

Notice of Decision
of The Corporation of the City of Guelph
Regarding a Development Charges Complaint

IN THE MATTER of a complaint, dated December 21, 2023, made under Section 20 of the Development Charges Act, 1997, by Jennifer Meader, agent for Paisley and Whitelaw Inc., (the Complainant), against the decision of the City of Guelph, regarding the application of development charges for the property 1098 Paisley Road.

TAKE NOTICE that the Council of The Corporation of the City of Guelph, at a meeting held February 14, 2024, dismissed the complaint as per Section 20(6) of the Development Charges Act, 1997.

AND TAKE NOTICE that the Complainant may, at any time before the appeal period ends on the **1st day of April, 2024 4:00 p.m.**, file an appeal with the Clerk of The Corporation of the City of Guelph, including the reasons for the appeal and be accompanied by the fee of **\$1,100.00, paid by credit card, certified cheque or money order** payable to the Minister of Finance. The forms are available from ServiceGuelph, Guelph City Hall or on OLT's website, www.olt.gov.on.ca.

A copy of the decision, including the reasons, is attached.

DATED at the City of Guelph this 20th day of February, 2024.

Dylan McMahon
Deputy City Clerk
City of Guelph
1 Carden St.
Guelph, ON N1H 3A1

IN THE MATTER OF a complaint under Section 20 of the *Development Charges Act, 1997*, S.O. 997, c. 27, as amended, regarding the property municipally known as 1098 Paisley Road, in the City of Guelph, on the basis that:

1. The amount of the development charges was incorrectly determined;
2. A credit 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.

Heard: February 14, 2024

Reasons for Decision: February 19, 2024

Members Present: Mayor Guthrie (Chair), Councillor Caton, Councillor Gibson, Councillor Goller, Councillor Klassen, Councillor Allt, Councillor Richardson, Councillor Billings, Councillor Busuttil, Councillor Caron, Councillor Downer, Councillor Chew, Councillor O'Rourke

Agent / Counsel: Jennifer Meader, Agent for the Complainant, Paisley & Whitelaw Inc.
Allison Thornton, Counsel for the Respondent, The Corporation of the City of Guelph, Finance Department Staff.

DECISION

This is the decision of the City Council ("Council") acting as a Tribunal pursuant to the *Statutory Power Procedure Act*, R.S.O. 1990, c. S.22, as amended, with respect to the decision of the City's Finance Department staff regarding the amount of development charges owed for the development of Building C at the property municipally known as 1098 Paisley Road, in the City of Guelph.

For the Reasons that follow, Council **dismisses** the complaint of the Complainant, Paisley & Whitelaw Inc.

REASONS FOR DECISION

The Complaint

[1] Paisley & Whitelaw Inc. (the "Complainant") is the owner of lands municipally known as 1098 Paisley Road, within the City of Guelph ("Subject Lands"). The Complainant is in the process of developing the Subject Lands and constructing three buildings with residential units, referred to hereinafter as Buildings A, B and C, respectively.

[2] In correspondence dated September 20 and 27, 2023, the City of Guelph Manager of Financial Strategy and Long-Term Planning ("Manager of Finance") advised the Complainant of the development charges that were owed for the development of Building C and set out the credit that had been applied to this amount as a result of a past overpayment.

[3] By way of correspondence dated December 21, 2023, the Agent of the Complainant registered the formal complaint regarding:

1. The amount of the development charges was incorrectly determined;
2. A credit 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.

The Development Charges Regime

[4] The principled basis for development charges in Ontario, including in the City, is that "growth should pay for growth". That is, the increased costs of providing services and infrastructure to accommodate new growth should be paid for by that growth, and not place an undue financial burden on the City of Guelph or its taxpayers.

[5] Pursuant to the *Development Charges Act, 1997*, S.O. 997, c. 27, as amended (the "Act"), municipalities, including the City, have passed development charges by-laws that require the payment of development charges on various types of development.

The Law

[6] Where a complaint about development charges is concerned, subsection 20(1) of the *Act* provides as follows:

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. 1997, c. 27, s. 20 (1).

[7] Where a complaint in the proper form is filed with the municipality imposing the development charge, subsection 20(4) of the *Act* requires that "[t]he council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing."

[8] Subsection 20(6) of the *Act* provides that, "[a]fter 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."

