



COMPLAINT PURSUANT TO SECTION 20(1) OF THE *DEVELOPMENT CHARGES ACT, 1997, S.O. 1997, c. 27*

TO: MR. RICK M. O'CONNOR, Ottawa City Clerk
MR. TIMOTHY MARC, Planning, Development and Real Estate Law
MR. GARY BAKER, Planning, Infrastructure and Economic Development

FROM: HL GENERAL PARTNER INC. ("Holloway")
Suite 106, 145 Hobsons Lake Drive
Halifax, Nova Scotia B3S 0H9

SUBJECT: 1354-1376 Carling Avenue / D07-12-17-0041 and A19-004753 -
DEVELOPMENT CHARGES

I. INTRODUCTION

Holloway is seeking a determination that the City of Ottawa:

- (a) was in error in not applying the transitional provisions in subsection 12(5) of By-Law No. 2019-156 (the "By-Law") to the calculation of the development charges payable by Holloway in connection with the issuance of the building permit issued pursuant to application A19-004753; and
- (b) as a result of not applying the transitional provisions levied development charges in excess of the amount owing when the correct rates are to be applied.

Holloway requested that the transitional rates be applied, but the City of Ottawa did not agree to that request and advised Holloway to instead follow the complaints process set out in the *Development Charges Act, 1997, S.O. 1997, c. 27* (the "DCA") to have the matter reviewed.

II. SUMMARY OF REASONS FOR COMPLAINT

As described in more detail below, Holloway submits that it should have received the benefit of the transitional rates for the following main reasons:

- (a) On May 14, 2020, the City provided a Development Charge Summary representing and confirming the transitional provisions (section 12 of the By-Law) were applicable to our project. The City should comply with and fulfill its commitment. It should not be permitted to resile from that confirmation and commitment; and

(b) In addition, the time associated with the City's processing of Holloway's redevelopment project as a whole was unusually and unreasonably lengthy. This led to significant project delays. It took almost 2 years to obtain rezoning and site plan control approval. It then took a further almost 2 years to obtain a building permit for Phase 1. Had the approvals sought been processed in a reasonable timeframe, the lower development charges would have been applied when calculating the applicable development charges. The delays were not the result of Holloway's actions. Holloway took all possible steps in a timely fashion to obtain approvals. The unusually lengthy processing time was unreasonable and amounts to error under section 20 of the DCA.

III. BASIS FOR COMPLAINT

a. Transitional Provisions Apply

On May 14, 2020, after and despite the expiry of the March 31, 2020 deadline in the transitional provisions (section 12 of the By-Law), the City provided Holloway with a summary of the applicable development charges representing and confirming the application of the transitional provisions. The email and Development Charge Summary received from the City are attached as Attachment #2.

As a result of the City's representation and commitment, upon which Holloway was entitled to rely and did rely, Holloway is similarly entitled to have the lower rates applied when calculating the development charges applicable to the building permit issued for Phase 1. The City knew, or ought to have known, that Holloway relied on that representation.

There is no basis upon which the City was allowed to renege from its agreement.

In April 2021, around the time the City indicated that the issuance of a building permit was imminent, it provided a Development Charge Summary but inexplicably did not apply the transitional rates. A copy of the Development Charge Summary is attached as Attachment #3. Holloway complained and advised the City that it expected the lower rates to apply, but the City would not agree because the building permit was issued after March 31, 2020. Despite Holloway's complaints, the City advised Holloway that the only option was to file a complaint under the DCA.

Holloway submits that these facts establish a valid basis for allowing Holloway's complaint and refunding the amount Holloway overpaid in development charges.

In addition, however, Holloway nonetheless sets out below a summary of the delays in the processing of the approval applications, which in total led to a total of almost 4 years to obtain approvals and a building permit for Phase 1.

b. Zoning Amendment and Site Plan Control Approval – Phase 1

Attached as Attachment #1 is an approved Overall Concept Design for Holloway's redevelopment. The redevelopment includes a 2-Phase development comprised of 5 residential buildings. Phase 1 involves the construction of 2 buildings, one of 8 storeys and the other of 20 storeys. Phase 2, currently in the site plan control approval process, involves the construction of 3 buildings, one of 20 storeys, one of 22 storeys and one of 8 storeys.

