

1. **DEVELOPMENT CHARGES – RESOLUTION OF APPEALS BY GREATER OTTAWA HOME BUILDERS' ASSOCIATION AND BUILDING OWNERS AND MANAGERS ASSOCIATION OF OTTAWA – IN CAMERA – LITIGATION OR POTENTIAL LITIGATION, AFFECTING THE CITY, INCLUDING MATTERS BEFORE ADMINISTRATIVE TRIBUNALS. REPORTING OUT DATE: OCTOBER 14, 2015**

REDEVANCES D'AMÉNAGEMENT – RÉOLUTION DES APPELS INTERJETÉS PAR LA GREATER OTTAWA HOME BUILDERS' ASSOCIATION ET LA BUILDING OWNERS AND MANAGERS ASSOCIATION OF OTTAWA – À HUIS CLOS – LITIGES ACTUELS OU ÉVENTUELS AYANT UNE INCIDENCE SUR LA VILLE, Y COMPRIS LES QUESTIONS EN LITIGE DEVANT LES TRIBUNAUX ADMINISTRATIFS. DATE DE COMPTE RENDU : LE 14 OCTOBRE 2015

COMMITTEE RECOMMENDATION

That Council consider the following referral from Planning Committee:

That Council approve the proposed resolution of the appeals by the Greater Ottawa Home Builders' Association and the Building and Owners and Managers Association of Ottawa, and partial resolution of the appeals by Caivan Development Corporation, Minto Communities Inc., Mattamy (Jock River) Limited, Richmond Village (North) Limited as and Richmond Village (South) Limited, as set forth in Document 1.

RECOMMANDATION DU COMITÉ

Que le Conseil examine le renvoi suivant de Comité de l'urbanisme :

Que le Conseil approuve la résolution proposée des appels interjetés par la Greater Ottawa Home Builders' Association et la Building Owners and Managers Association of Ottawa, et la résolution partielle des appels interjetés par Caivan Development Corporation, Minto

Communities Inc., Mattamy (rivière Jock) Limited, Richmond Village (Nord) Limited et Richmond Village (Sud) Limited, comme il est expliqué dans le document 1..

DOCUMENTATION / DOCUMENTATION

1. Acting Deputy City Manager's Report, Planning and Infrastructure, dated 5 October 2015 (ACS2015-PAI-PGM-0177).

Rapport du Directeur municipal adjoint par intérim, Urbanisme et infrastructure, daté le 5 octobre 2015 (ACS2015-PAI-PGM-0177).

2. Extract of draft Confidential Minutes, Planning Committee, 13 October 2015

Extrait de l'ébauche du procès-verbal confidentiel, Comité de l'urbanisme, le 13 octobre 2015.

**Report to
Rapport au:**

**Planning Committee / Comité de l'urbanisme
October 13, 2015 / 13 octobre 2015**

**and Council / et au Conseil
October 14, 2015 / 14 octobre 2015**

**Submitted on October 5, 2015
Soumis le 5 octobre 2015**

**Submitted by
Soumis par:
John L. Moser,
Acting Deputy City Manager / Directeur municipal adjoint par intérim,
Planning and Infrastructure / Urbanisme et Infrastructure**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2015-PAI-PGM-0177

**SUBJECT: Development Charges – Resolution of Appeals by Greater Ottawa
Home Builders' Association and Building Owners and Managers
Association of Ottawa – *In Camera* – Litigation or Potential Litigation,
Affecting the City, Including Matters Before Administrative
Tribunals. Reporting Out Date: October 14, 2015**

**OBJET: Redevances d'aménagement – Résolution des appels interjetés par
la Greater Ottawa Home Builders' Association et la Building Owners**

and Managers Association of Ottawa – *à huis clos* – Litiges actuels ou éventuels ayant une incidence sur la Ville, y compris les questions en litige devant les tribunaux administratifs. Date de compte rendu : le 14 octobre 2015

REPORT RECOMMENDATION

It is recommended that Planning Committee refer the following recommendation to Council for its consideration:

That Council approve the proposed resolution of the appeals by the Greater Ottawa Home Builders' Association and the Building and Owners and Managers Association of Ottawa, and partial resolution of the appeals by Caivan Development Corporation, Minto Communities Inc., Mattamy (Jock River) Limited, Richmond Village (North) Limited as and Richmond Village (South) Limited, as set forth in Document 1.

