement to be approved in December 2015. The claim of urgency appears to have been nothing more than a contrivance designed to circumvent the Council's February 2010 direction.

Before continuing with this narrative, it would seem appropriate to take note of a recent subdivision agreement that was actually processed in accordance with Council's 2010 directive:

> The subdivision agreement for Mason Homes' Cloverlea III subdivision was properly circulated to and reviewed by the Planning Committee at its October 14, 2015 meeting
>
> That agreement was then duly approved and adopted by Council -- without the "wiggle-room" qualification that had been included in the Bromont resolutions -- at its October 27, 2015 meeting.
>
> That subdivision agreement was then executed on January 8, 2016 – being more than 2 months after its processing by Planning Committee and Council had been completed.

My point?: Taken together, all three examples suggest that, at minimum, one should be extremely skeptical about Director Marshall's claim that requiring a subdivision agreement go to Planning Committee and Council for approval prior to being executed "*can add approximately two months to the subdivision process*". It's self-evident, after all, that In none of the three cases that I've cited above would the agreement have been executed any earlier if this procedure had not been in place.

The upshot is that Director Marshall's claim in this regard is not only baseless, it's counter-factual.

Nor, to be frank, would it matter if preserving Council's approval authority over subdivision agreements did in fact cause a delay in the registration process. My submission is that that would in no way warrant or justify jettisoning that procedure and delegating authority to staff.

The fact is that entering into a subdivision agreement intrinsically gives rise to potentially enormous financial and liability implications for both the municipality and the developer. Ensuring the integrity of both the process and the outcome, and likewise ensuring that all payments and safeguards have been properly secured by means of that agreement, is an obligation that intrinsically falls to Council. Accordingly, rather than considering the possible delegation of its current approval authority, it would be my submission that what Council should actually be doing is assuming more aggressive control over this process.

In this regard, I would draw Council's attention to the outcome of the OMB case to which Director Marshall has made reference in his report. Let begin by putting it into context:

> While, as I've already stated, I had been fully supportive of the directive that Council had issued in February of 2010, it soon became apparent that merely having the agreement go to Planning Committee for review did not function as a fully-adequate safeguard against the sorts of abuses that had been occurring during the Oostveen-Becking era.
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> Indeed, as time went on it became ever-more the pattern that the Committee would end up being provided with only a draft version of the agreement – with staff then taking it upon themselves to fill in the most highly consequential provisions afterward.
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> What equally became apparent was that no monitoring or safeguards had been put in place to ensure that the payments and commitments that were required under an agreement (as well as under applicable municipal by-laws) were actually being received.

> Accordingly, in connection with my company's successful OMB challenge (via the Dunster appeal) to the new boilerplate *Conditions of Draft Approval* that Mr. Rojas had introduced in 2011, I had asked the Board to incorporate a further Condition requiring a Clearance Letter from the City's Finance Department confirming that all of the financial requirements stipulated both in the subdivision agreement and in applicable municipal by-laws had been met.

I should mention that then-Director Taylor had vigorously opposed this particular request. Early on in the Dunster appeal process, for example, he had submitted a letter (dated October 24, 2011) to the Board in which he claimed that "*the City disagrees with the appellant that Condition 65 be amended to include a requirement that a clearance letter also be required from the City's Finance Department*". [There is, of course, no indication that he had bothered to obtain Council's agreement prior to identifying this as being the City's position.]

And thereafter, during the subsequent settlement discussions that took place in 2014, he continued to dig in his heels in opposing the inclusion of this proposed Condition. In the end, of course, he was left with no choice but to agree to it when the mediator, Vice-chairman Lee, expressed his incredulity: "*How could Council possibly be opposed to a Condition that is designed to enable it to ensure that all financial requirements had been properly met?"*

As a result, the City entered into Minutes of Settlement (which were later confirmed in a Board Order) wherein it agreed that the following Condition, as well as being included in the Dunster approval, would be incorporated into the City's boilerplate *Conditions of Draft Approval* for go-forward purposes[3]:

