

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW NO. 6652-12

BEING A BY-LAW OF THE CORPORATION OF THE TOWN OF WHITBY WITH
RESPECT TO DEVELOPMENT CHARGES

WHEREAS section 2(1) of the *Development Charges Act, 1997* (hereinafter called "the Act") enables the Council of a municipality to pass by-laws for the imposition of development charges against land located in the municipality for increased capital costs required because of the increasing need for services arising from development in the area to which the by-law applies;

AND WHEREAS the Council of the Corporation of the Town of Whitby has made "The Town of Whitby Development Charge Background Study," dated August 24, 2012, prepared by Watson & Associates Economists Ltd., available to the public at least two weeks prior to the public meeting and has given Notice in accordance with section 12 of the Act of its intention to pass a by-law under section 2 thereof and has heard all persons who applied to be heard whether in objection thereto or in support thereof;

AND WHEREAS the Council in adopting the Development Charge Background Study on October 9th, 2012, directed that development charges be imposed on land under development or redevelopment within the geographical limits of the municipality as hereinafter provided.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WHITBY enacts as follows:

1. In this by-law,

DEFINITIONS

- (a) "Act" means the *Development Charges Act, 1997, S.O. 1997, c. 27, as amended*,
- (b) "agricultural use" means lands, buildings or structures, excluding any portion thereof used as a dwelling unit or for a commercial use, used or designed or intended for use for the purpose of a *bona fide* farming operation including, but not limited to, animal husbandry, dairying, livestock, fallow, field crops, removal of sod, forestry, fruit farming, greenhouses, horticulture, market gardening, pasturage, poultry keeping, and equestrian facilities;
- (c) "apartment dwelling" means a dwelling unit in an apartment dwelling house;
- (d) "apartment dwelling house" means a building or part of a building containing four or more dwelling units, which units have a common entrance from street level and are served by a common corridor;

- (e) "bedroom" means any room used or designed or intended for use as sleeping quarters including but not limited to, a den, a study or other similar use;
- (f) "commercial" means any non-residential development not defined as "industrial" or "institutional" in this by-law;
- (g) "Council" means the council of the Town;
- (h) "detached dwelling" means a dwelling containing only a dwelling unit or a dwelling unit and an accessory apartment;
- (i) "development" includes redevelopment;
- (j) "development charge" means a charge imposed pursuant to this by-law adjusted in accordance with Section 13;
- (k) "dwelling unit" means a room or suite of rooms used or designed or intended for use by one person or persons living together in which culinary and sanitary facilities are provided for the exclusive use of such person or persons, or a retirement residence dwelling unit;
- (l) "grade" means the average level of finished ground adjoining a building at all exterior walls;
- (m) "gross floor area" means, the total floor area, measured between the outside of exterior walls or between the outside of exterior walls and the centre line of party walls dividing the building from another building, of all floors above the average level of finished ground adjoining the building at its exterior walls;
- (n) "hospital" means land, buildings or structures used, or designed or intended for use as defined in the *Public Hospitals Act, R.S.O1990, c. P.40*, as amended;
- (o) "industrial" means any building used for or in connection with,
 - i) manufacturing, producing, processing, storing or distributing something and includes a greenhouse;
 - ii) research or development in connection with manufacturing, producing or processing something;
 - iii) retail sales by a manufacturer, producer or processor of something manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place; and,
 - iv) office for administrative purposes, if carried out with respect to manufacturing, producing, processing, storage or

- distribution and in or attached to the building or structure used for the manufacturing, producing, storage or distribution;
- (p) "institutional" means lands, buildings or structures owned by and used or designed or intended for use by:
- i) a hospital;
 - ii) a place of worship; or
 - iii) a nursing home owned by an organized body for a non-profit purpose where the use is carried on without profit or gain, the body is registered as a charitable organization and is licensed or approved under a special or general Act but excludes any building, or part of a building containing a retirement residence dwelling unit;
- (q) "mobile home" means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent or temporary residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed;
- (r) "non-residential use" means land, buildings or structures or portions thereof used, or designed or intended for a use other than a residential use;
- (s) "other dwelling" means any residential dwelling which is not a detached dwelling, a single detached dwelling, a semi-detached dwelling, a townhouse dwelling, an apartment dwelling or a retirement residence dwelling unit;
- (t) "parking structures/garages" means a building or structure provided exclusively for the purpose of vehicle parking;
- (u) "place of worship" means that part of a building or structure used for worship and that is exempt from taxation as a place of worship under the *Assessment Act, R.S.O. 1990, c. A.31*, as amended;
- (v) "residential use" means lands, buildings or structures used, or designed or intended for use as a home or residence of one or more individuals, and shall include, but is not limited to, a single detached dwelling, a semi-detached dwelling, a townhouse, an apartment dwelling house, a mobile home, a retirement residence and a residential dwelling unit accessory to a non-residential use;
- (w) "retirement residence" means a residential building or the residential portion of a mixed-use building which provides accommodation for persons of retirement age, where common facilities for the preparation and consumption of food are provided for the residents of the building, and where each dwelling unit or living accommodation has separate

