



DEVELOPMENT AND INFRASTRUCTURE SERVICES – PLANNING DIVISION
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February 24, 2015

JOINT DEVELOPMENT & INFRASTRUCTURE SERVICES/PLANNING & BUILDING SERVICES AND CORPORATE SERVICES/FINANCIAL SERVICES - REPORT 2015-04

TO: Council

SUBJECT: Protest of Development Charge Payment
Brixton Commercial Realty Advisors Ltd.
487 Queen Street

ORIGIN: Letter submitted to the Clerk

RECOMMENDATIONS

- a) **THAT Joint Development & Infrastructure Services/Planning & Building Services and Corporate Services/Financial Services Report 2015-04 dated February 24, 2015 regarding Protest of Development Charges Payment for 487 Queen St be received and the following recommendations be adopted:**
- i. **THAT the Development Charges be calculated for this development as a multi-unit dwelling, and that the current policies and practices regarding the calculation and collection of Development Charges remain as they are;**
 - ii. **AND THAT Mr. Brent Fleming, Brixton Commercial Realty Advisors Ltd. 10 Kingsborough Crescent, Toronto ON M9R 2T9 be notified of these actions.**

BACKGROUND

As Committee is aware, a 16-unit residential building was recently approved for construction at 487 Queen Street. The project was subject to the rezoning and site plan approval processes. On November 12, 2013 the rezoning was approved. In October 2014, the site plan agreement was executed and on December 16, 2014 the building permit was issued.

On November 18, 2015 \$133,794.47 was collected for the Town's portion of the Development Charges. On January 7, 2015 \$228,092.17 was collected for the Region's portion of the Development Charges. On January 9, 2015 the Clerk received a letter advising that the Development Charges had been paid under protest. The letter outlines the protest is based on

Sections 20(1)(a) and 20(1)(c) of the Development Charges Act, namely: a) the amount of the Development Charges was incorrectly determined and c) there was an error in the application of the development charge by-law.

The letter outlines that the error stems from the categorization of the building as a multi-unit building (as defined in the Development Charges By-law) as opposed to an apartment building.

COMMENTS

On May 21, 2013 the appellant deputed to Committee regarding this issue; Committee referred the matter to staff to investigate. In October 2013 staff provided the Committee with a report recommending that Committee maintain the current policies and practices regarding the calculation and collection of Development Charges as it relates to the development at 487 Queen Street. Committee passed that recommendation.

In Joint Development & Infrastructure Services/Planning & Building Services and Corporate Services/Financial Services Report 2013-41 (Report 2013-41) (Attached as Appendix A), staff informed Committee that the appellant had asked that the Town consider the proposed development at 487 Queen Street be categorized for Development Charges purposes as apartments rather than as 'multiple units', at the time, such a re-categorization would have saved approximately \$204,000 in Development Charges (Town's portion = ±\$39,000; Region's portion = ±\$165,000).

In Report 2013-41, staff reviewed the request and provided the following information for Committee's consideration:

York Region

York Region charges \$35,369 per multiple unit dwelling, which is defined in their 2012 bylaw as:

"multiple unit dwellings" includes townhouses, stacked and back-to-back townhouses, mobile homes, group homes and all other residential uses that are not included in the definition of "apartment building", "small apartment", "large apartment", "single detached dwelling" or "semi-detached dwelling";

York Region defines apartments as follows:

"apartment building" means a residential building or the residential portion of a mixed use building, other than a townhouse or a stacked townhouse, consisting of more than 3 dwelling units, which dwelling units have a common entrance to grade;

The Region revised its 2012 Development Charges to categorize apartments based upon floor space and not number of bedrooms, with a charge of \$17,001 for units that are less than 700 square feet, and \$25,049 for units with a floor space over 700 square feet.

The developer's presentation showed the stacked townhouses as being 1,000 square feet each. The difference in DC's between a multiple unit dwelling and a 1,000 square foot apartment is \$10,320 each, or \$165,120 for 16 units.

Town of Newmarket

In 2014, staff undertook and completed a review of the Development Charges By-law. The new Development Charges By-law was passed on July 21, 2014. The definitions of multiple unit dwelling and apartment were changed in order to bring them into alignment with the Region's By-law. Based on when site plan approval was given and the building permit was issued, Mr. Fleming paid the new Development Charges rates.

