2
DEVELOPMENT CHARGE BY-LAW APPEALS

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, August 23, 2005, from the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that:

1. Staff be authorized to conduct further meetings with the 2005 Development Charge By-law appellants to scope issues and provide potential resolution strategies, and report back to Council.

2. Staff and internal and/or external legal Counsel be authorized to appear before the Ontario Municipal Board ("OMB"), if necessary, in response to the appeals received pertaining to Regional Development Charge By-law No. DC-0005(a)-2005-060, enacted June 23, 2005.

2. PURPOSE

The purpose of this report is to advise Council of the appeals received by the Region on the recently enacted amendment to the Development Charge By-law ("DC By-law"), to seek authorization to continue to discuss issues with the appellants, and to seek authorization to appear before the OMB in response to the appeals. This report also provides an update on the 2003 DC By-law appeals.

3. BACKGROUND

On June 25, 1998, Regional Council enacted a revised DC By-law with a five year term, under revised Provincial legislation. In March 2002, staff was authorized to initiate the comprehensive review of the DC By-law, with the intention of enacting a revised DC By-law prior to June 25, 2003, the expiry date of the existing DC By-law. On May 22, 2003, a revised DC By-law was enacted, with a four year term. In accordance with the DC Act, 1997, anyone opposed to the DC By-law had until July 2, 2003 to file an appeal to the OMB. Four appeals were filed in opposition of the Region's DC By-law. Two of the four appeals have been successfully resolved and two appeals remain outstanding, which were filed by the Greater Toronto Home Builders' Association and Lonsmount Development Ltd.

Subsequent to the enactment of the 2003 DC By-law, scope changes within key areas of the water and wastewater capital program occurred. The Region experienced delays in proceeding to construction on some key wastewater infrastructure projects. On October 1, 2004, the Ministry of Environment issued a letter to the Region outlining additional conditions pertaining to mitigation of environmental impacts on many of the Regional wastewater projects. These additional conditions have significantly increased the cost of these projects. In response to these cost increases, Council authorized staff to proceed with an amendment to the DC By-law incorporating these increased costs, such that the costs of growth would be captured from the development creating the need for these costs.

With respect to the water program, a recently completed update to the Toronto water supply agreement has resulted in a benefit to the Region through a significant increase in the available water supply to York Region. The infrastructure necessary to sustain this capacity increase was determined through the Toronto/York Joint Optimization Study (JOS) which was completed in 2004. As a result of the JOS, the capital program, which only included works to 2005 in the previous 1998 agreement, is now including an infrastructure program to 2031.

On June 23, 2005 the DC By-law Amendment was enacted. In accordance with the DC Act, 1997, anyone opposed to the DC By-law had until August 2, 2005 to file an appeal to the OMB. Two appeals were filed in opposition of the Region's DC By-law Amendment. A group of High Rise Developers along with a residential developer appealed the DC By-law amendment. The reasons for these appeals are detailed below.

4. ANALYSIS AND OPTIONS

4.1 DC By-law Amendment Process

Over an eight to twelve month period, staff undertook a comprehensive review of the 2003 DC By-law. This review incorporated the results of key long term infrastructure master plans that have been through a public review process, and Council-approved population and employment projections.

A major component of the review process involved consultation with key stakeholders. Regional staff has had consultations with various consultants and the development industry during the review. Staff also held a development industry "roundtable" session with representatives from the Greater Toronto Homebuilders Association ("GTHBA") and the Urban Development Institute, York Region Chapter ("UDI") to discuss DC By-law issues, and held detailed discussion sessions with subgroups of these stakeholders. In these meetings the developer groups undertook a detailed review of the methodology and data used in the background study required to support the DC By-law Amendment, and responded to the input received from the various stakeholders.

A public meeting was held on June 2, 2005 as required by the DC Act, 1997, where further input was received from the development industry. Subsequently, staff held further discussions with other development stakeholders regarding specific development charge issues. These issues are outlined below.

4.2 2005 DC By-law Amendment Issues

4.2.1 High Density Development Charge Rate

The apartment condominium representatives, as they did in the 2003 DC By-law Appeal, expressed concern that the DC rate for high density residential development is too close to the single family dwelling rate. They also indicated that due to the lengthy project development and approval process, projects currently being developed would be negatively impacted by any increase to the residential DC rate, as proponents would not have the ability to adjust their negotiated deals or proformas to incorporate any cost increases.

4.2.2 Residential Development Appeal

A residential developer approached Regional staff and also made a deputation to Regional Council for special consideration to pay Regional DC's prior to the scheduled increase. After not receiving Council approval to pay the Regional Development Charge at the lower rate, the developer filed an appeal to the DC By-law amendment. The developer was opposed to the imposition of the higher water and sewer rate, the methodology by which the new water and sewer rate was calculated, the population growth assumption used and the inability to pay the hard services component of the Regional Development Charges prior to the June 23, 2005 enactment of the amendment.

4.2.3 2003 DC By-law Appeal Update

The two outstanding appeals to the 2003 DC By-law are from the Greater Toronto Home Builder's Association and Lonsmount Development Ltd. Regional staff have continued discussions with these appellants in an effort resolve the appeals in timely manner. A resolution between the Region and Greater Toronto Home Builder's Association regarding the transit development charge has not yet been reached however, discussions are continuing. A teleconference with the OMB has been scheduled for September 2005 to discuss the progress of the discussions held between Regional staff and the appellants.

5. FINANCIAL IMPLICATIONS

It is estimated that staff and consultant costs of approximately $350,000 would be incurred if the Region is required to appear before the OMB in response to the appeals of the DC By-law Amendment. By continuing to meet with development stakeholders in an effort to resolve the appeal issues, these costs could be avoided.

If the Region is unsuccessful in its defence of the DC By-law, the OMB could order the Region to refund some portion of the development charge collections received under the newly enacted DC By-law amendment.

6. LOCAL MUNICIPAL IMPACT

Development charges are a major source of financing the growth-related capital infrastructure required to facilitate the buildout of proposed developments and provide required services within the area municipalities. Any reduction in the amount of costs eligible for development charge recovery would impact the funding of these growth-related capital projects for the proposed developments.

7. CONCLUSION

On May 22, 2003 the Region enacted a revised DC By-law. The Region received four appeals of the revised 2003 DC By-law. Two of the four appeals have been resolved and two are outstanding. On June 23, 2005 the Region enacted an amendment to the DC By-law to capture some of the cost increases experienced by scope changes resulting form new Ministry of Environment requirements. The Region received two appeals to the 2005 DC By-law amendment. If discussions with development proponents do not resolve the issues outlined in the appeals, the Region will be required to appear before the OMB in response to these appeals. This report seeks authorization to defend the DC By-law amendment at the OMB, if required.

The Senior Management Group has reviewed this report.