

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 29, 2016

CASE NO(S): DC140015
DC140030

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27

Appellant: 219786 Ontario Ltd.
Appellant: Greater Ottawa Home Builder's Association
Appellant: Governor Place Developments
Appellant: Talos Custom Homes and Others
Subject: Development Charges By-law No. 2014-229
Municipality: City of Ottawa
OMB Case No.: DC140015
OMB File No.: DC140015
OMB Case Name: Marjerrison v. Ottawa (City)

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

Appellant: 219786 Ontario Ltd.
Appellant: MacRae Avenue Development Inc., et al
Appellant: Mattamy Limited
Appellant: Richmond Village Ltd. and Others
Subject: Development Charges By-law No. 2014-328
Municipality: City of Ottawa
OMB Case No.: DC140030
OMB File No.: DC140030
OMB Case Name: Building Owners and Management Association of Ottawa v. Ottawa (City)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: January 27 to 28, 2016 in Ottawa, Ontario

APPEARANCES:

Parties

Counsel

City of Ottawa

T. Marc

Minto Communities Inc.

U. Melinz and B. Hagen

DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD

[1] This decision is with respect to the appeal by Minto Communities Inc. (“MCI”) in what has been described as “Stream 5 – Transit in Rural Areas” in these proceedings.

[2] MCI has appealed Development Charge By-law Nos. 2014-299 and 2014-328 and, as part of its appeal, argues that City Council did not act fairly and reasonably or within its powers under the *Development Charges Act* (“DCA”) with respect to the establishment of the “Urban Transit Area” (“UTA”), “Rural Transit Area A” (“RTA-A”) and “Rural Transit Area B” (“RTA-B”) charge. Furthermore, this charge is not in accordance with the methodology set out in s. 5(1) and 5(6) of the DCA. It is also unfair and not reasonable for the City to seek the same transit charge in RTA-A as the UTA. It also argues specifically that the charge does not reasonably reflect the actual increased capital costs that are created by development in the RTA-A commensurate with the development charge imposed. A development charge according to MCI must reflect the costs that are created by an increase in need and service but if there is no increase in service, the charge is not reasonable.

[3] The City, on the other hand, argues that the calculation of the development charge related to RTA-A is fair and reasonable and is consistent with the requirements of the *DCA* and its regulations. It further argues that City Council made a policy decision in granting a partial exemption from the payment of the transit development charge in the RTA-B and that the Board should not substitute its own policy decisions for those of City Council.

[4] The Appellant MCI relies on the testimony of Christopher Gordon, a transportation engineer retained by MCI, and that of Audrey Jacobs, a land economist and planner also retained by MCI for this hearing.

[5] The City relies on the testimony of Colin Simpson, a transportation planner employed by the City as well as that of Andrew Grunda, who was qualified to proffer opinion evidence with respect to municipal financing matters with particular expertise in the area of development charges. He was retained by the City to assist in the preparation of its Development Charge Background Study (“DCBS”).

[6] The Board has carefully considered all of the evidence as well as the submissions of counsel and finds that the appeal should be denied for the reasons that follow.

[7] The Board finds, based on the evidence before it, that City Council has acted fairly and reasonably with respect to the establishment of the transit development charge for the UTA, RTA-A and RTA-B.

[8] Mr. Grunda provided the Board with a detailed analysis of the work undertaken by the City and his firm to meet the requirements of the *DCA* in relation to the establishment of the transit development charge including:

- estimating the anticipated amount, type and location of development for which development charges can be imposed;
- excluding all ineligible services from the calculation;
- estimating the increase in the need for services attributable to the anticipated development;
- insuring that the increase in need does not include an increase that would result in the level of service for the anticipated development increment exceeding the average level of that service provided in the City over the 10 year period immediately preceding the preparation of the background study;
- insuring that City Council has indicated that the estimate of the increase in need will be met;
- insuring that City Council has considered/carried out an examination of the long term capital and operating costs for capital infrastructure included in the charge;
- removing those kinds of local services for which the City can impose directly or indirectly a charge relating to a development or require a developer to construct a service related to a development imposed by condition under s. 51 or 53 of the *Planning Act*;
- estimating the capital costs necessary to provide the increased services
- making the appropriate deductions from the increase in the need for services attributable to the anticipated development;
- tabulating the total capital costs considered by service in terms of those that would benefit new development against those that would benefit existing development;
- increasing costs where debenture debt is required and a cash flow analysis reveals a net financing cost requirement;

- determining whether all of the subject costs are to be recovered on a uniform municipal-wide basis or whether some or all are to be recovered on an area-specific basis; and
- relating the costs involved to anticipated development for each period under consideration and using allocations between residential and non-residential development and between one type of development and another, to arrive at a schedule of charges.

[9] It is noted that s. 5(6) of the *DCA* provides that a municipality cannot collect more than the calculated cost for each service and that a municipality cannot offload the cost of servicing one type of development onto another type.

