

# Special City Council Meeting Agenda

Wednesday, February 14, 2024, 5:00 p.m.

Council Chambers

Guelph City Hall, 1 Carden Street

Changes to the original agenda are noted with an asterisk "\*".

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	<b>Pages</b>
1. Call to Order - 5:00 p.m.	
2. Development Charges Complaint Procedures Orientation <b>Presentation:</b> Matthew Irish, Associate Solicitor	1
3. Break	
4. Public Meeting to Hear Complaint Under Section 20 of the Development Charges Act, 1997 - 6:00 p.m.  Development Charges Complaint - 1098 Paisley Road	11
4.1 Complainant  <b>Presenter:</b> Jennifer Meader, Agenda on behalf of Paisley and Whitelaw Inc.	
4.2 Respondent  <b>Presenter:</b> Allison Thornton, Associate Solicitor, Counsel for the Respondent	
4.3 Complainant Response  Jennifer Meader, Agenda on behalf of Paisley and Whitelaw Inc.	

#### **4.4 Respondent Response**

Allison Thornton, Associate Solicitor, Counsel for the Respondent

#### **5. Authority to move into closed meeting for deliberation**

Council shall now deliberate in closed session:

As per Section 9(1) (b) or the Statutory Powers Procedure Act, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

##### **5.1 Call to Order (closed meeting)**

##### **5.2 Development Charges Complaint - 1098 Paisley Road**

#### **6. Open Meeting**

##### **6.1 Decision**

#### **7. Adjournment**

# **Hearing Procedure: Complaint under the Development Charges Act**

**Council Orientation**

**February 14, 2024**

# HEARING PROCEDURE

- The procedure in respect of the hearing of a complaint under the *Development Charges Act, 1997* is governed, generally, by the *Statutory Powers Procedure Act* and, specifically, section 20 of the *Development Charges Act, 1997*
- For the purposes of the hearing, City Council will be acting in its capacity as a tribunal and exercising quasi-judicial powers

# The Legislation

## ***Statutory Powers Procedure Act***

### **Application of Act**

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision

- Subsection 3(2) of the Act sets out those situations where the Act does not apply

# ***Statutory Powers Procedure Act***

- Under subsection 1(1) of this Act,

“statutory power of decision” means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not

- “tribunal” means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute

# ***Statutory Powers Procedure Act***

## **Decision; interest**

### **Decision**

17. (1) A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party

### **Interest**

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated

## ***Development Charges Act, 1997, Section 20***

### **Complaint to council of municipality**

**20** (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

(a) the amount of the development charge was incorrectly determined;

(b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or

(c) there was an error in the application of the development charge by-law.



## ***Development Charges Act, 1997, Section 20 (cont.)***

### **Hearing**

(4) The council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing.

### **Council's powers**

(6) After hearing the evidence and submissions of the complainant, **the council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.**

## ***Development Charges Act, 1997, Section 22***

### **Appeal of council's decision**

22 (1) A complainant may appeal the decision of the council of the municipality to the Ontario Municipal Board by filing with the clerk of the municipality, on or before the last day for appealing the decision, a notice of appeal setting out the reasons for the appeal.

### **Additional ground**

(2) A complainant may also appeal to the Ontario Municipal Board if the council of the municipality does not deal with the complaint within 60 days after the complaint is made by filing with the clerk of the municipality a notice of appeal.

# PLEASE NOTE

During the break between the end of this presentation and the commencement of the Complaint Hearing, I respectfully ask the Members of Council not to discuss the complaint amongst yourselves or with anyone else.

# QUESTIONS?

**Jennifer Meader**

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**VIA EMAIL**

December 21, 2023

City of Guelph  
1 Carden Street  
Guelph, ON N1H 3A1

Attention: Mr. Stephen O'Brien, City Clerk

Dear Mr. O'Brien:

**Re: DEVELOPMENT CHARGES COMPLAINT  
West Peak, Building C  
191 Elmira Road**

We represent Paisley & Whitelaw Inc. ("**Client**") with respect to the development of Building C on the property municipally known as 1098 Paisley Road, within the City of Guelph ("**Subject Property**"). We hereby file a complaint pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, C.27 ("**DC Act**") on the basis that:

1. The amount of the development charges ("**DCs**") was incorrectly determined;
2. A credit is available to be used against the development charge was incorrectly determined; and
3. There was an error in the application of the development charges by-law ("**DC By-law**").

**DEVELOPMENT PROPOSAL**

The Subject Property is in the process of being built out with midrise residential apartment buildings. Buildings A, B and C are under construction, with Building A being in the process of receiving occupancy. Building C, which is the subject of this complaint, will contain 83 one-bedroom units and 55 two-bedroom units, for a total of 138 residential units.

**BASIS FOR COMPLAINT**

On February 28, 2019, our Client overpaid DCs for the project. The total amount of overpayment was \$809,318 ("**Overpayment**"). On August 19, 2022, the City agreed that the Overpayment would be applied to the DCs payable in respect of Building C.

JENNIFER J MEADER, PROFESSIONAL CORPORATION  
TURKSTRA MAZZA ASSOCIATES

When Building C came forward for its first building permit, the DCs were calculated and the City overlooked its pre-existing commitment to an early payment agreement , in respect of the Overpayment, pursuant to section 27 of the DC Act (“**Early Payment Agreement**”).

Our Client advised City staff that, as a result of the Early Payment Agreement, the DC rates for Building C were locked in, according to the rates applicable at the time DCs were paid in respect of Buildings A and B, as established by the Overpayment (“**Original Rates**”). City staff subsequently acknowledged the Early Payment Agreement and applied the Original Rates until the Overpayment was exhausted (the first 56 one-bedroom units). However, the City’s DC calculation imposes interest against the Overpayment that they were holding.

Pursuant to subsection 26.2(7) of the DC Act, the City is not permitted to charge interest on the Overpayment as it is the subject of an Early Payment Agreement. Section 26.2 permits a municipality to impose interest on DC rates frozen as of the date a site plan application was submitted, but subsection (7) states that, “[t]his section does not apply in cases where there is an agreement under section 27”.

Furthermore, the purpose of allowing interest charges is to offset the lost opportunity to the municipality of not having the DCs at the time they would otherwise have been due. In the case of the Overpayment, the City was holding the funds and was collecting interest on them. It would be an unfair windfall to the City if it was able to both charge interest to our Client for the Overpayment and at the same time, accrue interest on the Overpayment through the City’s reserve fund account. The corollary is our Client’s lost opportunity to earn interest on the Overpayment while it remained with the City. The consideration flowing to our Client through the Early Payment Agreement is lost if interest is imposed.

#### **HEARING OF DC COMPLAINT**

On the basis of the reasons set out above and such further reasons as may arise, we would respectfully request that the City proceed to schedule a hearing of this DC Complaint before Council. However, our Client looks forward to discussing the concerns set out herein further with staff in hopes of avoiding the need for a contested hearing before Council.

Yours truly,



Jennifer Meader

JENNIFER J MEADER, PROFESSIONAL CORPORATION  
TURKSTRA MAZZA ASSOCIATES