

Development Charges Complaint – 615 Kennedy Road

Date: January 16, 2024

To: Executive Committee

From: Chief Financial Officer and Treasurer

Wards: Ward 20 – Scarborough Southwest

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 615 Kennedy Road in Scarborough.

The development project consists of a 10-storey residential apartment building containing 215 dwelling units with two levels of underground parking. The complainant, 615 Kennedy Road Inc., objects to the amount of development charges determined in relation to permit issuance. The complainant applied for a building permit on December 21, 2021 to construct the development. A building permit for the development could not be issued as the proposed construction did not comply with all applicable law. The *Building Code Act, 1992* (the “*Act*”) provides that a Chief Building Official (CBO) must issue a building permit unless the proposed construction will contravene the *Act*, the building code or any other applicable law. However, the *Act* provides that the CBO may issue a conditional permit for any stage of construction, where the proposal complies with certain applicable laws and where it is the opinion of the CBO that an unreasonable delay in construction would occur should a conditional permit not be issued. Community Benefits Charges (CBC) is applicable law for the purpose of issuance of a conditional building permit. The issuance of a conditional permit is at the sole discretion of the CBO pursuant to the *Act*.

The complainant requested a below grade conditional permit for the development on June 14, 2022, as the proposed construction still did not comply with all applicable law as required by the *Act*. In accordance with City Council’s conditional permit policy [2016.EX11.7](#), as further amended by [2023.EX1.6](#), the complainant entered into a Section 27 Development Charges Agreement with the City executed on April 24, 2023 (Section 27 Agreement).

The Section 27 Agreement stipulates that development charges (DCs) are determined based on the “higher of” rates on the By-law in effect on the date of issuance of the first building permit or if applicable, rates frozen at site plan or rezoning application. The Section 27 Agreement only deals with the amount and timing of payment of DCs. Other applicable law requirements must be satisfied in order for a building permit to be issued.

In respect of this application, the rates are determined by the By-law rates in effect on the date of first building permit issuance. In addition to development charges, the complainant was required to remit payment of a Community Benefits Charge. Pursuant to Article VI of Toronto Municipal Code Chapter 415 (Development of Land), where a CBC payment is required, this payment must be received prior to issuance of the first building permit. The Development Charges By-law ("DC By-law"), requiring the payment of DCs and the Community Benefits Charge By-law ("CBC By-law"), requiring the payment of CBC are applicable law for the issuance of a building permit, including a conditional building permit, under the *Act*.

While DCs were paid by the complainant, they did not submit payment of the CBC prior to the May 1, 2023 development charges rate increase and, consequently, the building permit was not issued prior to that date. By the time the CBC was paid, the amount of DCs were recalculated based on the new rates in effect at the time, and payment of the difference was requested pursuant to the Section 27 agreement executed by the owner and the City to issue the permit. The complainant takes the position that they were not informed of the requirement to pay the CBC prior to the permit being issued, and since they paid DCs prior to May 1, 2023, they should not be subject to the increased rate.

According to their complaint, they relied solely on the terms of the Section 27 agreement which only speaks to the requirement to pay the DCs to issue the permit. They claim they were advised of the requirement to pay the CBC at the end of the business day on Friday, April 28, 2023, and there was not enough time for them to send the wire transfer before May 1st. The complainant is not taking issue with the application of the DC By-law, but attempting to indirectly attack the application of applicable law in issuing a Building Permit respecting the payment of the CBCs through a section 20 complaint. There is no error in applying the DC By-law.

City staff have reviewed the complaint and are of the opinion that the DC By-law was applied properly, and no error was made in determination of the applicable development charges. The complainant was aware of the requirement to pay the DCs and CBC in full at permit issuance prior to the May 1st increase and staff made several efforts to assist the complainant to ensure that the permit could be issued as it complied with all other applicable law. This included expediting the appraisal of the site within two weeks to facilitate the calculation of the CBC which generally requires approximately six weeks to complete. Several communications were made between staff and the complainant over email and phone advising that the CBC payment must be made to issue the permit. Ultimately, the CBC payment was made on May 1st and DCs had to be recalculated due to indexing.

The DC By-law provides the timing of calculation and payment of DCs to be determined by applying the rates in effect on the date that the building permit is issued. Prior to May 1st, the amount of DCs was determined to be \$6,106,283.90. As the permit was not issued before May 1st due to the outstanding CBC payment, the DC was recalculated and an additional \$2,039,501.57 was requested by Toronto Building for permit issuance. To date, the complainant has not remitted further payment for DCs nor have they requested that the conditional permit be issued. As such, the conditional building permit has not been issued. Since there was another rate increase on August 15, 2023, the DC was recalculated again. Currently, the complainant would have to pay \$2,548,547.92 to

have the permit released. Furthermore, since a long period of time has passed and the requested permit is not an as-of-right permit, but rather, a request for a conditional building permit, the owner would have to demonstrate to the CBO that an unreasonable delay in construction still exists prior to issuing the permit. Development charge rates are not a criteria for the consideration of issuing a conditional permit.

