



**Minutes of Guelph City Council Development Charges Hearing
Held in the Council Chambers, Guelph City Hall on
January 22, 2018 at 5:05 p.m.**

Attendance

Council: Mayor C. Guthrie
Councillor P. Allt
Councillor B. Bell
Councillor C. Billings
Councillor D. Gibson

Councillor M. MacKinnon
Councillor L. Piper
Councillor M. Salisbury
Councillor C. Downer
Councillor A. Van Hellemond

Absent: Councillor J. Gordon
Councillor J. Hofland
Councillor K. Wettstein

Staff: Mr. C. Cooper, City Solicitor
Ms. T. Agnello, Deputy City Clerk
Ms. D. Black, Council Committee Coordinator

Call to Order (5:00 p.m.)

Mayor Guthrie called the meeting to order.

Disclosure of Pecuniary Interest and General Nature Thereof

There were no disclosures.

Councillor Salisbury arrived at the meeting. (5:107 p.m.)

Development Charges Complaint Procedures Orientation

Christopher Cooper, City Solicitor provided instruction regarding the hearing procedures and applicable legislation.

Councillor Piper arrived at the meeting. (5:13 p.m.)

Recess (5:22 p.m.)

1. Moved by Councillor MacKinnon
Seconded by Councillor Van Hellemond

That the meeting be recessed.

Carried

The meeting recessed at 5:22 p.m. and reconvened at 6:00 p.m.

Public Meeting to Hear Complaint – 561 York Road Guelph – Foundation Permit Application – 17 005798PF

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Ms. T. Agnello, Deputy City Clerk
Ms. D. Black, Council Committee Coordinator

Also Present: Mr. R. Ferraro, Agent for the Complainant, 1776410 Ontario Ltd.
Mr. W. Leuschner, Owner and President, 1776410 Ontario Ltd.
Mr. D. Mast, Counsel for the Respondent

Call to Order (6:00 p.m.)

The Mayor called the meeting to order.

Preliminary Statement

Darrell Mast, Counsel for the Respondent, clarified that he is present in the role as the Counsel for the Respondent and provided a statement about impartiality.

The Mayor explained the Hearing process.

The parties introduced themselves:

Darrell Mast, Counsel for the Respondent, The Corporation of the City of Guelph
Ray Ferraro, Agent for the Complainant, 1776410 Ontario Ltd.
Werner Leuschner, Owner and President of 1776410 Ontario Ltd.

Complainant

Ray Ferraro, Agent for the Complainant, 14776410 Ontario Ltd., outlined the Complainant's objections to the City's demand for development charges. He advised the Development Agreement was in place eight years before development charges came into effect and all of the items have been addressed. He stated that during the Site Plan Approval process development charges and parkland dedication were not mentioned.

Counsel for the Respondent interjected to request the Development Agreement be submitted as an exhibit for the hearing.

The Development Agreement between Arthur Wolfond (In Trust), Wolfond Construction Limited and The Corporation of the City of Guelph dated the 6th day of April, 1981, registered on title for the property municipally known as 561 York Road, Guelph, was submitted as "Exhibit 1" attached hereto.

The Agent for the Complainant stated it was a surprise to them to be requested to pay development charges when they applied for the building permit. He noted there were no demolish credits because the Development Charges Act was not in effect, the redevelopment of the property did not cost the City, the taxes have been paid in full each year, and all of the Site Plan Approval costs have been paid.

The Counsel for the Respondent interjected and raised the issue that documents being referred to by the Complainant were not provided as evidence and the Complainant was addressing factual information rather than evidence.

The Complainant stated the Development Agreement preceded the inception of development charges and the subject property should therefore not be subject to the charges. He noted previous structures were on the property and commercial buildings were demolished and all taxes have been paid. He believes the refusal was issued by the building department because they were not aware of the development agreement on title and the conditions that were already in place.

Council asked questions regarding whether subsequent owners were aware of the Development Agreement, the timing of the demolition on the property, when the Complainant acquired the property and what the Complainant believes was in error regarding the calculations of the development charges.

The Complainant believes that the Development Agreement and the Development Charges by-law are in conflict and the development charges should not be retroactively assigned to the property.

Council also sought clarification regarding the charges and credits given and the development plan for the property.

The agent for the Complainant advised the owner of the property also wished to speak.

Counsel for the Respondent consented to the owner speaking with the provision that the owner speaks as an agent and not as a witness.

Werner Leuschner, Owner and President of 1776410 Ontario Ltd., stated that he bought the property unaware that development charges would be required and he provided a road widening to the City for free and that should be considered. He also spoke about conversations he had with City staff regarding the property and conditions to be met.

Counsel for the Respondent objected to statements made regarding City staff comments due to the lack of supporting evidence and asked Council not consider those statements during deliberations.

Questions were also raised regarding the timing of the road widening and the zoning of the property.

