

**Report to
Rapport au:**

**Planning Committee
Comité de l'urbanisme
11 February 2021 / 11 février 2021**

**and Council
et au Conseil
24 February 2021 / 24 février 2021**

**Submitted on 1 February 2021
Soumis le 1er février 2021**

**Submitted by
Soumis par:
John Buck**

**Acting Chief Building Official / Chef du service du bâtiment
Planning, Infrastructure and Economic Development Department / Direction
générale de la planification, de l'infrastructure et du développement économique**

**Contact Person
Personne ressource:
Richard Ashe**

**Manager / gestionnaire, Permit Approvals / Approbation des permis
613-580-2424, 33201, Richard.Ashe@ottawa.ca**

Ward: SOMERSET (14)

File Number: ACS2021-PIE-BCS-0003

SUBJECT: Development Charge Complaint – 500 Preston Street

OBJET: Plainte relative aux redevances d'aménagement – 500, rue Preston

REPORT RECOMMENDATION

That Planning Committee recommend that Council dismiss the development charge complaint in respect of 500 Preston Street.

RECOMMANDATION DU RAPPORT

Que le Comité de l'urbanisme recommande au Conseil de rejeter la plainte relative aux redevances d'aménagement à l'égard du 500, rue Preston.

BACKGROUND

The *Development Charges Act*, Section 20 provides that a complaint may be filed by an owner in respect of the development charges imposed by a municipality in respect of a project on the basis that:

- a) The amount of the development charge was incorrectly determined;
- b) Whether a credit is available to be used against the development charges, 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.

Basis of Complaint

The complaint is by the owner of 500 Preston Street. Development Charges By-law 2019-156, enacted on May 22, 2019 provided for certain transitional rates to be in effect until March 31, 2020. At the time of its enactment, it also provided that the first indexing under the by-law would take place on April 1, 2020. The building permit was ultimately issued on April 4, 2020. As set out in the discussion section of this report, it is the position of the owner that it should have been entitled to the municipal development charges rate that was in effect on March 31, 2020 which would have resulted in the municipal development charges payable being \$577,406.92 less.

The Development Charge complaint by the solicitor for the owner is attached as Document 1 to this report.

DISCUSSION

As enacted, the Development Charges By-law contained the following provisions:

TRANSITIONAL PROVISIONS

12. (1) Subject to subsection (3) and subject to meeting the criteria in subsection (2), the applicable development charge under this by-law for the period from the date of the enactment of this by-law to September 6, 2019 shall be in accordance

with the transitional rates and the categories for that period set forth in Schedules “B” and “C” to this by-law.

(2) In order to qualify for the transitional rate pursuant to subsection (1), either clause a) must apply or both clauses b) and c) must apply:

(a) The building permit is issued on or after May 23, 2019 and on or before June 28, 2019;

(b) A complete building permit application is submitted on or before June 28, 2019;

(c) The building permit is issued on or before September 6, 2019.

(3) The development charges in Schedules “K” to “P” shall apply in addition to the amounts applicable pursuant to subsections (1) and (4).

(4) Subject to subsection (3), in respect of complex buildings and purpose built high-rise rental buildings, subject to meeting the criteria in subsection (5), the applicable development charges under this by-law for the period from the date of the enactment of this by-law to March 31, 2020 shall be in accordance with the transitional rates and the categories for that period set forth in Schedules “B” and “C” to this by-law.

(5) In order to qualify for the transitional rate pursuant to section (4), either clause (a) must apply or both clauses b) and c) must apply:

(a) The building permit is issued on or after May 23, 2019 and on or before June 28, 2019;

(b) A complete building permit application is submitted on or before June 28, 2019;

(c) The building permit is issued on or before March 31, 2020.

16(2) The development charge rates set out in this by-law shall be adjusted by the Treasurer, without amendment to this by-law on April 1, 2020 in accordance with the changes (1 January 2018 to 31 December 2019) in the Statistics Canada Infrastructure Development Charge Price Index, Catalogue Number 62-007. For greater certainty, the Infrastructure Construction Price Index from

Catalogue Number 62-007 for Ottawa will be used if such continues to be published

The building being constructed has 94, one bedroom units, 172, two bedroom units and 7,862 square feet for commercial area. It was eligible for consideration for the transitional rate to March 31, 2020 as both a complex building and a purpose built high-rise residential building. A complete building permit application was submitted prior to June 28, 2019 and therefore it met the first requirement in clause 12(5)(b) above.

In the by-law as enacted, two events were to take effective April 1, 2020:

1. The first indexing pursuant to By-law 2019-156; and
2. The end of the transitional period for complex and purpose built high-rise residential buildings.