This report recommends that the complaint be dismissed. A decision or a non-decision of Council to dismiss the complaint may be appealed to the Ontario Land Tribunal (OLT). This report was prepared in consultation with the (Acting) Chief Building Official and Executive Director, Toronto Building and the City Solicitor.

RECOMMENDATIONS

The Chief Financial Officer and Treasurer recommends that:

1. City Council determine that the Development Charges By-law have been properly applied to the development project located at 615 Kennedy Road.
2. City Council dismiss the complaint dated July 12, 2023, with respect to 615 Kennedy Road filed pursuant to Section 20 of the Development Charges Act, 1997.
3. Council authorize City Staff to defend any appeal of City Council's decision or non decision to the Ontario Land Tribunal.

FINANCIAL IMPACT

There is no financial impact on the City's capital or operating budget from the adoption of recommendations contained in this report. Development Charges, in the amount of \$6,106,283.90 were collected by the City. Should the complaint be dismissed, the developer will be required to pay additional development charges in the amount of \$2,548,547.92 as of the date of this report to receive their building permit, subject to the outcome of any appeal to the Ontario Land Tribunal.

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 charges 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 bylaw to specific development proposals and a hearing for Section 20 complaints is not a forum for challenging the validity of a development charges by-law. The by-law is subject to mandatory updating every 10 years, inclusive of stakeholder engagement and appeal opportunities.

Background

Conditional permits may be considered by the CBO under S. 8(3) of the *Building Code Act, 1992* where the CBO is satisfied that an unreasonable delay in construction would occur if a conditional permit is not issued. No person is ever entitled by right to a conditional permit under the Act. Conditional permits are strictly within the discretion of the CBO and there is no obligation for the City to issue a building permit until construction complies with all applicable law. The issuance of a conditional permit, particularly for below grade construction, allows commencement of construction while the applicant continues to work toward obtaining compliance with all applicable law.

The DC By-law provides the timing of calculation and payment of development charges, under Section 415-8. B:

The amount of development charges payable in respect of a development shall be determined by applying the development charge rates in effect on the date that a building permit is issued in respect of the building or structure for which the owner has made a building permit application, unless the applicable development charge rates are to be determined under Section 26.2 of the Act or on a different date under an agreement pursuant to Section 27 of the Act;

On August 15, 2022, the City enacted its Community Benefits Charge (CBC) By-law which imposes a charge of 4 percent of the value of the land that is the subject of the development or redevelopment. The CBC is imposed on development or redevelopment of a building or structure with five or more storeys and that adds ten or more residential units. According to Section 415-48D of Toronto Municipal Code Chapter 415, Development of Land,

The community benefits charge is payable prior to the issuance of the first building permit issued for the development or redevelopment.

Conditional Permit Application by 615 Kennedy Road Inc.

The applicant, 615 Kennedy Road Inc. submitted a request for a below grade conditional shoring permit on May 9, 2022 to Toronto Building which was accepted on June 14, 2022. Applicants that wish to apply for a below grade conditional permit must enter into a development charges agreement with the City under Section 27 of the *Development Charges Act*. This agreement requires development charges to be calculated and paid at the time of issuance of the first permit, which in this case would be due and payable at the time of the issuance of the conditional shoring permit. An agreement was executed between the City and 615 Kennedy Road Inc. on April 24, 2023.

A request was submitted to Corporate Real Estate Management (CREM) on April 3, 2023 to provide a CBC appraisal. The appraisal memo and payment instructions were sent to the developer on April 18, 2023 indicating that a CBC of \$427,300 was payable.

Over the approximately 2–3-week period leading up to the May 1st development charge rate increase, the complainant was engaged in several communications with City staff. Through various emails and phone conversations, they were provided all the necessary information to remit the requested amounts in advance of the rate increase. The City received payment of DCs in the afternoon of Friday, April 28th. The CBC payment was made on May 1st and confirmed the following day by city staff. Since the permit was not issued prior to the rollover date, staff were required to recalculate the DC and requested an additional \$2,039,501.57 based on the effective rates on May 1, 2023.

As several months have since passed, Toronto Building would need to re-evaluate the conditional permit application and request an update on the progress of the Site Plan Application (SPA). The complainant would again have to demonstrate that non-issuance of the conditional permit would create an unreasonable delay in construction. The complainant was aware that the additional payment could have been made under protest for the purposes of releasing the conditional permit to proceed with construction while disputing the charge. Since the complainant has not remitted any additional payments, the current amount required to issue the permit as of the August 15, 2023 DC rate schedule, is \$2,548,547.92.