[9] Subsection 27(1) of the *Act*, states that "[a] municipality may enter into an agreement with a person who is required to pay a development charge providing for all or any part of a development charge to be paid before or after it would otherwise be payable."

[10] Subsection 26(1) of the *Act*, states that "[a] development charge is payable for a development upon a building permit being issued for the development unless the development charge by-law provides otherwise."

[11] Subsection 26(1.2) of the *Act* states that "If a development consists of two or more phases that will not be constructed concurrently and are anticipated to be completed in different years, each phase of the development is deemed to be a separate development."

[12] The City has enacted By-law Number (2019)-20372, as amended by By-law Number (2021)-20643, being a by-law for the imposition of Development Charges (the "DC By-law").

[13] Section 3.2 of the DC By-law provides that, subject to limited exceptions in section 3.3, the DC By-Law applies to all lands in the City.

[14] Section 1 of the DC By-Law defines "Council" as "the Council of The Corporation of the City of Guelph."

[15] Section 3.15 of the DC By-Law states:

Council, from time to time and at any time, may enter into agreements providing for all or any part of a development charge to be paid before or after it would otherwise be payable, in accordance with section 27 of the Act (emphasis added).

[16] On January 1, 2022, amendments to the *Act* came into force.

Chronology of Events

[17] On February 28, 2019, the Complainant paid development charges in the aggregate amount of \$4,872,821.00 for Buildings A and B. The applicable development charge rates were \$14,435.00 for a one bedroom unit and \$19,884.00 for a two bedroom unit.

[18] On March 2, 2019, By-Law Number (2019)-203722, being a by-law for the imposition of Development Charges, came into force.

[19] Based on changes to Buildings A and B that occurred from the time of the payment of the development charge made in February 2019, the City proposed to refund the Complainant \$809,318.00 for this overpayment.

[20] On July 14, 2022, the Complainant submitted a site plan application for Building C. The July 2022 development charge rates were \$16,990.00 for a one bedroom unit and \$23,761.00 for a two bedroom unit.

[21] In correspondence dated September 20, 2023, the City's Manager of Finance wrote to the Complainant to advise of the development charges owed for Building C, crediting the \$809,318.00 that the City had remaining from the development charges paid for Buildings A and B.

[22] In correspondence dated September 20, 2023, a representative of the Complainant raised concerns with how the development charges

had been calculated for Building C, ultimately leading to the dispute at issue in this complaint.

The Representations of the Complainant

Summary

[23] In written submissions dated February 14, 2024, the agent for the Complainant (the "Agent") summarized the Complainant's objections to the City's calculation of the development charges owed for the development of Building C on the Subject Lands as follows:

- a. There is a valid agreement between the City and the Complainant for the prepayment of development charges ("DCs") at the 2019 rates ("Prepayment Agreement").
- b. The Prepayment Agreement was honoured in respect of Buildings A and B.
- c. The City indicated that it would honour the Prepayment Agreement in respect of Building C, but didn't. That is why the Complaint was lodged.

[24] The Agent submitted that a Prepayment Agreement was established in a series of email communications between the City and the Complainant.

[25] In particular, the Agent directed Council to an exchange of correspondence that took place on August 16, 2022, between George Schembri, the principal of the Complainant corporation, and a Junior Analyst in the City's Finance Department ("Junior Analyst"). After being advised that City had received an overpayment of development charges for Buildings A and B in the amount of \$809,318.00, the Complainant stated:

"I'm ok with keeping that amount on credit for the lower amounts on units in building C if the City chooses."

After an inquiry into the number of units for Building C and whether there was a commercial portion, the Junior Analyst responded and stated:

"Thanks for the update. We can retain the balance and adjust towards Bldg. C payments."

[26] The Agent submitted that the Complainant was entitled to rely on the Prepayment Agreement and had a reasonable expectation that it would be honoured until the Prepayment had been exhausted. Otherwise, the City would be acting inconsistently and arbitrarily.

[27] The Agent submitted that if the City were to be permitted to default on its commitment, it would result in an unfair windfall in favour of the City, which would amount to unjust enrichment. If the Prepayment Agreement is not honoured, there was no reciprocal benefit to the Complainant.