RECOMMANDATION DU RAPPORT

Il est recommandé que le Comité de l'urbanisme soumette la recommandation suivante au Conseil municipal à des fins d'examen :

Que le Conseil approuve la résolution proposée des appels interjetés par la Greater Ottawa Home Builders' Association et la Building Owners and Managers Association of Ottawa, et la résolution partielle des appels interjetés par Caivan Development Corporation, Minto Communities Inc., Mattamy (rivière Jock) Limited, Richmond Village (Nord) Limited et Richmond Village (Sud) Limited, comme il est expliqué dans le document 1.

BACKGROUND

The *Development Charges Act* provides that a municipality must review the development charges imposed by the municipality over a period not exceeding five years since the enactment of the last Development Charges By-law adopted by the City.

The City of Ottawa undertook a development charges review that culminated in the development charges by-laws adopted on June 11, 2014. Subsequent to the adoption of Development Charges By-law 2014-229 which imposed development charges for

city-wide services, several appeals were received by the City. These appeals were based upon broad challenges to the methodologies utilized for the calculation of the City's development charges as well as more specific disputes outlined below with respect to the by-law as adopted.

Subsequent to the adoption of the by-law, discussions continued between the City and the appellants with the participation of Chair Harder and Councillor Hubley. These discussions have resulted in the proposed resolution of the appeal to the provisions of the Development Charges By-law 2014-229, subject to the exceptions as further discussed below. This proposed resolution is attached as Document 1.

One of the outcomes of the settlement is that a new Development Charges By-law will be enacted on or before June 1, 2017. This is two years in advance of when the next Development Charges By-law would be enacted, but is needed in 2017 to reflect the intent of the settlement.

DISCUSSION

Transit Development Charge

Infrastructure Standards Review

Through the discussions that have taken place in both the lead up to the enactment of the by-law and in seeking resolution of the appeals, two main themes have been expressed.

Firstly, the importance of transit to the future development of the city has continually been emphasized. The City's position is that to the greatest extent permissible in respect of funding through growth under the *Development Charges Act*, funding is to be obtained for the City's transit system as outlined in the Official Plan and Transportation Master Plan. This position includes being able to utilize the greater ability to finance transit that is expected with the enactment of Bill 73 and its accompanying regulations.

Secondly, the City and the development industry have discussed the nature of the quantum of the capital cost for infrastructure. This discussion largely focused on the cost of roads but was not solely restricted to that development charge component. There was a view amongst the participants to the discussions that there is a need to

conduct a review of the standards to ensure that the infrastructure needed to support growth is in place but at a cost that is reasonably justifiable in the circumstances.

These two themes have lead to the foundational premise of the proposed settlement encapsulated in Clauses 1 to 5. Through these clauses, it is acknowledged that the City will be moving forward, once the required statutory and regulatory changes are made, with an amendment to the Development Charges By-law to increase the transit component of the charge in order to provide greater growth-related funding for the transit system.

Under the terms of the settlement, the City will also move forward with a review of the standards for City infrastructure. As stated in the proposed settlement, the working premise is that the increases in the development charge resulting from an increased transit charge would be substantially offset by reductions possible elsewhere as a result of the standards review. Such cost reductions however would not only lead to a reduction in the development charge in respect of growth-related infrastructure, they also may lead to a reduction in the cost of local services directly installed by or on behalf of a development and non-growth related infrastructure constructed by the City.