> That subsequent to the execution of the Subdivision Agreement by the Owner and prior to the signing of the final plan by the Director, the City Treasurer shall confirm in writing to the Director that all financial obligations and payments to the City, as set out in the Subdivision Agreement, in accordance with condition 3, have been satisfied including, but not limited to:
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> a) all applicable Development Charge payments in accordance with the requirements of all applicable Development Charge By-laws,
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> b) all applicable Capital Charge payments in accordance with the requirements of all applicable Capital Charge By-laws,
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> c) all applicable Local Improvement payments in accordance with the requirements of all applicable Local Improvement By-laws,
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> d) all applicable fees payable in accordance with the requirements of all applicable municipal by-laws, including fee by-laws,
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> e) the form and amount of the securities that the owner is required to have posted to secure its obligations under the Subdivision Agreement, including the identification of any reduction in such securities that has already been incorporated into the Subdivision Agreement,
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> f) where there has been such a reduction in such securities, a Statutory Declaration submitted on behalf of the Owner confirming payment of all accounts for material, labour and equipment employed in the installation of the services on whose completion such reduction has been computed and applied, and
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> g) any financial obligations with which the owner's compliance has been deferred or from which the owner has been exempted pursuant to the terms of the Subdivision Agreement.
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> It is acknowledged that prior to the signing of the final plan by the Director, a copy of the Subdivision Agreement will be forwarded to Planning Committee for endorsement which will include a Planning Report along with the financial reporting as outlined above.

[3] I am also appending hereto, for the Committee's reference, the applicable extract from those Minutes of Settlement

Let me begin by acknowledging that, to their credit, front-line Planning staff (after some initial prodding by me) have in fact complied with the commitment that Council made in approving those Minutes of Settlement. In sum: Every one of Council's subsequent Draft Approvals has included that mandated financial condition in its *Conditions of Draft Approval*.

That being said, however, I am also obliged to point out that senior staff have nevertheless managed to successfully circumvent the requirement that Council thereby imposed. The fact is that, in the case of each and every such subdivision that has gone on to registration, that particular Condition ended up being waived by staff. The outcome has been that:

- In no instance has the mandated financial report gone to Planning Committee and Council.
- And in no instance did Council see the final developer-executed version of the Subdivision Agreement prior to the Plan's being registered.

Obviously I can't say with certainty that Council was unaware that this was happening. But it makes no sense to assume otherwise. To paraphrase Vice-Chairman Lee: "Why would Council choose to forego receiving either the Treasurer's report or the final version of the subdivision agreement to which that report refers?"

The upshot is that notwithstanding Council's having, in each such instance, imposed a Condition that was specifically designed to enhance Council's oversight and control, senior staff have taken it upon themselves to waive that Council-imposed Condition – thereby undermining Council's ability to safeguard the integrity of the final approval process.

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I suggested at the outset that to a great extent senior staff have already been conducting themselves as if the authority to approve subdivision agreements had already been delegated to them. As the examples I've cited above illustrate, they appear to regard the mandated Committee-and-Council review of subdivision agreements as being nothing more than a procedural inconvenience – with the power to revise the agreement's final terms being exercisable by staff at their subsequent prerogative.

An even more extreme example of this pattern is to be found in the December 16, 2016 Bromont subdivision agreement that I'd referenced earlier (being the one that had been given an accelerated approval by Council more than a year earlier). Moreover, this particular example also serves to shed some needed light on the manner in which senior staff have been implementing the "Development Charge Deferral Policy" that Director Marshall references on page 9 of his Report.

Let me once again begin by putting this into context, so as to ensure that there is no confusion on the key issues:

- The "Development Charge Deferral Policy" was adopted by Council (as Council Policy No. CA2016-001) on September 20, 2016. The Bromont subdivision agreement was not signed until December 16, 2016. Accordingly the Policy was already in place and in effect at the time the Bromont agreement was executed.
- The draft subdivision agreement that had been submitted to and approved by Council on December 8, 2015 had specified that the Development Charge payments relating to sewage, water and roads (the "hard services D.C.s") were to be paid prior to the execution of the subdivision agreement.