[28] The Agent submitted that the Complainant would not have agreed to allow the City to hold the \$809,318.00 that the City had remaining from the development charges paid for Buildings A and B unless there was some consideration flowing to the Complainant. Instead the Complainant would have insisted on having the \$809,318.00 returned, which it would have invested.

[29] The Agent submitted that the Complainant gave the City the choice of applying the \$809,318.00 "for the lower amounts" on units in Building C, or refunding it. The Agent submitted that the City chose to retain the balance and apply it towards Building C payments, but ultimately the City broke the Prepayment Agreement.

[30] During submissions, the Agent for the Complainant confirmed that the amount of interest credited to the Complainant on the \$809,318.00 from the overpayment of development charges for A and B was not at issue.

The Representations of the Respondent

Summary

[31] The Respondent submitted that Buildings A and B were to be developed under Phase 1 with subsequent buildings to be developed under additional Phases. These Phases are separate developments for development charge purposes. The development charge payment made by the Complainant on February 28, 2019 was solely for charges related to Phase 1 at the development rates in place at the time under the DC By-Law.

[32] The Respondent submitted that development charges are calculated based on when the site plan is submitted. On July 14, 2022, the Complainant submitted its site plan for Building C. Based on this

timing, the Respondent states that the development rates in place at this time under the DC By-Law were correctly applied and not the rates that were available for Phase 1.

[33] The Respondent submitted that pursuant to the DC By-Law, only Council may enter into the Prepayment Agreement contemplated by the Complainant. There is no delegation of authority to junior finance staff generally or the Junior Analyst involved in this matter to enter into the Prepayment Agreement contemplated by the Complainant.

[34] Further, the Respondent submitted that the communication referenced by the Complainant to have created the Prepayment Agreement is unclear and vague. It is insufficient to have created the Prepayment Agreement contemplated by the Complainant, particularly as the junior staff member involved did not have the necessary authority under the DC By-law.

[35] The Respondent denied that an unjust enrichment occurred as the Complainant was credited interest calculated on a quarterly basis based on the average prime rate on the \$809,318.00 held by the City as a result of the overpayment of development charges for Buildings A and B.

Decision and Order

[36] On consideration of all of the submissions made, as well as a review of the written material submitted by the Complainant and Respondent, Council finds that there was no error in the application of the City's DC By-Law.

[37] The Complainant has failed to adduce sufficient compelling evidence that a Prepayment Agreement, as contemplated under section 27 of the *Act* and 3.15 of the DC By-Law, was entered into by the City, as alleged.

[38] In the Agent for the Complainant's submissions, the Agent for the Complainant advised that the correspondence provided in their written material is the indica that the City agreed to apply the 2019 development charge rates to Building C, despite the site plan for Building C being submitted on July 14, 2022. The Agent refers to this as creating a Prepayment Agreement.

[39] Based on the submissions of the Complainant and Respondent, as well as a review of their written material provided, Council finds

that the exchange of correspondence, including the email exchange on August 16, 2023, between the Complainant and the Junior Analyst are vague and ambiguous. These communications did not create a Prepayment Agreement as asserted by the Complainant. There is no clear agreement that the 2019 development charge rates would be applied to Building C. There is no compelling reason to depart from applying the development charge rates in effect when the site plan for Building C was submitted on July 14, 2022.

[40] Further, and in the alternative, pursuant to section 3.15 of the DC By-Law, the Junior Analyst had no authority to enter into the Prepayment Agreement alleged to exist by the Complainant.

[41] After hearing the submissions of the Complainant and Respondent, as well as reviewing the written material provided, Council finds that:

1. The amount of the development charges was correctly determined.
2. A credit available to be used against the development charge was correctly determined.
3. There was no error in the application of the DC By-Law.

[42] Accordingly, Council **Orders** that the complaint be dismissed and the refund requested by the Complainant in the amount of \$143,080, plus interest, be denied.

Table of Authorities

Statutes Considers:

Development Charges Act, 1997, S.O. 997, c. 27, as amended

Statutory Power Procedure Act, R.S.O. 1990, c. S.22, as amended

The Corporation of the City of Guelph Development Charges By-law
Number (2014)-19692

The Corporation of the City of Guelph Development Charges By-law
Number (2019)-20372

The Corporation of the City of Guelph Development Charges By-law
Number (2021)-20643