



REPORT FOR ACTION

Development Charge Complaint - 77 Glen Rush Boulevard

Date: October 10, 2017
To: Executive Committee
From: Acting Chief Financial Officer
Wards: 16 Eglinton-Lawrence

SUMMARY

This report responds to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* relating to a development project located at 77 Glen Rush Boulevard. A decision of Council to dismiss the complaint may be appealed to the Ontario Municipal Board.

The development consists of a private school, interim structures (portables) and the demolition of a previous school building. Under the City's Development Charges By-law, the original school demolition resulted in an offset against other development on-site. The concurrent permits for building both interim structures and the final school building, currently under construction, were assessed development charges. Under the City's By-law, no demolition reduction would be applied when the portables are ultimately removed.

The applicant contends that the result is double payment of DCs, and that the DCs should not have been applied to the interim portables, or failing that a demolition reduction should apply upon their removal.

City staff has reviewed the issue thoroughly and concluded that i) it constitutes a complaint under the Act; and, ii) development charges payable were properly calculated at the time of building permit issuance and that there was no error in the application of the City's Development Charges By-law.

Nevertheless, staff recommend that Council authorize relief to the applicant through the application of a demolition reduction when and to the extent that the portables are removed. In addition, staff will undertake to improve the next DC by-law so that it allows a more appropriate treatment for similar circumstances.

RECOMMENDATIONS

The Acting Chief Financial Officer recommends that:

1. Council authorize the Acting Chief Financial Officer, in consultation with the City Solicitor and Chief Building Official, to execute an agreement to provide a demolition reduction to the applicant in an amount of up to \$328,578.45 upon the removal of the portables at 77 Glen Rush Boulevard so long as and to the extent that the demolition occurs in connection with the opening of the permanent school structure at 77 Glen Rush Blvd.

FINANCIAL IMPACT

The value of the disputed demolition reduction is \$328,578.45, equivalent to the amount of DCs paid for the interim portables construction at the time of permit issuance.

Development charges are used to fund the City's eligible growth-related capital costs, as approved by Council through the City's annual capital budgeting process. Any loss in development charge revenue results in increased tax and rate supported costs, or reduced capacity to invest in capital infrastructure.

DECISION HISTORY

Land development applications in the City are required to pay development charges in accordance with a by-law enacted by Council pursuant to provisions of the *Development Charges Act, 1997* (the "DC Act"). Under Section 20 of the DC Act, a person required to pay a development charge may complain to Council that,

"the amount of the development charge was incorrectly determined;

whether 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

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 submissions 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 (the "Board"). The complainant may also appeal to the Board if Council does not deal with the complaint within 60 days after the complaint has been made.

COMMENTS

Staff received a notice of a DC payment under protest with respect to the development at 77 Glen Rush Blvd dated September 30, 2016. After review of the letter, the circumstances of the development, a meeting with representatives of the proponent on June 28 2017 and consultation with staff in Toronto Buildings and City legal, staff determined that the letter constitutes a s.20 complaint under the Act.

The City's Development Charges By-law provides for exemptions for temporary structures, and demolition reduction offsets against DCs payable, up to the value of the DCs payable on the replacement structure. The relevant sections of the by-law are attached.

The development at 77 Glen Rush Boulevard consists of a private school, interim structures (portables) and the demolition of a previous school building. The permits for building both interim structures and the final school building, currently under construction, were issued in 2016 and both were assessed development charges. Under the City's Development Charges By-law, the original school demolition resulted in an offset against charges for the construction of the interim use portables. The complaint relates to the charge for the interim use portables, and/or the ineligibility for a future demolition reduction in relation to removal of the interim use portables upon completion of the final school.

	Issue/Application Date	Chargeable sq. metres	DC rate	DCs paid
Interim Facilities Bldg. Permit	Sept. 20, 2016	1634.8	\$200.99	\$328,578.45
Original School demolition permit	Aug. 26, 2016	(1395.0)	\$200.99	-\$280,381.05
Net Charge				\$48,197.40
Permanent School Bldg. Permit	Jan. 16, 2017	3,351	\$200.99	\$673,517.49
Total				\$721,714.89

Private schools are chargeable under the City's DC bylaw as non-residential development. The interim use portables were assessed development charges. Under the bylaw, exemptions for temporary structures are limited to those that are to be maintained for a period of 8 months or less. The portables are being used to operate the new school while the permanent structure is under construction, for a period well over a year.

