Clarington

Staff Report

If this information is required in an alternate accessible format, please contact the Accessibility Coordinator at 905-623-3379 ext. 2131.

Report To:	**Joint Committees**		
Date of Meeting:	September 14, 2020	**Report Number:**	FND-029-20
Submitted By:	Trevor Pinn, Director of Finance/Treasurer		
Reviewed By:	Andrew C. Allison, CAO	**Resolution#:**	JC-125-20, GG-332-20
File Number:		**By-law Number:**	
Report Subject:	Whistle Cessation Funding Options		

Recommendations:

1. That Report FND-02920 be received;
2. That staff include a contribution to the Roads Capital Reserve Fund of $420,000 for the purposes of whistle cessation for consideration as part of the draft 2021 budget; and
3. That all interested parties listed in Report FND-029-20 and any delegations be advised of Council's decision.

Report Overview

Council has directed staff to work towards establishing whistle cessation protocols at the Cobbledick Road and Bennett Road grade-level crossings. Council has asked for funding options for this work. This report highlights several options, including development charges and community benefits charges; these two funding options are only available for growth-related capital infrastructure.

1. Background

1.1 At the Special General Government Committee meeting on February 19, 2020, council directed staff to move forward with the request to eliminate train whistles at the Cobbledick Road and Bennett Road grade-level crossings.

1.2 During the July 6, 2020, Council meeting, council passed resolution #C-349-20 directing staff to look into several aspects of funding for the Cobbledick Road level railway crossing improvements.

1.3 This report speaks solely to the funding options available to the Municipality regarding this project.

2. Funding Options

Tax Levy Paragraph Sub-heading

2.1 Tax levy funding is the least restrictive form of funding for this project. This source of funding is not dependent on qualifications of the project and is at the complete discretion of Council.

2.2 Based on the 2020 levy, the estimated cost of $1.25 million represents a municipal levy increase of approximately 1.99 per cent.

2.3 Council could establish a contribution to the Roads Capital Reserve Fund over a set period of time in order to save up for this project. Assuming a contribution of $420,000 per year for three years the impact would be a 0.67 per cent increase to the tax levy in 2021.

Special Area Tax Levy

2.4 Section 326 of the *Municipal Act* allows a municipality to pass a by-law to identify a special service, determine the costs of the service, designate the area of the municipality that receives the service and charge those taxpayers for the service.

2.5 While special area tax levies are not common, they do provide an ability for municipalities to attribute the cost of a service not generally received throughout the municipality to the area that receives this benefit.

2.6 Given that, at the moment, the only area of the Municipality that would be benefitting from this increased service, it could be argued that a special area levy provides equity to the taxpayers in other areas of the Municipality who are not benefiting from the whistle cessation activities.

2.7 The by-law to establish the charge would be required to be passed annually.

2.8 The use of a special area levy would create a precedent that could result in other areas wanting special service enhancements and utilizing this method to pay for it. It runs the risk of becoming administratively burdensome. For example, the City of Chatham-Kent has 22 different tax rates depending on where you live.

2.9 While this is a reasonable alternative, the general tax levy may be more appropriate, particularly if this is a level of service that will be spreading to other areas of the Municipality. Also, determining the area of the Municipality that benefits from a reduction of noise could be subjective and would result in many resident complaints.

Development Charges

2.10 Development charges are regulated under the *Development Charges Act* and have been the subject of some revisions throughout 2019 and 2020, many of which are still to be proclaimed.

2.11 The Act states that Council may adopt a by-law to impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.

2.12 Prior to the current reform of the Act, a service was eligible unless it was included on the ineligible list. As part of the *More Homes, More Choice Act* and subsequent legislation this is changing. A charge is ineligible unless it is included as an eligible service.

2.13 A development charge may only be imposed on an eligible service as listed in the Act; the Act does not include rail services as an eligible service. It does include transit services; however the railways going through Clarington at this time are not part of municipal transit systems.

2.14 It should be noted that the Act does include as an eligible service “services related to a highway as defined in subsection 1 (1) of the *Municipal Act, 2001*…”. The definition in the *Municipal Act* states that a highway “means a common and public highway and

includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway."

