

DEVELOPMENT CHARGES BY-LAW 230-2008 AMENDMENT

Recommendation

The Commissioner of Finance/City Treasurer and the Director of Reserves & Investments, in consultation with the Commissioner of Legal and Administrative Services, recommend:

1. That this report be received.

Contribution to Sustainability

Not Applicable

Economic Impact

The City of Vaughan's 2008 Development Charge by-law utilized a new methodology which provided the City with an additional \$32.1M in development charges over the ten (10) year (2008 – 2017) growth period. The increase to the new rate was phased-in from 2008 to 2010, generating an additional \$2.4M in development charges collected.

As a result of the first final Decision of the new development charge calculation methodology (the "gross" versus "net" population methodology) in favour of the Development Industry, the economic impact to the City of Vaughan is the loss of \$32.1M (partially offset by the \$2.4M collected) in development charges (DC) over the ten year (2008 – 2017) growth period. The capital plans for the affected service categories will be impacted, with reductions for Indoor Recreation (\$17.3M), Parks Development (\$11.3M) and Library (\$3.5M), partially offset by the \$2.4M collected.

Due to the development industry's support of the City of Vaughan's approach to the new "gross" methodology, the City's DC By-law was not appealed to the OMB, the City was able to collect additional charges from 2009 to early 2011, and the City will not be required to refund any of the additional development charges collected up to the date of the first final Decision.

Communications Plan

The City will advise the development industry.

Purpose

The purpose of this report is to provide Council with an update on the first final Decision of the "gross" versus "net" population forecast methodology in favour of the Development Industry.

Background – Analysis and Options

The 2008 City of Vaughan Development Charges Background Study was adopted by Council September 22, 2008. The 2008 Background Study calculated the development charges based on a new methodology utilizing gross population instead of a net population forecast. The change in methodology favourably impacted costs eligible to be collected through development charges for indoor recreation, parks development and

library capital and provided the City with an additional \$32.1M in development charges over the ten (10) year (2008 – 2017) growth period. The new methodology only impacted the residential rate calculation.

Recognizing at the time the new City of Vaughan Development Charge By-law was approved that the use of the new methodology had been appealed by the development industry in another municipality and that it would be appropriate to phase-in a change in methodology that increases rates, staff proposed a phase-in approach of the development charge rates from the net to the gross calculation over a two year period. The development industry was supportive of the proposed phase-in and provided a letter of support (Attachment 1) subject to the condition that, in the event that the use of the "gross" methodology was successfully challenged by the development industry, the City's DC by-law would be amended to comply with the first final Decision on the challenge. No matter the outcome, the rates remain subject to regular indexing.

The Town of Orangeville's development charge by-law was appealed to the Ontario Municipal Board based on the use of the "gross" population method. The new methodology used in the Town of Orangeville's development charge by-law was successfully challenged at the OMB in September 2010, potentially negatively affecting all municipalities using this methodology. Following the OMB decision, the Town of Orangeville Council determined that they wished to seek leave to appeal the OMB decision to the Divisional Court.

On March 21, 2011 the Divisional Court refused leave to the Town of Orangeville to appeal the OMB decision. For the purposes of Vaughan's Development Charges By-law, that constitutes the first final Decision.

By-law 230-2008, section 5 provides as follows:

"in the event of a challenge to the gross versus net population methodology for development charges imposed by this by-law, this by-law shall be amended to comply with the first final Decision on the challenge and Schedules B-1, B-2 and B-3 shall be amended as required to implement the decision. There shall be no retroactive application of the Decision and no development charges paid shall be returned or refunded and no additional payments shall be required from the date the by-law, as amended, come into effect."

The Divisional Court ruling triggers Council's previous decision, reflected in section 5, to amend the Development Charges by-law accordingly. Therefore Schedules B-2 and B-3 are deleted from By-law 230-2008.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities set forth in Vaughan Vision 2020.

