



**STAFF REPORT
ACTION REQUIRED**

Complaint Pursuant to Section 20 of the *Development Charges Act, 1997* – 15 York Street

Date:	May 14, 2008
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer Deputy City Manager Richard Butts
Wards:	28
Reference Number:	P:\2008\Internal Services\SP\ec08004Sp (AFS #7623)

SUMMARY

The purpose of this report is to provide staff recommendations in response to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997*. The complainant has proposed an approach different from the one used by staff to account for available development charges credits, pursuant to the Development Charges Credit Transfer Agreement, and the calculation of the development charges payable for the development.

Staff has reviewed the provisions of the Development Charges Credit Transfer Agreement, as applicable in this case, and concluded that development charges credits have been accounted for correctly, and that the development charges by-law was properly applied to this development. Accordingly, it is recommended that the complaint be dismissed.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer, and Deputy City Manager Richard Butts recommend that:

1. Council dismiss the complaint filed pursuant to Section 20 of the *Development Charges Act, 1997*, and the request for a refund of development charges in the amount of \$481,247.32 not be approved.

Financial Impact

Staff recommends that the complaint be dismissed for the reasons contained in this report. A decision to recognize the complaint would have negative precedent-setting implications. The matters of rezoning and the calculation of development charges for increased density will be applicable in the case of the proposed development at 16 York Street as well. While the increased density in the present case amounts to 19,023 sq. m. of residential gross floor area, it is estimated to be in excess of 45,000 sq. m. of residential gross floor area for the proposed development at 16 York Street.

ISSUE BACKGROUND

The complaint (Attachment 1) relates to the manner in which staff has applied available development charges credits, pursuant to the Development Charges Credit Transfer Agreement (the “Agreement”), dated June 26, 2002, to the proposed development. The complainant has proposed that the gross floor area (“GFA”) eligible for development charges credits under the Agreement be distributed on a proportionate basis across all contemplated uses at the site, thereby resulting in lower development charges payable. Staff, on the other hand, has relied on the specific provisions of the Agreement to determine the development charges payable.

Provisions under the Act

Under Section 20 of the *Development Charges Act, 1997* (the “Act”), a person required to pay a development charge may complain to Council that,

- (a) the amount of the development charge was incorrectly determined;
- (b) 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 Charge By-law.

Section 20 further requires that Council hold a hearing into the complaint and give the complainant an opportunity to make representations at that hearing. After hearing the evidence and submission of the complainant, Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. Under Section 22 of the Act, the complainant may appeal the decision of Council to the Ontario Municipal Board (the “Board”). The complainant may also appeal to the Board if Council does not deal with the complaint within 60 days after the complaint has been made.

COMMENTS

The development site is governed by, among others, the Development Charges Credit Transfer Agreement, dated June 26, 2002, between Canadian Pacific Properties Inc. and the City of Toronto. Canadian Pacific Properties Inc. was entitled to development charges credits (“CPPI credits”) for the provision of works and services in the area generally known as the Railway Lands East. Pursuant to the Agreement, CPPI credits were

allocated to each development block on a proportionate gross floor area basis – the combined maximum gross floor area of each block as a percentage of the combined maximum gross floor area of all such blocks as determined at the date of the Agreement. Details of the CPPI credits allocation by blocks are set out in Schedule C of the Agreement.

The development site is within Block 5 as referenced in the Agreement. At the time the Agreement was signed, Block 5 had a combined maximum GFA of 85,004 sq. m. (“original density”), with an associated development charges credit of \$5,424,375.00. Further, under Zoning By-law 168-93, the entire 85,004 sq. m. was zoned as non-residential GFA. However, subsequent to a rezoning of the site obtained by the applicant, 104,027 sq. m. of GFA is now being developed as per the details below (Table 1).

Table 1
Original and Current Permitted Densities and Uses
(GFA in sq. m.)