- However, the revised version that was actually executed a year later included an added-on provision that over-rode this requirement and instead permitted Bromont to defer the payment applicable to each home until that home was actually occupied.
- As a result: No hard services D.C. payments were to be made in conjunction with the execution of the Bromont subdivision agreement; and likewise no hard services D.C. payments would be required as a precondition to Bromont's obtaining building permits. This deferral was obviously highly beneficial to Bromont; and it equally had a major negative impact on the rate at which funds flowed into the City's already-underfunded D.C. Reserve.
- The City's entering into an agreement with a developer that allows for such a deferral is, of course, specifically permitted under the Council-adopted "Development Charge Deferral Policy". What is to be especially noted, however, is that the Policy also includes the following stipulation in Clause 10:

  > ***Council Approval: Prior to an agreement with DC deferral provisions being executed, it must be supported by a resolution of Council if it is a subdivision agreement or consent agreement pursuant to subsection 5.06 of the DC by-law.***

- In this instance there was no such resolution of Council authorizing the execution of an agreement with Bromont that provided for such a DC deferral. Rather the incorporation of this deferral into the executed version of the Bromont subdivision agreement had been undertaken by one or more members of senior staff at his/her/their own initiative, without even having even bothered to seek – much less obtain -- the required Council approval.

In sum: The Policy's requirement for Council's prior approval could not be clearer or more explicit. (i.e., "*it must be supported by a resolution of Council* …)

Nevertheless, in taking it upon themselves to confer this significant benefit on Bromont, one or more senior staff members essentially chose to thumb his/her/their nose not only at the Policy but at Council itself.

Let's also be clear on this:

- The Policy's specification that an agreement incorporating such a deferral had to be approved by Council was in no way discretionary.
- Rather, the City's 2015 DC By-law specifically required it to include that stipulation -- insofar as Subsection 5.06(c) (a copy of which is appended hereto) specifies that the hard services D.C.s must be paid on the date the subdivision agreement is executed "*unless [an agreement providing for their being paid at a later date] is* ***approved by resolution of Council***".

The upshot is that, in presuming to exercise an authority that they did not actually possess, the staff member(s) in question contravened not only an adopted Council Policy but also the City's Development Charge By-law.

No less to the point: In taking it upon themselves to amend the subdivision agreement in this fashion without obtaining Council's approval, the staff members who were responsible for this effectively place the two individuals who were thereafter required to sign that subdivision agreement – namely the Mayor and the Clerk – in a completely compromised position. How so?:

- Section 5.06 of the City's DC By-law specifies that, in the absence of an agreement providing for the deferral of the hard services D.C.s being approved by resolution of Council, the subdivision agreement must provide for their being collected in conjunction with that agreement's execution.
- There was no resolution of Council authorizing the deferral of hard services DC payments for Bromont.
- Accordingly, insofar as it incorporated a waiver of the collection of those hard services D.C.s, the Mayor and Clerk had no legal authority to sign the Bromont subdivision agreement that they executed on December 16, 2016.

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To sum up:

> In some ways, of course, it seems peculiarly strange that staff would now be asking Council to delegate the authority to approve subdivision agreements – given that staff have already been in the habit of conducting themselves as if that authority had already been delegated.
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> That being said, the sorts of abuses that are already taking place (as illustrated in the examples I've cited herein) point to how very dangerous it would be to formalize that delegation of authority.
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> In fact, I'm going to respectfully suggest that the current patterns and practices are actually even more of a concern that those that were taking place between 2006 and 2009.
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> To be fair to Mr. Oostveen and Mr. Becking, after all, they only abused the authority that they had actually been given by Council. By contrast, some members of senior staff have apparently fallen into the habit of exercising -- and abusing -- authority that they've never actually been granted.
>
> The proper remedy for this is not the one apparently advocated by Director Marshall – namely formalizing the delegation of authority that staff have already assumed on a *de facto* basis. Instead, it is for Council to more aggressively insist on exercising its oversight role … and likewise to ensure that these practices cease.

I will of course have more to say about this during my deputation.

Sincerely yours,

Marty Stollar

Martyn Stollar
Managing Director

Extract from Minutes of Settlement

Schedule "G"

L. Financial Obligations

WHEREAS the Parties acknowledge that there is a public interest in ensuring that all of an Owner's financial obligations have been properly identified and satisfied prior to the signing of the final plan;

THEREFORE:

1. THE PARTIES AGREE that the following further condition shall be added to the Dunster Conditions as an additional "Clearance Condition":

