TORONTO

STAFF REPORT
ACTION REQUIRED

Development Charge Complaint – 545-565 Sherbourne Street

Date:	August 6, 2014
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	28 – Toronto Centre-Rosedale
Reference Number:	P:\2014\Internal Services\Ec14024Cf (AFS # 20067)

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 545-565 Sherbourne Street.

The complainant claims that, on account of various administrative delays by the City, a building permit could not be drawn or issued prior to the increase in development charge rates that came into effect on February 1, 2014. A conditional permit was issued in May 2014 and development charges in the amount of $5,246,662 were collected; had a building permit been issued prior to February 1, 2014, applicable development charges would have been $4,247,436 (lower by $988,797).

After reviewing the complaint, staff has concluded that 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 Charge By-law. This report recommends that the complaint be dismissed.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. Council determine that there was no error in the application of the City's Development Charge By-law to the development project located at 545-565 Sherbourne Street.

2. Council dismiss the complaint filed pursuant to Section 20 of the Development Charges Act, 1997.

Financial Impact

The recommendations in this report will have no immediate impact on the City's capital or operating budget. Development charges, in the amount of $5,246,662, were paid to the City upon the issuance of a conditional building permit for the development located at 545-565 Sherbourne Street. The development charges collected will be used to fund the City's eligible growth-related capital costs, as approved by Council through the City's annual capital budgeting process.

ISSUE BACKGROUND

The development project required an amendment to the applicable zoning by-law. In 2011, Council approved the zoning by-law amendment in principle, with final approval contingent on the execution of various agreements. The complaint (Attachment 1) claims that due to administrative delays on the City's part, the agreements were not executed and thus a building permit could not be issued prior to the development charge rate increase on February 1, 2014, resulting in an increase of $988,797 in development charges payable at the time the building permit could be issued.

Provisions under the Development Charges Act

Under Section 20 of the *Development Charges Act, 1997* (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."*

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

Project Background

In December 2008, Medallion Properties Inc. submitted a rezoning application for redevelopment of 545-565 Sherbourne Street. The site, located in St. James Town, is occupied by three existing rental apartment towers with 1,117 units. The rezoning application proposed the retention of the existing apartment towers and the redevelopment of the existing commercial podium along with the addition of a 43-storey residential rental tower and street-level townhouses with a total of 409 new rental units. The existing podium over Earl Street between Sherbourne Street and Bleecker Street has now been demolished as part of this redevelopment and is a significant public realm improvement for this densely populated neighbourhood. The proposal also includes the provision of rental replacement for 10 units.

This apartment infill project has been an extremely complex file for development review for both the City and the applicant. A continuous underground parking garage built in the late 1970's, which runs under Earl Street (a public street), provided the applicant and City staff with numerous ownership and technical engineering matters which needed to be properly understood and diligently conditioned prior to final approvals.

An application for site plan control was submitted on February 3, 2011. A final report was considered by City Council on October 24, 2011, and the zoning by-law was adopted in principle, with final approval contingent on the execution of various agreements and other requirements, namely the execution of a Section 37 agreement, a site plan agreement, a Section 111 agreement, and certain engineering technical requirements. The required agreements were executed on February 13, 2014, the required zoning by-law amendment was enacted on February 20, 2014, and a conditional building permit was issued on May 30, 2014.

Development Approval Timing and Building Permit Issuance

A building permit application for the proposed development was submitted on April 22, 2013; the required zoning by-law, permitting the development, had not been adopted by Council and was not yet in place. Although the development received Council approval the introduction of bills to enact the zoning by-law was subject to the completion and execution of various agreements including a Section 111 agreement for replacement rental housing and a Section 37 agreement. Despite the above and based on the draft zoning by-law, Toronto Building staff identified and communicated zoning deficiencies to City Planning and the applicant. Further processing of the application, including communicating with the applicant, continued based on standard practices. An above grade building permit, which would have triggered the payment of development charges, could not be issued until enactment of the applicable zoning by-law, which occurred on February 20, 2014. An above grade structural permit was issued on May 30, 2014, and the applicable development charges were calculated and collected on this date.

Development charge by-law provisions

The City's Development Charge By-law (No. 1347-2013, the "DC By-law") came into effect on November 1, 2013, and includes a schedule to phase-in the adopted rates semi-annually commencing on February 1, 2014, with the final phase-in on February 1, 2016. Pursuant to Section 415-8A of the DC By-law, development charges applicable to a development are "*calculated, payable and collected as of the date a building permit is issued"*. Contrary to the assertion in the complaint, there was no revision or other change to the definition of "*building permit*" that would affect the date when development charges are payable. A conditional building permit was issued on May 30, 2014, promptly after the minimum requirements for permit issuance were met. The City collected development charges calculated at the rates in effect on that date.

The complainant is claiming that the development charge imposed was not correct under subsection 20(1)(a) or (b) of the DC Act. Staff has reviewed the calculation of the development charge, and confirm that the amount was correctly determined, thus satisfying subsection 20(1)(a). Subsection 20(1)(c) permits a claim that "there was an error in the application of the development charge by-law." The complainant is not alleging that on May 30, 2014, the date of permit issuance, the amount of the development charges calculated and collected by the City was in error. Instead, the basis of the complaint is that if certain agreements had been finalized and executed earlier, thus allowing the required Zoning By-law to be enacted by Council earlier, that the Applicant would have been in a position to obtain an above grade building permit prior to the February 1, 2014 deadline for the increase in development charge rates. As a legal matter, Legal Services staff does not interpret the phrase "there was an error in the application of the development charge by-law" as supporting a complaint about the administrative process leading up to the enactment of a zoning by-law. In this case, Legal Services staff advises the DC By-law was correctly applied on the date of building permit issuance, which is the date the by-law requires that development charges be "calculated, payable and collected." In the opinion of Legal Services staff, complaints as to the processing of zoning by-law amendment applications, or other necessary planning approvals, are beyond the scope of the right to file a complaint under subsection 20(1)(c) of the DC Act.

Agreement to Alter Timing of Payment

Under both the DC Act (Section 27) and the City's DC By-law (Section 415-8 C.), Council may enter into an agreement providing for all or any part of the development charge to be paid before or after it would otherwise be payable. The complaint seeks to enter into an agreement to have development charges payable determined at rates in effect prior to February 1, 2014. As a legal matter, this request is unnecessary; should Council, or the OMB on appeal, determine that a refund of development charges paid is warranted, there is no need to enter into a late payment agreement.

CONCLUSION

For the reasons discussed above, staff is of the opinion that the City's DC By-law was applied correctly and the applicable development charge was accurately determined and collected. The building permit could not be issued prior to February 1, 2014, as the required zoning by-law had not been adopted. The complaint provisions under Section 20 of the DC Act, detailed earlier in the report, list the circumstances under which a complaint may be made. Legal Services staff is of the opinion that claims respecting the length of time taken to provide development approvals or finalize agreements, thus delaying the enactment of the required zoning by-law and subsequently affecting the issuance of a building permit pursuant to the *Building Code Act*, are beyond the scope of a Section 20 complaint. It is recommended that the complaint be dismissed.

Legal Services and City Planning division staff were consulted in the preparation of this report and concur with its recommendations.

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SIGNATURE

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Roberto Rossini
Deputy City Manager and Chief Financial Officer

ATTACHMENTS

Attachment 1: Complaint letter from WeirFoulds, LLP, dated June 18, 2014