

## Toronto Building Division: Conditional Permits

**Date:** October 20, 2017

**To:** Audit Committee

**From:** Auditor General

**Wards:** All

### SUMMARY

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This report provides results of the Auditor General's review of conditional permits issued by Toronto Building Division. The review was initiated as a result of a complaint to the City's Fraud and Waste Hotline.

While conditional permits are a tool used in the development review process to balance the significant number of large complex development applications being received by the City, conditional permits can only be issued if the circumstances prescribed in section 8(3) of the *Building Code Act* are met.

The complainant alleged that there was a financial incentive for conditional permit applicants to obtain above-grade conditional permits in advance of scheduled development charge increases. It was also alleged that some above-grade conditional permits were not issued in full compliance with section 8(3) of the *Building Code Act*. The alleged impact was reduced development charge revenues received by the City.

In our opinion, the complaint that some above-grade conditional permits issued are not in full compliance with section 8(3) of the *Building Code Act* is substantiated. Under the law, conditional permits should not have been issued for 2 of the 15 sites we reviewed, resulting in \$867,700 in lost development charges revenue.

Further, the complaint that there is a financial incentive for conditional permit applicants to obtain an above-grade conditional permit in advance of the scheduled date of a development charges increase is also substantiated. This conclusion is based on measuring conditional permits issued against criteria that Toronto Building developed in mid-2016 but which are still in draft form. The development charges were collected based on the conditional permit policy in effect at that time which did not contain objective criteria for issuing above-grade conditional permits.

On a go-forward basis to ensure fairness and to ensure the City receives the development charges revenue it is entitled to, without slowing down the construction process, we are recommending that the draft conditional permit issuance criteria be reviewed and finalized.

Finalizing these criteria will provide a standardized approach and some objective measures to support the Chief Building Official in forming her opinion regarding conditional permit issuance. We understand that the Chief Building Official will continue to exercise her discretion when making conditional permit decisions.

Development charges represent a significant source of revenue for the City. Over \$702 million in development charges have been collected over the past four years. The 15 files that we reviewed had a total of \$29.9 million in development charges. These revenues would have been \$8.0 million higher had the conditional permits been issued using the criteria that are still in draft form.

We have not projected the potential revenue lost across the entire population because some cases were reported to us and other sample items were selected based on judgement. However, what we can say is that the nature and frequency of the issues, as well as, the number of managers focused on encouraging and expediting conditional permit applications to reduce development charges as a customer service, means that the City's interests may not have not been balanced. The totality of what we have observed in this review indicates this is a systemic issue and that potential development charges revenues lost are much greater.

## **RECOMMENDATIONS**

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The Auditor General recommends that:

1. City Council request the Chief Building Official & Executive Director, Toronto Building Division to review and finalize draft conditional permit issuance criteria/guidelines.
2. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to strengthen controls to ensure that all requirements, including Zoning By-Law, Building Code Act, and Toronto Building conditional permit issuance criteria, are met prior to the issuance of a conditional permit.
3. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to implement a quality assurance and compliance process to ensure conditional building permits issued meet regulatory and divisional requirements.
4. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to amend the Conditional Permit Policy to require that all conditions relating to a conditional permit be included in the formal agreement supporting the conditional permit and ensure that staff adhere to this requirement.
5. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to ensure that the impact of any development related demolition permits are considered prior to issuing a conditional permit.

6. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to amend the Conditional Permits Policy to:

- a. include requirements for the retention of appropriate documentation in support of decisions related to the issuance of Conditional Permits
- b. ensure management scrutiny and approval of significant deviations from policy and standard practice are documented
- c. include guidelines to assist staff in making assessments of claims of unreasonable delays in construction.

7. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to document the steps taken to obtain reasonable assurance that Conditional Permit applicants' assertions of unreasonable delays in construction are valid before approving the conditional permit application.

8. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to examine alternatives to mitigate the risks caused by the volume of conditional permit applications submitted immediately prior to a development charge increase.

9. City Council request the Chief Building Official & Executive Director, Toronto Building Division to periodically report to Council providing information as to timing of conditional permits relative to changes in development charges, extent, and impact of conditional permits issued.

10. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to ensure building permit applicants are treated fairly and consistently by either:

- a. instructing staff to stop inviting conditional permit applications, or
- b. providing all applicants with building permit applications in process that will be subject to development charges with information regarding applying for a conditional permit prior to a development charge increase.

11. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to ensure performance planning objectives for individual employees contribute to the overall efficiency and regulatory compliance of the City.

12. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to ensure staff are aware and trained in appropriate divisional objectives that should guide their day-to-day activities and decisions.

13. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to review permit monitoring and enforcement practices and undertake any changes necessary to adequately monitor Conditional Permits.

14. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to explore opportunities to enhance the use of technology in the inspection process in an effort to gain both efficiency and effectiveness.

15. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to implement measures to enforce conditional permit agreements in a consistent manner.

16. City Council request the Chief Building Official & Executive Director, Toronto Building Division to review, in consultation with the City Solicitor, the General Manager, Parks, Forestry & Recreation Division, and other appropriate City Divisions, the provisions of the Municipal Code related to the collection of Parkland Levies and propose any changes necessary.