Holloway began its pre-consultation with the City of Ottawa on December 14, 2015. Based on feedback from the City in January 2016, which included a study and plan list, Holloway developed its plans and continued obtaining feedback from the City during that time. After extensive work, further pre-consultation with the City took place on February 1, 2017, and comments followed approximately 3 weeks later from City staff. Holloway met with the Carling Community Association members to explain the direction of the project. In March 2017, City staff advised that a site plan control application would be required to be filed before a demolition permit would be issued for a structure located on the Phase 1 land. At no time did the City raise any heritage concerns.

On April 12, 2017, Holloway filed its zoning amendment and site plan control application for Phase 1 of the development and its application was deemed complete on April 28, 2017. Holloway expected to attend before the UDRP on June 6, 2017 but Holloway was moved to the July 6, 2017 because the City had too many submissions for the June 6th UDRP meeting. On July 6, 2017, for the first time, the UDRP then raised a heritage concern, which was a surprise to Holloway and requested a focused design “sketch” session with Holloway.

On July 13, 2017, about 2.5 months after Holloway’s Phase 1 approval application was deemed complete, the City’s technical review notes were provided, with no mention of any heritage concerns. The focused design session did not occur until September 7, 2017, another delay of almost 2 months. At the time, there was no heritage designation under the *Ontario Heritage Act*, and no registration of the property in the City’s register as a property of cultural heritage value or interest.

Prior to Holloway’s development application, the City did not have any interest in pursuing a designation. Nonetheless, Holloway was required to engage a heritage consultant to address the City’s comments, engage in additional UDRP review sessions and agree to incorporate certain heritage recommendations into its design in order to avoid the City instead pursuing a designation under Part IV of the *Ontario Heritage Act*, which it threatened to do if Holloway did not agree to incorporate its recommendations and despite that it was not previously interested in pursuing such a designation.

Holloway provided an updated submission on December 1, 2017 and the City provided preliminary comments several weeks later on January 19, 2018. Further meetings and submissions were required, which took several more months to complete. The rezoning was not approved until August 29, 2018.

During that time, Holloway also continued to work with the City on site plan approval. Site plan approval was ultimately provided on January 15, 2019, but a final copy of the site plan agreement capable of being signed was not executed until March 30, 2021. This was because changes were required to the agreement that made it impossible to execute prior to that date. Holloway was dealing with issues relating to the letter or credit, traffic management and other issues, which were ultimately resolved in Holloway’s favour. In recognition of the lengthy amount of time it was taking to finalize the site plan agreement, the City granted extensions of time to prevent site plan approval from lapsing. These extensions inherently reflect the City’s understanding and acknowledgment to Holloway that it was timely and reasonably dealing with the City. The City registered the site plan agreement on April 21, 2021.

c. Building Permit

Holloway applied for a building permit on June 28, 2019. Despite Holloway filing its building permit application by that required deadline, the City did not issue the building permit until May 13, 2021 – almost 2 years after the application was filed. As a result, contrary to the City’s written representation and confirmation on May 14, 2020, the City refused to apply the transitional provisions in section 12 of the By-law when calculating the development charges to be paid by Holloway. The City’s stated rationale was that Holloway could not benefit from the transitional provisions because the permit was not issued by March 31, 2020.

Following submission of the application on June 28, 2019, the City advised that it was overloaded with submissions. An initial response was not received until late August 2019. Despite regular and persistent follow-ups and timely responses from Holloway to City requests, the process was slow.

When the Covid-19 global pandemic emerged in January 2020 and a full shutdown followed in March 2020, Holloway continued to push the City to approve and issue the building permit. However, delays became unavoidable as everyone tried to adapt to the numerous restrictions, shutdowns and lockdowns. The delays resulting from the devastating impacts of Covid-19 should be taken into account and not attributed to Holloway in determining whether the transitional rates should apply. Holloway contacted City Councillor Brockington for assistance in dealing with the delays, and he advised that the “Planning Dept did admit that the situation around Covid-19 and their ability to maintain a high level of productivity has no doubt played a role in the delay.”

