

Development Charges Complaint – 3-5 Marina Avenue

Date: April 24, 2024
To: Executive Committee
From: Chief Financial Officer and Treasurer
Wards: Ward 3 – Etobicoke-Lakeshore

SUMMARY

This report responds to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* and Section 257.85 of the *Education Act*, relating to a development project located at 3-5 Marina Avenue in Etobicoke-Lakeshore.

The development project consists of the demolition of an existing single detached dwelling and the creation of two semi-detached dwellings, each containing one secondary dwelling unit. The complainant, Dan Iannetti, objects to the amount of development charges and education development charges calculated. The complainant asserts that the development charges were incorrectly calculated at the ‘Singles & Semis’ rate, instead of the ‘Multiples 1 Bedroom and Bachelor’ rate. Additionally, the complainant states that education development charges were incorrectly calculated as an additional demolition credit was not provided for their existing basement apartment. Thirdly, the complainant claims that delays to schedule hearings and the City to clear planning conditions resulted in having to pay increased rates on development charges and education development charges.

City staff have reviewed the complaint and are of the opinion that the Development Charges By-law ("DC By-law") was applied properly, and no error was made in determination of the applicable development charges. Staff have reviewed the building permit application along with documentation submitted by the complainant, and believe the development was correctly categorized as two semi-detached dwellings, each with one secondary dwelling unit, and so the ‘Singles & Semis’ rate applies. The development does not meet the definition of a multiple dwelling unit; therefore the ‘Multiples 1 Bedroom and Bachelor’ rate does not apply.

After review, City staff have determined that the Education Development Charges By-law ("EDC By-law") was correctly applied. The EDC By-law outlines that credits are applied where an education development charge has previously been paid. In this case, an education development charge was not previously paid for the basement apartment in the existing detached house. Therefore, the complainant is not entitled to an additional education development charge credit since an education development charge was not previously paid.

In addition, according to the DC By-law and EDC By-law, development charges are calculated at the time of permit issuance, therefore calculations are not backdated due to scheduling/administrative delays in planning or building permit approvals.

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 3-5 Marina Avenue.
2. City Council dismiss the complaint dated October 11, 2023, with respect to 3-5 Marina Avenue filed pursuant to Section 20 of the *Development Charges Act, 1997* and Section 257.85 of the *Education Act*.
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 are no financial impacts resulting from the adoption of recommendations contained in this report. A total of \$106,020 in development charges and education development charges was collected by the City from the complainant in 2023 (development charges in the amount of \$97,041, and education development charges in the amount of \$8,979).

The complainant is seeking a refund in the amount of \$72,313. If the complainant appeals Council's decision to the Ontario Land Tribunal (OLT), there may be financial impacts to the City if a decision by OLT results in an unfavourable outcome to the City. A decision in favour of the complainant may result in the City issuing a refund of up to \$68,720 for development charges. As the City remits payment of education development charges to the Toronto Catholic District School Board, the school board would be responsible for refunding the education portion of up to \$3,593.

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; or
- 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 257.85 (1) of the *Education Act*, an owner, the owner's agent or a board, may complain to the council of the municipality to which an education development charge is payable that:

- a. the amount of the education development charge was incorrectly determined;
- b. a credit is or is not available to be used against the education development charge, or that the amount of a credit was incorrectly determined; or
- c. there was an error in the application of the education development charge by-law.

Under Section 20(4) of the DC Act and Section 257.85(5) of the *Education 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. If the complainant appeals Council's decision to the OLT, the City's defence would be provided by the Legal Services Division.

Section 20 complaints deal with application of the DC By-law 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 same provisions are applied in respect of the EDC By-law in dealing with education development charge complaints. The DC By-law is subject to mandatory updating every 10 years, inclusive of stakeholder engagement and appeal opportunities.

Background

On October 11, 2023, a formal Section 20 complaint was received by the City from the property owner, Dan Iannetti, requesting a review of the development charges and education development charges calculated. The development project consists of the demolition of an existing detached single dwelling, lot severance and the creation of two semi-detached dwellings, each containing one secondary dwelling unit.

The complainant's position is that the creation of a semi-detached dwelling with a basement apartment should be charged at the 'Multiples 1 Bedroom and Bachelor' rate and not the 'Singles & Semis' rate. However, Section 415-1 of the DC By-law, provides

the following definitions for semi-detached dwelling, secondary dwelling unit and multiple dwelling unit:

SEMI-DETACHED DWELLING - A residential building consisting of two dwelling units having one vertical wall, but no other parts, attached to another dwelling unit where the dwelling units are not connected by an interior corridor. For the purposes of this definition, a semi-detached dwelling with one secondary dwelling unit as defined in this bylaw is deemed to be a semi-detached dwelling.

SECONDARY DWELLING UNIT - A dwelling unit, whether contained within a proposed single detached dwelling or semi-detached dwelling, or ancillary to a single detached dwelling or a semi-detached dwelling including but not limited to a coach house, laneway suite or structure constructed above an existing garage or other structure separate from the primary dwelling unit, which:

- A. comprises an area less than the gross floor area of the primary dwelling unit; and
- B. is not capable of being legally conveyed as a separate parcel of land from the primary dwelling unit

MULTIPLE DWELLING UNIT - All dwellings units other than a single detached dwelling, a semi-detached dwelling or an apartment unit, but includes a dwelling unit in a row dwelling, duplex or triplex, and a back to back townhouse.