Resolution of Indexing Appeal

In respect of indexing, due to a commitment made to the Greater Ottawa Homebuilders Association and the commencement of the State of Emergency, Council on March 25, 2020 adopted the motion, a full copy of which attached as Document 2 but the relevant clause is as follows:

Council endorse a resolution of the appeals to the indexing provision through the modification of the By-law 2019-156 to provide that the indexing date be October 1 rather than April 1.

There was however no modification to the provision that ended the transitional period for complex and purpose built high-rise residential buildings on March 31, 2020.

Emergency Measures – Ontario Regulation 119/20

On Friday, April 3, 2020, the Ontario Government enacted and published Ontario Regulation 119/20 that imposed further restrictions on businesses operating in Ontario. In respect of building permits, it required the closure of mixed use building sites unless a permit had been issued by Saturday, April 4, 2020.

490-500 Preston Application

Starting on page E of the development charge complaint attached as Document 1 is an e-mail exchange concerning the building permit application. The e-mail exchange does conclude with an e-mail wherein a staff memo notes that the fee increase has been

postponed. This references the indexing deferral which was before Council that date. However, the final e-mail in the exchange also states that:

You will be sent the final fees by the tech clerk when notification is given that the permit is ready to be issued.

An earlier e-mail from March 5, 2020, on page F, noted that the question of the Record of Site Condition was an outstanding issue. Nothing in the e-mail exchange states that the Record of Site Condition matter had been resolved nor that the building permit was ready to be issued.

The Record of Site Condition matter had not been resolved as of March 25, 2020, nor had it been resolved as of April 4, 2020. There was no legal entitlement to a building permit as of that day. Nonetheless given the uncertainty as to when the prohibitions imposed by Ontario Regulation 119/20 would be lifted and so as not to delay construction for an uncertain period of time, the determination was made to issue the permit on Saturday, April 4, 2020. In that the permit was issued on a Saturday, such can be taken as evidence of the extraordinary nature of the situation.

As there was no entitlement to a building permit on or before March 31, 2020, it is therefore the view of staff that none of the three conditions in section 20 for a complaint being sustained have been met.

DEVELOPMENT CHARGE AMOUNT SUBJECT TO COMPLAINT

The amount by which the applicable municipal development charges increased in respect of the project at 500 Preston at the end of the transition period was \$577,406.92. This reflects an increase in \$28,774.92 dollars in respect of the commercial portion of the property and \$548,632 in respect of the residential portion of the property.

Further, pursuant to the *Development Charges Act*, section 26.1, the municipal development charges for a rental building are spread out over six annual payments, the first of which is due at occupancy. This deferral period applies only to the residential portion of the building. Thus, as a result of the end of the transition period, an additional amount of \$91,438.67 per payment, plus interest, is payable.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

The applicable legislation requires that two weeks notice of a hearing into a development charges complaint be given to the complainant. This notice was given on Thursday, January 28, 2021.

COMMENTS BY THE WARD COUNCILLOR

The Ward Councillor is aware of this report.

LEGAL IMPLICATIONS

Following Council's consideration of this complaint, notice of the decision will be sent to the complainant. The complainant has the ability to appeal Council's decision to the Local Planning Appeal Tribunal.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications associated with the recommendations of this report.

FINANCIAL IMPLICATIONS

There are no direct financial implications associated with the report recommendation. In the event the complaint is upheld, the \$117,144.32 will be returned from the respective development charge reserves.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

TERM OF COUNCIL PRIORITIES

There are no Term of Council priorities impacted by this report.

SUPPORTING DOCUMENTATION

Document 1 Postponement of Indexing Motion

Document 2 Development Charges Complaint

DISPOSITION

The Office of the City Clerk will advise the solicitor for the complainant of Council's decision.

Document 1 – Postponement of Indexing Motion

WHEREAS, in the Development Charges By-laws enacted in May, 2019, the indexing date was moved from August 1 to April 1 to avoid indexing during the summer months; and

WHEREAS the indexing provision has been appealed to the Local Planning Appeal Tribunal; and

WHEREAS the rate for indexing only becomes known at the end of February; and

WHEREAS staff have been reminded of a Council motion in 2002 that at least three months notice should be provided of the rate of increase pursuant to indexing; and

WHEREAS moving to an indexing date of October 1 will avoid indexing during the summer months, allow for three months notice to be given and resolve the appeals of this provision to the Local Planning Appeal Tribunal; an

WHEREAS during these extraordinary circumstances, Building Code Services could not effectively manage a rush of permit applications if applicants wished to take advantage of the current rates;

THEREFORE BE IT RESOLVED THAT:

1. Council endorse a resolution of the appeals to the indexing provision through the modification of the By-law 2019-156 to provide that the indexing date be October 1 rather than April 1.
2. Council approve that, pending an order of the Local Planning Appeal Tribunal, that the indexation for 2018 and 2019 set to proceed on April 1, 2020 be deferred to October 1, 2020.