Due to the outstanding CBC fee, the building permit could not be issued prior to May 1, 2023. In accordance with the DC By-law and the executed development charges agreement, the DC is required to be calculated based on the rates in effect on the date a permit is issued. Therefore, the City takes the position that development charges were correctly applied.

CONCLUSION

For reasons discussed above, staff are 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 recommend that the complaint be dismissed.

CONTACT

Casey Brendon, Director, Revenue Services Division, Telephone: 416-392-8065
Fax: 416-696-3778, casey.brendon@toronto.ca

John Longarini, Manager, Operational Support, Revenue Services Division,
Telephone: 416-395-0125, john.longarini@toronto.ca

SIGNATURE

Stephen Conforti
Chief Financial Officer and Treasurer

ATTACHMENTS

Attachment 1: Community Benefits Charge Appraisal Memo dated April 18, 2023

Attachment 2: Development Charges Notice dated April 21, 2023

Attachment 3: Toronto Building response letter to complainant dated June 16, 2023

Attachment 4: Section 20 complaint from 615 Kennedy Road Inc. dated July 12, 2023

Attachment 5: Revenue Service response letter to 615 Kennedy Road Inc. dated September 25, 2023

Attachment 1: Community Benefits Charge Appraisal Memo dated April 18, 2023



Transaction Services
Corporate Real Estate Management

Metro Hall
55 John Street
2nd Floor
Toronto, Ontario M5V 3C8

Peter Cheng
Manager, Appraisal Advisory, Transaction
Services

Tel: 416-338-5105
Peter.Cheng@toronto.ca
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April 18, 2023

599-631 Kennedy Road
Email: marianna@nahidcorp.com

To whom it may concern,

**Re: Section 37 Community Benefits Charge Payment, Building Application #21 250439 BLD
599 – 631 Kennedy Road, Toronto (Ward 20): 10-storey mixed-use residential building
consisting of 215 units**

Please be advised that a review of the real estate market, the subject site and the development proposed on the property municipally known as 599 – 631 Kennedy Road, Toronto, has been completed. The market value of the subject site has been appraised at \$10,400,000 (value of the land) as of April 18, 2023 (the "valuation date"). The total payment for the Community Benefits Charge respecting the development associated with Building Permit Application #21 250439 BLD and as provided in accordance with the provisions of Section 37 of the Planning Act, Article VI of the Toronto Municipal Code Chapter 415 and the Community Benefits Charge Appraisal Fee Structure, as adopted by City Council pursuant to Section 69 of the Planning Act, Toronto Municipal Code Chapter 441, Fees and Charges, Appendix C, Schedule 11, is \$427,300.00.

The Community Benefits Charge payable is \$427,300.00 and is based on the above described development assuming a total site area of 3,849.00 sq. metres and an after development density of 17,069.11 sq. metres, as well as a current valuation.

SECTION 37 PAYMENT

Amount of Community Benefits Charge Payable	\$416,000.00
Appraisal Fee	\$10,000.00
HST (13%)	\$1,300.00
Total Payment	\$427,300.00

The above amount may require review and possible revision if the Building Permit has not been issued within six months of the valuation date October 18, 2023 or if any other significant changes with respect to the site and building areas, as relied upon for the initial valuation have occurred. The CBC payment referenced above is only for the development described and referenced above. Any future phases are deemed to be a separate development or redevelopment under the CBC By-law and a community benefit charge will be payable for any future phase on the day before the first building permit for development or redevelopment of that phase is issued.

Should you believe that you are entitled to an (additional) exclusion or exemption under Section 415-49 of Chapter 415 of Toronto Municipal Code, Article VI, which would reduce the Community Benefit Charge payable, you must provide evidence in support of the exclusion or exemption, to the satisfaction of the City.



Should you be of the view that the amount of the Community Benefits Charge noted above exceeds the amount permitted under subsection 37(32) of the Planning Act, you shall pay the above total amount under protest and, within 30 days of making the payment, provide the City with an appraisal of the value of the land as of the valuation date. If you are considering disputing the Community Benefits Charge payable, it is advisable to seek independent legal advice.

The City of Toronto's GST number is 86740 2299 RT 007. The payment is to be made by Electronic Funds Transfer (EFT) to the City. For EFT instructions and before making any payment, please contact John Longarini- Manager Operational Support Revenue Service, Finance & Treasury Services (John.Longarini@toronto.ca, contact number (416) 395-0125) to confirm that payment can be accepted at this time.

If further information or clarification is required, please contact Tony Cheng at (416) 392-7212.

