

July 2, 2013

Our File No.: 13-0868

Via Email and Courier

City of Toronto
Toronto City Hall
100 Queen Street West
10th floor, West Tower
Toronto, ON M5H 2N2

**Re: Development Charge Review - Submission for Public Meeting
Item EX33.1 - Executive Committee Meeting, July 3, 2013
Building Industry and Land Development Association**

We are solicitors for the Building Industry and Land Development Association (“BILD”) regarding the City’s ongoing development charge by-law review. This letter is submitted on behalf of the Toronto Chapter of BILD for consideration at the public meeting scheduled to be held at the July 3, 2013 meeting of the City’s Executive Committee.

The development charge by-law proposed by staff would increase residential development charges by about 92%, on average. Moreover, the increase is proposed to be introduced without adequate transition provisions to mitigate its impact on projects in the process of development. BILD is extremely concerned with the impact that almost doubling development charges would have on the development industry and the affordability of new homes in this City.

BILD is requesting that the Executive Committee defer the Report from the Deputy City Manager and Chief Financial Officer to its meeting of October 30, 2013, in order to provide adequate time for stakeholders to understand and consider the development charge by-law proposed by staff, and to allow further discussion and consultation to explore ways to address the impacts of staff’s proposal. The Background Study and Report with staff’s proposed increase was only available last week. Moreover, staff are proposing that the development charge increase not take effect until February 2014. Considering the magnitude of the increase proposed, and the critical importance of the building industry to the City’s economy, a deferral of this matter by the Executive Committee is warranted.

Further, staff are recommending that the Executive Committee recommend the Background Study and By-law directly to Council for approval, and that staff report the results of the public

meeting directly to Council. With all due respect, that approach does not provide the Executive Committee with an adequate opportunity to consider the submissions the public is entitled to make, and does not have due regard for public input. Staff should report back to the Executive Committee on submissions received from the public before the by-law is recommended to Council for approval.

Notwithstanding BILD's request that the Executive Committee defer this matter, we are setting out BILD's preliminary comments and concerns with the proposed development charge by-law below.

Introduction

The building industry is a fundamental component of the Toronto economy.¹ New residential development creates jobs and encourages non-residential development. In addition to the contribution to the City's economy made by residential development through construction jobs and spin-off benefits, the provision of a range of attractive, modern housing, represented in the City largely by new condominium development, attracts new residents who will provide an educated and skilled work force. That work force will attract new business investment in the City.

Despite recent statistics regarding the pricing of new housing in Toronto, significant concerns have been identified regarding the strength of the Toronto housing market over the next year. Sales of new high-rise development in the City are down 12% (year to date) compared to the average of the last 10 years.

Currently, government charges and fees equate to, on average, 19.7% (\$106,200) of the cost of a new low rise home in the City and 16.5% (\$67,252) of the cost of a new high-rise home in the City, not including section 37 contributions or similar benefits.

The increase in development charges proposed by staff of \$10,624 for a two-bedroom apartment and \$7,671 for a one bedroom apartment will materially impact the cost and affordability of new housing in the City.

Calculation of the Development Charge

BILD believes that the manner in which development charges were calculated in the Background Study has resulted in proposed charges that are too high, and which are not fair and reasonable or in accordance with the provisions of the *Development Charges Act*. The magnitude of the

¹ Last year the value of new home construction in the greater Toronto area amounted to \$26.4 billion with more than 202,700 jobs created in the new homes and construction, renovation and related fields.

calculated increase in the development charge alone would cause one to question the appropriateness of the calculation.

BILD acknowledges and appreciates the consultation undertaken by the City's staff and consultants with the consultants retained by BILD over the last several months regarding background "inputs" to the calculation of the proposed development charge. Useful information has been provided. However, many concerns remain outstanding in respect of the assumptions and calculations used, which BILD's consultants believe render the proposed development charges unreasonable and not in compliance with the requirements of the *Development Charges Act*.

The detailed technical issues identified to date by BILD's consultants are set out in the attached Appendix.

