

Subject: Development Charge Complaint - 1354, 1376 Carling Avenue

File Number: ACS2022-PIE-BCS-0002

Report to Planning Committee on 25 August 2022

and Council 31 August 2022

Submitted on July 29, 2022 by John Buck, Chief Building Official, Planning, Real Estate and Economic Development Department

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Ward: River (16)

Objet : Plainte relative aux redevances d'aménagement – 1354 et 1376, avenue Carling

Dossier : ACS2022-PIE-BCS-0002

Rapport au Comité de l'urbanisme

le 25 août 2022

et au Conseil le 31 août 2022

Soumis le 29 juillet 2022 par John Buck, Chef du service du code de bâtiment, Direction générale de la planification, de l'immobilier et du développement économique

Personne ressource : Terri Hunt, Gestionnaire par intérim, Approbation des permis

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Quartier : Rivière (16)

REPORT RECOMMENDATIONS

That Planning Committee recommend that Council dismiss the development charge complaint in respect of 1354, 1376 Carling Avenue.

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'urbanisme recommande au Conseil de rejeter la plainte relative aux redevances d'aménagement concernant le 1354 et 1376, avenue Carling.

BACKGROUND

The *Development Charges Act*, Section 20 provides that a complaint may be filed by an owner in respect of the development charges imposed by a municipality in respect of a project on the basis that:

- a) The amount of the development charge was incorrectly determined;
- b) Whether a credit is available to be used against the development charges, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined;
- c) There was an error in the application of the Development Charge By-law

Basis of Complaint

The complaint is by the owner of 1354, 1376 Carling Avenue. Development Charges By-law 2019-156, enacted on May 22, 2019, provided for certain transitional rates to be in effect until March 31, 2020. At the time of its enactment, it also provided that the first indexing under the by-law would take place on April 1, 2020, this was subsequently modified to be on October 1, 2020. The building permit was ultimately issued on May 13, 2021. As set out in the discussion section of this report, it is the position of the owner that it should have been entitled to the municipal development charges rate that was in effect on March 31, 2020, which would have resulted in the municipal development charges payable being \$942,626.65 less, exclusive of applicable interest (further discussed below).

The Development Charge complaint by the representative for the owner is attached as Document 1 to this report.

DISCUSSION

As enacted, the Development Charges By-law contained the following relevant transitional provisions:

TRANSITIONAL PROVISIONS

12 (4) Subject to Subsection (3), in respect of complex buildings and purpose built high-rise rental buildings, subject to meeting the criteria in Subsection (5), the applicable development charges under this by-law for the period from the date of the enactment of this by-law to March 31, 2020 shall be in accordance with the transitional rates and the categories for that period set forth in Schedules “B” and “C” to this by-law.

(5) In order to qualify for the transitional rate pursuant to Section (4), either clause must apply or both clauses b) and c) must apply:

(a) The building permit is issued on or after May 23, 2019, and on or before June 28, 2019;

(b) A complete building permit application is submitted on or before June 28, 2019;

(c) The building permit is issued on or before March 31, 2020.

16(2) The development charge rates set out in this by-law shall be adjusted by the Treasurer, without amendment to this by-law on April 1, 2020, in accordance with the changes (1 January 2018 to 31 December 2019) in the Statistics Canada Infrastructure Development Charge Price Index, Catalogue Number 62-007. For greater certainty, the Infrastructure Construction Price Index from Catalogue Number 62-007 for Ottawa will be used if such continues to be published.

The buildings being constructed have 320, one bedroom units (a decrease of two from the time of building permit application), 94, two bedroom units (an increase of one from application date) and 5,244.75 square feet for commercial area. The building permit application was submitted on June 28, 2019. Thus, under the terms of By-law 2019-156, it was at that date eligible for consideration for the transitional rate to March 31, 2020, as both a complex building and a purpose built high-rise residential building.

The owner’s position is that through delay in processing the zoning amendment, site plan approval, site plan agreement and building permit, the owner was prevented from obtaining its building permit on or before March 31, 2020. It is the position of staff that this is not a valid ground under the provisions of the *Development Charges Act*, Section 20 set out above to be found a complaint.

Further, with respect to the factual situation underlying the processing of the application for the building permit, this application did not qualify for the issuance of a building permit until May 2021.

Planning Approvals

The related Site Plan Control (D07-12-17-0041) and Zoning By-law Amendment (D02-02-17-0030) applications were submitted on April 12, 2017 and deemed complete April 28, 2017. Significant design review was conducted through two Urban Design Review Panel (UDRP) sessions; a formal review on July 6, 2017 and a focused review on September 7, 2017. On November 27, 2017 City of Ottawa Planning, Infrastructure and Economic Development Department received an Ontario Municipal Board (OMB) appeal (PL171257) in respect of the above noted files on behalf of Holloway Lodging Limited Partnership (the Applicant), for lack of decision. As site plan details and submissions were reviewed to implement the UDRP recommendations from September 7, 2017, the companion Zoning By-law Amendment was brought forward to Planning Committee on August 28, 2018 and approved by Council on September 12, 2018. Subsequently on November 23, 2018, the Owner withdrew the appeal on the Zoning By-law Amendment.