sanitary facilities and in some cases, less than full culinary facilities and a separate entrance from a common hall;

- (x) "retirement residence dwelling unit" means a dwelling unit within a retirement residence and is subject to the rate applicable to an apartment unit of less than two bedrooms;
- (y) "semi-detached dwelling" means a building on a lot or lots, divided by a common wall or a connecting wall to contain two dwelling units, each unit having its own entrance from the outside;
- (z) "single detached dwelling" means a building located on a lot containing one dwelling unit, which is freestanding, separate and detached from other main buildings or main structures, but does not include a mobile home;
- (aa) "Town" means The Corporation of the Town of Whitby; and
- (bb) "townhouse dwelling" means one of a group of not less than three dwelling units attached to each other side by side.

2. SCHEDULE OF DEVELOPMENT CHARGES

- (1) Subject to the provisions of this by-law, development charges against land shall be calculated and collected in accordance with the base rates set out in Schedule B, as applicable, which relate to the services set out in Schedule A.
- (2) The development charge with respect to the use of any land, buildings or structures shall be calculated as follows:
 - (a) in the case of residential development, or the residential portion of a mixed-use development, based upon the number and type of dwelling units, in accordance with Schedule B, as applicable;
 - (b) The development charges imposed on a retirement residence dwelling unit shall be payable at the rate applicable to an apartment of less than two bedrooms;
 - (c) in the case of non-residential development, or the non-residential portion of a mixed-use development, based upon the number of square feet of gross floor area of such development, in accordance with Schedule B, as applicable;
 - (d) The development charges imposed upon a mobile home shall be payable at the rate applicable to an apartment of two bedrooms or larger. The development charges paid in regard to a mobile home shall be refunded in full to the then current owner thereof, upon request, if the mobile home is removed within ten years of the issuance of the building permit relating thereto. The onus is on the

applicant to produce evidence to the satisfaction of the Town, acting reasonably, which establishes that the applicant is entitled to the refund claimed under this section.

- (e) Where a non-residential development has both industrial and commercial uses, development charges will be imposed against the commercial or industrial gross floor area of the building or structure and as though the uses were separate.
- (3) Council hereby determines that the development of land, buildings or structures for residential and non-residential uses have required or will require the provision, enlargement, expansion or improvement of the services referenced in Schedule A.

3. APPLICABLE LANDS

- (1) Subject to subsections (2), (3), (4), (7) and (8), this by-law applies to all lands in the Town of Whitby, whether or not the lands or use is exempt from taxation under Section 3 of the *Assessment Act, 1990, c.A..31*.
- (2) This by-law shall not apply to land that is:
- (a) owned by:
 - i) a board as defined in subsection 1(1) of the *Education Act*,
 - ii) the Town, or any local board thereof;
 - iii) The Regional Municipality of Durham, or any local board thereof; or
 - (b) used for the purposes of:
 - i) a local municipality or any local board thereof;
 - ii) the development of a non-residential farm building, used for bona fide agricultural uses;
 - iii) an institutional use as defined in Section 1.
- (3) This by-law shall not apply to:
- (a) a temporary use permitted under a zoning by-law amendment enacted under section 39 of the *Planning Act*,
 - (b) temporary erection of a building without foundation as defined in the *Building Code Act* for a period not exceeding six (6) consecutive months and not more than six (6) months in any one calendar year on a site for which development charges or lot levies have previously been paid;

