

Development Charge Complaint - 1383, 1385, 1389, 1399 and 1403 Military Trail

Date: June 18, 2019
To: Executive Committee
From: Chief Financial Officer and Treasurer
Wards: 25 - Scarborough - Rouge Park

SUMMARY

This report responds to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* and Section 257.85 of the Education Act relating to a residential development project located at 1383, 1385, 1389, 1399 and 1403 Military Trail.

The development project consists of five pre-existing lots with one detached dwelling in each. In the process of redevelopment, demolition permits were issued for these five lots. Subsequently, building permit applications for the development were submitted.

The City's 2013 Development Charges By-law was in effect at the time of the permit application. It contains a provision for DC reduction relating to demolished units for up to 36 months after issuance of demolition permit upon submission of a complete building permit application. At the time of permit application approximately 53 months had elapsed. The Toronto Catholic District School Board's (TCDSB) Education Development Charges By-law also provided demolition offsets for up to 36 months from demolition permit issuance.

The complaint seeks to have the demolition reduction apply, noting that i) they experienced delay due to a subsequent sale of the properties followed by redevelopment redesign which required an application for minor variance and ii) revocation of the demolition permit was forestalled at their request twice, and should in their view have reset the clock for the purposes of the 36 month window.

Staff determined that Development Charges By-law was applied properly and no error was made in the calculation of the Development Charges. This report recommends that the complaint be dismissed. A decision of Council to dismiss the complaint may be appealed to Local Planning Appeal Tribunal. This report was prepared in consultation with the Chief Building Official and the City Solicitor.

RECOMMENDATIONS

The Chief Financial Officer and Treasurer recommends that:

1. City Council determine that the Development Charges By-law and Education Development Charges By-Law have been properly applied to the residential development project located at 1383, 1385, 1389, 1399 and 1403 Military Trail.
2. City Council dismiss the complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* and Section 257.85 of the Education Act.

FINANCIAL IMPACT

There is no financial impact on the City's capital or operating budget from the adoption of recommendations contained in this report. Development Charges under protest, in the amount of \$480,804 including Education Development Charges, were collected by the City prior to the issuance of a related building permit (August 17, 2017). The amounts under dispute on the expired redevelopment reduction is \$200,335 (5 Single dwelling units @ \$40,067) in Development Charges and \$7,465 in Education Development Charges.

It is important that the City consistently applies its Development Charges By-law. The funds collected pay for growth-related capital costs such as roads, transit, water, sewer, parks and recreation facilities that help pay for services needed for these developments and redevelopments. The City collects the EDCs on behalf of the TCDSB and remits the funds to the board monthly, as required under the Education Act.

If the complainant appeals Council's decision to the Ontario Local Planning Appeal Tribunal, the City's defence would be provided by the Legal Services Division.

COMMENTS

Development in the City is 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"). Provisions of the Act require that a by-law provide rules for dealing with redevelopment. The City's DC by-law contains such provisions and provides demolition reductions to DCs otherwise payable in amounts and under the circumstances set out in the by-law.

Provisions under the Development Charges Act, 1997 also allow an applicant to request a municipal hearing of a complaint under certain circumstances.

Under Section 20 of the DC 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. *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*
- c. *there was an error in the application of the development charge by-law."*

Council has delegated s. 20 hearing responsibility to Executive Committee. After hearing the evidence and submissions of the complainant, Executive Committee may recommend that Council "*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 Local Planning Appeal Tribunal (LPAT). The complainant may also appeal to the LPAT if Council does not deal with the complaint within 60 days after the complaint has been made.

Circumstances

This development project consists of five pre-existing lots with one detached dwelling in each. The previous owner of the properties applied for demolition permits on the five pre-existing dwellings and were issued on January 29, 2013. On September 1, 2015, the above properties were sold to Military Trail Development Corporation. The five pre-existing lots were divided into 12 building lots to build one two storey dwelling being constructed on each of the 12 lots. On June 21, 2017, Military Trail Development Corporation submitted complete building permit application, approximately 53 months after the issuance demolition permit. On August 17, 2017 the Corporation paid development charges for the new development. On October 10, 2017, it notified the City of its objection to the application of the by-law and the EDC by-law within the statutory 90 day allowance for complaints.

Assessment

Development Charges By-law 1347-2013 was in effect at the time the building permits applications were received and issued. It included a provision for redevelopment reduction or offset that may be applied towards the Development Charges being imposed, only if the complete building permit application is submitted within 36 months of the issuance of the related demolition permit.

Under Development Charges By-law 1347-2013,

415-7. Amount of charge.

C. Redevelopment.

(1) *Despite any other provision of this article and subject to Subsections C(3) and (4), 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:*

(a) In the case of a residential building or structure, or the residential uses in a mixed-use building or structure, which is being redeveloped for residential or non-residential purposes, the development charges payable will be reduced by an amount calculated by multiplying the applicable development charge under Subsection A by the number of dwelling units or dwelling rooms that have been or will be demolished or converted to another type of residential use or non-residential use, and according to the type of dwelling unit or dwelling room so demolished or converted;"

Staff reviewed the complaint in consultation with the Solicitor and determined that the application of the demolition reduction is within the scope of s. 20 of the Act, specifically a question of an error in the application of the bylaw.

As in many jurisdictions, the City's DC bylaw provides for offsets for demolitions and sets a time limit on these offsets based on the date of demolition permit issuance. The demolition reduction window applicable in this matter is 36 months. In the 2018 bylaw this relationship was reviewed, and the demolition reduction window was extended to 60 months. The revised window does not apply retroactively.

The complaint states that due to the sale to Military Trail Development Corporation and redesign of redevelopment, it required an application for minor variance which delayed demolition itself until January 2017. It also asserts that the City on two occasions delayed revoking the demolition permits at the request of the developer and that these events should constitute a re-issuance of the demolition permit.

The demolition permits do not have an expiry date, they have an issuance date. The issuance date is the relevant date for the provision of demolition reductions. Demolition Permit Issuance was approved by Community Council as it was not within the delegated authority of the CBO. Actual date of demolition is not relevant under the by-law.

Notices of Intention to Revoke are typically sent to permit holders where they have not actively carried out the work authorized by the permit for a period of more than one year. After the notices are sent the permit holder has 30 days to request a deferral from revocation for which a fee must be paid. These deferrals are at times requested to maintain the permission to demolish, and/or to avoid another demolish permit application.

On two occasions, Toronto Building agreed to defer revocation of the demolition permits at the request of the permit holder. These actions do not constitute an issuance of the demolition permit under the by-law.

Demolition permits were issued in this matter on January 29, 2013. Complete building permit applications were submitted on June 21, 2017. This is approximately 53 months which is outside the 36 month demolition reduction window permitted under the applicable by-law. Accordingly staff have determined that the by-law was properly applied and recommend that the complaint be dismissed.

TCDSB Education Development Charges By-Law 173-2013,

The TCDSB EDC by-law contained similar provisions for demolition reductions with the same window for expiry, and were applied in a like manner. Accordingly staff have determined that the by-law was properly applied and recommend that the complaint be dismissed.

CONCLUSION

For reasons discussed above, staff is of the opinion that the City's Development Charges By-law and Education Development Charges By-law were applied correctly and there was no error in the determination of applicable Development Charges. Staff confirm that the applicant is not entitled to the demolition reduction it is seeking. Staff recommends that the complaint be dismissed.

CONTACT

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SIGNATURE

Heather Taylor
Chief Financial Officer and Treasurer

ATTACHMENTS

Attachment 1: Complaint letter from Military Trail Development Corporation, dated October 10, 2017