

Development Charges Complaint – 337 Maple Leaf Drive

Date: March 16, 2022

To: Executive Committee

From: Chief Financial Officer and Treasurer

Wards: Ward 5 – York South-Weston

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 337 Maple Leaf Drive.

The development project consists of a one storey addition and interior alterations to convert an existing one storey storage building to a single family dwelling. The complainant asserts that development charges should not apply to the application as they were paid in the form of lot levies when the lot was created in 1980. Additionally, the complainant claims that the existence of a building permit for construction of a detached garage issued in 1980 satisfies an implicit provision within the Development Charges By-law ("DC By-law") that development charges are not applicable to residential lots that have an existing building permit.

City staff have reviewed the complaint and are of the opinion that the Development Charges By-law was applied properly and no error was made in determination of the applicable development charges. Staff believe the project falls within the definition of development under the DC By-law, requiring one or more of the actions referred to in section 415-5, namely the issuing of a permit under the Building Code Act. Where a building permit is being issued for construction of a building, it is considered a development and development charges are applicable unless an exemption applies.

Where a demolition permit is issued within a 60-month period immediately prior to the date of submission of a complete building permit application with respect to a building or structure to be converted from one principal use to another principal use on the same land, the DC By-law provides for a reduction that can be applied against development charges deemed payable. As no demolition permit was issued within this 60 month time frame on the structure at 337 Maple Leaf Drive, the redevelopment reduction cannot be applied.

This report recommends that the complaint be dismissed. A decision of Council to dismiss the complaint may be appealed to the Ontario Land Tribunal (OLT). This report was prepared in consultation with the Chief Building Official and the City Solicitor.

RECOMMENDATIONS

The Chief Financial Officer and Treasurer recommends that:

1. City Council determine that the Development Charges By-law has been properly applied to the development project located at 337 Maple Leaf Drive.
2. City Council dismiss the complaint dated October 25, 2021, with respect to 337 Maple Leaf Drive filed pursuant to Section 20 of the Development Charges Act, 1997.

FINANCIAL IMPACT

There is no financial impact on the City's capital or operating budget from the adoption of recommendations contained in this report. To date, the building permit has not been issued. Development Charges, in the amount of \$93,978 will be collected by the City prior to the issuance of a related building permit.

If the complainant appeals Council's decision to the Ontario Land Tribunal, the City's defence would be provided by the Legal Services Division.

COMMENTS

Development charges are applied in accordance with a by-law enacted by Council pursuant to provisions of the Development Charges Act, 1997 (the "DC Act"). Under Section 20 of the DC Act, a complaint may be brought to Council on one of three grounds:

- 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

Under Section 20 (4) of the DC Act, Council shall hold a hearing into the complaint and give the complainant an opportunity to make representations at that hearing. Executive Committee may recommend that Council "*dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.*"

The decision of Council may be appealed to Ontario Land Tribunal (OLT) by the complainant. Section 20 complaints deal with application of the by-law to specific development proposals and is not a forum for challenging the validity of the development charges by-law itself. The by-law is subject to mandatory updating every five years, inclusive of stakeholder engagement and appeal opportunities.

Background

In June 2021, staff received an inquiry from the authorized representative of the property owner, Frank Di Giorgio, requesting a review of the development charges calculated in respect of the proposed development project. A formal Section 20 complaint was received by the City in October 2021. The project consists of the construction of a one storey addition and interior alterations to convert an existing one storey storage building to a single family dwelling on a lot that was created by way of severance in 1980.

The complainant's position is that through a North York Committee of Adjustment decision in 1980, the lot for 337 Maple Leaf Drive was created as a conveyed lot in a consent application and, as a result, it would have been subject to payment of charges applicable to land division at that point in time. In the complainant's opinion, the payment of charges made in 1980 to receive the consent certificate serves as the equivalent of paying development charges

The complainant also states that current lot addition application was a technical severance for legal purposes only to adjust property lines, and not to create a new lot. Additionally, through the issuance of a building permit in 1980 for the existing structure, a detached garage, they believe that development charges would not be applicable to residential lots that have an existing building permit.

The City's DC By-law defines development as follows:

"Any activity or proposed activity in respect of land that requires one or more actions referred to in 415-5A and includes a trailer or mobile home park, the redevelopment of land or the redevelopment, expansion, extension or alteration, or any two or more of them, of a use, building or structure"

Section 415-5A (7) of the DC By-law provides that:

"Development charges shall be imposed on all land, buildings or structures that are developed if the development requires:

(7) The issuing of any permit under the Building Code Act in relation to a building or structure"

As the proposed addition and interior alterations to convert a detached garage into a single family dwelling require a building permit to be issued and therefore meets the above definition, it is the City's position that development charges are applicable.

Section 415-6 outlines the exemptions from development charges that may be applicable to certain types of development projects. Section 415-6A (1) of the DC By-law provide exemptions from development charges for intensification of housing as follows:

"Development charges shall not be imposed with respect to the residential development of land or buildings if the only effect of such development is:

- a) An enlargement to an existing dwelling unit;
- b) The creation of one or two additional dwelling units in an existing single detached dwelling; or
- c) The creation of one additional dwelling unit in any existing semi-detached dwelling or other existing residential building"

As this project does not meet one of the above criteria relating to housing nor any of the other listed exemptions in Section 415-6, an exemption from development charges would not apply.

The DC By-law also provides a reduction of development charges for redevelopment of dwelling units or rooms that will be demolished or converted from one principal use to another principal use on the same land. Section 415-7C (1) for the amount of charge for redevelopment provides as follows:

"Despite any other provision of this article and subject to Subsections C(3) and (4), where, as a result of the redevelopment of land, a demolition permit has been issued within the sixty (60) month period immediately prior to the date of submission of a complete building permit application with respect to the whole or a part of a building or structure existing on the same land, or a building or structure is to be converted from one principal use to another principal use on the same land, the development charges otherwise payable with respect to such building permit application shall be reduced as follows:

- a) In the case of a residential building or structure, or the residential uses in a mixed-use building or structure, which is being redeveloped for residential or non-residential purposes, the development charges payable will be reduced by an amount calculated by multiplying the applicable development charge under Subsection A by the number of dwelling units or dwelling rooms that have been or will be demolished or converted to another type of residential use or non-residential use, and according to the type of dwelling unit or dwelling room so demolished or converted"

The development project at 337 Maple Leaf Drive is not eligible for a reduction of development charges as a demolition permit was not issued within the prescribed sixty month period, nor does the existence of a building permit issued in 1980 for the construction of the detached garage satisfy the above criteria. Furthermore, the reduction would only be available for the demolition of an existing single detached dwelling unit; the demolition of the existing garage does not entitle the owner to a reduction in development charges payable.

Based on the interpretation of the DC By-law, it is the opinion of staff that the proposed structure constitutes a development. Any prior payments made in the form of lot levies or the building permit previously issued for the existing structure do not exempt or reduce the amount of development charges payable at this point in time, and therefore development charges were correctly applied.

CONCLUSION

For reasons discussed above, staff is of the opinion that the City's Development Charges By-law were applied correctly and there was no error in the determination of applicable Development Charges. Staff recommends that the complaint be dismissed.

CONTACT

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SIGNATURE

Heather Taylor
Chief Financial Officer and Treasurer

ATTACHMENTS

Attachment 1: E-mailed Complaint from Frank Di Giorgio dated October 25, 2021