



**STAFF REPORT
ACTION REQUIRED**

Complaint Pursuant to Section 20 of the *Development Charges Act, 1997* – 3700 Midland Ave.

Date:	May 16, 2008
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer Deputy City Manager Richard Butts
Wards:	Ward 41
Reference Number:	P:\2008\Internal Services\SP\ec08005Sp (AFS#7553)

SUMMARY

The purpose of this report is to provide staff recommendations in response to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* (the “Act”). The complainant, Kreadar Enterprises Ltd. (Kreadar), claims that it is entitled to development charge credits for the cost of constructing a portion of Silver Star Boulevard and related sanitary sewer works.

Staff have reviewed the complaint and recommend that the complaint be dismissed. The Act provides that a development charge credit can only be granted where there is an agreement between the municipality and the developer providing that a credit will be given in return for the construction of a development charge service. Since there is no such agreement between Kreadar and the City, Kreadar has no legal entitlement to a development charge credit.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer, and Deputy City Manager Richard Butts recommend that:

1. Council dismiss the complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* and deny the request for a development charge refund in the amount of \$386,986.01.

Financial Impact

This report recommends that the complaint be dismissed and the requested development charge refund be denied.

The complainant is seeking a development charge credit (refund) in the amount of \$386,986.01, as well as development charges credits for future development on the Kreadar Lands. Should Council agree that the complainant is entitled to a credit, the development charge by-law provides that the credit be the lesser of the cost of the works constructed or the development charge component related to these works. Accordingly, the applicant would only be entitled to a potential credit (refund) of \$68,870.40, being the lesser of the pro rated cost of construction of Silver Star Blvd. road and sewer works (estimated by Kreadar to cost \$955,336.17) and the road and sewer component of the development charges paid. In addition, a decision in favour of the complaint would result in further credits, estimated at potentially \$724,000, for the balance of the undeveloped Kreadar Lands.

ISSUE BACKGROUND

The complaint (Attachment 1) requests that the City grant Kreadar development charge credits for the previous construction of a portion of Silver Star Boulevard and sanitary sewers on the lands located north of McNicoll Ave. and west of Midland Ave. (Kreadar Lands). It is the position of the complainant that, at the time of development approval in 2001, no development charges were applicable to non-residential development and thus, no credit was sought by Kreadar in exchange for the works.

Provisions under the Act

Under section 20 of the Act, a person required to pay a development charge may complain to Council that,

- (a) the amount of the development charge was incorrectly determined;
- (b) a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
- (c) there was an error in the application of the development charge by-law.

Section 20 further requires that Council hold a hearing into the complaint and give the complainant an opportunity to make representations at that hearing. After hearing the evidence and submission of the complainant, Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. Under section 22 of the Act, the complainant may appeal the decision of Council to the Ontario Municipal Board.

COMMENTS

As a condition of the consent to sever the Kreadar Lands, approved by the Committee of Adjustment on November 21, 2001, Kreadar was required to construct a portion of Silver Star Blvd, including storm, sanitary sewer and watermain extensions, from McNicoll

Avenue to the proposed 0.3 metre (one foot) reserve at the north limit of the property. The works were set out in a servicing agreement between the City and Kreadar dated October 9, 2002.

Neither the consent approval nor the servicing agreement provided that Kreadar would receive a development charge credit for the construction of the road and sewer work. As set out in section 38 (1) of the Act (emphasis added),

“If a municipality agrees to allow a person to perform work that relates to a service to which a development charge by-law relates, the municipality shall give a credit towards the development charge in accordance with the agreement”.

Subsequent provisions in the Act refer to the requirement that there be an agreement between the municipality and the person performing the work. Thus, a development charge credit for the provision of work that relates to a development charge service, can only be given where there is an agreement to give such a credit. Legal Services staff advise that Kreadar has no legal entitlement to a development charge credit, and development charges were properly paid in full at the time of building permit issuance.

In addition to the legal position noted above, Technical Services staff advise that there is no indication that the City requested Kreadar to oversize any infrastructure beyond that necessary to service their own lands. In addition, the subject road and sanitary sewer works do not meet the 2004 local services policy guidelines for development charge eligibility. Accordingly, none of the Silver Star Boulevard road and sewer work would be eligible for a development charge credit in any event.

With respect to whether the development charge credit was considered at the time of development approval in 2001, an October 24, 2001 staff report, [<http://www.toronto.ca/legdocs/2001/agendas/committees/sc/sc011120/it021.pdf>], indicates that the extension to Silver Star Boulevard was a capital work item in the development charge by-law. The report also states that the road was to provide “access and servicing to the vacant industrial lands in the interior of the block”, but does not recommend that the City provide a development charge credit in exchange for such works.

The complainant also states that the construction of Silver Star Boulevard road and sewers were in the City’s development charge calculations. Technical Services staff have reviewed the 1999 and 2004 development charge background studies and advise that a portion of the road and sewer work were included in the 1999 development charge study, and only a portion of the sewer work was included in the 2004 development charge study. This, however, does not constitute sufficient grounds for granting a development charges credit. As noted previously, any credits must have been agreed to by the City and by Kreadar.

This report has been drafted in consultation with Legal Services and Technical Services staff.

Conclusion

Staff recommend that the complaint be dismissed for the reasons discussed in the report. The Act provides that a development charge credit can only be granted where there is an agreement between the municipality and the developer providing that a credit will be given in return for the construction of a development charge service. Since there is no such agreement between Kreadar and the City, Kreadar has no legal entitlement to a development charge credit. Notwithstanding the requirement for an agreement, Technical Services staff advise that the works are not eligible for development charge credits, primarily because the City did not request Kreadar to oversize any of the infrastructure beyond that necessary to service their own lands.

CONTACT

Joe Farag, Director, Special Projects
Tel: 416-392-8108, Email: jfarag@toronto.ca

Mario Angelucci, Acting Director, Toronto Building
Tel: 416-392-7523, Email: mangeluc@toronto.ca.

SIGNATURE

Joseph P. Pennachetti
Deputy City Manager and
Chief Financial Officer

Richard Butts
Deputy City Manager

ATTACHMENTS

Attachment 1: Development Charge Complaint letter dated January 15, 2007, from
Cassels Brock & Blackwell LLP, counsel to Kreadar Enterprises Ltd.