Transition and Phasing

Appropriate transition for implementing development charge increases is critical to mitigating the impact of such increases. BILD does not believe that the phasing-in of the development charge increase proposed by staff is adequate to mitigate against the impact of an increase of the magnitude proposed. Staff propose that 50% of the increase be imposed in February 2014 and the remaining 50% of the increase be imposed five months later in July 2014.

A phasing-in of the development charge of the nature proposed by staff does not reflect the reality of timing for the planning and construction of a high-rise development project, which occurs over years. Moreover, it does not address the concern that significant increases in development charges could impact a potentially fragile housing market.

BILD submits that the following measures would represent appropriate approaches to transition for development charge increases:

1. The City's current development charge expires on April 30, 2014, in accordance with the current by-law. No increase in the development charge should be introduced before that date.
2. Development projects that are in advanced stages of planning should be entitled to prepay development charges at current rates.
3. In accordance with the approach used in the City's 2009 development charge by-law, any increase in the development charge should be imposed in phases that are tied to achieving "benchmark" amounts of residential development. If increased charges are only imposed if development benchmarks are met, it ensures that such increases are only imposed if the residential housing market in the City remains healthy.

4. The phasing-in of any significant development charge increase should not occur over 5 months, but on an annual basis over the five-year life of the by-law.

Other By-law Issues

BILD has identified several other concerns with the draft development charge by-law proposed by staff, described below:

1. *Amount of Charge on Redevelopment (§415-7.C)*

The proposed development charge by-law provides for reductions in the development charge payable where lands are redeveloped through demolition or conversion of existing buildings. This provision is appropriate as it provides for new development to fund the “net” increase in the need for service arising from the development.

However, no reduction is provided where a non-residential building is demolished for or converted to residential building space. BILD submits there is no basis not to allow a reduction in the development charge to account for the redevelopment of a non-residential building for residential uses. The new residential development of the land in question should only be required to pay development charges based on its net increase in the need for service it imposes.

In addition, the reduction for redevelopment of a non-residential development provided for in the draft by-law only allows for a reduction in the development charge based on existing ground floor space. There is no reasonable basis on which to restrict the reduction of the development charge available based on ground floor space, whether the lands in question are being redeveloped for non-residential or residential purposes.

2. *Timing for Payment of Development Charges (§415-8) and Definition of “Building Permit” (§415-1)*

The draft by-law provides that development charges are calculated and payable as of the date a building permit for above-grade construction is issued. The first building permit issued under the *Building Code Act* for a residential high-rise building is typically issued many months (sometimes upwards of 18 months depending on the size of the building and its location) before a building permit for construction above grade. This means that development charge rates typically increase between the issuance of a below-grade building permit and an above-grade building permit. BILD believes that a developer should be entitled to determine the amount of development charges payable early in the construction process by having the option of paying development charges on a building permit for below-grade construction. The developer would also have the option of instead paying the higher development charge on the issuance of an above-grade permit.

3. *Refund for Recalculation of Development Charges (§415-8.H)*

§415-8.H provides that a top-up of development charges will be required where, after the payment of development charges, a development is revised such that a change to the number or distribution of residential units would result in a higher development charge being payable. However, the last sentence of §415-8.H provides that no refund of development charges shall be provided where a change to a development would have resulted in a lower development charge being payable. BILD submits it is unreasonable and unfair not to provide for a refund where a change to a development results in an overpayment of development charges.

4. *Refund for Compliance with Toronto Green Standard Program (§415-7.A(3))*

As with the City's 2009 development charge by-law, §415-7.A(3) provides that where a development meets Tier 2 requirements of the Toronto Green Standard Program, a 20% rebate of development charges paid will be provided. However, the proposed by-law includes a provision which has the effect of capping the rebate at the rates provided for in the 2009 by-law. BILD believes this is an important provision, and was not consulted with respect to this policy change.

5. *Treatment of Stacked Townhouses and Back-to-Back Townhouses (Definitions §415-1.)*

BILD believes that stacked townhouse units and back-to-back townhouse units should be treated as apartment units for the purposes of the development charge by-law, as opposed to multiple dwelling units which are subject to higher development charge rates. The relative development charge rates applied to dwelling unit types should generally be based on the average relative demand for services resulting from the various unit types, which should generally be based on household size and potentially density of development. In our members' experience, stacked townhouse units and back-to-back townhouse units achieve similar household sizes and densities as larger apartment units. From a policy perspective, such an approach would provide an incentive for higher density development, while increasing affordable housing options for all incomes and stages of life.