The deadlines in section 12 of the By-Law are inherently a reflection of what the City believed would be a reasonable amount of time to process a building permit application for a complex development. Holloway met the June 2019 deadline and always worked diligently and in good faith to move the process along so that its building permit could be issued. The timeline for processing Holloway’s building permit application was more than double the 8-month timeline set out in the transitional provisions of the By-Law. This reflects the unreasonableness of the processing time of Holloway’s building permit application.

IV. CONCLUSION

Based on the foregoing, Holloway respectfully requests that its complaint be allowed and it be granted a refund in the amount it overpaid.

Dated this 18th day of August, 2021.

HL GENERAL PARTNER INC.

By: 
ASO – Paola Calce

ATTACHMENT #1

1354-1376
CARLING AVE,
OTTAWA
CONCEPT SITE PLAN

LEGEND

- PROPERTY LINE
- PHASING LINE
- EXISTING HOTEL
- ORIGINAL PROPERTY LINE
- ROAD WIDENING (477m²)
- SEWER EASEMENT (116m²)



8	UPDATED STATS	2018.06.20	EL
8	ADJUSTED BUILDING B	2018.05.23	RP
7	UPDATED UNIT COUNTS	2018.04.20	EL
6	ACCESS ROAD THROAT	2018.04.18	RP
5	FOR CLIENT REVIEW	2018.01.30	EL
4	FOR CLIENT REVIEW	2017.11.10	RP
3	FOR CLIENT REVIEW	2017.09.13	RP
2	REVIEW	2017.09.12	RP
1	DRAWING	2017.09.07	RP

CREATED BY: RP
REVIEWED BY: PB
DATE: 2018.04.20

CLIENT
HOLLOWAY LODGING CORPORATION

FOTENN
Planning + Design
01

OTTAWA
223 McLeod Street
Ottawa, ON K2P 0Z8
T 613 730 5709

DEVELOPMENT STATISTICS

ZONING		AM10
SITE AREA		18,559m ²
SETBACKS		REQUIRED PROVIDED
F.Y.	0m	Road widening
C.Y. (AB)	3.5m	
C.Y. (CD)	3m	
R.Y.	7.5m	11.5m/26m
HEIGHT		Stores
Commercial Ground Floor:	1(6m)	
ABC	20/22/20	
DIC	8	
Total:	20	

RESIDENTIAL UNITS		
Building A	195	
Building B	215	
Building C	273	
Building D	108	
Building E	108	

TOTAL: 899
*Unit counts as provided by the architects

ESTIMATED GFA		RETAIL	RESIDENTIAL
Building A	850m ²		12,589m ²
Building B	645m ²		13,604m ²
Building C	1,109m ²		16,571m ²
Building D			7,715m ²
Building E			8,051m ²

TOTAL: 2,604m² 58,730m²
*Assumes an 85% efficiency

PARKING		Above Ground
		49

NOTES

- Assumes a typical residential floor height of 3m. Assumes a minimum commercial ground floor height of 6m.
- For the purposes of this concept, an average unit size of 75m² (900SF) is used to calculate the approximate number of units.
- GFA: Assumes 85% efficiency for apartment buildings. Assumes 85% efficiency for apartment buildings. Building includes interior amenity areas for the residents.



THAMES ST.

ATTACHMENT #2

Paola Calce

From: Gavin MacDonald <gmacdonald@armcoqc.com>
Sent: Thursday, May 14, 2020 9:48 AM
To: Marty Ounanian; George Jr. Armoyan
Subject: FW: latest fees
Attachments: doc04666120200514085609_5DAC06FE.pdf

For the call

From: "Sarazin, Charles" <Charles.Sarazin@ottawa.ca>
Date: Thursday, May 14, 2020 at 9:39 AM
To: Gavin MacDonald <gmacdonald@armcoqc.com>
Subject: latest fees

-----Original Message-----

From: noreply@ottawa.ca <noreply@ottawa.ca>
Sent: May 14, 2020 9:28 AM
To: Sarazin, Charles <Charles.Sarazin@ottawa.ca>
Subject: Your scanned document

The scanned document is attached to this message.

