

TORONTO LANDS CORPORATION

Guideline: City of Toronto Funding on TDSB External Site Improvement Projects

To: Chair and Members of the Toronto Lands Corporation

Date: September 26, 2019

Recommendation:

That the report, *Guideline: City of Toronto Funding on TDSB External Site Improvement Projects*, be received and forwarded to the TDSB for information.

Rationale

Under Section 37 of the *Planning Act*, each Municipality has the authority to consider and authorize an increase in height and/or density through a site specific by-law in return for community benefits. Funding can also be obtained through Section 45 of the *Planning Act*. Community benefits can be a specified cash amount or specific funding or a contribution to a particular community project, i.e., community centre. A school board i.e. TDSB, has no inherent right to Section 37 or Section 45 funding or to request a developer or the Municipality (City of Toronto for TDSB) to allocate any or a portion of these funds to the TDSB. Historically, both organizations work closely together with a local Councillor recommending at City Council that capital funding be directed to TDSB for a specific external playground project on TDSB lands. In the majority of cases, the request for funding commences with the local school community when they are seeking an improvement in the school yard. It can also occur when TDSB has determined a capital project will be undertaken and the school has the opportunity to fund or seek additional monies to support capital improvements that continue to enhance the local schoolyard.

Prior to TDSB receiving any City funds for a capital playground project, the City has required, under City legal and Councillor concurrence, to agree to specific terms and conditions in an executed agreement that governs the distribution of the funds and public use of the external playground. The City has referred to these agreements as "Community Access Agreements" and TDSB has called these "Public Use - Section 37 Agreements". According to TDSB, funding over the last ten years has ranged from \$8,000 to \$1,500,000 on a project for a total of approximately \$6.3Million. Except for one site, a total of 33 schools were allocated funding for exterior improvements that ranged from a variety of playground equipment and associated external improvements.

There is a great deal of time and effort required by all parties when securing funding and settling on terms and conditions in the agreements, albeit some have become standard, but others vary in length of term, amortization, refunds, indemnity and risk to TDSB. The primary condition in these agreements is that the City requires a guarantee of community access to the improvement (playground equipment) outside of school hours for the duration of the agreement; and that the TDSB must indemnify the City during the community use after regular school hours.

As TLC has its new mandate, these types of agreements will become part of the portfolio. TLC believes it is imperative going forward that all agreements have some sense of standardization and guidelines are necessary in order to ensure fairness and equity across the school board in funding al-

locations for any of the assets. TLC will support TDSB in achieving these funding initiatives and work with City staff in order to ensure agreements can be completed in an efficient and fair process.

Context

TLC has considered efficiencies, transparency and fairness in evaluating Guidelines for receiving funds from Section 37 and Section 45 Agreements with the Municipality. TLC has reviewed a number of TDSB past agreements, conversed with TDSB risk management and spoken to a few other school boards to have a better understanding of section funding for capital improvements on school property.

As background, the City of Toronto Section 37 Implementation Guidelines (section 5.9, page 28) Adopted by City Council at its meeting of November 19-20, 2007 and revised to consolidate Council adopted amendments as of January, 2016, states:

“Improvements to School Board Playgrounds

Cash contributions toward the capital improvement of school board playgrounds are eligible S. 37 community benefits where the playground serves as a local park, where the public will continue to have reasonable access for the foreseeable future, and where there is no local City-owned parkland performing a similar function in the same community that could otherwise benefit from the cash contribution.”

In these cases, City Council approves the Motion by the local councilor that recommends that a community access agreement is to be approved by terms and conditions as required by the Ward Councillor, Parks, Forestry and Recreation and satisfactory to the City Solicitor. As such, in the past, terms, funding amounts and other provisions can vary. It is the intent to provide a simplicity and equity in order that all agreements conform to generally the same terms and conditions forming Guidelines for any future receipt of funding.

Guideline: Principle of Community Access Agreement

While an agreement to specifically use the TDSB property playground after school hours its referenced use is as a local park, the TDSB maintains ownership of the property and the agreement does not reference any change of use of the land from a school playground to a park. The land remains a school playground to serve the students as a form of playing activity and the agreement simply is in place as an acknowledgement that the funding provided secures the improvement and access by the public after school hours. As such, these agreements are a form of “shared-use or community access agreements” and are a commitment to allow the community use for specific time period in exchange for receipt of capital dollars in order to build or contribute to the construction of the playground equipment or improvement on a specific school site to enhance student opportunities during school hours and create a vibrant experience for the community after hours.