Consistent with the goal of seeking a reduction in the non-transit portions of the charge, the proposed settlement provides that no new projects would be added to the non-transit program of capital works funded by development charges prior to 2019.

Contingencies and Post Period Capacity

Clauses 3 and 4 provide for a reduction in the development charge for residential and non-residential development that is retroactive to October 1, 2014, the end of the transition period under the current Development Charges By-law. This reduction is on account of two items related to roads:

- a) Post Period Capacity
- b) Cost Reduction

Staff have accepted the proposition that certain roads will not be fully utilized by 2031, the horizon year upon which the Development Charges By-law (and the City's Official Plan) are based and that they therefore have some capacity to accommodate growth beyond 2031, a capacity that has been identified as 15 per cent. The allocation of 15 per cent post period capacity has the effect that ultimately the same amount of money

will be collected through development charges in respect of the roads in question, but that such portion of the cost will be recovered from growth that occurs after 2031.

With respect to the cost reduction, there have been continuing discussions between City staff and the development industry as to the extent which contingencies contained in the current City's development charge background study are or are not appropriate to account for unforeseen elements of the cost of projects at the time that the background study is adopted and approved. In order to arrive at a settlement of appeals, staff have agreed to recommend a reduction in the roads development charge that reflects a lesser amount collected on account of items identified as contingencies at this time. However, in the event that the contingencies prove through the time of the construction of the projects in question to have been warranted, the result will be that the higher capital cost of the construction of the road will be then included in the Development Charges By-law and such higher cost will be recovered from future development.

Other Uses - Clause 5

The examples contained within the table beneath Clause 3 of the proposed settlement are in respect of a building permit for a single detached dwelling. Clause 5 provides that the corresponding adjustments would be made for other types of dwellings (towns, multiples and apartments).

Non-Residential Charge

Prior to 2014, the City's non-residential development charge was divided into three components, a General Use Non-Residential charge paid by retail and hotel uses, a lesser charge Commercial/Institutional/Industrial paid by office, commercial uses and high technology uses and an Industrial (Limited) charge applicable to other industrial uses that was approximately 46 per cent of the full charge paid in respect of retail uses. With the current by-law, the City has moved to two non-residential categories, merging the General Use Non-Residential and the Commercial/Institutional/ Industrial (for high technology) charge. To mitigate the movement to the one development charge category for these two uses, staff have agreed to recommend a discounted charge that would increase through a phase-in program over time moving forward. It is noted that subject to the adjustments that will result of Clause 2 respecting the transit service development charge and the infrastructure standards review, the phase-in will continue

with the next by-law anticipated to be enacted This is represented in Clause 6 of the proposed settlement. There would be no phase-in period for the industrial rate.

With respect to the reduction in the non-residential charges, unlike the reduction to the roads component where the cost reductions can be recovered in a subsequent by-law if they are not realized, the *Development Charges Act* states that if a type of development is provided a lower or discounted charges than was calculated, than any resulting revenue shortfall cannot be recovered by increasing development charges rates on any other development types.

Future Reviews - Clause 9

Through Clause 9 it is provided that none of the parties are accepting or rejecting any particular methodology employed in the calculation of the charge and reserve the right to advance or challenge methodologies in the future.

Other Development Charge Appeals

In addition to the appeals filed by Greater Ottawa Home Builders' Association and Builders and Managers Association of Ottawa, appeals have been filed by several other developers. To the extent that such appeals touch on the matters raised above, Clause 8 provides that such appeals would be dismissed and to that end, the relevant appellants have signed the settlement document. There are however certain appeals that are not disposed of by this settlement and at this point are continuing.

Additional Works

Several developers are seeking the inclusion of additional works within the by-law, largely intersection improvements and road widening. This is scheduled for a hearing at the end of November.

Manotick Water and Sewer

A report concerning the resolution of this appeal is to be before Planning Committee and Council at the same time as this report. The outcome is to be considered by the Ontario Municipal Board on October 15, 2015.