17. City Council request the Chief Building Official & Executive Director, Toronto Building Division, to implement appropriate controls to ensure IBMS data cannot be overridden without appropriate authorization.

## **FINANCIAL IMPACT**

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The financial impact of the recommendations in this report is not determinable at this time.

The 15 files that we reviewed had a total of \$29.9 million in development charges. We conservatively estimate the development charges revenues would have been \$8.0 million higher had the conditional permits been issued using the criteria that are still in draft form. We cannot project the potential revenue lost across the entire population, and we are unable to make any conclusions as to potential issues with conditional permits we did not examine. However, what we can say is that the nature and frequency of the issues, as well as, the number of managers focused on encouraging and expediting conditional permit applications to reduce development charges as a customer service, means that the City's interests may not have not been balanced. The totality of what we have observed in this review indicates this is a systemic issue and that potential development charges revenues lost are much greater.

## **DECISION HISTORY**

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The Chief Building Official has authority under the *Building Code Act* to issue conditional permits if certain conditions are met. One of these conditions is that the conditional permit applicant must enter into an agreement with the City that sets out the timelines within which they must comply with the remainder of requirements for a building permit. In 2002, City Council delegated authority to enter into these agreements to the Chief Building Official and Deputy Chief Building Officials.

<http://www.toronto.ca/legdocs/2002/agendas/council/cc021029/plt12rpt/cl002.pdf>

## COMMENTS

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Development charges represent a significant source of revenue for the City. Over \$702 million in development charges have been collected over the past four years.

Development charges help pay for infrastructure needed to service growth. This includes costs for roads, transit, parks, recreation, and water infrastructure related to development. Essentially, the principle is that growth pays for growth. Where collective development charges revenues are insufficient to fund the growth-related infrastructure needs, the necessary funds need to be collected from other sources, including from taxpayers across the City through an increase in property taxes.

Where a landowner wants to construct a building they must apply for and obtain a building permit from the City. Once a permit applicant has met all of the conditions of the *Building Code Act*, the Chief Building Official must issue the requested permit.

In recognition of the complexities of complying with the requirements of the *Building Code Act*, the *Act* allows the Chief Building Official, at her discretion, to issue a conditional permit under certain conditions. This may be done when an applicant has not fulfilled all of the requirements for a full building permit, but is in compliance with a set of reduced requirements. Should the applicant subsequently not be able to fulfill all of the requirements for a full permit, they bear the full risk of restoring the site to its original condition.

Issuing the first above-grade permit, conditional or otherwise, is a critical milestone. The date of issue is when the amount of development charges is calculated and payable. This is also the date when other fees and charges, like parkland levies and education development charges become due.

If a developer is unable to fulfill all of the requirements necessary to obtain a normal above-grade building permit, there can be a significant financial incentive to apply for an above-grade conditional permit in advance of a scheduled development charges rate increase. As an example, development charges collected for one development was \$5.8 million on July 30, 2015. Had a conditional permit not been issued, the development charges due would have increased by almost \$1 million just two days later when a development charges rate increase was phased-in.

The *Building Code Act* provisions relating to conditional permits is broadly worded so that Chief Building Officials can review a proposed construction project and decide whether it will be unreasonably delayed if a conditional permit is not issued. The Chief Building Official is under no obligation to issue a conditional permit and the permit applicant has no right of appeal should a conditional permit not be issued.

It has been nearly 15 years since City Council granted the Chief Building Official authority to enter into Conditional Permit Agreements that allow construction to move forward while ensuring the City's interests are protected. Since that time, the volume of conditional permits has grown from the 30 to 40 permits expected in the first year to over 500 permits per year.

It was not until mid-2016, Toronto Building finally developed guidelines for issuing conditional permits. These guidelines can help to ensure that all developers are treated consistently and fairly because they provide objective criteria for determining the appropriate timing for issuing conditional permits. The guidelines are still in draft form and were not in use during the period covered by our review. The guidelines should be finalized promptly.

In the absence of any other objective criteria in the *Building Code Act* and Toronto Building's own Conditional Permit Policy, we used the draft guidelines as the benchmark by which we evaluated a sample of conditional permits issued between 2012 and 2016.

Based on the draft conditional permit issuance criteria, we noted situations where, in our opinion, the above-grade conditional permits appear to have been issued prematurely. Our complete analysis and findings are in our report included as Attachment 1.

This report contains 17 recommendations along with management's response to each recommendation. Management agrees with our recommendations and has identified a plan to implement them. Management further agrees that there are concerns raised in this report that need to be addressed. The implementation of policies that set some objective criteria for the issuance of conditional permits, the equitable treatment of applicants and the strengthening of the monitoring and enforcement of conditional permit agreements will address these concerns.

## **CONTACT**

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## **SIGNATURE**

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Beverly Romeo-Beehler  
Auditor General

## **ATTACHMENTS**

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Attachment 1: Toronto Building Division: Conditional Permits