Regional Implications

Not applicable

Conclusion

The Town of Orangeville decision in favour of the development industry is the first final Decision on the gross versus net methodology. Based on this outcome and Council's previous decision, reflected in By-law 230-2008, section 5, staff advise that Schedules B-2 and B-3 of By-law 230-2008 are deleted.

Attachments

Attachment 1 – BILD Letter dated September 3, 2008

Report prepared by:

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Director of Reserves & Investments
Ext. 8271

Respectfully submitted,

Barbara Cribbett, CMA
Commissioner of Finance/City Treasurer

Ferrucio Castellarin, CGA
Director of Reserves & Investments

ATTACHMENT 1



BUILDING A GREATER GTA
Building Industry and Land
Development Association

September 3, 2008

Mr. Clayton D. Harris
Deputy City Manager/
Commissioner of Finance & Corporate Services/
City Treasurer
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

RE: *City of Vaughan, Proposed Development Charges – 2008 By-law Review*

The Building Industry and Land Development Association understands that the City of Vaughan and industry representatives appointed by the BILD York Chapter, referred to as the Vaughan Developers Group, have been in discussions regarding draft proposed development charge rates as part of the City's ongoing review of its current development charges by-law.

At a meeting of August 22nd, members of the BILD York Chapter were provided with an update on these recent discussions, which have resulted in changes to the proposed rates and a suggested phase-in presented by the City of Vaughan understood to generally have the following provisions:

- The charge effective in November 2008 will be calculated on the NET population basis;
- The proposed charge of \$12,284/unit will apply from November 2008 to October 2009 which represents an increase of 16% over the current rate of \$10,548;
- From November 2009 to October 2010, the charge will increase by 50% of the difference between the NET and GROSS basis, increasing the charge by \$632/unit to \$12,916/unit;
- Beginning in November 2010 and thereafter, the full rate (using GROSS population basis) will apply, increasing an additional \$632/unit to \$13,548/unit;
- The non-residential charge is reduced from the proposed \$24.32 per sq.m to \$19.65 per sq.m.;
- The transitional phase-in shown will be revised to either the GROSS or NET population basis through wording in the by-law or through a by-law amendment as appropriate once the final first outcome of any OMB hearing on the matter is rendered;
- Should this decision be in favour of the appellants resulting in a development charge reduction, the City of Vaughan will not issue refunds for those development charges from the date the by-law, as amended, comes in to effect; nor will the City of Vaughan request additional payments should the decision be in favour of the municipality paid; and,
- The rates referred to above are subject to regular indexing.

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BUILDING A GREATER GTA
Building Industry and Land
Development Association

If the above principle and proposed transitional phase-in is approved by Council, BILD can confirm that it will not appeal the new City of Vaughan development charges by-law to the Ontario Municipal Board. Please note however, that this decision does not preclude individual members companies from protesting the new by-law and/or submitting their own appeals.

In addition, as you are aware, BILD has filed an appeal to the Ontario Municipal Board of the recently approved Town of Clarington development charges by-law No.2008-14. Our objection to this by-law is that the charge imposed was calculated by the Town's consultant, Hemson Consulting Ltd., using a flawed methodology that does not comply with the requirements of the *Development Charges Act*. BILD understands that Hemson Consulting Ltd. has employed the same methodology to calculate the proposed City of Vaughan development charge.

Although BILD supports the City of Vaughan's proposed principle and transition phase-in as noted above, and has indicated that BILD will not appeal the new development charges by-law on this basis, please note that such support does in no way imply that BILD is in agreement with the methodology utilized by Hemson Consulting Ltd. to calculate the proposed City of Vaughan development charge.

We appreciate the City of Vaughan's stakeholder consultations to date, and look forward to continued discussion prior to adoption of the final development charges by-law.

Sincerely,

/per
Fraser Nelson
Chair, BILD York Chapter

cc. Paula Tenuta, BILD
Director, Municipal Government Relations

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