



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Development Charges--LPAT Decision - 2157 Lake Shore Boulevard West (Humber Bay Shores)

**Date:** September 21, 2020

**To:** City Council

**From:** City Solicitor

**Wards:** All

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report is about litigation or potential litigation that affects the City of Toronto.

Confidential Attachment 1 to this report contains advice or communications that are subject to solicitor-client privilege.

#### **SUMMARY**

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This report provides information regarding a legal challenge to a decision issued by the Local Planning Appeal Tribunal ("LPAT") on August 7, 2020, in respect of a series of development charge complaints filed by the Humber Bay Shores Landowners Group pursuant to section 20 of the Development Charges Act, 1997.

#### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1, once adopted by City Council.
3. City Council direct that the remainder of Confidential Attachment 1 is to remain confidential in its entirety, as it relates to litigation involving the City and contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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The financial impact relating to these issues is set out in the Confidential Attachment.

## **DECISION HISTORY**

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On August 7, 2020, the LPAT issued a decision in respect of a series of development charge complaints filed by the Humber Bay Shores Landowners Group pursuant to section 20 of the Development Charges Act, 1997 (the "DC Act").

## **COMMENTS**

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### **Factual Background**

Ocean Club Residences Inc., Phantom Developments Inc., B-Major Homes (Ontario) Inc., Empire Communities (2183) Lakeshore Blvd. Ltd., Kingbird Developments Inc., and Monarch Waterview Development Limited, ("the Humber Bay Shores Owners"), have developed or are in the process of developing various properties ("Humber Bay Shore Lands") in an area of the City of Toronto known as Humber Bay Shores. It is a significant development area, consisting of approximately 5,000 new residential units.

As a condition of proceeding with the development of the lands, and to amend the Zoning By-law to lift the (H) Holding symbol, the owners negotiated a Core Infrastructure Agreement with the City whereby the Humber Bay Shores Owners would fund and/or construct municipal infrastructure (roads, water, sanitary sewers, stormwater management) required to support their developments. The Core Infrastructure Agreement was finalized and executed by the City and the Humber Bay Shores Owners in February, 2014.

As part of the negotiations, the Humber Bay Shores Owners requested that the City give them credits against development charges otherwise payable upon issuance of building permits for the development of their properties. In support of their request, they submitted to the City a report from Altus Group Economic Consulting in December, 2012. Ultimately, the City responded and advised the Owners of the City's determination that none of the works required under the Core Infrastructure Agreement were eligible for development charge credits.

The Humber Bay Shores Owners filed three separate complaints pursuant to section 20 of the Development Charges Act, 1997, ("the DC Act") in respect of their various development properties.

## **The Section 20 Complaints**

### a) Ocean Club Residences Inc.

This complaint was filed on May 28, 2014. It does not claim that the amount of development charges paid (\$6,428,804) was incorrectly calculated on the date that the building permit was issued and development charges were paid. The complaint is based on two grounds: firstly that the City was at fault due to delays in finalizing the Core Infrastructure Agreement, such that Ocean Club was required to pay the scheduled increase in development charge rates that came into effect on February 1, 2014; and secondly that the City should have given the owner a credit against development charges payable for the construction of certain pieces of infrastructure.

### b) Phantom Developments Inc.

This complaint was filed on July 31, 2014 in respect of development charges paid in the amount of \$4,713,357. The Phantom complaint is in all material respects the same as the Ocean Club complaint as set out above.

### c) Major Homes (Ontario) Inc., et al

This complaint was filed on May 11, 2015 on behalf of four different owners in Humber Bay Shores, and is based solely on claims for development charge credits.

## **LPAT Decision**

In May and August of 2019, the LPAT conducted a hearing which was held over seven hearing days. On August 7, 2020, LPAT issued its decision ruling on the Humber Bay Shores Owners' development charges complaints.

In short, the LPAT ruled as follows:

1. LPAT agreed with the City's position that it has no jurisdiction to determine delay claims under s.20 of the DC Act, so it dismissed the delay claims (\$2,141,272) made by the Humber Bay Shores Owners.
2. LPAT did not agree with the City's position that LPAT has no jurisdiction to adjudicate development charge credit claims, and ordered that the City pay to the Humber Bay Shores Owners the amount of \$2,032,333 in respect of the credit claims advanced at the hearing.

## **Motion for Leave to Appeal**

In order to comply with statutory filing deadlines, the City Solicitor has already submitted a Motion for Leave to Appeal to the Divisional Court for Leave to Appeal the LPAT decision.

This report seeks instructions from Council in respect of the Motion for Leave to Appeal.

Report for Action with Confidential Attachment on Development Charges --LPAT Decision - 2157 Lake Shore Boulevard West (Humber Bay Shores)

## **CONTACT**

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Tim Carre, Solicitor, Legal Services, 416-392-8044, [Timothy.Carre@toronto.ca](mailto:Timothy.Carre@toronto.ca)

Robert Robinson, Solicitor, Legal Services, 416-392-8367,  
[Robert.Robinson@toronto.ca](mailto:Robert.Robinson@toronto.ca)

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Information