On January 14, 2019, The Applicant reached an agreement with the City respecting the Site Plan Control application and agreed to remove its appeal. On January 15, 2019, the Site Plan Control application was approved. The Site Plan Agreement was prepared and issued to the applicant on February 28th, 2019 after reference plans for easements and road widenings, cost estimates, Property Identification Number issues, encroachment issues and other legal matters were resolved post site plan approval. The City issued a letter advising of the legal fees, letter of credit, conveyances, encumbrances and other requirements for site plan agreement registration on March 1, 2019. The Site Plan Agreement was not immediately executed by the applicant and nor was a Letter of Credit submitted to the City to obtain a conditional building permit. However, what transpired over the next two years were applicant requests for agreement revisions; applicant driven site plan revisions (July 2019 and October 2020) for elevation, landscaping and site plan matters; site plan approval extensions (granted 4 times by the Planning, Infrastructure and Economic Development Department to extend site plan approval); multiple communications of Staff requesting the Letter of Credit in July of 2020 leading up to the October 1, 2020 Development Charge deadline; proposed changes on the Construction Management Plan (February 2021); and an Ownership name change impacting the Site Plan Agreement (February 2021). The

Letter of Credit was received in early April 2021, and the Site Plan Agreement was registered April 21, 2021.

The Building Code reviews are noted as being carried out on Sept 26, 2019, January 6, 2020, April 28, 2020, and June 8, 2020, with review completed on May 7, 2021. During the initial building code review, the review was deemed to be preliminary only, due to major design issues associated with the submission, including incomplete structural drawings, lack of shoring details, compliant exits, mechanical documentation, smoke control measures and barrier free suite design.

A deficiency letter was issued on January 6, 2020, as the result of a comprehensive review based on a more complete submission. Further responses continued through the end of February 2020. In early April 2020 discussions around these submissions and others occurred with a deficiency letter sent April 28, 2020. Further follow-up occurred in early May 2020 with material submitted for review on May 13, 2020, resulting in a deficiency letter sent June 8, 2020.

The remaining unresolved deficiencies were of a significant nature concerning mechanical documentation, smoke control measures, exiting, consent from neighbours and municipal consent regarding the installation of shoring, and product specifications. There were other issues with respect to changes occurring throughout the process requiring multi-discipline updates to drawings. An email was sent to representatives for the applicant on December 22, 2020, from the building code plans examiner for the application identifying major issues that remained outstanding. These issues along with revised shoring details to void the requirement for neighbouring consent agreements was received in May 2021, allowed the building code review to be completed and the building permit issued. This was over thirteen months after the possibility of entitlement to the transitional rate had expired.

Applicable Development Charges Rates

The owner's representative makes reference to a May 14, 2020, e-mail as providing an entitlement to the transitional rate notwithstanding the expiration of the March 31, 2020 deadline. While the line does read "Development Charges-Transitional Provision" the amount identified (for municipal development charges) is \$5,383,309.66. This amount is based upon the rates in effect at that time in May 2020 (i.e., after the end of the transitional rate) being:

322 one bedroom	\$11,161.00	\$3,851,442.00
83 two bedroom	\$16,828.00	\$1,396,558.00
5,244.75 square feet	\$25.78	\$135,209.66
Amount due (subject to credit for demolition)		\$5,383,209.66

Had the rate applied been the transitional rate than the amount owing would have been as follows:

322 one bedroom	\$10,591.00	\$3,410,302.00
83 two bedroom	\$13,791.00	\$1,114,653.00
5,244.75 square feet	\$22.12	\$116,013.87
Amount due (subject to credit for demolition)		\$4,670,968.87

(The amounts in the tables above were subject to credits for the demolition of existing development.)

Thus, the amount provided by staff to the applicant in May 2020 was based upon the transitional rate no longer being applicable.

The amount of development charges ultimately payable, again subject to interest for deferred payments as discussed below, based upon the May 13, 2021, building permit issuance date (i.e. after the October 2020 indexing) is in accordance with the following:

320 one bedroom	\$12,887.00	\$4,123,840.00
84 two bedroom	\$18,129.00	\$1,522,836.00
5,244.75 square feet	\$27.76	\$145,594.26
Amount due (subject to credit for demolition)		\$5,792,270.26
Demolition Credit		\$1,623,960
Total due		\$4,168,508.26

As set out above, taking into account the credit for the demolition of existing development (\$1,623,960) and the amount paid in respect of municipal development charges at building permit issuance (\$145,594.26) this leaves \$4,022,914 plus interest.

If the transitional rate applied, the amount due would be \$3,225,881.61 plus interest, a difference of \$942,626.65.

The *Development Charges Act* has been amended to provide that in respect of a rental development the development charges are due in six equal annual installments commencing the date a building permit is issued and on the five anniversaries of such date thereafter. The five payments due subsequent to the date the building permit is issued are subject to interest at the rate fixed by Council. In respect of the development in question, the above provision did not apply to the non-residential component of the buildings and the non-residential amount was due and paid at the time the building permit was issued. Thus, the amounts set out above would be payable over a five year period.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

The applicable legislation requires that two weeks notice of a hearing into a development charges complaint be given to the complainant. This notice was given on Monday, June 27, 2022.

COMMENTS BY THE WARD COUNCILLOR

The Ward Councillor is aware of this report.

LEGAL IMPLICATIONS

Following Council's consideration of this complaint, notice of the decision will be sent to the complainant. The complainant has the ability to appeal Council's decision to the Ontario Land Tribunal

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications associated with the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no direct financial implications associated with the report recommendation. Should the complaint be upheld, the City will receive \$942,626.65 plus interest less in development charges.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

ECONOMIC IMPLICATIONS

There are no environmental implications associated with this report.

TERM OF COUNCIL PRIORITIES

There are no Term of Council priorities impacted by this report.

SUPPORTING DOCUMENTATION

Document 1 Development Charges Complaint

DISPOSITION

The Office of the City Clerk will advise the representative for the complainant of Council's decision.