This e-mail originates from the City of Ottawa e-mail system. Any distribution, use or copying of this e-mail or the information it contains by other than the intended recipient(s) is unauthorized. Thank you.

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DEVELOPMENT CHARGE SUMMARY

Report: RPTC_OT_DEV0117

Run On: 14 May 2020 at: 08:22:04

Application number: A19-004753
 Address: 1354 CARLING AVE
 Rate Category: MIXED
 Education Fees Units: 405
 Education Fees Sq.ft.: 5,244.75

Applicable Fees:

Fee Type	Charge Amount
Ottawa Carleton Catholic (English Separate)	\$204,035.56
French Public	\$294,021.29
French Catholic (French Separate)	\$273,109.93
Ottawa Carleton District (English Public)	\$321,724.51
Development Charges - Transitional Provision	\$5,383,209.66
	\$6,476,100.95

Comments: Manual intervention required credit from demolition of existing must be applied to municipal residential only
 Demolition credit 58,500 sq ft X \$25.78 = \$1,508,130.00
 \$5,383,209 minus \$1,508,130.00 = \$3,875,079.00

Development Charge last update:

Date: 14-May-2020
 Updated by: SARAZIN, CHARLES
 Action: Calculated

Use Record(s):

Use Status	Use Type	Dwelling Units	Rooming Units	Total floor area
Non Residential General	Retail	0	0	5245
Residential Regular	Apt 1 Bedroom	322	0	0
Residential Regular	Apt 2+ Bedroom	83	0	0

Important Note: The fees provided in this statement are subject to change, e.g. changes to the proposed work, square footage added or deleted, and when development charges are affected by by-law changes or indexing. See Ottawa.ca for more information regarding <http://ottawa.ca/en/city-hall/planning-and-development/how-develop-property/development-charges>.

You will be notified by a Building Technical Clerk when the building permit is ready for permit issuance and pickup. This notification will include advisement of final fees due at permit issuance.

ATTACHMENT #3

Application number: A19-004753
Address: 1354 CARLING AVE
Rate Category: MIXED
Education Fees Units: 405
Education Fees Sq.ft.: 0.00

Applicable Fees:

Fee Type	Charge Amount
Development Charges (Municipal)	\$4,176,153.26
Ottawa Carleton Catholic (English Separate)	\$202,095.00
French Public	\$317,520.00
French Catholic (French Separate)	\$270,540.00
Ottawa Carleton District (English Public)	\$318,735.00
	\$5,285,043.26

Comments: ** Residential portion of Municipal DC's deferred under Bill 108 sect. 26, value deferred at time of issuance of \$4,030,559.00. Municipal DC's to be collected at time of issuance = \$145,594.26
 **Signed declaration received. EDC's remain payable in full. "

Demolition credit 58,500 sq ft x \$27.76 = \$1,623,960.00
 \$1,623,960.00/ 1 bdrm rate of 12,887 = 126 units
 proposed 322 one-bedroom units - 126 theoretical credit units = 196 one-bedroom units for municipal DCs + 83 two-bedroom units and 5,244.75 sf of commercial space)

Education charges on 405 dwelling units. Demolition of commercial space applied to the proposed commercial space.

Development Charge last update:

Date: 29-Apr-2021
Updated by: THOMAS, CAIRINE
Action: Calculated

Use Record(s):

Use Status	Use Type	Dwelling Units	Rooming Units	Total floor area
Non Residential General	Retail	0	0	5245
Residential Regular	Apt 1 Bedroom	196	0	0
Residential Regular	Apt 2+ Bedroom	83	0	0

Important Note: The fees provided in this statement are subject to change, e.g. changes to the proposed work, square footage added or deleted, and when development charges are affected by by-law changes or **indexing**. See [Ottawa.ca](http://ottawa.ca/en/city-hall/planning-and-development/how-develop-property/development-charges) for more information regarding <http://ottawa.ca/en/city-hall/planning-and-development/how-develop-property/development-charges>.

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