



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Proposed Settlement of Litigation Regarding the
Development Charges Payable for a Development at
160 Vanderhoof Avenue**

Date:	December 10, 2015
To:	City Council
From:	City Solicitor
Wards:	Ward 26, Don Valley West
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege and pertains to litigation or potential litigation that affects the City.
Reference Number:	

SUMMARY

This report seeks instructions regarding a proposed settlement of litigation commenced by Scenic III (ARH) Developments Ltd. ("Scenic") against the City of Toronto respecting development charges payable for a development at 160 Vanderhoof Avenue (the "Development"). In its court application Scenic asserts that it was improperly required to pay an additional \$959,512 in development charges when it was not permitted to prepay development charges. Scenic claims that it had a contractual right to prepay development charges under the terms of a subdivision agreement, which would result in the lower payment sought. The details of the proposed settlement are discussed in Confidential Attachment 1.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report.
2. City Council direct that Confidential Attachment 1 remain confidential as it contains advice and information that is subject to solicitor-client privilege and

pertains to litigation or potential litigation. City Council authorize the public release of all or a portion of the confidential instructions once the proposed settlement is finalized at the discretion of the City Solicitor; and

3. The appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

The financial impacts resulting from the recommendations made in this report are disclosed in Confidential Attachment 1.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial information disclosed in Confidential Attachment 1.

DECISION HISTORY

There is no prior decision history in respect of this litigation.

ISSUE BACKGROUND

The litigation between Scenic and the City involves the interpretation of a contractual provision respecting the payment of development charges, contained in a subdivision agreement (November 16, 2001) entered into by the City and Scenic's predecessor in title for the property, Kosmor Contracting Inc., as well as other parties.

The provision at issue reads as follows:

"14.1 The Owners agree to pay Development Charges to the City pursuant to the Development Charges By-law, except that they may be paid at the time of obtaining applicable building permits, or earlier at the Owners' option."

Scenic relies upon this provision to assert that it was entitled to exercise an option to prepay its development charges prior to the issuance of a building permit for its development and in advance of recent increases to development charge rates, resulting in a reduced payment.

Article I of Chapter 415 of the Toronto Municipal Code "Development of Land", provides for development charges to be calculated, payable and collected as of the date of building permit issuance unless, among other things, they are to be paid at a different time under an agreement entered into between the City and the owner under section 27(1) of the *Development Charges Act, 1997*. This provision of the *Development Charges Act* provides municipalities with the authority to enter into agreements with persons required to pay development charges providing for all or part of a development charge to be paid before or after it would otherwise be payable.

On July 31, 2014 Scenic tendered a cheque to Toronto Building with the intention of prepaying the development charges in respect of the Development. The cheque was for \$3,837,196.00, which Scenic calculated to be the development charges applicable to its development based on the rates in effect on that day. The next day, an increase in development charge rates was scheduled to take effect pursuant to Chapter 415.

At that time Scenic was not yet entitled to receive a building permit for the Development. Staff in Toronto Building advised Scenic's representative that its attempt to prepay development charges would not be accepted.

On May 4, 2015 Scenic commenced an application to the Superior Court requesting that the court provide a declaration confirming its right to make an early payment under the subject provision of the subdivision agreement.

On May 29, 2015 Scenic was in a position where it was entitled to receive a building permit for the Development upon payment of development charges. On that date Scenic paid development charges in the amount of \$4,796,708.00, stating that it did so "under protest" and without prejudice to its pending court application.

The application seeks an order requiring the City to repay \$959,512.00, which Scenic has calculated to be the difference between the amount it sought to prepay on July 31, 2014 and the amount it was ultimately required to pay on May 29, 2015 after two development charge rate increases took effect on August 1, 2014 and February 1, 2015.

Scenic's court application is scheduled to be heard on January 25, 2016.

COMMENTS

Confidential Attachment 1 sets out and discusses the proposed settlement of the court application.

CONTACT

Tim Carre, Solicitor, Legal Services, Telephone: (416) 392-8044, Fax: (416) 397-5624, E-mail tcarre@toronto.ca

SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 - Confidential Information

Staff Report with Confidential Attachment on Proposed Settlement of Litigation re Development Charges Payable for a Development at 160 Vanderhoof Avenue