Rural Transit Charge

Certain developers in the rural area have appealed the transit services development charge being the same for portions of the rural area as being the same as the urban charge. This is scheduled for a hearing in January, 2016.

Development in the Vicinity of Transit Stations

Several developers have appealed the elimination of the 50 per cent reduction in the roads component of the development charge for the construction of apartments, subject to limitations on provided parking, in the vicinity of transit stations. This hearing is also scheduled for January, 2016.

Monahan Stormwater Facility

The developers, subject to the Monahan Stormwater Facility Area Specific Stormwater Development Charge, has appealed this charge to the Board. A hearing is scheduled for January, 2016.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

There was no consultation required for this report, although extensive discussions were held with appellants to resolve their appeals.

COMMENTS BY THE WARD COUNCILLORS

This is a city-wide report – not applicable.

LEGAL IMPLICATIONS

There is no legal impediment to the adoption of the recommendation in the report. Should this settlement be approved, it will resolve the most significant appeals to the Development Charges By-law. Implementation of the modifications to the Development Charges By-law will be subject to Ontario Municipal Board approval, such approval to be sought in November.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications association with the recommendation in this report.

FINANCIAL IMPLICATIONS

If the settlement proposed in this report is approved it is anticipated that the revised residential and non-residential rates will come into effect by the end of November. It is estimated that from October 1, 2014 to end of November 2015 the City will have collected \$45 million under the Roads and Related Services component of the development charges, of which approximately \$7.4 million, plus interest, will be rebated to those individuals and organizations that were issued building permits over this timeframe. It is anticipated that the rebate cheques will be processed by the end of June 2016.

The background study establishes the costs of growth-related works that are included in the annual capital budget and forecast. The Roads and Related Services section of the study will have to be revised to reflect the amended lower growth-related costs. In the budget any costs that exceed what was identified in the background document are funded from debt that is repaid by future development charge collections. The result of approving this settlement is that the amount of development charge funded debt will likely increase until new infrastructure standards are adopted by Council which will result in lower gross capital cost estimates.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priority:

EP2 Support growth of local economy.

SUPPORTING DOCUMENTATION

Document 1 Settlement Agreement – Development Charges By-law Appeals, the Greater Ottawa Home Builders' Association and the Business Owners and Managers Association

DISPOSITION

Legal Services will submit the proposed modifications to the Development Charges By-law to the Ontario Municipal Board.

Planning and Growth Management Department to undertake the Infrastructure Standards Review in collaboration with the Development Industry.

Document 1 - Development Charges By-law Appeals

Development Charges By-law Appeals

Settlement Agreement

The Greater Ottawa Home Builders' Association (GOHBA)

and the Business Owners and Managers Association (BOMA)

September 22, 2015

The following agreement is put forward to completely resolve the appeals by GOHBA and BOMA to the City's Development Charges By-law (By-law No. 2014-229, as amended by By-law No. 2014-328). This agreement will need to be ratified by City Council and is put forward with that proviso. Provided that Council ratifies this settlement on October 14, 2015, GOHBA, BOMA, Richmond (South), Richmond (North), Mattamy, Minto and Caivan as well as the City will be bound by this settlement.

The Agreement is as follows:

1. The City will commit to undertake, in collaboration with the development industry, the preparation of a new Development Charges By-law to come into force no later than June 1, 2017. In the interim the existing Development Charges By-law will remain in effect save and except for the amendments thereto provided for in this settlement, if and when confirmed by order of the Ontario Municipal Board.
2. a) The City will commit to undertake, in collaboration with the development industry, a review of the City's Infrastructure Standards during this Term of Council. Cost reductions identified through the Infrastructure Standards Review process or any other processes and the new Bill 73 transit service charges will be incorporated into the new Development Charges By-law noted in point 1.

b) The working premise is that the increased transit service charge should be substantially offset by decreases in other service charges. In the event decreases outweigh the needed increase, the new Development Charges By-law will reflect all the decreases. The City will not propose or support the addition of new projects to the calculation of its development charges in any applicable background study for any new Development Charges By-law enacted prior to

January 1, 2019, unless the addition of such projects is agreed to by BOMA and GOHBA. For greater certainty, this clause does not prohibit increases in the transit service development charge.

