
Subject: Additional Information Regarding 135 Queen St., Niagara-on-the-Lake

Report to: Corporate Services Committee

Report date: Wednesday, December 8, 2021

Recommendations

1. That Report CSD 71-2021 **BE RECEIVED** for information.

Key Facts

- The purpose of this report is to provide further information to the Corporate Services Committee regarding a previous Committee delegation made on behalf of the property owner of 135 Queen St, Niagara-on-the-Lake for the extension of a Regional Development Charge (RDC) demolition credit.
- As per RDC By-law 2017-98, a demolition credit eligibility period is 5 years from the date that the building was demolished. For this property, the demolition permit was obtained on May 26, 2015, meaning eligibility period expired on May 26, 2020.
- The property owner has indicated that their development was not able to proceed as a result of archaeological investigation required for the site as well as delays caused by COVID-19.
- A building permit for the site was obtained in September 2021. Due to COVID-19 provincial measures, the Town of Niagara-on-the-Lake did not issue building permits between April 4 and May 19, 2020.
- The expired demolition credit amounts to \$72,389 based on 2021 rates as outlined in Table 1.

Financial Considerations

Currently, there are no financial considerations associated with this report. At the present time, the property is ineligible to receive demolition credit extension under RDC By-law 2017-98. Should Council elect to extend the demolition credit to the property owner, the RDC would be reduced by the refund amount of \$72,389. There are no existing grants programs that would offer the applicant the relief that they desire. The demolition amounts as well as gross RDC payable have been summarized in Table 1.

Table 1 – Summary of Development Charge and Demolition Credit Amounts

Summary	Region Calculation	Developer Request	Difference
Gross RDC Payable	\$137,808	\$137,808	\$0
Demolition Credit	0	\$72,389	\$72,389
Net Payable	\$137,808	\$65,419	\$72,389

Analysis

On September 14, 2021, the Region received a letter from Equity Venture Group Corp. (a Solmar Company) regarding a proposed development located at 135 Queen Street, Niagara-on-the-Lake. In this letter it was identified that the property owner was in the process of obtaining a building permit for the redevelopment of the aforementioned property to accommodate a new 10,834 square foot commercial use structure. The property was previously developed with two commercial structures totaling 5,691 square feet which were demolished between May and July 2015. The general purpose of the letter was to request that the Region provide an extension to the base 5 year RDC demolition credit associated with the structures demolished in May 2015 which expired in May 2020.

For reference, section 18 (a) for RDC By-law 2017-98 has been provided below which specifies that:

18. (a) If application is made for a building permit in respect of a parcel of land upon which a premise existed **within five years** prior to the date of such application, but which premise has been demolished or destroyed before the date of such application, then the **amount of development charges payable upon issuance of the said building permit shall be reduced by the net amount**, calculated pursuant to this By-law at the current development charge rates, that would be payable as development charges in respect of the demolished or destroyed premise, provided that such reduction shall not exceed the development charges otherwise payable. For purposes of this subsection, “net” means the excess of the development charges for premises constructed, over the development charges for premises demolished or destroyed.

There is no provision with the RDC By-law that would allow the extension of the demolition credit for non-brownfield properties beyond the base 5 year period. As such, the request to extend the demolition credit period beyond the 5 years was denied via letter to the property owner dated October 8, 2021.

Region staff also reviewed the property within the context of Section 18 (c) of RDC By-law which provides that, “where demolition takes place on a brownfield... an application may be made to the Regional Treasurer for an extension of time for the redevelopment credit of up to three additional years if the redevelopment has not been able to proceed due to delays in completing the remediation works. This application must be received prior to the expiry of the initial five year period as provided in section 18. (a) of this By-law. This application would be considered by Regional Council for approval.” Based on this additional review, the property has not been identified as a brownfield within the context of the brownfield definition contained within RDC By-law; and the application was not received prior to the expiry of the initial five year period as required, and therefore would not be eligible for an extension based on this provision.

On October 13, 2021, Tom Richardson, legal counsel for Equity Venture Group Corp, made a delegation before the Corporate Services Committee. At this delegation Mr. Richardson identified that the project was delayed as a result of the archaeological requirements and the COVID-19 pandemic which allegedly prevented the developer from applying for a building permit before May 2020 (i.e., when the five-year period for demolition credit expired). Citing these delays, Mr. Richardson requested that the eligibility for demolition credit at the site be extended due to the delays experienced. When asked if the building permit could have been applied for sooner, or within the five-year period, Mr. Richardson said that while it could have been applied for, he was unsure of whether it would be obtained due to the ongoing nature of the archeological investigation. It should be noted that, per the Town, there was a six-week period between April 4 and May 19, 2020, when building permits were not issued due to COVID-19 measures. According to Mr. Richardson, the archaeological investigation was lengthy and required multiple amendments to the site plan to accommodate areas highly affected by archaeological finds. A report was also due to the Ministry of Heritage, Sport, Tourism and Culture Industries on the findings of the archeological investigation, which can take up to six months to a year to obtain ministry clearance.

