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2003 DEVELOPMENT CHARGE BY-LAW APPEALS

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, August 22, 2003, from the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that:

1. This report be received for information.

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

3. Staff and internal and/or external legal Council 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-0005-2003-050, enacted May 22, 2003.

2. PURPOSE

The purpose of this report is to advise Council of the appeals received by the Region on the recently enacted 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.

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.

4. ANALYSIS AND OPTIONS

4.1 DC By-law Review Process

Over a twelve to fifteen month period, staff has undertaken a comprehensive review of the DC By-law. This review has 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 extensive consultation with key stakeholders. Regional staff has had consultations with the various master plan consultants, area municipal staff and the development industry during the review. This included staff making presentations to area municipal CAO's, Planning Directors and Treasurers. Staff also held a development industry "roundtable" session in October 2002 and a Council Workshop on January 30, 2003. Staff held nine comprehensive meetings 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 several 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, and responded to the input received from the various stakeholders.

A public meeting was held on April 17, 2003 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 Development Charge By-law Issues

4.2.1 Transit Development Charge Cost Recovery

The proposed transit capital program for the next ten years is estimated at $2.2 billion, with approximately two-thirds of the cost assumed to be funded from senior levels of government.

Based on historical service standard levels, the DC Act, 1997 would permit a recovery of approximately 5% of the Region's share of these costs. At the end of the 10 year capital plan period, the DC Act, 1997 would permit a recovery of 33% of the Region's growth-related transit capital costs. This would translate into a residential development charge rate of $2,335 per single family dwelling.

The 2003 Draft DC Background Study proposed that the DC rate for transit be phased in over the term of the DC By-law to reach a target 33% cost recovery level (this was reduced to approximately 25% upon enactment of the DC By-law on May 22, 2003). Legal advise has been provided that the intended approach regarding recovery of growth-related costs associated with transit service does not comply with the current provisions of the DC Act, 1997. However, recognizing the importance of a sustainable transportation system to service future growth in York Region, both UDI and GTHBA had indicated their support of the Region's proposed treatment of the Regional Transit capital costs.

4.2.2 Non-residential Development Charge Rate

The non-residential DC rates imposed prior to enactment of the revised DC By-law were set at $2.50 per sq. ft. for industrial/office/institutional uses, and $3.50 per sq. ft. for retail uses. These rates were significantly discounted from the DC rates required to fully recover growth-related non-residential capital costs. As the DC rate required to fully recover eligible capital costs is not imposed, a revenue shortfall is created. A contribution from the Regional tax levy and/or user rate is required to offset this shortfall, as the DC Act requires any DC shortfall be recovered from non-DC sources. For example, only 80% of the cost of a fully growth-related water or sewer capital project is recovered through DCs due to discounting. The balance is recovered from user rates. Similarly, a growth-related road project is funded 76.5% from DC, with the balance funded from tax levy.

The revised DC By-law proposed to reduce the discounting of the retail development charge rate over the term of the DC By-law, with retail DC rate starting at $3.85 per sq. ft., and increasing in three steps to $8.05 per sq. ft. Development stakeholders expressed concerns regarding the increase in the retail rate, and the methodology used in apportioning capital costs between retail and non-retail uses. In consideration of these concerns, staff was directed at the May 22, 2003 Council meeting to report back prior to implementation of the second step of the non-residential DC rate increase, regarding a comparison of DC rates enacted throughout the GTA, an update on discussions to be held with development stakeholders regarding the identification of costs attributable to the various sectors, and cost recovery options.

4.2.3 High Density Residential Development Charge Rate

Prior to enactment of the DC By-law, apartment condominium representatives approached the Regional staff expressing 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. To mitigate this potential impact on current development proposals, the DC By-law included a provision that any building permits issued by December 31, 2003 for apartment development be "grandfathered" and subject to the development charge rates imposed under the previous development charge by-law.

4.3 DC By-law Appellants

Four appeals were received against the Region's revised DC By-law. The appellants and the reasons for their appeals are outlined below.

- GTHBA – Despite the involvement of the GTHBA representatives throughout the DC By-law review process and support of the principles included in the DC By-law, the GTHBA has filed an appeal. The appeal is based mainly on the Region's treatment of transit capital costs, stating that the treatment does not comply with the provisions of the DC Act, 1997.
- FirstPro Shopping Centres – FirstPro has filed an appeal based on the calculation of the retail DC rate. However, FirstPro has agreed to meet with staff over the next several months to resolve issues regarding the appeal. They have indicated that they will not actively pursue the appeal while the meetings with staff are ongoing, and will revoke the appeal if these issues are resolved.
- Canadian Tire Real Estate Limited– Canadian Tire has filed an appeal based on the treatment of transit capital costs and the calculation of the retail DC rate. Canadian Tire has also committed to meet with staff in order to resolve the appeal issues, and has indicated that they will not actively pursue the appeal while the meetings with staff are ongoing, and will revoke the appeal if these issues are resolved.
- Pemberton Group Inc., Liberty Development Corporation, the Remington Group Inc., Tridel-Dorsay (Circa Project), Lonsmount Development Ltd., and 1541677 Ontario Inc. – This appeal has been filed to challenge the residential apartment DC rate in comparison to the single family dwelling rate. The appeal states that the apartment rate is too high.

4.4 Development Charge Regional Appeal Process

The process includes a phased work plan with three identifiable phases. Phase I of the suggested workplan includes review of all planning issues, scale of development within Centres and Corridors, identifying firm boundaries and densities for Centres and Corridors, and review of non-residential square footage and employment projections. Phase II includes review of non-residential issues. Topics such as non-residential cost allocations, review of alternative methodologies for non-residential split, and a potential review of infrastructure needs for the "power centre" category will be discussed. In Phase III it is anticipated that a full group meeting will be held to resolve all outstanding issues.

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. 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.

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 has received four appeals of the revised DC By-law. If discussions with development proponents does 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 at the OMB.

The Senior Management Group has reviewed this report.