Under the new By-law's Transition Rate, the Town of Newmarket charges \$11,318.00 for a multiple unit dwelling, \$5,585.00 for an apartment unit under 650sq.ft and \$8,719.00 for an apartment unit over 650sq.ft. The units at 487 Queen Street are over 650sq.ft. For this development, the difference between considering it as "multiple dwellings" and "apartment units over 650sq.ft" would be \$33,787.00 (please note that the calculation includes credit for the existing three residential units and commercial space on the property).

In the new Development Charges By-law multiple dwellings are defined as:

"multiple dwellings" includes townhouses, stacked and back-to-back townhouses, mobile homes, group homes and all other residential uses that are not included in the definition of "apartment building", "small apartment, "large apartment", "single detached dwelling" or "semi-detached dwelling";

Apartments are defined as follows:

"apartment unit" means a residential building or the residential portion of a mixed use building, other than a townhouse or a stacked townhouse, consisting of more than 3 dwelling units, which dwelling units have a common entrance to grade.

It is staff's interpretation that this residential building would be considered a multiple dwelling as the definition speaks to "all other residential uses". It is not an apartment building as there is "no common entrance to grade". It is one structure and there are 6 different entrances into the building. As it does not meet the definition of any other type of residential use defined in the Development Charges By-law, it falls, by default, into the definition of multiple dwellings as "all other residential uses".

This building is a relatively new built form and can be somewhat difficult to visualise. The new building at 487 Queen Street will have 16 units. There are four 'basement' units; entering these units requires walking down several stairs and unlocking the door to the unit.

The other 12 'upper' units are separated into two bays. To enter any one of the 12 upper units, one walks up some stairs into an open area. From there the unit is entered by unlocking the door

(one of six) to access the unit. This access configuration is repeated for the six other upper units in the other bay.

These access areas are open to the public. Each unit has a separate door which is unlocked by the unit resident. No two units share common interior space. This space is considered to be open to the public because there is no barrier (i.e. locked door) to stop a person from entering it.

Recommendation

In 2013, Town staff reviewed the request against the definitions in the 2009 Development Charges By-law and determined that the proposed development did not meet the definition of apartments. When the site plan was executed staff reviewed the definitions in the new Development Charges By-law and determined that the development does not meet the new definition of apartments. As such, it is staff's recommendation that the Development Charges be calculated for this development as a multiple dwelling, and that the current policies and practices regarding the calculation and collection of Development Charges remain as they are.

Impact on Future Capital Program

When the Town sets its Development Charges, it determines the amount of growth-related capital expenditures that will be required to support the projected growth, and then it allocates this amount to the anticipated population growth. Each type of construction has an average person per unit, ranging from just over 1 person per unit for apartments, to over 3 persons per unit for detached houses.

Development Charges are pre-payments for future capital expenditures. If the amounts are reduced, then there will be a funding shortfall which will need to be addressed by other methods.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This report links to Newmarket's key strategic directions in being Well Managed through fiscal responsibility.

CONSULTATION

During the Development Charges By-law review staff consulted with the development industry. No concerns were raised with respect to the categorization of multiple unit dwellings.

Staff have spoken with Regional staff and confirmed that the Town and the Region are using the same interpretations of the definitions in our Development Charges By-laws.

HUMAN RESOURCE CONSIDERATION

Not applicable to this report.

BUDGET IMPACT (CURRENT AND FUTURE)

Operating Budget (Current and Future)

This report has no direct impact on the Operating Budget.

Capital Budget

Should Council decide to honour this request, there would be a shortfall of funding for future growth-related capital projects. The capital program would either have to be reduced or funding found from another source.

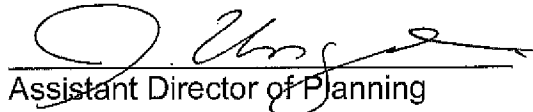
In addition to the \$33,787.00 in Development Charges for this project, there is the potential for reduction in charges to other similar projects that this could set a precedent for.

CONTACT

For more information on this report, contact: Rick Nethery at 905-953-5300 ext. 2451 or via email at rnethery@newmarket.ca, or contact Mike Mayes at 905-953-5300, ext. 2102 or via e-mail at mmayes@newmarket.ca.



Director, Financial Services /Treasurer



Assistant Director of Planning



Director, Planning & Building Services



Commissioner, Corporate Services



Commissioner, Development & Infrastructure Services