According to the chronology provided by Mr. Richardson, early stages of the archaeological investigation took place in 2015, but the final stage of the assessment did not start until May 2018 due to the aforementioned amendments to the plan based on early archaeological findings. The final results of the investigation were not submitted to the ministry until September 2020, with approval from the ministry being provided in February 2021. Please note that the chronology states demolition was completed in July 2015, but as confirmed with Town staff in Niagara-on-the-Lake, the demolition permit was issued on May 26, 2015.

Demolition credit extension requests are common and are generally denied by the Region if they do not fit the criteria established in section 18 (c) of RDC By-law 2017-98. It would be difficult to justify an extension on the basis of the representative making a delegation to the Corporate Services Committee given the absence of any support in the By-law to do so. Councillors should also be aware that a Development Charge complaint under section 20 of the Development Charge Act will also be forthcoming at a future Special Council meeting on December 16 for a different property under similar circumstances.

Alternatives Reviewed

Any demolition credit extension outside of existing RDC By-law provisions or any grant awarded outside of an existing grant program would be in contravention of the current DC By-law 2017-98. Consequences of approving an extension at this time include: risk of Region being challenged under the anti-bonusing provision of the Municipal Act or the extensions being declared void as any extension approval, without taking the necessary steps to amend the RDC By-law including an updated background study, would be beyond Council's legal power or authority.

Relationship to Council Strategic Priorities

RDC are a major source of funding for growth projects in the capital budget. As such, RDC assist in achieving the strategic priorities of a fiscally sustainable government.

Other Pertinent Reports

[CSC-C 30-2021](#) Delegation Submission T. Richardson re: DC 135 Queen St NOTL

Prepared by:

Rob Fleming, MBA
Senior Tax & Revenue Analyst
Corporate Services

Recommended by:

Todd Harrison, CPA, CMA
Commissioner/Treasurer
Corporate Services

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Margaret Murphy, Associate Director, Budget Planning & Strategy, and reviewed by Helen Chamberlain, Director, Financial Management & Planning/Deputy Treasurer.

Appendices

Appendix 1 Chronology, 135 Queen Street, Niagara-on-the-Lake

Chronology, 135 Queen Street, Niagara on the Lake

- March 2015 Demolition Started.
- July 2015 Demolition completed.
- June 2015 Archeologists complete Stage 2 Archeological Assessment, report sent to MTCS.
- Sept. 2015 Archeologists complete Stage 3 Archeological Assessment.
- Sept. 2015-17 Significant design change to original application and site plan due to archeological findings. New drawings/heritage permit and MTCS approval required.
- 2017 Received MTCS clearance of the Stage 3 archeological assessment.
- May 2018 Stage 4 Archeological Assessment initiated (30+ 1m x 1m x 1m piers dug by hand).
- Sept. 2018 Stage 4 Archeological Assessment completed, and report submitted to the MTCS for clearance.
- October 2018 Revised Site Plan Approved by Council, but not servicing due to need to relocate services to 178 Gate Street.
- June 2019 Stage 4 Archeological Assessment clearance received from MTCS.
- August 2019 Stage 4 Archeological Assessment completed recommending filling excavated piers with concrete.
- August 2019 Town concern with the servicing of 135 Queen Street through another 178 Gate Street resolved as both properties merged on title.
- August 2019 Drawings revised to include 178 Gate Street as part of the 135 Queen Street application and final site plan approval.
- August 2019 Archeological Assessment for 178 Gate Street required by Town.
- Nov. 2019 Archeological Assessment for 178 Gate Street initiated.
- Dec. 2019 Archeological Assessment Stage 1, 2 and 3 field-work completed.
- March 2020 Stage 3 Archeological Assessment Report completed and submitted to MTCS recommending a Stage 4 Archeological Assessment.
- July 2020 Approval from MTCS Stage 3 Archeological Assessment for 178 Gate Street to undertake Stage 4 mitigation.

- July 2020 Stage 4 Archeological Assessment completed.
- Sept. 2020 Stage 4 Archeological Assessment Report sent to MTCS.
- February 2021 Approval on the Stage 4 Archeological Assessment by MTCS for 178 Gate Street.
- April 2021 Final Stage 4 Archeological Assessment Report submitted to Town and MTCS
- Sept. 2021 Town approved revised Site Plan.
- Nov. 2021 Final clearance from MTCS.
- Nov. 2021 Site services initiated.