



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**215 Sherway Gardens Road
OMB Decision – Development Charge Complaint**

Date:	July 9, 2013
To:	City Council
From:	City Solicitor
Wards:	Ward 5 – Etobicoke-Lakeshore
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

On June 20, 2013, the Ontario Municipal Board (“OMB”) issued a decision regarding a development charge complaint respecting 215 Sherway Gardens Road. The OMB ordered the City to repay an amount of \$397,941.00. In order to protect the City’s appeal rights, the City Solicitor filed a notice of motion to seek leave to appeal to the Divisional Court within the required time frame. The Confidential Attachment to this report seeks Council’s instructions on this matter.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1; and
2. City Council authorize the public release of the confidential recommendations in Attachment 1 if adopted by Council.

DECISION HISTORY

On December 16, 2010, Sherway Gate Development Corp. ("**Sherway**") submitted a building permit application to permit the construction of a 29 storey apartment building at 215 Sherway Gardens Road, as the fourth tower of a phased residential development consisting of 4 apartment towers. On January 31, 2011, Sherway made a payment of \$3,494,281 in respect of development charges for both towers at 205 Sherway Gardens Road (Tower D) and for 215 Sherway Gardens Road (Tower C). A conditional building permit was issued for 205 Sherway Gardens Road on January 30, 2011.

On February 1, 2011, the development charge rates increased significantly due to indexing and the scheduled phase-in of development charge increases. As the building permit for 215 Sherway Gardens Road had not yet been issued, in the fall of 2011 the applicant was advised that a further payment of development charges in the amount of \$397,941 was required to be paid prior to issuance of the building permit. The applicant paid this additional amount under protest, and the building permit for 215 Sherway Gardens Road was issued on January 20, 2012.

On June 29, 2012, Sherway filed a notice of appeal to the Ontario Municipal Board disputing the requirement to pay additional development charges. The OMB heard the appeal in January of 2013.

On June 20, 2013, the OMB issued its Decision allowing the complaint and ordered the City to repay the amount of \$397,941.00 to Sherway. The OMB relied upon a letter written by the City on January 25, 2011 which set out the amount of the development charges payable for 215 Sherway Gardens Road. Although the letter specifically said that the amount payable was subject to increases in the development charge rate, the OMB found that a reading of the letter would lead a reasonable person to conclude that the amount stated in the letter was the full amount outstanding.

FINANCIAL IMPACT

If the appeal is successful, the City will not be required to repay the amount of \$397,941.00 in development charges to the applicant. Additional comments on the financial impact are contained in the confidential attachment.

COMMENTS

The O.M.B. decision directed that the City pay the applicant \$397,941.00 in respect of a complaint filed pursuant to s.22 of the *Development Charges Act*.

A copy of the OMB decision has been filed with the Clerk.

The Confidential Attachment to this report provides further information.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information regarding review of OMB decision re: 215
Sherway Gardens Road