[10] Mr. Grunda explained that for transit services, the forecast period is limited to the 10-year period following the preparation of the DCBS in accordance with s. 5(1)5 of the *DCA*. These were consistent with the City's Official Plan projections and estimates within the Transportation Master Plan ("TMP"). Public Transit Services are calculated on a City-wide basis consistent with the City's prior Development Charge ("DC") practice and broad based usage according to Mr. Grunda.

[11] Mr. Grunda provided the Board with an in-depth review of the DCBS as it relates to transit services including the Program Coverage and the Capital Program identified in the TMP.

[12] Program Coverage includes a ten-year program for studies and masterplans, system improvements, vehicles, fare control systems, park and ride, corridor protection and transitways.

[13] The Capital Program is based on the 2013 TMP and includes projects that have been included in recent City capital budgets or in the City's Long Range Financial Plan, all of which are or will be approved as part of the DCBS.

[14] The DCBS includes the estimated capital costs to provide the increase in need for services including the capital cost estimates for each capital project within the Capital Program. He also outlined the DC recoverable costs for Public Transit services included in the calculation of the charge.

[15] He explained that the City's 2013 TMP identified a "2031 Rapid Transit and Transit Priority Network Concept Plan" of capital needs and that an affordability assessment was applied to the plan to arrive at the City's "2031 Affordable Rapid Transit and Transit Priority Network". He opined that this "affordable" network reflects Council's approved expression to address the increase in need for public transit services included in the 2014 DCBS.

[16] He addressed the requirements of the *DCA* to include the estimated capital costs to provide the increase in need for services providing the capital cost for each capital project within the Capital Program and outlined the DC recoverable costs for public transit services that were included in the calculation of the charge.

[17] The net growth-related costs are calculated on a per capita basis by dividing the residential cost share by the gross City-wide population increase over the 2014-2024 forecast period. The residential charge per dwelling unit is calculated by applying the City-wide persons per unit for the appropriate housing unit (singles and semi-detached dwelling units) to arrive at a charge of \$6,409 per single and semi-detached dwelling unit.

[18] The non-residential calculated charges are arrived at by dividing the industrial and non-industrial cost shares by their respective forecast increases in gross floor area over the 2014-2024 forecast period resulting in a \$2.77 per square feet ("sq ft") charge for industrial development and a \$6.73/ sq ft for non-residential development.

[19] DC By-law No. 2014-229 as amended by DC By-law No. 2014-328 sets out the rules for imposing uniform City-wide and area specific development charges within three

designated areas, Area 1 being inside the Greenbelt, Area 2 outside the Greenbelt area and Area 3 the Rural Area. The Rural Area is further divided into two areas – RTA-A and RTA-B.

[20] Mr. Grunda concluded that the City imposed a development charge for public transit services on a City-wide basis for all three areas consistent with the 2014 DCBS and in accordance with s. 5(5) of the *DCA*. This approach is also consistent with the practice used in some other municipalities across Ontario.

[21] The Board is not persuaded by the arguments put forth by MCI to support its appeal. It did not seriously challenge the methodology used by the City in arriving at the Transit Related DC nor did it challenge the various components of the charge. Christopher Gordon, the transportation engineer, did proffer some general propositions as to a difference in levels of service between the UTA and the RTA-A. This evidence was not significant enough to compel the Board to order a reduction to the RTA-A charge. The development charge was calculated on a city-wide basis and applied on a city-wide basis. The transit system is a city-wide system with transit users being able to access the system from anywhere in the City and being able to travel on it to anywhere in the City. It is reasonable therefore to apply the development charge on a city-wide basis subject to any policy decision made by council as it did for RTA-B.

[22] City Council made a policy decision to provide a partial exemption from the Transit Development Charge to the RTA-B by applying a reduction in the amount of two-thirds of the total transit related charge payable. This policy decision to reduce the RTA-B charge is not relevant to the determination by the Board as to the fairness and reasonableness of the RTA-A development charge.

[23] Audrey Jacobs, the land economist/planner, suggested that the charge applicable to the RTA-A should be reduced by applying the difference in the transit levy portion of the property tax bill. The RTA-A property tax levy for transit services represents 29.4% of the property tax transit levy applicable in the UTA. A

corresponding reduction to the charge payable in the RTA-A would be appropriate under the circumstances according to Ms. Jacobs and would represent a fair and reasonable charge. The corresponding tax rates for the different areas are not relevant to the Board's determination of whether the development charges are fair and reasonable.

[24] The Board is satisfied based on the evidence of Mr. Grunda, that the City carried its obligations in accordance with the process set out in the *DCA*, which resulted in a development charge relating to transit services that is just fair and reasonable.

[25] The Board finds that the development charge for transit services has been determined in accordance with the *DCA* and that it is fair and reasonable under the circumstances. This is not a situation where one category of development will cross-subsidize another. The development charge for transit services was arrived at in accordance with the *DCA* and is fair and reasonable under the circumstances.

[26] Accordingly, the MCI appeal is hereby denied.

"R. G. M. Makuch"

R. G. M. MAKUCH
MEMBER

If there is an attachment referred to in this document,
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Ontario Municipal Board

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