



Date: November 4, 2014

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Marvin G. Williams, Director of Public Works

Subject: Ordered Petitioned Sidewalks

Executive Summary

At the September 4, 2014 City Council Work Session, an item was brought before Council regarding the prioritization of sidewalk construction, including eleven sidewalk projects previously ordered by City Council as a result of petitions from abutting property owners. Council expressed a desire to change the assessment rate from \$5.00 per front foot to \$35.00 per front foot for the seven (7) least expensive projects currently on the petitioned construction list and eliminate the four (4) most expensive projects from the list altogether.

After consulting with the City Attorney’s Office, it is Public Works’ opinion that in order to do this Council must first hold a public hearing and adopt a resolution to rescind the original ordering of all eleven petitioned sidewalks. Should Council then wish to proceed with the seven least expensive projects at the \$ 35.00 per front foot assessment rate, additional Council actions would be required (see Issues and Analysis).

The adoption of the attached resolution will set a public hearing to consider rescinding the ordering of the eleven sidewalks on the current ordered petition list, which is the first step required to allow the re-issuance of petitions under Council desired criteria.

Recommendation

The Public Works Department recommends that City Council adopt a resolution setting a public hearing to consider rescinding the ordering of all petitioned sidewalks.

Background

In 2012, City Council expressed a desire to bring the sidewalk petition process more in line with the existing Durham Walks! Pedestrian Plan (the Plan). After careful consideration of how to accomplish that, City Council adopted Resolution #9846 and Ordinance #14408 on March 4, 2013, establishing two types of petitioned sidewalks – those inside the Plan and those outside the Plan – with a maximum assessment rate of \$35.00 per front foot for ordered petitioned sidewalks that lie within the approved Durham Walks! Pedestrian Plan and an actual cost assessment rate for sidewalks outside the Plan, for any sufficient petition received by the City on or after April 1, 2013. In addition, the sufficiency criteria was changed to require legal owners of 70% of the lots with road frontage within the project

limits to sign the petition and those signatures to represent at least 70% of the length of the road frontage within the project limits. The previous sufficiency criteria were over 50% of lots and over 50% of frontage to be represented by signatories.

The current list of eleven petitioned sidewalks were all ordered by City Council under sufficiency criteria (over 50%) and the maximum assessment rate (\$5.00 per front foot) that were in effect for petitions received prior to April 1, 2013. Of the eleven sidewalk projects currently on the ordered petitioned sidewalk construction list, Council expressed a desire at the September 4, 2014 Work Session to have the four most expensive projects removed from the list altogether. Those projects are University Drive, S. Roxboro Street, Sedwick Road, and Grandale Drive. These four projects are currently included in the Durham Walks! Pedestrian Plan (the Plan) at the rankings shown in Attachment C.

Council also expressed a desire to build the remaining seven (7) projects on the list and to assess them at a rate of \$35.00 per front foot, as opposed to the \$ 5.00 per front foot rate under which they were originally ordered. However, per Section 77(14) of the City Charter, the maximum assessment rate for any improvement ordered to be made by City Council as a result of a valid petition by abutting property owners is the rate in effect on the date on which the petition is returned to the City with sufficient signatures. Therefore, in order to build and assess these seven sidewalk projects at \$35.00 per front foot, the petition process would need to start over with an assessment rate of \$35.00 per front foot in effect. This would require a series of events, which are discussed in detail in the Issues and Analysis section of this memo.

Issues and Analysis

In order to not build the four most expensive sidewalk projects and to proceed with building and assessing the seven least expensive sidewalks on the current ordered petitioned sidewalk list (shown in Attachment C) at \$35.00 per front foot (as discussed at the September 4, 2014 Work Session), the following actions must be taken:

1. Adopt a resolution setting a public hearing to consider rescinding the ordering of the eleven petitioned sidewalks.
2. Hold a public hearing to consider rescinding the ordering of the eleven petitioned sidewalks.
3. Adopt a resolution rescinding the eleven petitioned sidewalks.
4. Adopt a resolution establishing the maximum assessment rate at \$35.00 per front for the seven least expensive sidewalks on the current ordered petitioned sidewalk list. This step is necessary because of the seven projects Council discussed building and assessing at \$35.00 per front foot, only one (Green Street, ranked 226) is currently on the Plan and is subsequently eligible for the \$35.00 per front foot maximum assessment rate under current policy. The other six projects (Juliette Drive; Infinity Road; Monmouth Avenue; Fayetteville Road; Hardwick Drive; and Yorktown Avenue) are not on the Plan, and therefore would be subject to actual cost assessments under current policy. If a sufficiency threshold other than 70% is desired for these projects, the resolution would need to establish the desired sufficiency criteria as well.

5. Have staff issue new petitions for the seven projects at the newly established maximum assessment rate and sufficiency requirements. The petitions would then need to be circulated by their respective sponsors to obtain the required number of signatures from abutting property owners. Any valid petitions received would then be brought before Council for consideration.
6. Adopt a resolution ordering the sidewalk to be made (under the guidelines established by the City Charter, Chapter 6, Article VII, Section 77) for any valid petition received. The sidewalk could then be built and assessed at \$35.00 per front foot, since that would be the rate in effect at the time the petition was received by the City.

As the four most expensive petitioned projects that Council wishes to eliminate altogether are currently on the Plan, these projects could be re-petitioned for, and if ordered by Council, would be subject to the current sufficiency criteria of 70% and the maximum assessment rate as shown in the Fee Schedule at the time of ordering (currently \$35.00 per front foot). The return of sufficient petitions and Council ordering of these projects could potentially move them up the priority list on the current Plan, as outlined under City of Durham Resolution #9846, adopted on March 4, 2013.

In the event that Council does choose to rescind any or all of those petitions currently on the ordered petition list, and subsequently re-order any or all of these projects without benefit of petition, then under current City policy, per Resolution #8648, adopted April 17, 2000, there would be no assessment levied against properties along the project limits.

Alternatives

- 1) The City Council could refrain from adopting the proposed resolution and maintain the current petitioned sidewalk list, with the rates under which they were originally ordered, and construct them as funds become available.
- 2) The City Council could choose to adopt the attached resolution to set a public hearing to consider rescinding the eleven (11) currently ordered sidewalk projects and instruct staff to re-issue petitions under the current criteria as adopted on March 4, 2013.
- 3) The City Council could adopt the attached resolution to set a public hearing to consider rescinding the eleven (11) currently ordered sidewalk projects and subsequently rescind the projects and instruct staff to re-issue petitions under new criteria established specifically for these projects.
- 4) The City Council could adopt the attached resolution to set a public hearing to consider rescinding the current list of eleven ordered petitioned sidewalks and subsequently add these sidewalks to the Durham Walks! Pedestrian Plan and have them constructed based on their individual ranking. This would result in no assessment against the abutting properties.

Financial Impacts

Assessment revenue would vary between being totally lost if all of the petitions were rescinded and no sufficient petitions were re-submitted, upwards to realizing full, actual cost assessments for projects outside the current Plan being ordered and built.

SDBE Summary

No SDBE implications have been identified for this matter.