Therefore, it is the City's position that the development was correctly categorized as two semi-detached dwellings, each with one secondary dwelling unit as per the definitions above. The development does not meet the definition of a multiple dwelling unit; therefore the 'Multiples 1 Bedroom and Bachelor' rate does not apply. As the secondary dwelling units are exempt from development charges, and the application was credited for the demolition of the existing single detached home, the complainant was correctly charged for the net creation of one semi-detached dwelling.

The complainant also claims that they were not provided an education development charge credit for their basement apartment within the existing detached house. After review of the EDC By-law by City staff, the complainant is not entitled to an additional credit because an education development charge was not previously paid for the basement apartment. Section 17 of the EDC By-law states that credits apply:

Where an education development charge has previously been paid in respect of development on land and the land is being redeveloped, except where sections 9 and 10, and/or section 12 and 13 apply:

- a. The education development charge payable in respect of the redevelopment will be calculated under this by-law;

- b. The education development charge determined under paragraph (a) will be reduced by a credit equivalent to the education development charge previously paid in respect of the land, provided that the credit shall not exceed the education development charge determined under paragraph (a);

Therefore, since an education development charge was previously not paid for the basement apartment, no credit is applied.

The complainant also states that delays to schedule hearings and the City to clear planning conditions resulted in having to pay increased rates on development charges and education development charges. Under Section 415-8B, the DC By-law provides the timing of calculation of development charges to be:

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;

Under Section 18, the EDC By-law provides the following in respect to payment of education development charges:

Education development charges applicable to a development shall be payable to the City of Toronto and collected on the date that a building permit for above ground construction is issued in respect of the building or structure on land to which the education development charge applies.

According to the DC By-law and EDC By-law, development charges are calculated at the time of permit issuance, therefore calculations are not backdated due to scheduling/administrative delays in planning or building permit approvals. Therefore, the City takes the position that the development charges and education development charges were correctly applied.

CONCLUSION

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

CONTACT

John Longarini, Interim Director, Revenue Services Division, Telephone: 416-395-0125,
Email: john.longarini@toronto.ca

David McIsaac, Interim Controller, Telephone: 416-397-5467, Email:
david.mcisaac@toronto.ca

SIGNATURE

Stephen Conforti
Chief Financial Officer and Treasurer

ATTACHMENTS

Attachment 1: Section 20 complaint from Dan Iannetti

Attachment 2: Revenue Service response letter to Dan Iannetti dated November 28, 2023

Attachment 1: Section 20 complaint from Dan Iannetti

There are a couple items where I believe the EDCs and DCs were calculated incorrectly.

Property Background

There was an existing detached with a basement apartment.
Find attached survey of the existing property.

It is being replaced with semi detached homes each with basement apartments.
Find attached approved permit set of drawings.

Below is a summary of the charges that I was charged and have paid for.

	Amount \$	Increase Date	Charge Quantity	Total Amount
Development Charge (Semi Detached)	\$ 97,041.00	15-Aug-23	1	\$ 97,041.00
Educational Development Charge	\$ 2,993.00	01-May-23	3	\$ 8,979.00
			Grand Total	\$ 106,020.00

We were charged the semi detached development charge rate effective August 15, 2023.
We were charged the educational development charge rate effective May 1, 2023.

Educational Development Charges (EDCs)

There is an existing basement apartment which I was not provided a credit for.
There are a total of four units in the new development.
There were two existing units and I was only provided a credit for one of them.

Find attached video of the existing house. I sent in a request for permits that were previously submitted for the property.

There was no permit submitted for the existing house as it was constructed over 100 years ago.
There was also no permit issued for the basement apartment that was constructed at the same time.
I would like to request that I am reimbursed for one additional educational development charge.

Development Charges (DCs)

I was charged for a single semi-detached development charge.
I would like to request that my development charge given at the multiples rate.

This is based on there being a basement apartment.

I spoke with my planner and he said someone he knows in the building department stated that a semi with a basement apartment is charged as such. I would like to request that I have the basement apartment designated as the primary unit. The basement apartment is a 1+ den which is defined as a 1+ multiples unit.

Project Delays

I have experienced a lot of delays with the approvals of my project.

I experienced delays in the following stages:

- 1) Waiting of C of A hearing date.
- 2) Stretched out TLAB hearing.
- 3) Long timeline to clear planning condition with city legal.

I was charged for the rates that were effective September 26, 2023. (Attached)

I would like to request that my development charges be brought to the rates prior to May 1, 2023 for my development charge. (148 days or just under 5 months prior)

Plus the rates prior to April 30, 2023 for my educational development charge. (149 days or just under 5 months prior)

There are rate freezes for projects that required rezoning and site plan approval.

My project was not subject to that since I only had approvals for consent and minor variances.