- (c) parking structures/garages;
 - (d) development where, by comparison with the land at any time within five years previous to the imposition of the charge:
 - i) no additional dwelling units are being created;
 - ii) no additional non-residential gross floor area is being added;
 - (e) where a development charge has been paid to the Town pursuant to previous by-laws under the *Development Charges Act, 1989 or 1997*, prior to the enactment of this by-law unless a subsequent action has the effect of increasing the need for services.
- (4) Section 2 of this by-law shall not apply to that category of exempt development described in s.s.2(3) of the Act, namely:
- (a) the enlargement of an existing dwelling unit or the creation of one or two additional dwelling units in an existing detached dwelling; or
 - (b) the creation of one additional dwelling unit in any other existing residential building.
- (5) Notwithstanding subsection (4)(a), development charges shall be calculated and collected in accordance with Schedule B, as applicable, where the total residential gross floor area of the additional one or two dwelling units is greater than the total gross floor area of the existing dwelling unit.
- (6) Notwithstanding subsection (4)(b), development charges shall be calculated and collected in accordance with Schedule B, as applicable, where the additional dwelling unit has a residential gross floor area greater than,
- (a) in the case of a semi-detached house, the gross floor area of the existing smallest dwelling unit, and
 - (b) in the case of any other residential building, the residential gross floor area of the smallest dwelling unit contained in the residential building.
- (7) Section 2 of this by-law shall not apply to that category of exempt development described in s.4 of the Act and s.1 of O.Reg. 82/98, namely:
- (a) the enlargement of the gross floor area of an existing industrial building, if the gross floor area is enlarged by 50 percent or less;

- (b) for the purpose of (a), the term "existing industrial building" shall have the same meaning as those terms have in O.Reg. 82/98 under the Act.
 - (c) Notwithstanding subsection (a), if the gross floor area is enlarged by more than 50 per cent, development charges shall be payable and collected and the amount payable shall be in accordance with s.4(3) of the Act.
- (8) Notwithstanding subsection (1), development charges shall not be imposed with respect to an enlargement of the gross floor area of an existing commercial building where such a building is located within the Downtown Community Improvement Plan Areas as defined in Schedule C – Map 1 and Map 2 to this by-law, and the gross floor area is enlarged by either up to fifty percent of the presently existing gross floor area or 5,000 square feet, whichever is less.

The amount of the charge is the charge otherwise payable on the total gross floor area enlargement, less the amount of the reduction defined in this subsection.

- (9) Where a conflict exists between the provisions of this by-law and any other agreement between the Town and the owner, with respect to land to be charged under this by-law, the provisions of such agreement prevail to the extent of the conflict.

4. APPLICATION OF CHARGES

- (1) Subject to subsection (2), development charges shall apply to, and shall be calculated, paid and collected in accordance with the provisions of this by-law in respect of land to be developed for residential and non-residential uses within the geographical limits of the Town, where,
- (a) the development requires,
 - (i) the passing of a zoning by-law or an amendment thereto under Section 34 of the *Planning Act, R.S.O. 1990, cP.13*, as amended (the "*Planning Act*");
 - (ii) the approval of a minor variance under Section 45 of the *Planning Act*;
 - (iii) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
 - (iv) the approval of a plan of subdivision under Section 51 of the *Planning Act*;
 - (v) a consent under Section 53 of the *Planning Act*;

- (vi) the approval of a description under section 50 of the Condominium Act, R.S.O., 1990, c.C.26 as amended or section 9 of the *Condominium Act, 1998 S.O. c. 19*, as amended; or
 - (vii) the issuing of a permit under the *Building Code Act, 1992 S.O. c.23*, as amended, in relation to a building or structure.
- (2) Subsection (1) shall not apply in respect of local services as described in s.59(2)(a) and (b) of the Act.

5. LOCAL SERVICE INSTALLATION

Nothing in this by-law prevents Council from requiring, as a condition of any approval under s.41, 51 or 53 of the *Planning Act*, that the owner, at his or her own expense, shall install or pay for such local services, as Council may require, or that the owner pay for the local connection to a storm drainage facility and associated administration, processing or inspection fees, related to the approval or within the area to which the approval relates.

