

## **Development Charge Complaint – 351 Wallace Avenue**

<b>Date:</b>	April 27, 2010
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager and Chief Financial Officer
<b>Wards:</b>	[Ward 18]
<b>Reference Number:</b>	P:\2010\Internal Services\SP\EC10001SP [AFS # 11829]

### **SUMMARY**

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This report responds to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* relating to a proposed residential land development project consisting of 134 townhouse units located at 351 Wallace Avenue.

The two issues raised in the complaint relate to the rate that ought to be applied in calculating the development charge. The complainant's position is that the rates in effect when the building permit was submitted (December 31, 2004) should be applied in determining the development charge instead of the rate in effect at the time of permit issuance (November 24, 2009). In addition, the complainant argues that the development charge rate for "apartment units" should be applied in the calculation of the charge rather than the "multiple unit" rate that was applied.

Staff is of the opinion that the development charges were properly calculated and collected. In accordance with the City's development charge bylaw, the charges are calculated and become due and payable based on the rates in effect at the time of building permit issuance. Also, the residential units in the project do not meet the definition of "apartment unit", as defined in the bylaw, and the "multiple dwelling unit" rates apply. Accordingly, it is recommended that Council dismiss the complaint.

## RECOMMENDATIONS

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The Deputy City Manager and Chief Financial Officer recommends that:

1. Council determine that the City's development charge bylaw has been properly applied to the land development project located at 351 Wallace Avenue.
2. Council dismiss the complaint filed pursuant to Section 20 of the *Development Charges Act, 1997*.

### Financial Impact

City staff, based upon a review of the plans submitted with the building permit application, determined that development charges in the amount of **\$1,318,694** (\$9,841/multiple dwelling unit x 134 units) were due and payable prior to building permit issuance for the project located at 351 Wallace Avenue. This amount was paid to the City under protest on November 24, 2009.

The complainant takes the position that the development charges were incorrectly calculated and that the charges should instead amount to **\$377,344** (\$2,816/2+ bedroom apartment unit x 134 units). The complainant has requested a refund equal to the difference between the amount paid and their proposed calculations (\$1,318,694 less \$377,344 = **\$941,350**) plus interest.

As discussed in the body of this report, staff is of the opinion that the development charges were properly calculated and collected and that the request for refund should be denied.

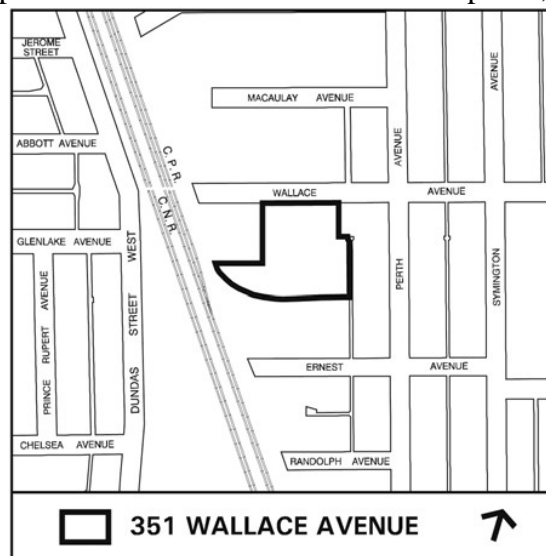
### ISSUE BACKGROUND

The City has received a complaint filed under Section 20 of the *Development Charges Act, 1997* (the Act) relating to a land development project located at 351 Wallace Avenue (Attachment 1). This report discusses and responds to the issues raised in the complaint, provides an overview of the legislative framework under the Act and provides additional background on the project.

### Issues raised in the complaint

As noted earlier, the two issues raised by the complainant relate to the applicable rates used in calculating the development charge for this project. The complainant takes the position that the City incorrectly calculated and collected the development charge because:

1. the rates in effect at the time that the building permit was submitted



(December 31, 2004) should be used in determining the applicable development charges instead of the rate in effect at the time of permit issuance (November 24, 2009); and

2. the development charge rate for "apartment units" should be used in the calculation, rather than the "multiple unit" rate that was imposed.

The complainant seeks a development charge refund in the amount of \$941,350 plus interest.

### **Project background**

The owner submitted a building permit application to the City on December 31, 2004 for the creation of 134 stacked townhouse units located in seven construction blocks. The residential development would replace an industrial warehouse building that was demolished under demolition permit number 01-26370 (demolition permit issued on May 28, 2001). The main building permit application (submitted in 2004) has not been issued and is pending planning approvals.

The owner submitted a conditional building permit application to the City on November 10, 2009. The City issued the conditional permit on November 24, 2009 after the owner paid all applicable fees, including development charges.

Attached to this report are copies of the development charge calculation and the receipt (Attachment 2), as well as more information on the planning and building permit approvals (Attachments 3).

