



CORPORATE SERVICES COMMISSION
Financial Services

TOWN OF NEWMARKET
395 Mulock Drive
P.O. Box 328
Newmarket, ON L3Y 4X7

www.newmarket.ca
mmayes@newmarket.ca
905.895.5193 ext 2102

June 9, 2016

JOINT DEVELOPMENT AND INFRASTRUCTURE SERVICE – PLANNING AND BUILDING SERVICES, AND CORPORATE SERVICES REPORT – FINANCIAL SERVICES – 2016-24

TO: Mayor Tony Van Bynen and Members of Council

SUBJECT: Request for Reduction of Development Charges - 415 Queen Street

ORIGIN: Director, Financial Services/Treasurer
Director, Planning and Building Services

RECOMMENDATIONS:

a) **THAT Joint Development and Infrastructure – Planning and Building Services, and Corporate Services – Financial Services Report – 2016-24 dated June 9, 2016 regarding Request for Reduction of Development Charges - 415 Queen Street be received and the following recommendation be adopted:**

i) **THAT the payment of Development Charges, or of any development-related fees, not be deferred or waived.**

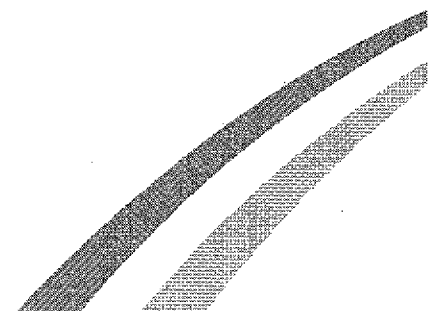
COMMENTS:

Background

On April 18, 2016, Mr. Jeffrey and Ms. Farzaneh Peterson made a deputation to Committee of the Whole regarding the property known as 415 Queen Street. Their request was for "substantial reduction of the development fees and deferral of payment." Committee directed staff to:

... explore opportunities related to Development Charges, engage the property owner and report back to Council within 60 days.

Attached is a copy of an information memorandum which provides a timeline of events leading up to this deputation.



In addition, the following facts pertain to this file:

- The existing buildings are a house of 201.64 m² (including a second floor of 71.76 m²) and a second building of 175.58 m² (including a mezzanine of 50.07m²)
- The current plan entails converting the entire secondary building and about half of the home into a private school – a total of 276.38 m²
- The registered owners of the property are Mr. Jeffrey and Ms. Farzaneh Peterson. The property is assessed as residential. The construction will result in 50% of the property being reassessed as commercial, with a property tax increase of at least 50%.
- Roger White Academy, according to its website, <http://www.rogerwhiteacademy.org/>, is a “private school offering innovative holistic education to K-8 students”.
 - Tuition is \$7,900 per year
 - It is not a registered charity

Analysis and Options

1. Consider the residential component of the building to be a semi-detached dwelling based on the reduction in floor space.

This is not a valid option as the Development Charges (DC) By-law does not recognize a residential/non-residential split. The by-law does contemplate mixed uses of property and addresses that in Section 3.6.

Even if it did recognise the split, semi-detached and single-detached residential units are charged the same DC's.

2. Development Charges can be waived for a building or structure used for a community use which is owned by a non-profit corporation (DC By-law, Section 3.5.b).

The definition of community use is “a facility traditionally provided by a municipality which serves a municipal purpose and shall include a community centre, library/research facility, recreation facility and a shelter.” This section is not applicable to this situation.

3. Deferral of payment of Development Charges and Planning Application Fees was dealt with in a policy adopted by Council in June of 2012,

However, the deferral referenced in the above policy is restricted to a prescribed area, being the Urban Centres and therefore, this property would not be eligible under that policy.

4. Financial Incentives under the Community Improvement Plan

The property is within the Town's Community Improvement Plan (CIP) area and, as such, the property is eligible to apply for the financial incentive programs associated with that Plan.

The Development Charge Equivalent Rebate/Credit Program, which allows property owners within the CIP to apply to have all or a portion of the DCs returned, based on the incremental impact of the project on Town services, applies to new construction, building preservation, restoration of heritage buildings, and residential intensification.

The Planning and Building Fees Equivalent Rebate/Credit Program allows property owners in the CIP to apply to have all or a portion of the Planning or Building fees refunded upon completion of the project under agreed-to conditions.

Although this property is within the CIP area, the Town has never used either of these programs. This is not a priority property and there is no budget for these programs. As such, it would not be recommended to the Newmarket Downtown Development Committee (NDDC) for approval.

If Council wishes to provide financial assistance to this project, the CIP would be the mechanism under which to do so, but funding would have to be allocated.

5. Although the DC By-law does not allow for fees to be waived or reduced for the appellant, Council can alter the timing of payments (section 3.11).

There is no current mechanism, but an agreement could be negotiated.

