

1. **DEVELOPMENT CHARGES: CONVERSION FROM RESIDENTIAL USE TO NON-RESIDENTIAL USE – *IN CAMERA* – LITIGATION OR POTENTIAL LITIGATION, AFFECTING THE CITY, INCLUDING MATTERS BEFORE ADMINISTRATIVE TRIBUNALS; RECEIPT OF ADVICE SUBJECT TO SOLICITOR-CLIENT PRIVILEGE, INCLUDING COMMUNICATIONS NECESSARY FOR THAT PURPOSE.**
REPORTING OUT DATE: UPON FINAL RESOLUTION OF THE MATTER
- REDEVANCES D'AMÉNAGEMENT : CONVERSION DE « UTILISATION RÉSIDENITIELLE » À « UTILISATION NON RÉSIDENITIELLE » – À *HUIS CLOS* – LITIGES ACTUELS OU ÉVENTUELS AYANT UNE INCIDENCE SUR LA VILLE, Y COMPRIS LES QUESTIONS EN LITIGE DEVANT LES TRIBUNAUX ADMINISTRATIFS; CONSEILS PROTÉGÉS PAR LE SECRET PROFESSIONNEL DE L'AVOCAT, Y COMPRIS LES COMMUNICATIONS NÉCESSAIRES À CETTE FIN.**
DATE DE COMPTE RENDU : UNE FOIS LA QUESTION RÉGLÉE.

COMMITTEE RECOMMENDATION

That Council receive this report for information.

RECOMMANDATION DU COMITÉ

Que le Conseil municipal prenne connaissance du présent rapport.

DOCUMENTATION / DOCUMENTATION

1. City Clerk and Solicitor's Report, dated 18 April 2017 (ACS2017-CCS-LEG-0002).

Rapport du Greffier municipal et avocat général, daté le 18 avril 2017

(ACS2017-CCS-LEG-0002).

2. Extract of draft Minutes, Planning Committee, 26 April 2017

Extrait de l'ébauche du procès-verbal du Comité de l'urbanisme, le 26 avril 2017.

Report to
Rapport au:

Planning Committee
Comité de l'urbanisme
25 April 2017 / 25 avril 2017

and Council
et au Conseil
10 May 2017 / 10 mai 2017

Submitted on April 18, 2017
Soumis le 18 avril 2017

Submitted by
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-CCS-LEG-0002

SUBJECT: Development Charges: Conversion from Residential Use to Non-Residential Use – *In Camera* – Litigation or Potential Litigation, Affecting the City, Including Matters Before Administrative Tribunals; Receipt of Advice Subject to Solicitor-Client Privilege, Including Communications Necessary for that Purpose.
Reporting Out Date: Upon final resolution of the matter.

OBJET: Redevances d'aménagement : Conversion de « utilisation résidentielle » à « utilisation non résidentielle » – à huis clos – litiges

actuels ou éventuels ayant une incidence sur la Ville, y compris les questions en litige devant les tribunaux administratifs; conseils protégés par le secret professionnel de l'avocat, y compris les communications nécessaires à cette fin.

Date de compte rendu : Une fois la question réglée.

REPORT RECOMMENDATIONS

That Planning Committee and Council receive this report for information.

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'urbanisme et le Conseil municipal prennent connaissance du présent rapport.

BACKGROUND

The City has received three development charge complaints in respect of the conversion from residential to non-residential space where no additional gross floor area is constructed. These are:

- i. 2006 Carp Road
Conversion of one storey dwelling to restaurant
Municipal Development Charges - \$28,031.65
- ii. 252 Argyle Avenue
Conversion of mixed use (residential and office) to office
Municipal Development Charges - \$41,130.75
- iii. 108 Lisgar Street
Conversion of one bedroom apartment to office
Municipal Development Charges - \$35,976

In each of these three instances above, existing space was converted from one use to another use with no new space being constructed.

The purpose of this report is to advise as to the intent of staff in interpreting the provisions of the Development Charges By-law and the Development Charges Background Study.

DISCUSSION

Since the enactment of the City's first comprehensive Development Charges By-law post-amalgamation in 2004, By-law 2004-298, the following language has been within the By-law:

7. The following shall be exempt from development charges:
 - (j) Non-residential use building permits not resulting in the creation of additional gross floor area;

Approach Prior to June 2014

Building Code Services has advised that prior to June 2014, a credit in full for municipal development charges would be applied where a conversion of residential use space to non-residential use space took place with no additional gross floor area being constructed.

