



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

8 Elm Street and 348-354 Yonge Street – Ontario Land Tribunal Hearing – Request for Directions

Date: March 7, 2024

To: City Council

From: City Solicitor

Wards: Ward 13 - Toronto Centre

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding on-going litigation.

SUMMARY

On May 31, 2023, the City received a complaint from 8 Elm Development Limited Partnership (the "Complainant"), pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27 (the "Section 20 Complaint"), for 8 Elm Street and 348-354 Yonge Street (the "Site") regarding the payment of development charges.

On August 18, 2023, pursuant to section 22(2) of the *Development Charges Act, 1997*, the Complainant appealed City Council's neglect or failure to make a decision on its complaint (the "Section 22 Appeal"), to the Ontario Land Tribunal (the "OLT").

On January 26, 2024, this matter was litigated at the OLT and the decision from the OLT is being held pending further discussion amongst the parties.

The City Solicitor requires further directions as this matter has been adjudicated; as a result, this matter is urgent and cannot be deferred.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report from the City Solicitor.

2. City Council direct that the confidential recommendations and all other information contained in Confidential Attachment 1 and the Confidential Appendix "A" to this report from the City Solicitor is to remain confidential as it contains advice and information which is subject to solicitor-client privilege and litigation privilege.

FINANCIAL IMPACT

The financial impact of the proposed settlement is detailed in the Confidential Attachment 1 to this report.

DECISION HISTORY

On December 14, 2022, City Council adopted Item EX1.6, which directed that the general terms and conditions of the below grade conditional permit development charges agreement be amended so that the development charges due and payable to the City, pursuant to the agreement, would be determined based on the higher of the development charge rate in effect at the time of permit issuance or the development charge rate in effect based on section 26.2 of the *Development Charges Act, 1997*. City Council also directed that interest would be payable where development charges are determined based on section 26.2 of the *Development Charges Act, 1997* in the agreement. City Council's resolution for Item EX1.6 can be found at: [Agenda Item History - 2023.EX1.6 \(toronto.ca\)](#)

COMMENTS

On May 31, 2023, the City was served with the Section 20 Complaint, regarding a dispute arising from the amount of development charge the Complainant paid in relation to the development on the Site. The Complainant disputed the \$31,828,502.83 of development charges it paid to the City and sought a refund in the amount of \$6,131,160.18 from the development charges it paid.

On August 18, 2023, the Complainant filed the Section 22 Appeal with the OLT due to City Council's neglect or failure to make a decision on its Section 20 Complaint within 60 days after the complaint was made. The OLT scheduled a one-day hearing on January 26, 2024, and this matter was litigated. The OLT has agreed to withhold issuing its decision on the matter to allow for further discussions between the City and the Complainant.

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Information
2. Confidential Appendix "A" - Confidential Information