
Subject: Regional Development Charges Complaint

Report to: Regional Council

Report date: Thursday, May 16, 2019

Recommendations

1. That the complaint filed with respect to the Regional Development Charges payable pursuant to Section 20 of the Development Charges Act, 1997, **BE DISMISSED** by Regional Council.

Key Facts

- The purpose of this report is to provide background information for a Development Charge (DC) complaint that was filed with the Region by 867962 Ontario Limited (the complainant) for a proposed apartment complex development located at 574 King Street, Welland.
- Section 20 of the Development Charges Act (DCA), 1997, allows for a person required to pay a DC to complain to the council of the municipality imposing the DC that the amount of the DC was incorrectly determined or that there was an error in the application of the By-law.
- Regional Council is required to hold a hearing for the consideration of this complaint, and will be acting as a tribunal and exercising quasi-judicial powers as per the process outlined in report CSD 12-2018 Regional Development Charges Planning Task Force Revised Terms of Reference & Complaint Process.
- The complainant's application for the building permit was submitted to the City of Welland under the previous Development Charges By-law but the permit was not issued until December 2018.
- In accordance with the DCA, and the Region's DC By-law, development charges are payable and calculated upon building permit issuance (not on the date of building permit application submission).
- Accordingly the complainant is required to pay development charges as calculated upon permit issuance based on the current DC By-law.
- There has been no error in the DC calculation or application of the By-law, and therefore the complainant is not eligible for relief under the DCA.

Financial Considerations

Under the Region's current DC By-law, passed November 16, 2017, the amount currently payable for the development located at 574 King Street, Welland (43 units – 1 bedroom; 7 units – 2 bedroom) is \$361,634 (2018 rates).

The complainant was approved for and received a Regional Development Charges (RDC) reduction under the Region's Brownfield Reduction Program at the time of permit issuance in the amount of \$63,353.55 (as per Schedule D of By-law 2017-98) which reduced the RDC payable to \$298,280.45. The complainant is seeking relief in the amount of \$182,005.45 which is equivalent to the difference between previous and current DC By-law charges in effect at the time of permit application and permit issuance, respectively. The new By-law rates are based on the new DC Background Study which supports growth needs based on recent master plans.

Analysis

Overview of Complaint

The purpose of this report is to respond to a complaint submitted under section 20 of the DCA, by 867962 Ontario Limited (the complainant) on March 19, 2019 for a proposed development located at 574 King Street, Welland, a copy of which is attached as **Appendix 1** but has been redacted by the Clerk as required to comply with MFIPPA requirements.

Under the DCA, the complaint must contain and allege, as a reason for the complaint, one or more of the following:

1. The amount of the development charge was incorrectly determined;
2. 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
3. There was an error in the application of the development charge by-law.

As noted in Appendix 1, the complainant has alleged that both the amount of development charges was incorrectly determined and there was an error in the application of the DC By-law. Regional Staff have reviewed the information provided by both the complainant, as well as the City of Welland Building Division. The City of Welland Building staff had indicated that the complainant was issued a building permit on December 21, 2018 and made payment of RDC at that time of \$298,208.45 (net of Brownfield Reduction Program amount of \$63,353.55). As a result of this review, it has been determined that the DC By-law has been administered correctly resulting in correct RDC payable of \$298,208.45 (2018 rates) upon building permit issuance for the proposed development.

Pursuant to section 26 of the DCA, a development charge is payable for a development upon a building permit being issued for the development unless the development charge By-law provides otherwise (as permitted in the Act).

The Region's DC By-law 2017-98, section 9(a), specifies that development charges under this By-law shall be calculated using the rate effective on the calculation date with

respect to such development. The By-law defines “calculation date” as the date on which the first building permit is issued by the local municipality and this is the date the RDC is payable. With the 2012 RDC By-law the calculation date for RDCs was the date on which the Chief Building Official of the local municipality received the application for the building permit and all accompanying information.

Notwithstanding that the complaint does not fall within the three items noted above, staff have prepared the following commentary on the information provided by the complainant.

Commentary on Complaint

The full complaint form is provided as Appendix 1 of this report but for ease of providing staff commentary, specific points from the complaint have been provided below along with staff comment.

1. The City of Welland failed to properly calculate the development charges on the Date (June 17, 2017) on which a complete Building Permit Application was received and accepted by the City of Welland, under bylaw 84-2015, which was in effect at the time of application.

2. The City of Welland misinformed clients as to the 'Calculation Date' to be used in determining Development Charges for Building Permits Applications submitted to the City prior to September 1, 2017 and issued after September 1, 2017.