We thank the Committee for considering our request, and look forward to working with the City regarding a development charge that is fair and equitable, and will not have a negative impact on the residential development industry in the City.

Yours very truly,

Goodmans LLP

A handwritten signature in black ink, appearing to read 'RH', with a long horizontal flourish extending to the right.

Robert D. Howe

cc: BILD Toronto Chapter Members

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APPENDIX "A"

CITY OF TORONTO PROPOSED DEVELOPMENT CHARGE 2013

BACKGROUND STUDY BY HEMSON CONSULTING LTD., JUNE 17, 2013

CALCULATION ISSUES - BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION

SPADINA SUBWAY EXTENSION

Post Period Benefit:

The Background Study bases the calculation of Post Period Benefit on the gross population increase (population in new units) from 2013 to 2022, but uses the net population increase from 2023-2031. The use of inconsistent population figures tends to underestimate the Post Period Benefit. The net population increase should be consistently used in this calculation.

Further, the Background Study allocates the entire amount of the cost of the Spadina Subway Extension related to development that will occur to 2031. It is not reasonable to expect that there is no growth that will occur beyond 2031 that will utilize the Spadina Subway Extension. Accordingly, the Background Study overestimates the capital cost of services attributable to the needs of development within the study period, contrary to section 2(1) of the DCA.

Benefit to Existing Development:

The approximately 35% capital cost of the Spadina Subway Extension attributable to existing development is too low. The calculation used to determine the extent to which the Spadina Subway Extension benefits existing development does not appear to have any reasonable connection to the extent to which existing development will use or benefit from the project.

Financing Costs:

There is an error in the manner in which financing costs were calculated for the Spadina Subway Extension. The financing costs of \$597 million are based on current and past market interest rates. As no cash flow analysis was undertaken, financing costs should have been calculated using real interest rates (market rates net of inflation).

TRANSIT

Post Period Benefit:

The text of the Background Study (Page 93) indicates that a Post Period Benefit share of 60% is applied to Union Station Revitalization Project, Waterfront Toronto and Port Lands based on 2041 growth estimates. However, the 60% was only applied to the Port Lands while the Waterfront Toronto and Union Station Post Period Benefit of 37.7% seems to relate only to the period to 2031.

Further, the Background Study bases the calculation of Post Period Benefit on the gross population increase (population in new units) from 2013 to 2022, but uses the net population increase post 2022. The use of inconsistent population figures tends to underestimate the Post Period Benefit. The net

population increase should be consistently used in this calculation. A consistent approach should be used for employment growth.

There was no Post Period Benefit (post 2022) applied to vehicles and equipment. It is not reasonable that there would be no Post Period Benefit for these items.

Reserve Fund:

There does not appear to be any accounting of reserve funds for transit, or discounts provided to previous development charges.

PARKS AND RECREATION

Combining the Parkland and Indoor Recreation Services:

The Background Study has changed the approach to assessing the 10-year historic service level and the related "cap" on services that may be funded through the development charge, by combining the parkland and indoor recreation services for the purposes of the calculations. The effect (and obvious intent) of this new approach is to allow large amounts of the capital cost of indoor recreation services, that would otherwise be ineligible, to be funded within the funding envelope attributable to parkland development services. It is not appropriate or in compliance with the DCA to comingle the parkland development and indoor recreation services for the purposes of these calculations. The effect is that the City is funding indoor recreation services through its development charge at a level of service that would exceed the 10-year historic average level of indoor recreation services provided by the City. The existence of improved parkland in the City does not change that.

Section 7 of the Act allows services to be grouped into a category, and deems the categories to be a single service for the purposes of "reserve funds, the use of money from reserve funds and credits." It does not allow a category of services to be treated as a single service for the purposes of calculating the development charge, including the application of the limit on the increased need for a service funded by the development charge pursuant to section 5(1)4.