Respondent

Darrell Mast, Associate Solicitor, Counsel for the Respondent, advised that the Development Charges by-law was passed pursuant to the Development Charges Act and noted that the building permit request is what instigated the development charges on the property in question. He clarified the purpose of development charges and provided the definition of same. He clarified that an appeal regarding the payment of taxes would be addressed by a separate tribunal and is not relevant to the issue of development charges.

He explained that the onus is on the Complainant to prove that there was an error in the application of the Development Charges By-law and Council should only consider whether if the by-law has been properly applied. He stated the Respondent's position is that it has not been improperly applied. He advised the Complainant does not allege there are outstanding credits and there are no grounds that would permit ruling in favour of the Complainant.

He then addressed the issue of the development agreement being in conflict with the development charges by-law. The Respondent's position is that there is no conflict between the two agreements because the development agreement is silent and does not contradict the Development Charges By-law.

Counsel for the Respondent addressed the section of the Development Charges By-law that relates to reasons for development charges and noted that a request for a building permit is one of those reasons unless agreed upon otherwise. He stated that again, the Development Agreement is silent on the issue so there is no provision to exempt the owner from being required to pay development charges in order to obtain the building permit.

Counsel for the Respondent does not dispute the fact the Development Agreement predates the Development Charges Act, but states that is irrelevant and the Development Charges By-law is still in effect.

Counsel for the Respondent also explained that the Development Agreement is also silent on Parkland Dedication and other City requirements relating to development of a property and those have been applied to the property so the development charges should be treated in the same manner.

Counsel for the Respondent addressed the Complainant's comment regarding the road dedication and explained that is a standard condition of site plan approval and formed part of the Development Agreement and does not factor into the issue of development charges.

He stated that the Development Agreement in question has no bearing on the Development Charges Act or the City's Development Charges By-law.

Counsel for the Respondent advised that factual evidence is required to attest to what has been said or not said and the factual information provided by the Complainant should not be considered without the required evidence.

Counsel for the Respondent also addressed the Complainant's issue of not hearing about Development Charges sooner and he stated that ignorance of the law is no excuse and that developers know payment of development charges are required.

In response to the Complainant's statement about taxes being paid, Counsel for the Respondent submitted that there was no evidence to prove the amount being quoted and since taxes are handled under a different tribunal, the information is irrelevant unless an exemption from Development Charges was made. The Development Agreement is silent on this matter as well so the tax issue should also not be a consideration.

Counsel for the Respondent summarized his presentation stating that the only question to be considered is whether the Development Charges By-law was properly applied. He requested that the complaint be denied and the decision that the requirement to pay development charges be upheld.

Council sought clarification regarding their decision options, the issue of the agreements being in conflict, the road dedication matter and determining the difference between local services and development charges.

Council also asked the amount of development charges were due, whether a demolition credit would apply, and how impost charges or levies differed from development charges.

Council also clarified that there are many other items that the Development Agreement was silent on that apply despite not being in place at the time the agreement was signed, that a buyer must conduct due diligence when purchasing a property and that there was a transition period for development charges application but that time expired in this scenario.

Counsel for the Respondent also cited the following case law in order to illustrate the purpose of Development Charges is for growth development and not just development of a lone property and onus of the Complainant.

Christensen v. Clarington (Regional Municipality) (2003), 45 O.M.B.R. 173, 49 M.P.L.R. (3d) 301(O.M.B.)

Martin v. Innisfil (Town) , 2017 CarswellOnt 10296 (O.M.B.) (Unreported)

Mistretta v. London (City) (2002), 43 O.M.B.R. 347 (O.M.B.)

Szilveszter v. Barrie (City) (2004), 48 O.M.B.R. 63 (O.M.B.)

1090505 Ontario Ltd. v. Waterloo (Regional Municipality) (2005), 50 O.M.B.R. 367 (O.M.B.)

Complainant Response

The Complainant disputes that the owner should have known that development charges would be required. He does not believe any of the precedent cases are comparable and reiterated that the development agreement was in place before development charges were in place so no development charges should apply.

A question was raised regarding the amount paid for conditions and taxes.

Counsel for the Respondent objected to the question being answered because it would require new evidence and documentation has not been provided.

The Mayor provided information regarding the deliberation process.

Deliberation and Decision (7:55 p.m.)

Council retired to the Council Caucus room for deliberations.

Decision Announcement (8:14 p.m.)

Council returned to the Council Chambers.

The Mayor announced the decision of Council to dismiss the complaint of the Complainant, 1776410 Ontario Ltd. with respect to the decision of the Plans Examiner, Building Services, to demand the application of development charges for the issuance of 561 York Road, Guelph, Foundation Building Permit Application – 17 005798 PF. He advised the reasons for the decision would be provided in writing as soon as possible.

Adjournment (8:16 p.m.)

The Mayor adjourned the meeting.

Carried

Minutes to be confirmed on February 26, 2018.

Mayor Guthrie

Tina Agnello – Deputy City Clerk