2.15 Given the above, despite the fact that the rail crossing would be on private property, it appears that rail crossings could conceivably be an eligible service under the revised development charges legislation. Any work would have to be related to growth under the current levels of service and not be charged as a service level enhancement. The Municipality is allowed to increase the level of service in a DC Study if it intends to ensure that such increase in level of service will be met. As the whistle cessation work is not in the current study and by-law it is not eligible as it would be a service enhancement.

2.16 If a rail crossing needs to be upgraded as a direct result of growth, it may be eligible for DC funding. In addition to being growth related, the project would have to be included in the DC background study. While there are some rail crossings in the Municipality that will likely need to be upgraded in the future to accommodate growth, these do not include the two crossings that are the subject of this report.

2.17 I believe that the argument that these two crossings need to be updated as a result of pending development is not defensible. The safety standards do not warrant, even with the projected growth, changes to these two crossings, and the main development in the area has been there for many years which would not make any new work "growth related".

2.18 In some instances where growth can't be directly attributed, a general growth argument can be used; this argument implies that because the Municipality is growing by X per cent that any new item needed provides that much service towards the growth component. A general argument that the Municipality is growing by 10% so therefore 10% could be attributed is difficult to justify in this case because the community is a gated-access community so the general public does not have access to going into that area.

2.19 Under section 59.1 of the Act a municipality shall not impose, directly or indirectly, a charge related to development or a requirement to construct a service related to development, except as permitted by this Act or another Act. This does limit the ability of the Municipality to charge developers for this work unless it is specifically allowed under the Development Charges Act, Planning Act or another Act.

Community Benefits Charges

2.20 While the regulations for the Community Benefits Charges (CBCs) are not final at the time of this report, staff have reviewed the draft regulations to determine if this project would be eligible.

2.21 The draft regulations up to July 8, 2020 were clear that if a project is eligible to be collected as a development charge, it would be ineligible to be included in a CBC by-law. Therefore, as railway crossings are eligible services for development charges they would not be eligible for CBCs under those regulations.

2.22 On July 8, 2020 the Province released Bill 197: *COVID-19 Economic Recovery Act, 2020* which amended a number of Acts. Included in the bill, which received royal assent on July 22, 2020, was a change which makes CBCs unattractive to the Municipality. This legislation has not been proclaimed yet (as of August 24, 2020), therefore there is technically no authority to collect CBCs at this time.

2.23 While the new legislation allows a CBC to be imposed in respect of a service that is an eligible service for DCs, provided that the project is not both funded by DCs and CBCs, the scope of development eligible for CBCs was significantly reduced. A CBC may not be imposed on development and/or redevelopment of:

- A proposed building or structure with fewer than five storeys at or above ground;
- A proposed building or structure with fewer than 10 residential units;
- Such types as prescribed.

2.24 Similarly, to development charges, a CBC may only be used to fund the growth-related capital infrastructure of the Municipality.

2.25 Based on information from the Province, CBCs will only be imposed on high density residential or mixed-use developments. They will not be charged to non-residential developments.

2.26 Based on the above, it is my opinion that creating a CBC charge would not be effective for the Municipality given the costs of administration (the study would be similar to that of a DC study) and the limited expected eligible developments.

Other Considerations

2.27 Staff are looking at funding opportunities with senior levels of government for railway improvements and enhancements.

2.28 Regardless of the funding method chosen above, the Municipality must have the cash resources available to complete the work. Staff have discussed with the Region of Durham regarding the ability to debenture funds for this project. Because the asset is not owned by the Municipality, debentures could not be issued for this project. Debentures could be issued for any road work on assets owned by the Municipality, however any contributions to rail company assets are not eligible to be debentured.

3. Concurrence

This report has been reviewed by the Director of Public Works and the Municipal Solicitor who concur with the recommendations.

4. Conclusion

It is respectfully recommended that Council include within the draft 2021 budget, a contribution to the Road Capital Reserve Fund for use in a future year towards the capital work for the specified rail crossings.

Staff Contact: Trevor Pinn, Director of Finance/Treasurer, 905-623-3379 ext. 2602 or tpinn@clarington.net.

Attachments: Not Applicable

Interested Parties:

There are no interested parties to be notified of Council's decision.