Sincerely,



Peter Cheng
Manager, Appraisal Advisory
Transaction Services
Corporate Real Estate Management
City of Toronto

CC: John Longarini, Derek Small



Attachment 2: Development Charges Notice dated April 21, 2023



Toronto Building
Kamal Gogna, P. Eng.,
Chief Building Official and Executive Director

Derek Small
Phone: (416) 396-8223
Email: dsmall@toronto.ca

NAHID CORP
C/O MARIANNA KARAMYAN
31 SCARSDALE RD
TORONTO ON M3B 2R2

April 21, 2023

Re: Development Charges for 21 250439 BLD 00 NB
Apartment Building New Building
at 599 KENNEDY RD
Ward 20 Scarborough Southwest

This is to advise that, in accordance with City of Toronto Bylaw No. 1137-2022, development charges (DCs) in the amount of **\$6,106,283.90** are due and payable prior to the issuance of the above-noted building permit.

DCs are payable and collected on the date the above-noted permit is issued, unless the DC is to be paid at a different time under Sections 26 or 26.1 of the Development Charges Act (the Act) or pursuant to an agreement under Section 27 of the Act.

The amount of the DCs payable is determined based on the rates in effect on the date that the above-noted building permit is issued, unless the charges are determined under Section 26.2 of the Act or on a different date under an agreement pursuant to Section 27 of the Act. Please see the attached for the details of the DC calculation, amount and timing of payment.

The amount of the DC payable shown above is current only as of today's date. DC rates are subject to change due to indexing, phase-in, by-law amendment, or changes to your development proposal. If the permit is not issued today but is issued on a subsequent date, the charges will be recalculated to reflect any changes to the DC payable based on the date of permit issuance. Where Section 26.2 of the Act applies, interest is applicable to the DCs payable in accordance with Council policy.

DC payments are not accepted by Toronto Building prior to an Issuance Pending Notice being provided.

Payments must be made via Electronic Funds Transfer. To arrange an EFT payment, please contact 416-397-5330. For questions on the amount of the DCs payable, please contact me.

Yours truly,

Zoning Examiner
Derek Small

Attachment 3: Toronto Building response letter to complainant dated June 16, 2023



Will Johnston, Deputy City Manager
Infrastructure & Development Services

Toronto Building
City Hall
12th Floor, East Tower
100 Queen Street West
Toronto, Ontario M5H 2N2

Kamal Gogna, P.Eng.
Acting Chief Building Official
& Executive Director

Tel: 416-392-7523
Email:
kamal.gogna@toronto.ca
www.toronto.ca

June 16, 2023

To: Nahid Corp c/o Wayne Long
31 Scarsdale Rd., Unit 2
Toronto, ON
M3B 2R2

From: Kamal Gogna, P.Eng. Acting Chief Building Official and Executive Director
Toronto Building Division

Re: 599 – 615 Kennedy Road 21 250439 SHO 00 PP

I am writing in response to your email to John Longarini and me dated June 1, 2023. I have since reviewed the history of this matter with staff and have duly considered your concerns. However, having reviewed the matter carefully, I can advise that the shoring conditional permit cannot be issued until the required additional development charges are paid. A summary of the relevant history is as follows:

On May 9, 2022, your request for a conditional shoring permit (the "Permit") was submitted to Toronto Building. It was accepted by Toronto Building on June 14, 2022. A conditional permit may not be issued unless and until a conditional permit agreement is executed along with an agreement pursuant to section 27 of the *Development Charges Act* (the "DC Agreement") as per City Council direction. These agreements were executed on April 21, 2023. The DC Agreement dictates when development charges are to be calculated and paid. The DC Agreement requires development charges to be paid at the time of issuance of the first permit. In this instance, DC's would be due and payable at the time of the issuance of the shoring conditional permit.

On August 15, 2022, the City enacted its Community Benefits Charges by-law, Article VI of Chapter 415 of the City of Toronto Municipal Code, which was passed pursuant to section 37 of the *Planning Act*. Pursuant to section 48.D of said by-law, the community benefits charge (the "CBC") is payable prior to the issuance of the first building permit issued for the development. As such, the CBC needed to be paid before the Permit could be issued.

On April 12, 2023 and in response to an inquiry you sent to me, Plan Review Manager Josh Heisterkamp advised you by email that the development charges and CBC are required to be paid in full at the time of permit issuance.



As you have acknowledged, the amount of the CBC payable was first communicated to you by memo from Peter Cheng Manager, Appraisal Advisory, Transaction Services, Corporate Real Estate Management, dated April 18, 2023. The letter advised you that payment was to be made by Electronic Funds Transfer ("EFT") and that you were to contact John Longarini, Manager Operational Support Revenue Services, Finance and Treasury Services, to obtain instructions regarding payment. It was therefore open to you to make your CBC payment at any time following April 18, 2023 (and well before the May 1st development charges increase). The memo provided you with the further contact of Tony Cheng should you require further information or clarification regarding the payment of CBC.

I further emphasize that, in order to assist you, Toronto Building requested Corporate Services to expedite providing you with the CBC appraisal when it requested the appraisal on April 3, 2023. The standard timeline for providing the CBC appraisal is six weeks whereas the appraisal memo of April 18th was issued only just over two weeks after the April 3rd request was made. Every effort was made to enable you to promptly make your CBC payment.