Inflated Historic Standards for Parkland Development and Amenities:

In order to calculate the historic standard of parkland development and amenities, the Background Study appears to use a weighted average of select parks recently developed. However, the vast majority of parks throughout the City would not meet this recent standard. The fact that the City has built some new parks to the higher standard cannot be used to inflate the replacement cost of all parks that were provided over the last 10 years.

The Background Study used an average replacement cost for parkland development and amenities of \$1.2M per hectare. By way of comparison, research conducted in the municipalities of Markham, Vaughan and Oakville revealed that a similar assessment of the replacement value of parkland development and amenities for existing parkland resulted in an estimated value of \$500k to \$600k per hectare for these municipalities. It is not reasonable to conclude that the City provides improved parkland at a standard that is double that of these other GTA municipalities.

Accordingly, in our view the historic value of parkland development used in the calculations is inflated, and would not comply to the requirements of the DCA.

Insufficient Benefit to Existing and Post Period Benefit:

A number of projects funded through the parks and recreation development charge include new facilities in an existing neighbourhood that has been historically underserved. As well there are projects that are being replaced and moved to a new location. In both instances the Background Study provided no adjustment for Benefit to Existing development when there clearly should be.

There are also other large recreation projects that will service large areas of the City that will clearly benefit development beyond 2022.

Examples of the above include:

- York Community Centre (\$12.4M) – No Benefit to Existing development assumed notwithstanding that research notes it is located in an ‘underserved area’ in an existing neighbourhood.
- Wellesley Pool (\$14.4M) - No Benefit to Existing development assumed notwithstanding that research shows the project as a ‘service improvement’ to the existing St. Jamestown neighbourhood.
- Don Mills Civitan Arena relocation (\$22.6M) – While \$11.3M is allocated to Benefit to Existing development, the existing arena is included in the level of service calculation. Research shows it as a service improvement. This project should not be included as a growth related cost.
- Pan Am Games Facility Pool (\$52.8M) - No Benefit to Existing development or Post Period Benefit assumed. It is not reasonable to assume a project of this scale will service growth exclusively over the next 9 year period.
- Waterfront Toronto Regional Sports Complex (\$29M) - No Benefit to Existing development or Post Period Benefit assumed. It is not reasonable to assume a project of this scale will service growth exclusively over the next 9 year period.
- Lawrence Heights Community Centre (\$37.8M) - No Benefit to Existing development or Post Period Benefit assumed. It is not reasonable to assume this project, which is scheduled to be constructed in the last year of the study period in 2022 will not service growth beyond 2022.

SUBSIDIZED HOUSING

Under section 2(1) of the DCA a development charge may only fund an increase in capital costs incurred by the City because of increased needs for services “arising from development”. Section 5(1)2 provides that the increased need for services funded by a development charge must be “attributable to the anticipated development”. The need for subsidized housing does not arise from nor is it attributable to development, and may not be funded by a development charge.

DEVELOPMENT RELATED STUDIES

Section 5(3)5 of the DCA allows a development charge to fund studies undertaken “in connection with” costs to be incurred by the City to:

- (a) acquire land or an interest in land,

- (b) improve land,
- (c) acquire, lease, construct or improve buildings or structures, or
- (d) acquire, lease, construct or improve facilities.

Many of the general land use planning studies proposed to be funded by the development charge do not relate to the matters listed above, and should be removed from the development charge.

CIVIC IMPROVEMENT

The need for Civic Improvement projects does not arise from development. They would be undertaken by the City regardless of whether growth occurs. They should be funded by taxes, which will be paid for by all residents of the City, those that exist today and those that will reside in new development.

CHILD CARE

Level of Service:

The level of service calculations and funding envelope calculations for child care are not legitimate for several reasons. The level of service calculations appear to include a large number of subsidized child care spaces provided by others. The DCA Regulations are clear that in calculating levels of service the replacement cost of "municipal capital works" must be used. Funding provided by the City to others to provide child care is an operating cost and does not represent municipal capital works.

