TORONTO

REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Development Charges By-law -OMB Appeal and Section 20 Complaint by KH College Street Inc. - 245 to 255 College Street and 39 and 40 Glasgow Street

Date: January 18, 2018
To: City Council
From: City Solicitor
Wards: Ward 9 - York Centre

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The purpose of this report is to seek instructions in respect of a section 20 complaint and OMB appeal regarding the payment of development charges for a development of lands known municipally as 245 to 255 College Street and 39 and 40 Glasgow Street.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the Confidential Instructions to staff in Confidential Attachment 1.

2. City Council authorize the public release of Recommendations 1 and 2 in Confidential Attachment 1, once adopted by City Council.

3. City Council direct that the balance of the recommendations and confidential information contained in Confidential Attachment 1 remain confidential in their entirety, as they contain advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial impact of the proposed settlement is detailed in the Confidential Attachment to this report.

COMMENTS

On April 8, 2015, the City was served with a complaint pursuant to section 20 of the *Development Charges Act* regarding a dispute arising from development charges paid in respect of a development at lands known municipally as 245 to 255 College Street and 39 and 40 Glasgow Street ("the Development"), (Attachment 1). The Development consisted of the construction of a 25 storey building to serve as an academic residence for University of Toronto students, which was approved in 2014. The building was constructed by a private owner, partly on the owner's lands and partly on lands owned by the university. The building is subject to a ground lease which, among other matters, governs the operation of the building as a university residence. The complaint disputed the amount of the payment made in the amount of $6,063,972 in City development charges and $625,704 in education development charges.

The basis of the complaint is that the Development is not a residential use but is a university residence and therefore exempt under the City's Development Charges By-law. In the alternative, the complaint states that the City has incorrectly identified the units as dwelling rooms and they should be classified as apartment units resulting in a lower development charge.

The complainant appealed its development charge complaint to the Ontario Municipal Board ("the OMB") on November 14, 2016, due to the City's failure to deal with the complaint within 60 days after the complaint was made (Attachment 2). The OMB scheduled an OMB hearing for four days in December of 2017; following discussions between the complainant's solicitor and the City Solicitor's office, the OMB hearing was adjourned to allow for further discussion.

CONTACT

Robert Robinson, Solicitor, Legal Services, Planning and Administrative Tribunal Law, Tel: 416-392-8367, Fax: 416-397-4420, Email: Robert.Robinson@toronto.ca

Robert Hatton, Director, Strategic & Intergovernmental Initiatives, Corporate Finance, Tel: 416-392-9149, Fax: 416-397-4555; Email: Robert.Hatton@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Attachment 1 - Section 20 Complaint dated April 8, 2015, from Goodmans LLP.

Attachment 2 - Notice of Appeal dated November 14, 2016 from Goodmans LLP.

Confidential Attachment 1

Attachment 1

Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4299
dbronskill@goodmans.ca

April 8, 2015

Our File No.: 08-0677

By Courier

City Clerk, City of Toronto
Toronto City Hall, 13th Floor West
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs:

Re: 245-255 College Street and 39 & 40 Glasgow Street
Development Charge Complaint by KH College Street Inc., pursuant to Section 20 of the *Development Charges Act, 1997*.

We are solicitors for KH College Street Inc. ("**Knightstone**"), the owner and ground lessee of the lands municipally known as 245-255 College Street and 39 & 40 Glasgow Street in the City of Toronto (the "**Subject Lands**").

Knightstone obtained a conditional above-grade building permit for the Subject Lands on January 30, 2015, and as part of that process, was required to pay City development charges of $6,063,972.00, and educational development charges of $625,704.00. The development charges value was based on a calculation that classified 690 beds as "Dwelling Rooms" and 57 student residence "pods" (or multiple bedroom units) as "Apartment – 2 bedroom and larger". The educational development charges value was based on a calculation that classified all 747 beds as "Residential Units".

Knightstone is hereby filing a complaint with the City, pursuant to Section 20 of the *Development Charges Act, 1997* on the basis that:

- the amount of the development charges was incorrectly determined; and,
- there was an error in the application of the development charge by-law.

The reason for Knightstone's complaint is as follows:

- The City's existing approach to the application of the development charge by-law does not recognize the approved use of the Subject Lands as "Private Academic Accommodations" but, instead, incorrectly treats the approved use as a form of residential development.

- Even if the approved use of the Subject Lands is a residential form of development, the Development Charge Calculation Form incorrectly identified 690 beds at the Subject Lands as "Dwelling Rooms". The 690 beds at the Subject Lands are grouped into student residence "pods" (or multiple bedroom units) and more appropriately fit into the category of "Apartment Units"; therefore, if the Private Academic Accommodations are deemed to be a residential form of development, the development charges for the Subject Lands should be recalculated to reflect all 280 student residence units as "Apartment Units" and no development charges should be imposed with respect to "Dwelling Rooms".

