Additional Financial and Legal Considerations

Bonding Program

A bond is a tri-party contractual arrangement between the Contractor (Principal), Project Owner/Obligee (e.g. Residential Developer) and the Bond Issuer/Surety. The bond will provide protection for the project owner in the event of their contractor's default in performing their responsibilities under the contract between the residential developer and their contractor up to the limit of the bond. A bond is used as a financial instrument should the Principal/contractor fail to meet their contract obligations. The Surety steps in as a guarantor should the Principal not be able to pay a valid claim. Laws on performance bonds are governed by the face of the bond (i.e. the content of the bond agreement).

In a scenario where there are damages to the neighbouring properties due to a residential development, the neighbouring property owners have limited protections under this option since they are not a party to the bond agreement. Third party damages are a risk that is better protected under the contractor's liability insurance that is responsible for the damages.

The bond option is neither feasible nor effective in providing financial assistance to the neighbouring property owners for losses due to residential development and therefore not recommended.

The other scenario is for the City to obtain a bond for private persons. This option is also neither feasible nor effective. The City has no ability to obtain bonding for private persons conducting residential projects on their own property as the City has no legal interest in these projects. Even if such bonding was commercially available, it would expose the City to very significant legal, financial and reputational risks over which we have little control or responsibility. The law places responsibility for negligent construction on the party responsible for the loss. This option is also not recommended.

Some factors of Implementation of a bonding program on behalf of private residents and corporations where the City would previously not have had a role would involve:

- Regulatory requirements to make the City a "bonding agency" and subject to the laws and regulations that govern such industry.

- Would place the City into direct competition with the private sector by providing bonding services that are not common municipal services.
- Transfers risk and cost to the City that is not legally required nor expected as a municipal service.
- Significant administrative costs and tax-levy burden to perform due diligence that the sureties perform such as assessing the operational and financial capacities of the contractors to deliver on a specific project. The City does not have the capacity to perform such due diligence for which the surety industry has been established.
- The City would be involved with the private disputes and potentially duplicating efforts that are handled through the surety and adjudication systems to ensure no overcompensation is made at the cost of the taxpayers' funds. This exposes the City to significant financial, legal and reputational risks while requiring significant resources to manage the program with not much public benefit.
- This poses significant financial risk to the City if the collected bonding fees are not sufficient to cover the commitments for claims against the bond which is very likely.
- This option has limited to no value to the public as explained earlier.
- Even if feasible, a City-led program would not be the best fit for every contractor who can obtain better terms on their own merit/profile that is customized to their operations.
- The City's program would likely be used by contractors who are viewed by the sureties as inferior risks that can't obtain appropriate bonding on their own, usually because they have incurred large losses in the past and are considered higher risk.

Grant Program

If the Council wishes to establish a funding program to provide financial assistance in these situations, the program would need to be offered through a grant program. A grant program offers a tool to compensate impacted residents where there is otherwise no legal obligation to do so. Although there is no prohibition against creating such a grant program, it would create a new precedent and expectations that are not currently required by law.

Creation of a grant program would require the city to establish eligibility criteria and processes for applications submissions, review and ongoing management of grants.

The eligibility criteria would involve assessment of damages, other sources of funding available to the resident such as insurance and bond proceeds or other financial guarantees that may have been made to the residents. This would mean the City would be involved with the private disputes and potentially duplicating efforts that are handled through the insurance, surety and adjudication systems to ensure no overcompensation is made at the cost of the taxpayers' funds.

Given the large volume of residential development and significant undertaking involved with the review and ongoing grant management and oversight, this would require significant additional resources and tax levy burden and effectiveness of the program is questionable given the significant considerations that are required.

The following is some of the key steps and processes to establish a grant program:

- Administration to perform a detailed business case to assess the benefit of the grant program and required resources
- Grant program development includes developing grant guidelines, application processes, eligibility criteria, selection, grant management
- Approval of the grant program criteria and associated processes
- A funding source including required FTEs and resources to manage the program should be identified subject to Council's approval.
- A process for addressing disputes etc.