3. The City agrees to adjustments to the Roads and Related Services development charges imposed by the Development Charge By-law to reflect a reduction in the Roads Gross capital costs and an increase in the Post Period Capacity Allocation to various projects as follows:

	Single Detached Dwelling	Rate Adjustment -	Rate Adjustment -	Single Detached Dwelling
	Current DC Rates	25% Cost Reduction	15% PPC Allocation	Proposed DC Rates
Inside Greenbelt	\$22,173	(\$1,370)	(\$165)	\$20,638
Outside Greenbelt	\$30,362	(\$1,494)	(\$217)	\$28,651
Rural (unserved)	\$17,474	(\$1,383)	(\$170)	\$15,921

4. The City agrees to make the necessary adjustment to the non-residential charges as a result of the reductions proposed in Clause 3 as follows:

		Estimated Rate Adjustment -			
		25% Cost Reduction +			
		Non-Residential		Non-Residential	
		Current Rates/Sq.ft.	15% PPC Allocation	Proposed Rates/Sq.ft.	
Non-Industrial		\$19.55	(\$1.62)	\$17.93	
Industrial		\$8.43	(\$0.69)	\$7.74	

- The City further agrees that the adjustments in Point 3 will apply to all residential land use types through corresponding proportionate reductions for each type.
- The City agrees to a phased in discount (incentive) in the non-industrial charge as follows:

Non-Industrial	Current DC Rates	Proposed DC Rates (see above)	10% Discount (Incentive)	5% Discount (Incentive)	2.5% Discount (Incentive)
	\$19.55	\$17.93	\$16.14* (Oct 1 2014 to Oct 1 2016)	\$17.03* (Oct 2 2016 to Sept 30 2017)	\$17.48* (Oct 1 2017 to May 15 2019)
*Subject to annual indexing					

There will be no corresponding change to the Industrial development charges rate.

7. GOHBA and BOMA will agree to the Board making the amendments to the Development Charge By-law listed above and then dismissing the balance of their appeal. Minto will agree to the Board making the modifications to the Development Charge By-law listed above and then dismissing their appeal as it relates to Post Period Capacity and Benefit to Existing for Transit. Richmond(South), Richmond (North), Mattamy, Minto and Caivan to agree that their appeal in respect of the transit development charge component applicable to the Rural Area is only with respect to the question of the rural v. urban share and not any individual aspects affecting the charge such as Post Period Capacity, Benefit to Existing, and allocation of grants. All parties agree to jointly request the Board to make the amendments to the Development Charge By-law provided for in this settlement, and will provide such evidence and submissions as are necessary for that purpose.
8. The City agrees that it will provide refunds as result of the reductions to the DC's provided for in the settlement in accordance with the requirements of the *Act*.
9. The agreement amongst the parties to settle the appeals as provided for herein does not constitute acceptance or rejection of the methodology employed, or the specific assumptions or calculations made in the calculation of the development charges in the Development Charge By-law, including in respect of the amendments thereto provided for herein. The parties agree that this settlement, except as expressly provided for herein, is without prejudice to any position that any of the parties may pursue as part of the preparation of any future development charge background study or by-law.

10. This document may be signed in counterparts.

Building Owners and Managers Association

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

Caivan Development Corporation

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

City of Ottawa

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

Greater Ottawa Home Builders' Association

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

Mattamy Limited

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

Minto Communities Inc.

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

Richmond Village (North) Limited

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____

Richmond Village (South) Limited

Per: _____

Print Name: _____

Title _____

Per: _____

Print Name: _____

Title _____