

Council Chambers
October 18, 2011 6:00 p.m.

A meeting of Guelph City Council as a Tribunal to hear a complaint under Section 20 of the Development Charges Act, 1997, as amended, with respect to 945 Southgate Drive.

Present: Mayor Farbridge, Councillors Bell, Burcher, Dennis, Findlay, Furfaro, Guthrie, Hofland, Laidlaw, and Van Hellemond

Absent: Councillors Kovach, Piper and Wettstein

Representing The Corporation of the City of Guelph: Ms. D. Jaques, General Manager of Legal Services/City Solicitor

Representing the Complainant: Mr. M. Kemerer, Solicitor

Also Present: Mr. B. Banting, Associate Solicitor/Tribunal Legal Counsel; Ms. J. Sweeney, Clerk Designate; and Ms. D. Black, Assistant Council Committee Co-ordinator

DECLARATIONS UNDER MUNICIPAL CONFLICT OF INTEREST ACT

There were no declarations.

The Mayor outlined procedural matters and Council's responsibilities when sitting as the Tribunal.

Mr. Marc Kemerer, solicitor on behalf of the complainant, 2144113 Ontario Limited, owner of 945 Southgate Drive, Guelph, suggested that City staff made an error in determining the higher commercial development charge rate applied to his client's property as the building is designed and intended to be used as an industrial building. He advised that under the Development Charges Act, the municipality must produce a pamphlet outlining the charges for each classification to act as a guide only and does not replace the by-law and is not permitted to act as a vehicle to add provisions to the by-law.

He stated that the relevant sections of the 1994 and 2009 Development Charges By-laws have not changed so the application of the charges should not have changed. He advised there is no provision in the Development Charges by-law that allows for the higher commercial rate to be charged on speculation development. He suggested that developers or land owners obtaining an industrial building permit, would expect development charges to be

established as industrial as payment is due and payable upon the issuance of the permit.

Mr. Kemerer suggested that the added statement in the pamphlet: "that if the nature of the business of future tenants is unknown the commercial/institutional rate shall apply to the entire gross floor area" exceeds the City's jurisdiction.

Mr. Kemerer further suggested the higher commercial/institutional rate is ultra vires as the carrying costs for the letter of credit is costly.

Mr. Kemerer recommended that the City adopt the alternative approach to the situation provided in Mr. Luffman's affidavit that suggests the City collect the appropriate development charges at the time finishing permits are issued.

He requested that the Tribunal uphold the complaint, impose the industrial rate on building B at 945 Southgate Drive, and declare the current agreement between the City and the client null and void.

Ms. Donna Jaques, City Solicitor, advised she disagreed with Mr. Kemerer's interpretation regarding the pamphlet. She stated that the Development Charges Act requires a pamphlet be established but the pamphlet does not require the approval of Council. She advised that the pamphlet states the rules for determining the rates for development and does reflect the intent of Council. She further advised that the Development Charges by-law indicates that the default would be the commercial rate with the onus on the developer/owner to prove the property is industrial. She stated that the definition of industrial in the Zoning By-law and the Development Charges By-law are different and the Development Charges By-law definition determines the fees. She advised that there has been no proof to the City's satisfaction, that the building will be an industrial use under the Development Charges By-law.

In response to the issue of prejudice raised by Mr. Kemerer, she advised that it would be unfair to the City and the taxpayers if the City did not impose the commercial/institutional rate as laid out in the pamphlet. She stated that the pamphlet is provided to all developers/owners and the complainant would have seen the information within the pamphlet. She stated that since the use of the building is unknown, the commercial/institutional rate needs to be applied.

Mr. Kemerer reiterated that the property is designed and intended as industrial and the development charges should be assigned as same.

The meeting recessed at 7:42 p.m. for deliberation of the Tribunal.

The meeting resumed at 8:20 p.m.

The Mayor advised of the Tribunal's decision as follows:

"THAT the definition of industrial use in the Development Charges By-law is more restrictive than contained in the Zoning By-law;

AND THAT the definitions contained in the Development Charges By-law are used to assess a property at the industrial development charge rate;

AND THAT there is no clear policy in the Development Charges By-law with respect to speculative industrial construction;

AND THAT there is a lack of alignment between the 2009 Development Charges By-law and the 2009 Development Charges Pamphlet;

AND THAT the Tribunal believes that the City should be encouraging speculative industrial construction;

THEREFORE the Tribunal finds in favour of the complainant;

AND THAT the current agreement between the City of Guelph and 2144113 Ontario Limited, owner of 945 Southgate Drive, Guelph, be declared null and void;

AND THAT the City of Guelph enter into a new agreement that requires the payment of commercial development charges, where applicable, at the issuance of the tenant finishing building permit."

VOTING IN FAVOUR: Councillors Bell, Burcher, Dennis, Findlay, Furfaro, Guthrie, Hofland, Laidlaw, Van Hellemond and Mayor Farbridge (10)

VOTING AGAINST: (0)

Carried

The meeting adjourned at 8:25 o'clock p.m.

Minutes read and confirmed November 28, 2011.

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Mayor

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Clerk Designate

**Decision of
Guelph City Council
October 18, 2011**

THAT the definition of industrial use in the Development Charges By-law is more restrictive than contained in the Zoning By-law;

AND THAT the definitions contained in the Development Charges By-law are used to assess a property at the industrial development charge rate;

AND THAT there is no clear policy in the Development Charges By-law with respect to speculative industrial construction;

AND THAT there is a lack of alignment between the 2009 Development Charges By-law and the 2009 Development Charges Pamphlet;

AND THAT the Tribunal believes that the City should be encouraging speculative industrial construction;

THEREFORE the Tribunal finds in favour of the complainant;

AND THAT the current agreement between the City of Guelph and 2144113 Ontario Limited, owner of 945 Southgate Drive, Guelph, be declared null and void;

AND THAT the City of Guelph enter into a new agreement that requires the payment of commercial development charges, where applicable, at the issuance of the tenant finishing building permit.