On April 26, 2023, the Permit application was forwarded to Toronto Building's Customer Services group for issuance pending receipt of the payment of the CBC. Thereafter, City staff reached out to you on several occasions prior to the May 1st development charges increase to remind you to make the CBC payment. I understand that Customer Services Manager Sean Fitzpatrick sent you an email on April 26th reminding you to make the CBC payment and to carefully follow Revenue Services' payment instructions.

I understand that Mr. Fitzpatrick sent you a further email on the evening of April 28, 2023 again reminding you to make the CBC payment. You responded to Mr. Fitzpatrick by email on April 29, 2023 acknowledging his email and indicating that you had avoided the development charges increase. However, this was not the case as the CBC had still not been paid. Given that the City only receives payment during normal business hours, the CBC payment would have had to have been paid by the end of Friday April 28th to avoid the development charges increase. Nevertheless, in an effort to assist you further, Mr. Fitzpatrick responded to your email indicating that the payment would have to be made forthwith (i.e. over the weekend and before the roll over to May 1st) to even consider that it had been made prior to the development charges increase taking effect. This did not occur.

Apart from Toronto Building, I am advised that Tony Cheng discussed the CBC payment amount with you on April 21, 2023. However, no payment followed. Further, John Longarini advises that he left a message for you at 10:17 a.m. on Friday April 28th regarding the need to pay the CBC given that the CBC had still not been paid. Again, no payment was made. Once again, every effort was made prior to May 1, 2023 to enable you to promptly make your CBC payment.

On May 1, 2023, you reached out to Mr. Fitzpatrick to provide instructions regarding the payment of the CBC (notwithstanding that the appraisal memo of April 18th provided Revenue Services contact information for the payment of the CBC). Mr. Fitzpatrick responded again explaining that Toronto Building does not provide payment instructions for CBC, and he directed you to Revenue Services. By email dated May 1, 2023 at 1:06 p.m., John Longarini provided you with wire transfer instructions (contrary to that stated in your email, Mr. Longarini's email was not sent after 6:00 p.m.). The payment was finally confirmed by Revenue Services on the morning of May 2, 2023. It was also on May 2nd that you confirmed with Toronto Building that the CBC payment had been made.

Because the CBC payment was not received until May 2, 2023, additional development charges were owing before the Permit could be issued given the development charge increase which took effect on May 1, 2023.

I appreciate your concern and frustration. However, we are obligated to follow applicable law and have no authority to waive the relevant provisions. Further, we are bound by the DC Agreement. Development charges are assessed and payable as of the date of permit issuance. Toronto Building was only in a position to issue the Permit following the payment of the CBC. Once again, as per section 48.D of Chapter 415, the CBC is payable prior to the issuance of the first building permit issued for the development. As the CBC was only paid on May 2, 2023, the development charges payable are at the rate in place as at the date, i.e. at the time of Permit issuance.

As such, Toronto Building is unable to issue the Permit until such time as the additional development charges are paid.

If you wish to dispute the amount of development charges following the payment of said charges, you may submit a complaint pursuant to section 20 of the *Development Charges Act*. I note that pursuant to subsection 20(2), a complaint may not be made later than 90 days after the day the development charge is payable (which in this instance would be the date of Permit issuance upon payment of the development charges).

Sincerely,



Kamal Gogna
Acting Chief Building Official & Executive Director
Toronto Building Division

CC: John Longarini, Manager Operational Support, Revenue Services Division
Nick Samonas, acting Director, Scarborough District, Toronto Building Division

Attachment 4: Section 20 complaint from 615 Kennedy Road Inc. dated July 12, 2023

615 KENNEDY ROAD INC.

July 12, 2023

Dear Council Members,

Re: Section 20 Development Charges Act appeal – 615 Kennedy Road Inc.

The purpose of this letter is to formally appeal the application of By-law 1137-2022 to our project for the reasons set out below. We appreciate that City staff have a heavy workload, especially in the days leading up to an increase in development charges rates. We have worked closely with staff and respect their role however, we also believe the City has responsibility to inform small builders of what they should expect in a way that allows us to understand all that staff are asking of us and does not require us to read between the lines. This is especially so in situations like ours where the responsibility for accepting payments for charges shifts between departments and the information slips between the cracks.

Reasons for Relief:

1. We believe that we have been treated unfairly given the circumstances outlined below.
2. It is not a fact of the CBC being paid, as it clearly was, but only a fact of when the City decides to accept payments or not.
3. The fact that the Wire Transfer for the DC was:
 - a. Create Date: 2023-04-28 11:08 AM,
 - b. Last Action Date: 2023-04-28 12:39 PM, and
 - c. Receipt No: 1689130 Date & Time: April 28, 2023, 02:05 PM by Building Department
 - d. in precisely 2 hours and 57 minutes the transfer was completed, and funds fully exchanged

This clearly show the time for a wire transfer from creation to last action to receipt by the City is not one day. The City failed to check on the same day, for the CBC payment wire transfer (May 1 to May 2) .