6. Council always has the authority to give a grant if they want to support specific types of activities.

Since the deputation, the Town has received a number of letters from the parents of pupils supporting the school's request. They suggest that Council should give special consideration to the work of the Roger White Academy and allow a variance from application of the Town's Development Charges By-law.

In making a decision based on the claim of social benefits, Council should consider:

- The precedent this would set – application to other taxpayers
- Whether a policy is required
- Due diligence – get copies of financial statements, etc. to support the financial claims
- The sufficiency of this assistance - even if the Town was to waive its \$14,905.17 in Development Charges, as well as the Planning fees (\$17,225.81 for the Zoning By-law

amendment and \$11,703.08 for the site plan application), there would still be the following additional charges:

- \$59,407.88 in Regional Development Charges – these are collected by the Town on behalf of the Region administering the Region's own DC by-law and the Region's interpretation of it – they are not obligated to follow the lead of the Town with regards to grants, waiving of fees or deferrals;
- \$2,230.39 in School Board Development Charges
- The cost of the renovations themselves, along with any related consulting fees
- Building Permit charges – which are yet to be determined
- Extensive work required to bring the property up to Building Code requirements
- Increased property taxes for the additional assessment

Meeting with the Property Owner

At Council's direction, Planning and Finance staff met with the property owners and their legal counsel on June 6, 2016 to discuss their request for a reduction in DCs. In particular, staff provided an overview of this report, outlining the programs, policies, and options available to staff to waive, reduce, or defer DCs, as well as staff's position on each option as it relates to this property. As noted in this report, staff also reminded the owners that, notwithstanding staff's recommendation, Council has the ability to give a grant if it wishes to support specific types of activities. The owners advised that they would be making a deputation to Committee of the Whole to discuss this report and their request.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

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

CONSULTATION

This report was jointly prepared by the Financial Services and the Planning and Building Services Departments. The Economic Development Office provided input on the application of CIP incentives.

HUMAN RESOURCE CONSIDERATIONS

Not applicable to this report

BUDGET IMPACT

The recommended course of action would have no budget impact.

Development-related fees are either for the recovery of costs (e.g. Planning application Fees) or the funding of capital projects (e.g. Development Charges). As such, if Council directs any of them to be waived, they will need to be replaced.


If current practices and policies are altered and new precedents set, consideration would have to be given to the financial impact.

CONTACT

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




Mike Mayes, CPA, CGA, DPA
Director, Financial Services/Treasurer




Jason Unger
Assistant Director, Planning & Building
Services



per Esther Armchuk (B.A. (Hons.), LL.B., DPA
Commissioner, Corporate Services



Richard Nethery,
Director, Planning & Building Services/
Town Planner



Peter Noehammer,
Commissioner, Development &
Infrastructure Services

MM/cf



Planning and Building Services

TOWN OF NEWMARKET

395 Mulock Drive

P.O. Box 328

Newmarket, ON L3Y 4X7

www.newmarket.ca

planning@newmarket.ca

905.953.5321

INFORMATION MEMORANDUM

TO: Mayor and Members of Council
R. N. Shelton, Chief Administrative Officer
Peter Noehammer, P. Eng., Commissioner, Development &
Infrastructure Services

FROM: Richard C. Nethery, B.E.S., MCIP, RPP
Director, Planning and Building Services

DATE: April 11, 2016

RE: 415 Queen Street – 415 Queen Street
Our File Nos.: D14-NP1101 and D11-NP1116

Further to the request of Jeffrey Peterson and Farzaneh Peterson to address Committee of the Whole on April 18, 2016 regarding Town development charges, we provide the following chronology of events relating to the zoning by-law application and site plan approval application:

Application for zoning by-law amendment was submitted on June 30, 2010 by Sciberras Consulting on behalf of the owner. The application requested an amendment to the Residential Detached Dwelling (R1-D) Zone to permit a private elementary school in conjunction with a residential use. Fees in the amount of \$17,225.81 plus HST were paid in January 2011.

Planning staff prepared Legal and Development Services – Planning Report 2011-10 dated March 1, 2011 and recommended the application for a zoning by-law amendment be referred to a public meeting.

The statutory public meeting was held on May, 3, 2011 at 7:00 p.m.

On May 16, 2011, Legal and Development Services – Planning Report 2011-22 recommended approval of the application for zoning by-law amendment.

On June 20, 2011, Council enacted By-law Number 2011-34. The by-law provided the only uses permitted in the main building are a private elementary school provided the residence (dwelling unit) is owner occupied. The only uses permitted in the accessory building are uses accessory to a private elementary school and uses accessory to a dwelling unit. A home occupation is not a permitted use.

On June 29, 2011 a pre-consultation meeting for the site plan approval application was held which was attended by Angelas Sciberras on behalf of the owner.

Application for site plan approval was submitted on July 28, 2011 by Macaulay Shiomi Howson Ltd. on behalf of the owner. Fees in the amount of \$11,703.08 inclusive of HST were paid.