6. MULTIPLE CHARGES

- (1) Where two or more of the actions described in Section 4(1) of this by-law are required before land to which a development charge applies can be developed, only one development charge shall be calculated, paid and collected in accordance with the provisions of this by-law.
- (2) Notwithstanding subsection (1), if two or more of the actions described in Section 4(1) of this by-law occur at different times, and if the subsequent action has the effect of increasing the need for municipal services as set out in Schedule A, an additional development charge shall be calculated and collected in accordance with the provisions of this by-law.
- (3) If a development does not require a building permit but does require one or more of the actions described in Subsection 4(1) of this by-law, then the development charge shall nonetheless be payable in respect of any increased or additional development permitted by such action.

7. SERVICES IN LIEU

Council may authorize an owner, through an agreement under s.38 of the Act, to substitute such part of the development charge applicable to the owner's development as may be specified in the agreement, by the provision at the sole expense of the owner, of services in lieu. Such agreement shall further specify that where the owner provides services in lieu in accordance with the agreement, Council shall give to the owner a credit, without interest, against the development charge in accordance with the agreement provisions and the provisions of s.39 of the Act, equal to the reasonable cost to the owner of providing the services in lieu, as determined by the Town. In no case shall

the agreement provide for a credit which exceeds the total development charge payable by an owner to the Town in respect of the development to which the agreement relates.

8. DEVELOPMENT CHARGE REDEVELOPMENT CREDITS

- (1) Where residential space is being converted to non-residential space, the development charge equivalent that would have been payable on the residential space shall be deducted from the charge calculated on the non-residential space being added.
- (2) Where non-residential space is being converted to residential space, the development charge equivalent that would have been payable on the non-residential space shall be deducted from the charge calculated on the residential units being added.
- (3) An owner who has obtained a demolition permit and demolished existing dwelling units or a non-residential building or structure in accordance with the provisions of the *Building Code Act* shall not be subject to the development charge with respect to the development being replaced, provided that the building permit for the replacement residential units or non-residential building or structure is issued not more than five years after the date of issuance of the demolition permit and provided that any dwelling units or non-residential floor area created in excess of what was demolished shall be subject to the development charge imposed under section 2.
- (4) No redevelopment credit shall be made in excess of the development charge payable for a redevelopment.

9. TIMING OF CALCULATION AND PAYMENT

- (1) Development charges shall be calculated and payable in full in money or by provision of services as may be agreed upon, or by credit granted by the Act, on the date that the first building permit is issued in relation to a building or structure on land to which a development charge applies.
- (2) Where development charges apply to land in relation to which a building permit is required, the building permit shall not be issued until the development charge has been paid in full to the Town.
- (3) Notwithstanding subsections (1) and (2), an owner and the Town of Whitby may enter into an agreement to provide for the payment in full of a development charge before building permit issuance or later than the issuing of a building permit.
- (4) If a development does not require a building permit, the development charge shall be calculated and paid in full at the rate in effect at the time the approval is granted as a condition of the earliest of any of the

approvals required for the development and enumerated in Section 4 of this by-law.

- (5) Determination of the applicable development charges rate shall be subject to the provision that complete building permit applications received prior to November 1, 2012, will be subject to the development charge rate in effect as of October 31, 2012. A complete building permit application means that all drawings and plans have been submitted in final form and all fees and charges have been paid, including the applicable Town of Whitby development charge.

10. BY-LAW REGISTRATION

This By-law or a certified copy of this by-law may be registered against the title to any land to which this by-law applies.

11. RESERVE FUNDS

- (1) Monies received from payment of development charges shall be maintained in a separate reserve fund for each service designated in Schedule "A," plus interest earned thereon.
- (2) Monies received for the payment of development charges shall be used only in accordance with the provisions of s.35 of the Act.
- (3) Where any development charge, or part thereof, remains unpaid after the due date, the amount unpaid shall be added to the tax roll and shall be collected as taxes.
- (4) Where any unpaid development charges are collected as taxes under subsection (3), the monies so collected shall be credited to the development charge reserve fund or funds referred to in subsection (1).
- (5) The Treasurer of the Town shall, commencing in 2013 for the 2012 year, furnish to Council a statement in respect of the reserve funds established hereunder for the prior year, containing the information set out in Sections 12 and 13 of O.Reg. 82/98, or any amending regulation.