Current Background Study

The current Development Charges Background Study was adopted by Council on June 11th, 2014, at the same time as the current Comprehensive By-law. The Background Study contains the following text in two instances (pages 2-4 and G-33):

(Page 2-4) In the case of a conversion of a non-residential to residential use, the credit is in the amount of the theoretical development charges that would have been payable had a building permit be issued to construct the non-residential use being converted. No credit is provided where a residential use is converted to a non-residential use.

(Page G-33) A conversion of non-residential floor area to a residential use is also eligible for a credit; however, conversion of a residential use to a non-residential use (e.g. a house into office space) does not give rise to a credit.

These passages are not present in past Background Studies. On their own, these two sections clearly lead to the conclusion that no credit is to be provided when space is converted from residential to non-residential purposes.

It is possible to come up with logical scenarios where the provisions from the by-law and Background Study would have meaning. For example, the By-law provision could be

said to apply to a change in use from one non-residential use (e.g. office) to another (e.g. restaurant) whereas the provision in the Background Study deals with the residential to non-residential case. The difficulty with this approach is that Clause 7(1)(j) of the Development Charges By-law is not limited by its language to the situation where the start point is one of existing, non-residential development. Further, the language at the start of page G-33 providing the rationale for redevelopment exemptions would seem equally to apply to a conversion from non-residential use to residential use as well as the reverse. The specific wording is as follows:

- 2.1 Most municipalities include provisions in their DC by-laws that provide a credit or a reduction in development charges payable if the subject development involves the conversion of existing floor space from one use to another, or if an existing building on site is being demolished and replaced. This practice is intended to recognize that existing servicing capacity is freed up when existing development is demolished or converted and that it is appropriate to net the DC value of that released capacity against the charge to be imposed on the replacement development.

Servicing capacity would be freed up whether the conversion was from residential to non-residential or non-residential to residential.

Intended Future Approach

As both the Development Charges By-law and Background Study are adopted by Council, it is acknowledged that it is the responsibility of staff to implement both to the extent that is possible. Where, as in the present case, a conflict is apparent, it is the view of staff that it is appropriate to provide to Committee and Council staff's intention as to the resolution of this conflict so that Council is in the position to provide alternate instructions should Council wish to do so.

Where there is an existing residential use space that is being converted into non-residential use space, it is in the opinion of staff, as expressed in Section 2.1 above, that it is appropriate to recognize that additional servicing capacity is not required when the conversion takes place. As a result, where such conversion takes place, for the extent of the existing gross floor area, staff would not require that municipal development charges be paid.

COUNCIL OPTIONS

Should Council wish to endorse the staff interpretation, then it would be appropriate to receive this report in open session.

Should Council be of the preliminary view that a development charge credit should not be applied in the instance of a conversion of residential to non-residential space, then it would be appropriate to direct staff in closed session to bring forward the development charge complaints to Planning Committee and Council. Committee and Council would then receive the submissions of the complainants and, in open session, make its final decision on this matter.

RURAL IMPLICATIONS

The approach in respect of the applicability of development charges to conversions from a residential use to a non-residential use would be anticipated to be consistent between the rural and urban areas.

CONSULTATION

As this is a confidential report at this point, the matters raised in this report have not been discussed with the complainants or their representatives.

COMMENTS BY THE WARD COUNCILLOR(S)

Not applicable as this is a City-wide matter.

LEGAL IMPLICATIONS

The legal issues and implications are outlined in the Discussion section of this report.

RISK MANAGEMENT IMPLICATIONS

Should the City take the position that municipal development charges are applicable for conversions from residential use to non-residential use and the complainants appeal to the Ontario Municipal Board, the risk would be that the Board would find it in their favour.

FINANCIAL IMPLICATIONS

The revised interpretation, as outlined within the report, will result in the reimbursement of \$108,135.40 in municipal development charges previously collected. The future application of this interpretation will eliminate the collection of municipal development charges where a conversion of residential use space to non-residential use space results in no additional gross floor area being constructed; thereby reducing development charge funding available for City growth-related capital projects and programs.

ACCESSIBILITY IMPACTS

Not applicable

ENVIRONMENTAL IMPLICATIONS

Not applicable

TERM OF COUNCIL PRIORITIES

Not applicable.

DISPOSITION

In the event this report is received by Council, the City Clerk and Solicitor Department would advise the complainants of the outcome and the municipal development charges would be returned to them.

In the alternative, should Council not receive the report but direct staff to bring forward the complaints to Planning Committee and Council, the City Clerk and Solicitor Department will prepare and submit the necessary reports.