C of A Hearing

Our C of A hearing date was during COVID. We had to wait six months for a hearing date. The typical timeline prior to COVID was three months. This added an additional 3 months to our timeline or approximately 90 days.

TLAB Hearing

Our original scheduled hearing date for our TLAB hearing was August 2022. We did not finish the TLAB hearing until April 2023. A large part of this was due to the neighbours drawing out the hearing to four days and pretending that they weren't available for dates. The total timeline from start to finish was approximately 7 months. I think a reasonable amount of time for a hearing would be 2-3 months. This added an additional 4 months to our timeline or approximately 120 days.

Clear Planning Conditions

There was one planning condition that took a very long time to clear with the legal department. I originally reached out to the legal department in the beginning of May 2023. The condition was not cleared until the end of July 2023. It took 3 months to get the agreement and condition finalized. I think a reasonable amount of time to clear a planning condition is 1.5-2 months. This added an additional 1 month to our timeline or approximately 30 days.

	Days Delayed
C of A Hearing	90
TLAB Hearing	120
Clear Conditions	30
Total Days	240

The total number of days the project was delayed beyond our control was approximately 240. If the project was approved more than 149 days prior we would have been charged the lower development charge and educational development charge rates.

I can provide evidence of these timelines if you would like. I did not have any room on the attachments for this email.

Rebate Summary

Below is a summary of the rebates of would like to request.

	Amount \$	Prior To Date	Charge Quantity	Total Amount
Development Charge (1+ Multiples)	\$ 28,321.00	01-May-23	1	\$ 28,321.00
Educational Development Charge	\$ 2,693.00	30-Apr-23	2	\$ 5,386.00
			Grand Total	\$ 33,707.00

The total difference in the charges comes to $\$106,020 - \$33,707 = \$72,313$.

Attachment 2: Revenue Service response letter to Dan Iannetti dated November 28, 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

November 28, 2023

Dan Iannetti
5 Marina Avenue
Toronto, ON M8W 1J8

Sent via email to: [REDACTED]

Dear Dan,

**Re: Development Charges Complaint – 3-5 Marina Avenue
Building Permit Application No.: 23 142038 BLD 00 NH & 23 142069 BLD
00 NH**

I am writing in response to your Section 20 development charges complaint received October 11, 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 the overall development charges and education development charges were incorrectly calculated based on the following:

1. Development charges were incorrectly calculated at the 'Singles & Semis' rate, instead of the 'Multiples 1 Bedroom and Bachelor' rate.
2. Education development charges were incorrectly calculated as you are claiming that an additional demolition credit was not provided for your existing basement apartment.
3. Delays to schedule hearings and the City to clear planning conditions resulted in having to pay increased rates on development charges and education development charges.

Development Charges

Section 415-1 of the Development Charges By-law ("DC By-law"), provides the following definitions:

SEMI-DETACHED DWELLING - A residential building consisting of two dwelling units having one vertical wall, but no other parts, attached to another dwelling unit where the dwelling units are not connected by an interior corridor. For the purposes of this definition, a semi-detached dwelling with one secondary dwelling unit as defined in this bylaw is deemed to be a semi-detached dwelling.

SECONDARY DWELLING UNIT - A dwelling unit, whether contained within a proposed single detached dwelling or semi-detached dwelling, or ancillary to a single detached dwelling or a semi-detached dwelling including but not limited to a coach house, laneway suite or structure constructed above an existing garage or other structure separate from the primary dwelling unit, which:

A. comprises an area less than the gross floor area of the primary dwelling unit; and

B. is not capable of being legally conveyed as a separate parcel of land from the primary dwelling unit

MULTIPLE DWELLING UNIT - All dwellings units other than a single detached dwelling, a semi-detached dwelling or an apartment unit, but includes a dwelling unit in a row dwelling, duplex or triplex, and a back to back townhouse.

The City has reviewed your building permit application along with the documentation you have submitted, and the development was correctly categorized as two semi-detached dwellings, each with one secondary dwelling unit as per the definitions above. The development does not meet the definition of a multiple dwelling unit, therefore the 'Multiples 1 Bedroom and Bachelor' rate does not apply. As the secondary dwelling units are exempt from development charges, you were correctly charged for the net creation of one semi-detached dwelling.

Education Development Charges

You indicated that you were not provided an education development charge credit for your basement apartment that was part of the existing detached house. After review by Toronto Buildings staff, you are not entitled to an additional credit because the basement apartment in the detached house was not lawfully existing and declared. There needs to be evidence that a basement apartment was constructed legally for it to be considered for an education development charge credit.

Effective DC and EDC Rates

Under Section 415-8B, the DC By-law provides the timing of calculation of development charges to be:

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

Therefore, development charge calculations are not backdated due to scheduling/administrative delays in planning or building permit approvals.

In consultation with Toronto Building and Legal Services, it has been determined that the development charge amounts were correctly calculated, and the DC 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 & Policy Development Unit by email at rs_dc_cbcadmin@toronto.ca.

Sincerely,



Casey Brendon
Director, Revenue Services

C: Nathan Muscat, Solicitor
Natasha Zappulla, Deputy Chief Building Official and Director, Toronto Building