### **Legislative provisions under the Act**

Pursuant to Section 20 (1) 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) *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."*

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.*"

## COMMENTS

Staff has reviewed the issues raised in the complaint, the related building permit plans, as well as the applicable provisions in the development charge bylaw.

### 1. Multiple dwelling unit rates should apply

The City's residential development charges are differentiated on the basis of the type of residential unit – single detached, semi-detached, apartments, multiple dwelling units and dwelling rooms.

*An apartment unit is defined as "A residential dwelling unit within a residential building, or the residential portion of a mixed use building, where such unit is accessed through a common entrance from the street level and an interior enclosed corridor, and the building contains three or more units with such access." (emphasis added).*

*Multiple dwelling units are defined as "All dwellings units other than a single detached dwelling, a semi-detached dwelling or an apartment unit, but includes a dwelling unit in a row dwelling."*

The plans submitted with the building permit application show that the units have access through entrances from the below grade parking. In addition, each of the units has individual access to grade. The units do not have access through a common entrance from the street level and an interior enclosed corridor. As a result, staff has determined that the units do not meet the definition of an "apartment unit", as defined, and that the rates applicable to "multiple dwelling unit" should apply for this project.

### 2. Transition provision under the 2004 bylaw

As part of the public consultation process leading up to the adoption of the City's 2004 development charge bylaw (No. 547-2004), development industry stakeholders expressed concerns regarding the impact that an increase in the development charges would have on projects that were well along in the development process. The concerns were based on the proposition that landowners had formulated business plans and made financial decisions on the basis of then existing and foreseeable conditions, including municipal financial requirements.

In response to those concerns, the development charge bylaw that Council approved in 2004 included a transition provision allowing building permit applications that were submitted on or before December 31, 2004 and issued on or before December 31, 2005 to be subject to (or 'grandfathered' at) the 2004 development charge rates. This provision was intended to cushion the impact of the increase in the charge on projects with imminent construction plans. The provision was not intended to continue indefinitely and would only apply to projects that start construction within a reasonable timeframe (i.e. by December 31, 2005 which is approximately one and half years after Council adopted the 2004 development charge bylaw).

The development project that is the subject of this complaint does not qualify for relief under the above-noted transition provision because it was not sufficiently advanced in the planning process to meet the required deadlines. Even though the owner did file a building permit application before the first deadline (December 31, 2004), the required Official Plan Amendment, Rezoning, and Site Plan Approval permitting the residential use was not in place to allow Toronto Building staff to issue the permit before the December 31, 2005 deadline.

As outlined in Attachment 3, City staff and the local community had a number of concerns with the development as proposed in the Official Plan Amendment and Rezoning applications, submitted to the City on November 8, 2004, including height, density and built form. Although staff continued discussions with the owner and met with the community on three occasions to try to resolve the issues, all issues were not resolved prior to December 31, 2005. The owner appealed to the Ontario Municipal Board on March 8, 2006 and the Board issued its order on January 31, 2007. The City did not delay the processing of the application to prevent the project from being able to meet the transition provision deadlines under the 2004 development charge bylaw.

Finally, any building permit applications that did not qualify for relief under the above transition provision were subject to development charges based on the rates in effect on the date of building permit issuance.

### 3. 2009 development charge bylaw applies

A new development charge bylaw (No. 275-2009) was adopted by Council at its meeting on February 23, 24 and 25, 2009. This bylaw came into force on May 1, 2009 and replaced the 2004 bylaw. This bylaw similarly requires the development charges to be "calculated, payable and collected as of the date a building permit is issued." The transition provision in this bylaw, however, included a 'freeze' in the rates for a two year period and a phase-in of the increase to the adopted charges over a four year period (phase-in between February 1, 2011 to February 1, 2014 based on a formula). There were no 'grandparenting' provisions adopted due to the lengthy phase-in to the new rates.

In accordance with the 2009 development charge bylaw, staff calculated and collected the development charges for the project at 351 Wallace Avenue based on the rates in effect at the time of building permit issuance (November 24, 2009).

## **Conclusion**

After careful consideration, it is the strong opinion of staff that development charges for the land development project located at 351 Wallace Avenue were properly calculated and collected in accordance with the City's development charge bylaw and that the complaint should be dismissed.

Toronto Building staff has contacted the complainant to discuss the issues raised in its complaint and to explain the provisions of the City's development charge bylaw. In that

discussion, the complainant indicated that it is unwilling to withdraw the complaint and thus, pursuant to Section 20 of the Act, the City is required to hold a hearing into the complaint.

The City Solicitor has been consulted in the preparation of this report and concurs with its recommendation.

## **CONTACT**

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## **SIGNATURE**

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Cam Weldon  
Deputy City Manager and  
Chief Financial Officer

## **ATTACHMENTS**

Attachment 1: Complaint letter, dated February 16, 2010, from Borden Ladner Gervais  
Attachment 2: Copies of the Development Charge Calculation Form and Receipt  
Attachment 3: Background on Planning and Building Approvals