Permitted Use	Original Density	Current Rezoning & Proposed Development													
	GFA	GFA	Details												
Residential	0	59,106	<table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">1-bdrm units</td> <td style="text-align: right;">534</td> </tr> <tr> <td>2-bdrm units</td> <td style="text-align: right;"><u>338</u></td> </tr> <tr> <td>Total units</td> <td style="text-align: right;">872</td> </tr> </table>	1-bdrm units	534	2-bdrm units	<u>338</u>	Total units	872						
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2-bdrm units	<u>338</u>														
Total units	872														
Non-residential	85,004 (ZBL 168-93)	44,921	<table border="0" style="width: 100%;"> <tr> <td colspan="2" style="text-align: right;">(sq. m.)</td> </tr> <tr> <td>Office</td> <td style="text-align: right;">20,752</td> </tr> <tr> <td>Hotel</td> <td style="text-align: right;">13,908</td> </tr> <tr> <td>Retail</td> <td style="text-align: right;">5,051</td> </tr> <tr> <td>Foodstore</td> <td style="text-align: right;">4,602</td> </tr> <tr> <td>Daycare</td> <td style="text-align: right;">608</td> </tr> </table>	(sq. m.)		Office	20,752	Hotel	13,908	Retail	5,051	Foodstore	4,602	Daycare	608
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Hotel	13,908														
Retail	5,051														
Foodstore	4,602														
Daycare	608														
Total	85,004	104,027													

Section 2.07 of the Agreement addresses rezoning and increased density as follows:

“In the event that CPPI or any Owner applies for a rezoning (the “Rezoning”) to increase the Combined Maximum Gross Floor Area of any Block, ... CPPI or the Owner as the case may be, agrees to pay to the City at that time the Development Charges that would be payable at the time of a building permit in respect only of the increased density and the use thereof permitted under the Rezoning” (emphasis added)

In accordance with the above provision of the Agreement, 19,023 sq. m. of increased density (104,027 sq. m. – 85,004 sq. m.) is residential GFA, and staff has determined development charges payable for this increased density to be \$1,456,325.77 as shown in Table 2. (Details of the calculation are provided in Attachment 2.)

Table 2
Staff Calculation of Development Charges Payable for Increased Density

Total proposed residential GFA	59,106 sq. m.
Total calculated residential development charges (based on unit mix as per Table 1)	\$4,524,922.00
Residential development charges payable for the increased density of 19,023 sq. m. (19,023 sq. m. / 59,106 sq. m.) x \$4,524,922	\$1,456,325.77

The calculated development charges for the original density of 85,004 sq. m. amount to \$3,926,724.00, and are less than the CPPI credits allocated to Block 5 (\$5,424,375.00); as a result no development charges are payable for the original density.

Applicant's suggested approach

As detailed in the complaint letter, it is the complainant's position that the GFA for each proposed use on the site should be divided between "protected" density and "unprotected" density (as follows in Table 3) and development charges payable be calculated in each case.

Table 3
Protected and Unprotected Densities
(GFA in sq. m.)

Total Density Proposed	104,027		
Protected (original) Density	85,004		
Unprotected (increased) Density	19,023		
Protected Density as percentage of Total Density Proposed	81.7%		
	A	B	C
Proposed Use	GFA	Protected GFA (Col A x 81.7%)	Unprotected GFA (Col A – Col B)
Residential	59,106	48,298	10,808
Office*	20,752	16,957	3,795
Hotel*	13,908	11,365	2,543
Retail	5,051	4,127	924
Foodstore	4,602	3,760	842
Daycare	608	497	111
Total	104,027	85,004	19,023
* Use exempted from development charges under current Development Charges By-law			

As under the approach adopted by staff, the calculated development charges on the "protected" density are less than the CPPI credits allocated to Block 5, and hence no

development charges are payable for the “protected” density. However, under the applicant’s approach, since the “unprotected” density (equal to the increased density) is spread across all the proposed uses, some of which are exempted from development charges under the City’s current Development Charges By-law (547-2004), the amount payable as development charges is lower. Staff is of the opinion that this approach is not supported by the Agreement, and consequently the amount calculated by the applicant is incorrect.

The City Solicitor has been consulted in the preparation of this report and concurs with its recommendation.

Conclusion

In staff’s opinion, there is no “inherent ambiguity” in the Agreement regarding how the development charges credits should apply to a change in the mix of proposed uses. Staff believes that section 2.07 of the Agreement applies and has been correctly applied to the calculation of development charges payable in the present case.

CONTACT

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SIGNATURE

Joseph P. Pennachetti
Deputy City Manager &
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Deputy City Manager

ATTACHMENTS

Attachment 1: DC Complaint letter dated March 27, 2008, from Stikeman Elliot LLP, counsel to York Bremner Development Inc.

Attachment 2: Spreadsheet showing staff’s development charges calculations – 15 York Street (Maple Leaf Square)