> **Revised Condition #62:** That subsequent to the execution of the Subdivision Agreement by the owner and prior to the signing of the final plan by the Director, the City Treasurer shall confirm in writing to the Director that all financial obligations and payments to the City, as set out in the Subdivision Agreement, in accordance with condition 3, have been satisfied including, but not limited to:
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> a) all applicable Development Charge payments in accordance with the requirements of all applicable Development Charge By-laws,
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> b) all applicable Capital Charge payments in accordance with the requirements of all applicable Capital Charge By-laws,
>
> c) all applicable Local Improvement payments in accordance with the requirements of all applicable Local Improvement By-laws,
>
> d) all applicable fees payable in accordance with the requirements of all applicable municipal by-laws, including fee by-laws,
>
> e) the form and amount of the securities that the owner is required to have posted to secure its obligations under the Subdivision Agreement, including the identification of any reduction in such securities that has already been incorporated into the Subdivision Agreement,
>
> f) where there has been such a reduction in such securities, a Statutory Declaration submitted on behalf of the Owner confirming payment of all accounts for material, labour and equipment employed in the installation of the services on whose completion such reduction has been computed and applied, and
>
> g) any financial obligations with which the owner's compliance has been deferred or from which the owner has been exempted pursuant to the terms of the Subdivision Agreement.
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> It is acknowledged that prior to the signing of the final plan by the Director, a copy of the Subdivision Agreement will be forwarded to Planning Committee for endorsement which will include a Planning Report along with the financial reporting as outlined above.

2. CKL AGREES that, on a go-forward basis, an identical condition will be incorporated into its Template of Standardized Conditions, subject to the understanding set out in Paragraph 8 of the Minutes of Settlement.

Extract from the 2015 DC By-Law

buildings or structures, and, in the case of a mixed use building or structure, on the non-residential uses in the mixed use building or structure, and calculated with respect to each of the applicable municipal services or service areas according to the gross floor area of the type of non-residential use.

5.04 **Electricity Generation**: Notwithstanding subsection 5.03, the non-residential development charges per 500 kilowatts of nameplate generating capacity described in Schedule 2 to this by-law shall be imposed on electricity generation uses of lands, buildings or structures, and, in the case of a mixed use building or structure, on the electricity generation uses in the mixed use building or structure, and calculated with respect to each of the applicable municipal services or service areas according to each increment of 500 kilowatts of nameplate generating capacity.

5.05 **Timing of Calculation and Payment of Development Charges**: Development charges respecting a development shall be calculated as of, and shall be payable on:

(a) in the case that a building permit is issued with respect to the development, the date the building permit is issued; otherwise

(b) the date the first action or approval described in subsection 4.01 with respect to the development is executed or granted.

5.06 **Override with Sections 26 and 27 of the Act**: Notwithstanding subsection 5.05, as permitted by sections 26 and 27 of the Act, the following provisions shall apply:

(a) If a development requires approval of a plan of subdivision under section 51 of the Planning Act or a consent under section 53 of the Planning Act and if a subdivision or consent agreement with respect to the development is entered into with the City, the water treatment, water distribution, sewage treatment, sewage collection and roads and related development charges pertaining to the development shall be calculated as of, and shall be payable on, the date the agreement is executed.

(b) Notwithstanding paragraph (a) but subject to paragraph (c) of this subsection, the dates on which development charges are to be calculated and made payable may be determined by an agreement entered into by the City with an owner required to pay the development charges where such an agreement may:

i. provide for all any part of the development charges to be paid before or after they otherwise would be payable;

ii. permit the owner to provide services in lieu of the payment of all or any portion of the development charges; or

iii. provide for security for the owner's obligations under the agreement.

(c) With respect to an agreement pursuant to paragraph (b) of this subsection, unless the agreement is approved by resolution of Council, paragraph (a) of this subsection shall prevail.

Section 6.00: Exemptions, Refunds and Credits

6.01 **Legislated Residential Exemptions**: Notwithstanding any other provision of this by-law, development charges shall not be imposed with respect to actions or approvals outlined in subsection 4.01 related to residential development of land, buildings or structures that would have the effect only of:

(a) permitting the enlargement of an existing dwelling unit;

(b) creating one or two additional dwelling units in an existing single-detached dwelling, where the gross floor area of the additional unit or units does not exceed the gross floor area of the existing dwelling unit;

(c) creating one additional dwelling unit in an existing semi-detached or row dwelling where the gross floor area of the additional unit does not exceed the gross floor area of the existing dwelling unit; or

(d) creating one additional dwelling unit in any other existing residential dwelling, where the gross floor area of the additional unit does not exceed the gross floor area of the