In addition, the value of spaces at \$64,516 does not represent the actual replacement cost of the facilities the City is currently providing. It is based on the purported cost of one facility, inflated to include a notional land cost.

Commitment to Provide:

The number of child care spaces in the City is in decline. Much of the capital program relates to unspecified child care centres which we question will ever be built.

Reserve Funds:

It is not clear from the Reserve Fund statements that are available that the reserve funds for child care facilities have been used to fund capital improvements for child care services that are actually provided by the City. We also note that none of the costs of the facilities have been funded through the tax levy, notwithstanding the 10% statutory deduction that would apply to child care facilities.

Benefit to Existing:

No portion of the capital cost of new child care facilities is allocated to Benefit to Existing development. It is our understanding that there are significant waiting lists for child care facilities and that the use of new child care facilities will not be restricted to the residents of new development. New child care facilities constructed by the City will benefit existing development as much as new development. The vast majority of the capital costs for new child care centres should be allocated to existing development.

ROADS

Unallocated Improvements:

The roads program in the Background Study includes “Unallocated Improvements” with a total capital cost of about \$99M. About 40% of this cost is allocated to Replacement and Benefit to Existing. In correspondence received on June 24, 2013 the City’s consultant provided a list of potential improvements that could be provided through this fund. Of the list provided four of the improvements involve City freeways and freeway interchange ramps, and three involve grade separations. These higher order road works (freeway related and grade separations) are typically designed to accommodate growth well beyond 10 years. Furthermore, as there are no plans in place to construct these projects, we would expect to see them completed towards the end of the 2013-2022 period. As such we would expect to see a substantial Post 2022 allocation for these items (in addition to the existing 40% Benefit to Existing) to reflect the nature of the potentially proposed works.

Benefit to Existing Development:

The implementation of Transit Priority involves replacement of existing equipment, and provides a clear benefit to all users of the road, existing and future. As such, we would expect to see a reflection of a Benefit to Existing component for these projects, as has now been included for the Signalization projects (at about 59% of the project cost).

The City has advised that the new road infrastructure projects that do not include a Benefit to Existing component are those that involve new road link construction. Even if this rationale is accepted, Project 1.5.1 “Growth Related Capital Works” is for the most part not related to new road link construction, and should be allocated a Benefit to Existing. Further, Project 1.5.6 “Port Union Road – Future” is a road that does not appear to lend itself to being extended and therefore would not qualify as a new road link.

Post Period Benefit:

The Background Study bases the calculation of Post Period Benefit on the gross population increase (population in new units) from 2013 to 2022, but uses the net population increase from 2023-2041. The use of inconsistent population figures tends to underestimate the Post Period Benefit. The net population increase should be consistently used in this calculation.

The Background Study allocates no Post Period Benefit to Signalization, Transit Priority or Waterfront Toronto Projects, and Road Infrastructure Projects. Many of these projects will benefit development after 2022, and should be allocated some Post Period Benefit. In response to questions concerning the lack of Post Period Benefit for these projects, the City’s consultant has suggested that there will be projects built beyond 2022 that will benefit growth in the 2013-2022 period. Even if that were the case, growth that occurs between 2013 and the time of the next Background Study must be treated as existing development in the next Background Study, and the capital cost of future projects benefiting such development, including those constructed post 2022, can’t be funded by the development charge. The City has the option of choosing a longer period for its roads program. The fact that the City chose to use a short (nine year) period does not allow it to ignore the Post Period Benefit of the projects it has included.

WATER

Unallocated Projects and Watermain Replacement and Upgrades:

The Background Study includes a capital cost of \$60M in “Unallocated General” projects, amounting to 15% of the total capital program. Given that the Background Study is only planning for a nine year period, the City should be able to anticipate where new significant growth-related water infrastructure will be required. The City has not provided any information to justify its inability to more specifically plan for this component of new water projects. The inclusion of a \$60M fund for miscellaneous unplanned projects is not reasonable.

In addition to \$60M of Unallocated General projects, the Background Study includes capital costs allocated to 2022 growth of about \$90M for Watermain Replacement and Watermain Upgrades projects. Again, these are unspecified projects, and the Background Study provides no basis for how the growth-related component of these projects is calculated.