4. The penal nature of the additional \$2 Million development charge the City is asking for is clearly, not in the spirit of good faith approvals process and
5. Clearly, while everyone worked diligently to complete this process, there was a serious lack of concise transparent simplified coordinated City approvals process, but instead a severely restricted payment process
6. This penal \$2 million tax could potentially harm the financial viability of the project and could lead to cancellation and
7. This penal \$2 million dollar tax now requires additional, unexpected funding , in a difficult financial marketplace, and finally,
8. This will significantly impact our ability to provide the quality, attainable housing that the City so desperately needs.

Background:

1. The agreements

April 20, 2023 – a Development Charges Agreement was executed by 615 Kennedy Road Inc. dated April 20

Subsection 2(1) obligates the Owner to pay development charges under By-Law 1137-2022 “in an amount to be determined based on the By-law in effect, and on such development charge rates as are in effect, on the date of the issuance of the first Building Permit.”

Section 2(3) reads: The payment of the Development Charge required by Subsection 2(1) is due and payable on the earlier of the date of issuance of the first Building Permit issued in relation to the Development following the entering into of this agreement as set out in Section 3 herein.

Section 5 contemplates further development charges could apply in respect of other development permitted on the site or for education purposes.

Section 15 says this is the entire and only understanding between the Parties relating to the payment of development charges in respect of the Development as authorized by the Building Permit.

Section 21(3) payments due on a non-business day are due the first business day following. No other fees or charges are referenced.

April 20, 2023 – a Conditional Permit Agreement was executed by 615 Kennedy Road Inc. dated April 20

Section 5 addresses the need to pay development charges prior to the issuance of a conditional building permit.

No mention is made of payment of any other fees as a condition of obtaining a conditional building permit.

2. Relevant Emails

April 12, 2023 email from Josh Heisterkamp to Wayne Long advising that DC’s and CBC by-law amounts are required to be paid in full at time of permit issuance.

April 17, 2023 email from Wayne Long to Josh Heisterkamp advising that will need the DC and CBC and other amounts along with wire transfer instruction before end of week the week to ensure everything is in place and have funds by April 26th and setting up a call to discuss.

April 18, 2023 letter sent by email from Peter Chang, in the Revenue section to Marianna at Nahid Corp advising of the amount outstanding on account of section 37, totaling \$427,300 with payment instructions. No mention that this charge must be paid in advance to obtain the building permit applied for, or of the potential impact of a development charge increase.

April 21, 2023 letter sent by email from Derek Small, Zoning Examiner advising that development charges in the amount of \$6,106,283.90 were due and payable prior to the issuance of the building permit applied for and including the calculation form. No mention that CBC charge must also be paid in advance to obtain the building permit.

April 26, 2023 Email from Bruntha Ponnampalam at the City contains the following relevant statements:

The following fees are required to be paid for the Permit NO: 21 250439 SHO 00 CP.

Dev Charges - Residential \$6,106,283.90

We are unable to take payments at our service counters at this time. All payments required to be made through EFT will take 2-3 business days to process. Please work with your banks to ensure these transfers are done in a timely manner in order to ensure payment is received to allow permits to be issued within this time frame. City staff hours are Monday through Friday 8:30 to 4:30; payments received outside of these hours will not be processed until the following business day.

April 26, 2023 email from Sean Fitzpatrick that the CBC payments are a new process. Toronto Building traditionally processed payments for section 37 agreements (replace by CBC's). Please take special care of that payment and make sure you follow Finance's instructions carefully and as quickly as possible.

April 27, 2023 email from Arjang Zandnia to Josh Heisterkamp advising that "The two agreements have been executed and forwarded to your attention previously for City of Toronto signature. We wish to pay the Development Charges today or tomorrow before deadline."

April 28, 2023 wire confirmation of payment of development charges in the amount of \$6,106,283.90 DV File No. 230676, Application No. 21 250439 BLD 00 NB, 615 Kennedy Rd. naming Sean Fitzpatrick and Bruntha Ponnampalam is evidence that development charges were paid ahead of the rate increase that took effect on May 1st as the City required. NOTE it took 2 hours and 57 minutes from creation to last action to receipt of payment by Building Department

April 28, 2023 at 4:11 pm Sean Fitzpatrick advised: We have not yet received confirmation that the Community Benefits have been paid. We will not be able to issue the Conditional Permit until that fee is paid. The outstanding amount is \$427,300.00. Minutes before the City offices close for the weekend, despite the new development charge rates coming into effect the following Monday.

Please let us know the current status of the funds transfer.