In addition, the ultimate demolition or removal of the portables will not result in any offset to DCs unless a building permit for an additional structure on the site is issued. The reduction offset is not available against the permanent new school because its building permit has already been issued. Under the by-law a credit is only available where "as a result of the redevelopment of land, a demolition permit has been issued within the thirty-six month period immediately prior to the date of submission of a complete building permit application with respect to the whole or a part of a building or structure existing on the same land."

Since both the interim portables and permanent school building were being built concurrently, a demolition permit application was not submitted for the portables "in the period prior to the date of a complete building permit application" for the permanent school building.

The complainant asserts that the interim portables construction should not have attracted a DC since their demolition was part of the construction plan. Failing that, the complainant asserts that the demolition of the portables should result in a reimbursement of the applicable DCs.

Staff note that the construction of the portables appropriately led to their assessment as a permanent structure under the by-law, but agree that had the timing of the building permits for the portables and permanent school facility been sequenced in a more typical way, the by-law would have allowed for a demolition reduction for the removal of the portables and DC charges of up to \$328,578.45 less. This is the amount of the demolition reduction if it applies when the portables are removed.

So long as the portables structure is removed when the permanent school facility is opened, staff support the provision of a demolition reduction for this development.

CONCLUSION

Upon receipt of notice of payment under protest, staff reviewed the circumstances of the development, met with representatives of the proponent and consulted with staff in Toronto Buildings and City legal.

Staff determined that the letter constitutes a s.20 complaint under the Act and that the City's DC By-law was applied correctly and involved no error in the determination of applicable development charges. However, staff conclude that the resulting charges are a reflection of the unusual sequencing of the permit applications rather than the cost of growth, and are inconsistent with the underlying DC policy objectives of the DC By-law.

Consequently staff recommend that Council authorize the CFO to enter into an agreement to provide a demolition reduction related to the removal of the portables.

CONTACT

Robert Hatton, Acting Executive Director, Corporate Finance Division, Tel: 416-392-9149; Fax: 416-397-4555; Email: robert.hatton@toronto.ca

Mario Angelucci, Director & Deputy Chief Building Official, Toronto Building, Tel: 416-392-7523; Fax: 416-392-7536; Email: mario.angelucci@toronto.ca

SIGNATURE

Joe Farag
Acting Chief Financial Officer

ATTACHMENTS

Attachment #1: DC bylaw excerpts
Attachment #2: Complaint letter from Caribou Torah Education Foundation, 77
Glen Rush Boulevard dated September 30, 2016

Attachment #1

DC Bylaw Excerpts

415-6 C Other exemptions.

Despite the provisions of this article, development charges shall not be imposed with respect to:

5) A temporary building or structure constructed, erected or placed on land for a continuous period not exceeding eight months, if:

(a) The status of the building or structure as a temporary building or structure is maintained in accordance with the provisions of this article; and

(b) Upon application being made for the issuance of a permit under the Building Code Act, in relation to a temporary building or structure on land to which a development charge applies, the City may require that the owner submit security satisfactory to the City, to be realized upon in the event that the building or structure is present on the subject land for a continuous period exceeding eight months, and development charges thereby become payable.

415-7

C. Redevelopment.

(1) Despite any other provision of this article and subject to Subsections C(2) and C(3), where, as a result of the redevelopment of land, a demolition permit has been issued within the thirty-six month period immediately prior to the date of submission of a complete building permit application with respect to the whole or a part of a building or structure existing on the same land, or a building or structure is to be converted from one principal use to another principal use on the same land, the development charges otherwise payable with respect to such building permit application shall be reduced as follows:

(b) In the case of a non-residential building or structure, or the non-residential uses in a mixed-use building or structure, which is being redeveloped for non-residential purposes:

[1] In the case of demolition, no development charge will be imposed to the extent that the existing non-residential gross floor area to be demolished and which is located on the ground floor would have been, if newly constructed, subject to the payment of development charges at the time of building permit issuance for the new building or structure and is replaced by the new non-residential gross floor area; and

(2) The amounts of any reduction under Subsection C (1) shall not exceed, in total, the amount of the development charges otherwise payable with respect to the redevelopment.

(3) Any reduction under Subsection C(1) shall apply only where the use of the building or structure that has been or will be demolished or converted to another use has been legally established pursuant to all applicable zoning by-laws and all building statutes and regulations relating to the construction of buildings.

D. Onus.

The onus is on the owner or applicant to produce evidence to the satisfaction of the City which establishes that the owner or applicant is entitled to any reduction in the payment of or refund of development charges claimed under this section.