Response:

As per the 2012 RDC By-law the calculation date for RDC was the date on which the Chief Building Official of the local municipality received the application for the building permit and all accompanying information. This definition was revised with the 2017 RDC By-law (as approved September 1, 2017) to the date on which the first building permit is issued by the local municipality in order to be compliant with the Development Charges Act, 1997. This change in definition was discussed during the public consultation process and provided to area building staff to assist in the transition between the 2012 and 2017 RDC By-laws. Prepayment agreements were available to all developers that had applied for a building permit prior to expiry of the former RDC By-law.

3. The Niagara Region neglected to ensure that all of the municipalities within the Region were informed and were providing Building Permit Applicants the same information regarding Calculation Dates. The City of Welland and the Town of Pelham are two municipalities that were misinforming Building Permit Applicants. In fact all Building Permit Applications received before September 1, 2017 at the Town of Pelham and issued after September 1, 2017 used the calculation date defined in Bylaw 84-2015.

Response:

On June 23, 2017 Region staff sent an email to all area treasurers and chief building officials containing an attachment outlining all changes between the 2012 and 2017 RDC By-laws including the change in the RDC calculation date. All area municipalities were provided with the same information. This information was discussed at other meetings during the By-law review process.

3. The Region of Niagara and the City of Welland neglected to notify all clients, who's Building Permit Applications submitted before September 1, 2017 and were affected by the change in definition of 'Calculation Date', were eligible to enter into agreements, with the Region, effectively grandfathering them into the Bylaw 84-215.

Response:

Meetings were held on various occasions to discuss the development charge By-law prior to final approval by Council. At the July 4, 2017 RDC Policy Task Force meeting, a summary of all Council, Committee and engagement sessions was provided as part of a PowerPoint. This agenda can be accessed via the below link with specific reference to the engagement process on page 7 through 9 of the agenda (slide 3-5 of the PowerPoint). All Council and Committee meetings as well as many of the other engagement sessions were open to all interested parties wishing to attend.

<https://www.niagararegion.ca/government/committees/rdctf/past-minutes.aspx>

4. The Region of Niagara neglected to include a transition clause in DC Bylaw 2017-98 to address specifically all Building Permits submitted under bylaw 84-2015 prior to September 1, 2017 and issued after September 1, 2017.

Response:

Included as Schedule F to the RDC By-law is a transition provision for brownfield properties. This development qualified for the brownfield RDC reduction program under the 2017 RDC By-law and therefore likely would have qualified under the Schedule F transition provision (assuming all relevant transition provisions were met). This transition provision was available to all relevant developments within the Region including this development.

While the Region did not specifically include a transition provision for building permit applications received by local area building staff before the current By-law came into effect, Regional Council did provide via resolution the ability for the Region to enter into prepayment agreements with developers for RDCs. This option was also available to all developments within the Region including this development.

Both of the above noted options or programs were provided by the Region as a discretionary item as there is no legislated requirement to do so under the DCA.

5. If calculated properly the amount to be collected at issuance of the Building Permit for 574 King St. was 50% of the total fee, calculated at the time the Building Permit Application was accepted by the City of Welland, on June 17, 2017, of which 100% will be refunded through the SNIP incentive upon completion.
As follows:

Response:

Upon repealing the 2012 RDC By-law, all incentive and reduction programs included as part of that By-law were also repealed and replaced with the incentives and reduction programs included as part of the 2017 RDC By-law. The 2012 RDC By-law provided an automatic 50% reduction of RDCs for developments located within the designated exemption areas with the remaining 50% refunded if the development achieved the requisite number of Council approved smart growth criteria. Under the current RDC By-law the automatic 50% reduction was removed and replaced with an enhanced brownfield RDC reduction program which can provide an incentive up to the cost of remediation. The 50% refund post construction for achieving smart growth is still available.

Recommended Resolution

In accordance with subsection 20(6) of the DCA, after hearing the evidence and submissions of the complainant, Regional Council may dismiss the complaint or rectify any errors as indicated in the complaint. Staff recommend dismissal of the complaint given that there is no basis for relief in accordance with the DCA as there has been no error in calculation of the RDCs or application of the By-law.

Once Council has rendered a decision, pursuant to the DCA, notice of Regional Council's decision is required to be mailed to the complainant by the Clerk. The complainant may appeal the decision of Council to the Land Planning Appeal Tribunal (LPAT).

Alternatives Reviewed

There are no alternatives available under existing legislation.

Relationship to Council Strategic Priorities

RDCs fall under the strategic priorities of Investment, Innovation and Entrepreneurship and Positioning Niagara Globally.

Other Pertinent Reports

CSD 63-2017 Regional Development Charges and Proposed By-law
CSD 12-2018 Regional Development Charges Terms of Reference and Complaint
Process – REVISED

Prepared by:

Rob Fleming, MBA
Senior Tax & Revenue Analyst
Enterprise Resource Management
Services

Recommended by:

Todd Harrison, CPA, CMA
Commissioner/Treasurer
Enterprise Resource Management
Services

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

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

Appendices

Appendix 1 Regional Development Charges Complaint Form