12. BY-LAW AMENDMENT OR REPEAL

- (1) Where this by-law or any development charge prescribed thereunder is amended or repealed by order of the Ontario Municipal Board or by resolution of the Council, the Town Treasurer shall calculate forthwith the amount of any overpayment to be refunded as a result of said amendment or repeal.
- (2) Refunds that are required to be paid under subsection (1) shall be paid to the registered owner of the land on the date on which the refund is paid.

- (3) Refunds that are required to be paid under subsection (1) shall be paid with interest to be calculated as follows:
- (a) interest shall be calculated from the date on which the overpayment was collected to the day on which the refund is paid;
 - (b) interest shall be paid at the Bank of Canada rate in effect on the date of enactment of this by-law.

13. DEVELOPMENT CHARGE SCHEDULE INDEXING

The development charges referred to in Schedule "B" shall be adjusted annually, without amendment to this by-law, commencing on July 1, 2013, and annually thereafter on July 1, while this by-law is in force, in accordance with the most recent twelve month change in the Statistics Canada Quarterly, "Construction Price Statistics".

14. BY-LAW ADMINISTRATION

This by-law shall be administered by the Treasury Department and the Planning Department.

15. SCHEDULES TO THE BY-LAW

The following schedules to this by-law form an integral part of this by-law:

- Schedule A- Designated Municipal Services under this by-law
- Schedule B- Schedule of Development Charges applicable commencing November 1, 2012
- Schedule C- Map 1 and 2 of Area Boundaries for the Town of Whitby CIP Areas

16. DATE BY-LAW EFFECTIVE

This by-law shall come into force and effect on November 1, 2012.

17. EXISTING DEVELOPMENT CHARGE BY-LAW REPEAL

By-law 6080-08 is repealed effective the date that this by-law comes into force and effect.

18. SEVERABILITY

If, for any reason, any provision, section, subsection or paragraph of this by-law is held to be invalid, it is hereby declared to be the intention of Council that all of the remainder of this by-law shall continue in full force and effect until repealed, re-enacted or amended, in whole or in part or dealt with in any other way.

19. SHORT TITLE

This by-law may be cited as the "Whitby Development Charge By-law".

20. NON-BINDING NATURE

Nothing in this by-law or Council's approval of a capital forecast shall be construed so as to commit or require the Town or its Council to authorize or proceed with any specific capital project at any specific time.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 9th DAY OF OCTOBER, 2012.

Debi A. Wilcox, Town Clerk

Patricia Perkins, Mayor

SCHEDULE "A"