April 28, 2023 at 9:15 pm Sean Fitzpatrick at the City advised that the conditional permit could not be issued as the community benefits payment in the amount of \$427,300 had not been received.

April 29, 2023 at 1:48 am email from Wayne Long to Sean Fitzpatrick confirming community benefit charge payment will be made and that avoided the DC rate increase.

April 30, 2023 at 5:09 am email from Wayne Long to Josh Heisterkamp and Derek Small asking for wire transfer instructions for s.37 CBC payment.

April 30, 2023 at 5:34 pm email from Sean Fitzpatrick in response: Hello Wayne, I am not certain that we have as yet. The permit needs to be issued and all payments received prior to the roll over date. I will investigate where we are on Monday when staff are back in the office.

May 1, 2023 at 6:20 am email from Wayne Long to Arjang Zandnia; Amir Naeimi and Marianna Karamyan advising that the mystery is solved, referring to the email from Sean of April 30th and the need for all payments to be made before the rollover date.

May 1, 2023 at 6:23 am email from Wayne Long to Sean Fitzpatrick advising that payment will be made and "DC was confirmed. Received CBC notice from you late Friday evening. Trust you will allow payment today and this will not affect DC increase."

May 1, 2023 at 12:09pm email from Sean Fitzpatrick advising that Toronto Building does not provide payment instructions nor receive payment for CBC's. I will defer to Revenue Services to provide the instructions.

May 1, 2023 at 6:06 pm John Longarini (Revenue, City of Toronto) advises: Please see the attached Wire and EFT transaction information. If required for the EFT, the Revenue Services address is 5100 Yonge St Lower Level, Toronto ON M2N 5V7. After hours notification of how to make the CBC payment makes it impossible to pay.

May 1, 2023 1:38 PM wire transfer completed per attached, and withdrawn from bank account, therefore the CBC payment was made prior to end of business day. NOTE : it took 2 hours 57 minutes for the wire transfer for the DC payment to be processed from creation to last action to Receipt by Building Department

May 2, 2023 email at 3:04 am confirmed that all DC and s.37 payments have been made. Reply from Sean Fitzpatrick at the City stated: We are having an internal discussion regarding the DC rates paid. Once we complete that discussion, we will either issue the permit or request additional fees for DC's.

May 18, 2023 -follow up response that Sean is away and looking after the matter.

May 24, 2023 email from Josh Heisterkamp advising he is responding in Sean's absence and that "The CBC payment was not received prior to May 1, 2023 and as such the conditional permit was not issued. The CBC memo dated April 18, 2023 required you to contact John Longarini for payment instructions, it is my understanding that this was not done before May 1. Accordingly, the conditional permit is ready for issuance subject to receipt of the additional DC's to reflect the current rates and confirmation from John Longarini that the CBC amounts have been paid."

May 24, 2023 instructions for wire transfer advising a further development charges payment of \$2,039,501.57 is owing.

May 24, 2023 email from Arjang Zandnia to Ron Fairbloom detailing City delays and need to rush, and new to City process as creating unfair result.

Grounds for Appeal:

By-Law 1137-2022 /Municipal Code Chapter 415, Article 1 (Development Charges) provides:

415-8 A. Development charges applicable to a development shall be payable and collected on the date a building permit is issued in respect of the building or structure for which the owner has made a building permit application.

The City has confirmed that development charges were paid on April 28, 2023 as required and in accordance with both the By-law and the Development Charges Agreement, however the City did not have the staff available to issue a permit and did not advise that the permit could not be issued because the CBC was not paid until after 9pm on a Friday allowing NO OPPORTUNITY to make this payment before the new development charge rates were to apply. We followed what staff told us and what was required under the Development Charges Agreement.

We believe that there was an error in the process used by the City and in how City staff applied Development Charges By-law. The City failed to inform that the building permit was being held until CBC was paid until after normal business hours on May 1st. Despite this, the CBC payment was in fact transferred to the City the afternoon of May 1, however, it was not received in the City Bank Account until May 2. We were not given the opportunity to make this payment by attending at a City building or in any other way, so the City's processing method is responsible for the delay in recording the payment. This is clearly evident, since the wire transfer for the DC payment was completed in precisely 2 hours and 57 minutes.

Toronto enacted By-Law 1139-2022 /Municipal Code chapter 415 Article VI establishing a Community Benefits Charge. The following provisions in Section 415-48 are relevant:

D. The community benefit charge is payable prior to the issuance of the first building permit issued for the development or redevelopment.

When the City told us that development charges must be paid prior to the issuance of the first building permit they did not tell us that CBC must also be paid until it was impossible to do this. We complied with the process we were told to follow, and were only advised that both charges had to be paid before a building permit could be issued after it was too late to correct.