Guideline: Term - Funding

Funding has such a wide range in value and sometimes the funding provided is the only or majority of funding for a project and in other cases it is a minor contribution to the overall TDSB expenditure. External funding or donations to a project can always be beneficial. However, the value of e.g. \$8,000 versus \$100,000 cannot be measured in the same manner. A substantial investment needs to provide a greater sense of security from the City perspective. Usually, there is a decision to amortize the value of the expenditure over a period of time which has ranged all the way up to twenty years dependent upon the Ward Councillor and in many cases there is no correlation between funding provided and term that appears reasonable, except one could argue the need of an improvement could dictate term.

In discussions with other Boards and TDSB staff, it is undesirable to enter into any terms longer than ten years. Specifically, boards find it difficult to determine with accuracy what would happen longer than ten years in the future on that specific portion of the property. If the land was required for an expansion or some type of disposition, either the agreement could not be terminated impacting on student needs or a large payout would be required to the City. In essence, the Boards have, under agreement, given away the rights to use its own property for the duration of the term. Thus, the question remains, what is a reasonable time frame to consider future use? A reasonable timeframe for a commitment to guarantee access to the funded improvement is a maximum of ten (10) years. As previously stated, smaller funding amounts that contributes to an existing project or the funding only adds a few features, should not receive the same commitment as funding that primarily covers a large portion of the capital cost. From TDSB data, it appears that an allocation of \$150,000 or more allows for new playground equipment and improvements. While TDSB is appreciative of any funding received from the City, when funding amounts to less than \$150,000, usually at this funding level, contributions are in support of an overall project. As such, an agreement guideline in terms of length will be no more than five (5) years. There may be instances, with a City commitment of a substantial amount, in excess of \$1Million that could result in a negotiated longer term of an agreement. Once the new playground is built, the TDSB must absorb all ongoing maintenance and repair costs. The funding provided does not allocate any portion to maintenance or inspection reports.

In summary, Guideline:

Funding received less than \$150,000 will indicate up to a five (5) year term in the agreement

Funding received more than \$150,000 will secure a ten (10) year term in the community access agreement

Guideline: Termination

Even with detailed planning, TDSB can be in a situation whereby an agreement needs to be terminated as the TDSB must remove the improvement. For example, an approved addition to a school requires the construction where the new playground was constructed in year 7 of a 10 year term.

In any event, the TDSB, as the property owner, must have the right to terminate the agreement for any reason. However, a reasonable notice period is required and a current executed agreement reflects at least six months' prior written notice. Contractor's schedules or other commitments may find that at least six months' prior notice can negatively impact or restrict TDSB plans. A reasonable termination period for TDSB protection should be slightly shorter. The City requires the capital provided to be amortized over the term and if the agreement is terminated earlier, the unamortized balance is to be calculated and refunded to the City. Going forward, TLC will include a depreciation component to any refund owing.

Guideline: Indemnity

It is the current practice that the City requires full indemnity for public use of the playground area from the TDSB in these agreements. The TDSB must also take out and maintain general liability insurance for five million dollars per occurrence in connection with any personal injury, death or property damage that might occur in or about the improvement area, such as the playground. TDSB risk management advises that it is only appropriate if the City wants to include use in the indemnification, then the City should indemnify TDSB for all claims resulting from its use, being after school hours and non-school days. TDSB risk management advises new agreements will require appropriate language in these scenarios. TDSB staff has advised that the City, while providing funding to create benefits to the community and enhance student activities, does not want to incur any legal responsibility for damages that may occur.

General terms and conditions in any shared-use agreement must allow the TDSB the right, within reasonable notice, to close the improvement for repairs and or maintenance or due to inclement weather where there may be a requirement to close the access for a short period of time. However, it would always be the intent, in good faith, to keep an improvement in place and actively in use for benefit of the children and neighbourhood.

Bill 108

As a result of the new Provincial Bill 108 there is no longer a Section 37 or Section 45 in the *Planning Act* whereby Councilor's can provide funding to the TDSB. Any funding commitment on new development projects will need to be secured out of the total community benefit contribution at the initial negotiations with the City of Toronto. However, as staff are aware, Section monies are still available at the City from numerous development projects under the previous *Planning Act*.

The aforementioned Guidelines are to highlight the main criteria of Community Access Agreements for public use in exchange for funding for external site improvements on TDSB property and the objective is to establish a fair, efficient and open process whereby a standard shared-use agreement can be utilized across the City. These Guidelines, attached as Appendix 1, and amended from time to time, may be provided to the parent and school community when approaching Councilor's for funding in order to ensure equity across the City. Funding from the City of Toronto for external site improvements is appreciated and beneficial to the students and community across the City.

Appendix

Appendix 1 Guideline: City of Toronto Funding on TDSB External Site Improvement Projects - Community Access Agreement

Routing

TLC Board: 26 September 2019
TDSB Board: October 2019 Cycle

From

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