DESIGNATED MUNICIPAL SERVICES UNDER THIS BY-LAW

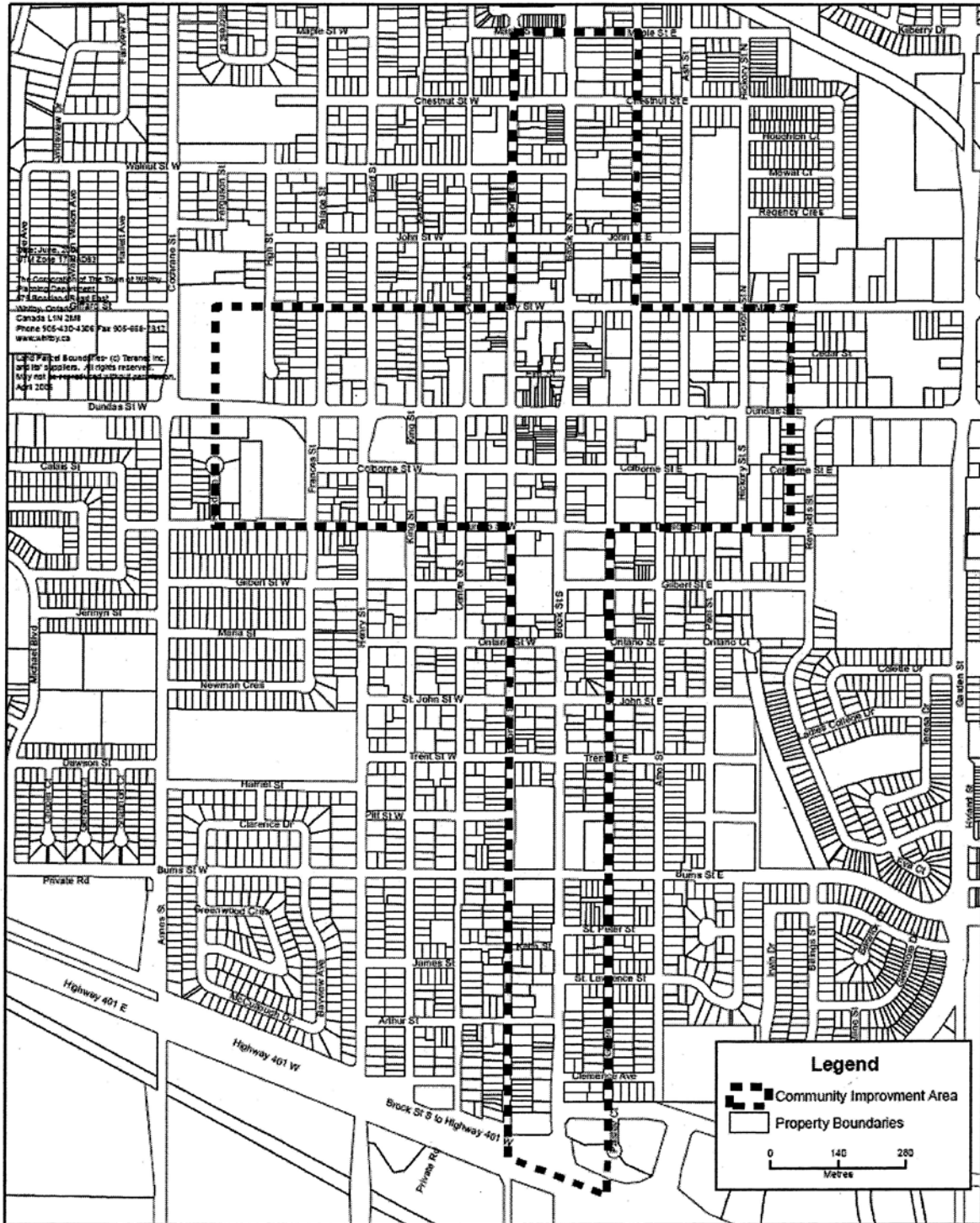
1. General Government (including development-related capital growth studies);
2. Non-Administrative Operational Facilities (including facilities and FFE for non-administrative functions growth-related needs);
3. Parks and Recreation (including parkland and trail development and equipment and services related thereto; major indoor recreational facilities and parks maintenance facilities and equipment);
4. Libraries (including facilities, furniture, shelving, equipment and services related thereto and including materials acquired for circulation, reference or information purposes by a library board);
5. Operations and Fire (including works operations facilities and vehicles, fire stations, vehicles and equipment);
6. Parking and By-law (including structures, work stations, vehicles and equipment);
7. Roads and Related (including roads, structures, sidewalks, streetlights, traffic signals);
8. Storm water management works.

SCHEDULE "B"

Schedule of Development Charges
Effective November 1, 2012

Service	Residential Development Per Dwelling Unit				Non-Residential per Sq.ft. of GFA
	Single, Semi or Detached Dwellings	Townhouse Dwellings with less than 3 bedrooms or Apartment Dwellings with 2 or more bedrooms	Apartment Dwellings with less than 2 bedrooms	Townhouse Dwellings with 3 or more bedrooms or Other Dwellings	
General Government	\$ 468	\$ 308	\$ 172	\$ 362	\$ 0.23
Non-Administrative Operational Facilities	119	78	44	92	0.06
Operations & Fire	708	466	261	548	0.36
Parks & Recreation	6,024	3,968	2,216	4,666	0.30
Libraries	561	370	206	435	0.03
Parking & By-law	95	63	35	74	0.05
Roads & Related	4,024	2,651	1,481	3,116	1.75
Stormwater Management	59	39	22	46	0.01
<i>Total</i>	\$ 12,058	\$ 7,943	\$ 4,437	\$ 9,339	2.79

SCHEDULE "C"
Town of Whitby Downtown Whitby Community Improvement Project Area
MAP 1 – Area Boundaries For The Downtown Whitby Community Improvement
Project Area



Whitby, Ontario
Canada L1N 2B9
Phone 905-430-4204 Fax 905-666-3317
www.whitby.ca

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April 2008

SCHEDULE "C"

Town of Whitby Downtown Brooklin Community Improvement Project Area MAP 2 – Area Boundaries For The Downtown Brooklin Community Improvement Project Area