We believe that we should be able to rely on what we are told by the zoning examiner and that City staff should be accountable for ensuring that they provide small companies in particular with the full information and not a siloed slice of information. No notice was provided that failure to pay the CIB charge in addition to the development charges owing before the May 1st date would result in being made subject to the new higher development charges rate. The fees and charges are under different legislation, and we now know are collected by different departments at the City. It is the same project however and the same building permit application.

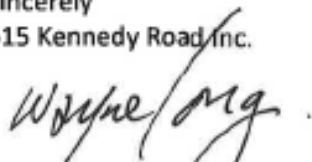
Conclusion:

We seek that the Committee exercise its discretion in these circumstances and correct this error, so that we can provide the City with these much-needed housing units. We accept that development charges and community benefits charges must be paid so that the City can provide the services required to support development. It is not a fact of being paid, as it clearly was, but only a fact of when the City decides to accept payments or not. We appreciate that staff are responding to these matters outside of normal business hours because they are too busy to respond sooner. However, the penal nature of your decision was strictly policy driven and not in the spirit of the efforts put forward by City staff and our group. The City needs to consider the fairness of these decisions in the context of all of the facts, and not just by looking at the time of processing at the City's end.

We also believe that we have been treated unfairly as a result and we are concerned that the additional development charges the City is asking for, will potentially harm the financial viability and significantly impact our ability to provide the quality attainable housing that the City so desperately needs.

In closing, we appreciate your timely review of this matter and trust you will do the right thing, the commonsense thing, and cancel this punitive tax, as clearly, this is not in the spirit of good faith approvals process and clearly, everyone worked diligently to complete this process. The complete lack of a coordinated City approvals process, timing around a weekend, and a restricted payment process should not have such catastrophic results.

Sincerely
615 Kennedy Road Inc.

A handwritten signature in black ink that reads "Wayne Long". The signature is written in a cursive style with a large, looping initial "W".

Wayne Long, Director
I have authority to bind the Corporation

Attachment 5: Revenue Service response letter to 615 Kennedy Road Inc. dated September 25, 2023



Casey Brendon
Director

Revenue Services
North York Civic Centre, LL
5100 Yonge Street
Toronto, Ontario M2N 5V7

Tel: 416-392-8065
Casey.Brendon@toronto.ca
www.toronto.ca

September 25, 2023

Wayne Long
615 Kennedy Road Inc.
2-131 Scarsdale Road
Toronto, ON M3B 2R2

Sent via email to: wlong@nahidcorp.com

Dear Wayne,

**Re: Development Charges Complaint – 615 Kennedy Road
Building Permit Application No.: 21 250439 BLD 00 NB**

I am writing in response to your Section 20 development charges complaint received July 12, 2023 where you filed a complaint objecting to the amount of development charges calculated in relation to permit issuance.

In your correspondence, you indicated that City staff did not apply the Development Charges By-law correctly based on the date used to calculate development charges that were paid in advance of the May 1, 2023 rate increase.

The development charges by-law provides the timing of calculation and payment of development charges, under Section 415-8. B:

The amount of development charges payable in respect of a development shall be determined by applying the development charge rates in effect on the date that a building permit is issued in respect of the building or structure for which the owner has made a building permit application, unless the applicable development charge rates are to be determined under Section 26.2 of the Act or on a different date under an agreement pursuant to Section 27 of the Act;

As payment of the Community Benefits Charges was still outstanding as of the May 1st DC rate increase, the City was unable to issue the permit and therefore required a re-calculation of development charges with the effective rates.

In consultation with Toronto Building and Legal Services, it has been determined that the development charge amounts were correctly calculated, and the development charge By-law was correctly applied.

Under Section 20 of the Development Charges Act, if you are not satisfied with the outcome of the review, you have the option to request a hearing. A request for hearing should be provided in writing to the Office of the Controller. The hearing is conducted by the City's Executive Committee which will make a recommendation to City Council.

If you are not satisfied with either the City's decision, or the timeliness of the City's response, you may file with the City Clerk your intention to appeal the issue to the Ontario Local Planning Appeal Tribunal. You will be required to pay a fee to file this appeal.

Below for your reference are the links to:

- the City's DC website, including DC by-law, applicable rates, and complaint process
<https://www.toronto.ca/city-government/budget-finance/city-finance/development-charges/>
- City Clerk website for Executive Committee
<https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/staff-directory-divisions-and-customer-service/city-clerks-office/>
- the Province's Development Charges Act
<https://www.ontario.ca/laws/statute/97d27>
- the Province's Local Planning Appeals Tribunal Process.
<https://olt.gov.on.ca/contact/local-planning-appeal-tribunal/>

If you have any questions regarding your options, please contact the Revenue Services Division, Planning and Policy Development Unit by email at RS_DC_CBCadmin@toronto.ca.

Sincerely,



Casey Brendon
Director

C: Gabe Szobel, Solicitor
Natasha Zappulla, Deputy Chief Building Official and Director, Toronto Building