

**Development Charges--Local Planning Appeal
Tribunal Decision - 2157 Lake Shore Boulevard West
(Humber Bay Shores)**

Date: March 20, 2023

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

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

This report provides information regarding a legal challenge to a decision of the Ontario Divisional Court released February 8, 2023 concerning a decision issued by the LPAT on August 7, 2020 in respect of development charge complaints filed by certain land owners in the Humber Bay Shores area of the City pursuant to section 20 of the Development Charges Act, 1997.

RECOMMENDATIONS

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, if adopted by City Council, at the discretion of the City Solicitor.
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

The financial impact is set out in Confidential Attachment 1.

DECISION HISTORY

On August 7, 2020, the Local Planning Appeal Tribunal ("LPAT") issued a decision (the "LPAT Decision") in respect of a series of development charge complaints filed pursuant to section 20 of the Development Charges Act, 1997 (the "DC Act") by a group of land owners pursuing developments in the Humber Bay Shores area of the City.

At its meeting on September 30, 2020, City Council adopted CC24.11 "Development Charges - Local Planning Appeal Tribunal Decision - 2157 Lake Shore Boulevard West (Humber Bay Shores)." The City Council decision can be found at: <https://secure.toronto.ca/council/agenda-item.do?item=2020.CC24.11>

On April 8, 2022 the Divisional Court granted leave to the City of Toronto to appeal to it from the LPAT Decision on three specified questions of law.

On February 8, 2023 the Divisional Court issued its decision on the City's appeal from the LPAT Decision (the "Divisional Court Decision")

COMMENTS

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 negotiation of this agreement, 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 that none of the works required under the Core Infrastructure Agreement were eligible for development charge credits.

The Section 20 Complaints

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.

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. Instead, 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) B 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

The three section 20 complaints filed by the Humber Bay Shores Owners in this matter were subsequently appealed to the LPAT pursuant to subsection 20(1) of the DC Act. They involved two categories of claims:

a) a claim to reduce the amount of development charges payable because of alleged administrative delays on the part of the City (the "Delay Claim"); and

b) a claim for credits against development charges payable by the Humber Bay Shore Owners to reflect their obligations under the Core Infrastructure Agreement to carry out and make financial contributions toward certain infrastructure works (the "DC Credit Claim").

In May and August of 2019, the Local Planning Appeal Tribunal ("LPAT") conducted a hearing which was held over seven hearing days. On August 7, 2020, LPAT issued its

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

decision ruling on the Humber Bay Shores Owners' development charges complaints (the "LPAT Decision").

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. 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 DC Credit Claim, comprised of \$502,333 reflecting work actually performed by the Humber Bay Shores Owners and \$1,530,000 reflecting a financial contribution made by the Humber Bay Shores Owners to the City.

Motion for Leave to Appeal to Divisional Court

The City requested leave to appeal from the LPAT Decision to the Divisional Court.

Leave was granted by the Divisional Court on April 8, 2022 in respect of three questions of law: two of the questions for which leave was granted concerned the development charge credit claim by the Humber Bay Shores Owners, while the third question related to the timeliness of some the Humber Bay Shore Owners' section 20 complaints to the City.

Appeal before the Divisional Court

The City's appeal was heard before a panel of the Divisional Court on January 17, 2023.

On February 8, 2023 the Divisional Court released its decision on the City's appeal from the LPAT Decision (the "Divisional Court Decision")

The Divisional Court Decision granted the City's appeal in part. The Divisional Court upheld the decision of the LPAT that the Humber Bay Shores Owners were entitled to a credit for the amount of \$502,333 reflecting work actually performed by them; however the Divisional Court found that no credit can be awarded for the financial contribution made by the Humber Bay Shores Owners. The credit awarded to the Humber Bay Shores Owners by the LPAT Decision was therefore reduced from by \$1,530,000 from \$2,032,333 to \$502,333.

Motion for Leave to Appeal to the Court of Appeal

In order to comply with statutory filing deadlines, the Legal Services Division filed a Motion for Leave to Appeal to the Court of Appeal from the Divisional Court Decision.

Thereafter, the Humber Bay Shores Owners also took steps to commence a motion for leave to appeal from the Divisional Court Decision.

This report seeks instructions from Council in respect of the motions for leave to appeal.

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 -