If the Unallocated General projects, Watermain Replacement and Watermain Upgrades projects are considered together, about 38% of the Water capital program funded by the proposed development charge relates to unspecified projects.

Post Period Benefit:

The Background Study bases the calculation of Post Period Benefit on the gross population increase (population in new units) from 2013 to 2022, but uses the net population increase post 2022. The use of inconsistent population figures tends to underestimate the Post Period Benefit. The net population increase should be consistently used in this calculation.

Further, the Background Study provides no assessment of the extent which water projects to be funded through the proposed development charge will have capacity to service development beyond 2031 (for non-Port Lands projects). It is not reasonable to expect that none of the Plant-related projects in the capital program will provide capacity that will benefit development beyond 2031. Accordingly, a portion of the capital costs of Plant-related projects should be allocated to development beyond 2031.

Inclusion of Funded Projects:

Two specific projects, D/Dufferin Reservoir Extension-Construction and D/ Milliken Pump Station Extension-Construction, have been noted in correspondence from the City to have achieved substantial completion in 2012. The inclusion of \$25.7M and \$29.8M, respectively, for these projects that have already been substantially funded and completed appears to be in error.

SANITARY SEWER

Unallocated Projects and Sewer Replacement:

The Background Study includes a capital cost of \$28M in “General Development - Unallocated” projects and \$5M for “New Sewers” projects, collectively amounting to 11.5% of the total capital program. As with water, given that the Background Study is only planning for a nine year period, the City should be able to anticipate where new significant growth-related sewer infrastructure will be required.

In addition to Unallocated and unspecified New Sewer projects, the Background Study includes capital costs allocated to 2022 growth of about \$30M for Sewer Replacement projects. Again, these are unspecified projects, and the Background Study provides no basis for how the growth-related component of these projects is calculated.

If the Unallocated projects and Sewer Replacement projects are considered together, about 22% of the Sanitary Sewer capital program funded by the proposed development charge relates to unspecified projects.

Post Period Benefit:

The Background Study bases the calculation of Post Period Benefit on the gross population increase (population in new units) from 2013 to 2022, but uses the net population increase post 2022. The use of inconsistent population figures tends to underestimate the Post Period Benefit. The net population increase should be consistently used in this calculation.

Further, the Background Study provides no assessment of the extent which water projects to be funded through the proposed development charge will have capacity to service development beyond 2031 (for non-Port Lands projects). It is not reasonable to expect that none of the Plant-related projects in the capital program will provide capacity that will benefit development beyond 2031. Accordingly, a portion of the capital costs of Plant projects should be allocated to development beyond 2031.

STORM WATER MANAGEMENT

TRCA Funding:

The Background Study includes funding to be provided to TRCA. We cannot see how capital funding provided to TRCA relates to growth-related infrastructure. In any event, section 4(3) of the DCA provides that only capital costs incurred by or behalf of the municipality or one its local boards may be funded through a development charge. Funding provided to TRCA is not eligible to be included in a development charge.

Basement Flooding Relief:

About 9.3% of the Basement Flooding relief projects are attributed to growth and proposed to be funded by the development charge. These are not growth related costs and should not be included in the development charge. All new developments are required to adhere to the City's strict Wet Weather Flow Management Policy. The objectives of the Wet Weather Flow Management Policy, as per section 3.4.4 of that document, already protect for the reduction in basement flooding. We cannot see how Basement Flooding relief projects are required to service new growth when on-site control is required of all new development.

End of Pipe SWM Facilities:

The objective of the Wet Weather Flow Management Policy is to "reduce and ultimately eliminate the adverse effects of Wet Weather flow on the built and natural environment". New development is required to control flows at the source so that there is minimal impact to the downstream system. In order to adhere to these requirements, and address potential stormwater impacts of their developments, developers are incurring significant expenditures through the development process. The Background Study does not establish how End of Pipe SWM Facilities are required to service new

development. New development should not be required to provide on-site control in compliance with the Wet Weather Flow Management Policy and also contribute to End of Pipe SWM Facilities through the development charge.

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