If any further information is required in respect of this complaint, please let us know. Notice to Knightstone with respect to this complaint can be provided to the undersigned. We look forward to this matter being considered as soon as possible, at which time we intend to expand on the reasons provided above.

Yours very truly,

Goodmans LLP

David Bronskill
DJB/
cc: Client

6427928

Goodmans LLP

Barristers & Solicitors

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November 14, 2016

Our File No.: 080677

Delivered by Email & Courier

City of Toronto
City Hall, 2nd Floor
100 Queen Street
Toronto, ON M5G 1E5

Attention: Ulli S. Watkiss, City Clerk

Dear Ms. Watkiss:

Re: Notice of Appeal Pursuant to Section 22(2) of the *Development Charges Act*
245-255 College Street and 39 & 40 Glasgow Street, City of Toronto

We are solicitors for KH College Street Inc. ("Knightstone"), the owner of the property known municipally as 245 - 255 College Street and 39 & 40 Glasgow Street in the City of Toronto (the "Subject Property"). On behalf of Knightstone, we are hereby appealing its development charge complaint in respect of the redevelopment of the Subject Property to the Ontario Municipal Board (the "Board") pursuant to subsection 22(2) of the *Development Charges Act* due to Council's failure to deal with the complaint within 60 days after the complaint being made.

Background

In its decision dated June 19, 2014 (the "Decision"), the Board allowed, in principle, Knightstone's appeals for a 25-storey building to serve as an academic residence for students primarily from the University of Toronto and as a hotel during the summer (the "Project"). The Board withheld its final order of Knightstone's Official Plan and Zoning By-law Amendment in relation to the Project pending the finalization of a number of details. The Board has since issued its final order with respect to the Official Plan and Zoning Amendment.

By letters dated January 23, 2015, the City advised Knightstone that it was required to pay the City development charges in the amount of $6,063,972.00 and educational development charges in the amount of $625,704.00, prior to the issuance of a building permit for the Project. A copy of these letters are attached.

Knightstone disputes the City's determination of the value of development charges imposed in relation to the Project. Despite repeated attempts by Knightstone to resolve this matter, the City has refused to reassess the amount of development charges payable. Accordingly, to obtain a conditional

above-grade building permit for the Project, Knightstone paid the full of amount of the development charges and the educational development charges requested by the City and was left with no choice but to subsequently file a complaint pursuant to Section 20 of the *Development Charges Act*. A copy of the Knightstone's development charge compliant dated April 8, 2015, is attached for reference.

Reasons for the Appeal

Knightstone disputes the City's determination of development charges on the basis that: (1) the amount of the development charges was incorrectly determined, and (2) there was an error in the application of the City's development charges by-laws (the "DC By-laws"). Primarily, Knightstone's dispute relates to the following issues:

- Knightstone is constructing a student residence that is an affiliated residence of the University of Toronto (the "University"). The residence will also serve as a hotel during the University's summer semester. The student residence is located on lands owned by the University as well as lands owned by Knightstone and is to operate in all respects as if it were a University operated student residence. For the portion of the residence located on University lands, Knightstone, as tenant, has entered into a ground lease with the University, as landlord. Section 415-6(B)(2) provides that "development charges shall not be imposed with respect to ... land, buildings or structures owned by and used or to be used for a college or university as defined in section 171.1 of the Education Act, and used for the purposes set out in such Act" [emphasis added]. Accordingly, the Project should be exempt from development charges pursuant to the City's own DC By-law.

- The City's existing approach to the application of the DC By-law does not recognize the approved use of the Subject Lands as "Private Academic Accommodations" but, instead, incorrectly treats the approved use as a form of residential development.

- In the alternative, the Development Charge Calculation Form incorrectly identified 690 beds at the Subject Lands as "Dwelling Rooms". The 690 beds at the Subject Lands are grouped into student residence "pods" (or multiple bedroom units) and more appropriately fit into the category of "Apartment Units"; therefore, if the Private Academic Accommodations are deemed to be a residential form of development, the development charges for the Subject Lands should be recalculated to reflect all 280 student residence units as "Apartment Units" and no development charges should be imposed with respect to "Dwelling Rooms".

These reasons will be expanded upon through opinion evidence from various expert witnesses at the Board.

The Appellant Form is enclosed, along with a cheque in the amount of $300.00. If any further information is required, please contact the undersigned.

Yours very truly,

GOODMANS LLP

Joe Hoffman
JBH/

Encl.

cc: Client

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