The application for site plan approval was considered by Site Plan Review Committee at a special meeting on August 15, 2011. Committee granted an approval in principle and referred the application to staff for processing subject to the applicant satisfactorily addressing preliminary staff comments. Committee also requested staff prepare a report for the Committee of the Whole meeting of August 29, 2011 regarding the process to establish an interim use in the accessory building and the re-instatement of a home occupation as a permitted use. Council adopted these recommendations on September 6, 2011.

Legal and Development Services – Planning Report 2011-33 was considered by Committee of the Whole on August 29, 2011. The report recommended that the owner be advised that if they wish to establish a temporary use in the accessory building and/or reinstate the home occupation use in the main building, a new application for zoning by-law amendment along with the required studies and fees is required. Council adopted the recommendation on September 6, 2011.

In February 2012 Planning staff provided Ms. Sciberras with the Site Plan Approval package which included the approved drawings along with the site plan agreement and confirmation of the fees and charges due and payable at the time of signing of the site plan agreement.

In March 2012 Planning staff confirmed the information regarding the fees and charges due and payable at the time of signing the site plan agreement directly with the owner. The actual amount of development charges payable at the time of issuance of the building permit could not be determined until the owner's architect was able to certify the actual floor area of the buildings under development.

The total amount owing to the Town for development charges in March 2012 was \$5,937.81 based on a gross floor area of 323.41m² at a rate of 18.36/m².

Letters were sent by the owner in March 2012 and in May 2012 to Mayor Van Bynen requesting either the Town issue building permits for both buildings or allow the applications to be withdrawn and a full refund of fees paid be refunded. The Town's Solicitor responded to the letters advising Town staff do not have the authority to reduce, waive or reimburse any fees and charges. The owner was advised that he had the right to make a request directly to Council to reimburse fees and charges. The owner advised that he did not intend to proceed with the development.

In May 2015 Town staff met with the owner, his architect and his lawyer regarding a new development concept for the property which anticipated a scaled back version of the original proposal. Staff advised that any change to the original proposal would need to conform with the requirements of the amending zoning by-law adopted by Council and revised plans would be required to be provided to the Town for review and comment. At the meeting staff confirmed the zoning by-law does not permit the use of the garage for the main school use. The owner and architect were advised to contact the Building Division regarding the building

permits for the proposed development noting there have been recent changes to the Ontario Building Code.

On June 3, 2015 staff were advised by the owner's solicitor that the owner wished to revive the site plan application file and move forward with a scaled back revised plan (i.e. no addition to the main building that was originally proposed).

Town staff during June and July of 2015 reviewed preliminary plans provided by the owner's solicitor. The plans indicated the school would operate within portions of the basement and main floor of the main building and the garage would be used for accessory uses to the school. Staff advised the owner would be required to submit revised plans for formal review and enter into a site plan agreement with the Town.

In August 2015 the owner's solicitor requested a rough estimate of the amount of the Town's development charges based on the revised plans. Staff advised that development charges would be payable on the gross floor area of the school used multiplied by the current rate.

The owner's solicitor submitted plans on October 28, 2015 for staff review and comment. Comments on the submission were provided to the owner's solicitor on January 5, 2016 from Building Services, Central York Fire Services, Engineering Services, and Planning Services. A second submission was required to address the matters identified during the review.

The owner's solicitor contacted staff in January of 2016 regarding the amount of development charges payable to the Town based on the revised plans. Staff advised the Town's development charges due and payable at the time of execution of the site plan agreement would be \$14,905.17 based on 276.38m² of floor area devoted to school use and the current rate of \$53.93/m².

In February 2016 the owner's solicitor contacted the Town's Treasurer regarding the amount of development charges payable for the proposed revised development and was advised that development charges for non-residential uses are based on floor area. The Treasurer further advised that there is no credit available as residential development charges are based on type not size and although a portion of the residential space is proposed to be converted to school use the residence would remain.

The Town received a revised site plan submission on February 26, 2016 from the owner's solicitor in response to first submission comments. The owner's solicitor was provided with comments from Building Services, Central York Fire Services, and Planning Services on March 29, 2016. Comments from Engineering Services have not been received yet.

The most recent revised plans indicate the major occupancies for the accessory building are assembly and residential. Legal and Development Services – Planning Report 2011-22 noted "the applicant indicated the space is to be used for accessory space for the school use for activities such as recreational space in inclement weather and art studio space but not an additional classroom". The amending zoning by-law provides the only uses permitted in the accessory building are uses accessory to a private school and uses accessory to a dwelling unit. A dwelling unit is not permitted within the accessory building.

Based on the current floor space proposed for school use, the Region development charges will be \$59,407.88 and School Board development charges will be \$2,230.39. These charges are payable at the time of issuance of the building permit.

If you require any additional information, please feel free to contact me.

Yours truly,

Richard C. Nethery, B.E.S. MCIP, RPP
Director of Planning and Building Services