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CN: 1-1-03-01

Submitted via Environmental Registry of Ontario

John Ballantine
Municipal Finance Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay Street
Toronto ON M5G 2E5

Re: Town of Lincoln Bill 108 Comments - Development Charges Act, Community Benefits Authority, Planning Act (ERO 019-0183, ERO 019-0184, ERO 019-0181)

On behalf of the Town of Lincoln Planning Department, we have reviewed the recently released proposed regulations relating to Bill 108, The More Homes, More Choice Act. As requested by the Ministry, we have prepared the following feedback in response to ERO postings #019-0183, #109-0184, and #109-0181.

Participation in future consultation relating to Bill 108:

The proposed regulations do not specify how the Town can provide comment on the CBC formula. The Town has been informed that the Province has established a Technical Working Committee to advise on a potential Community Benefits Charge (CBC) formula. **The Town respectfully requests that the Province provide the opportunity for municipalities to review and provide input prior to issuing any regulations pertaining to Bill 108, including the CBC formula.**

CBC Formula:

The MMAH has stated that a goal of the CBC formula will be to maintain historic revenues for soft services collected from development charges, density bonusing, and parkland dedication including the alternative rate. It is not clear how current revenues will be maintained, considering land values have little relation to the municipal capital costs which are to be funded through the CBC. The Town's concerns include land values that vary widely across communities, fluctuate over time, and are not tied to construction cost inflation. It is also unclear how growth-related revenues will be maintained with new development charge exemptions and how growth-related costs resulting from these types of developments will be funded.

CBC By-law implementation date:

The proposed transition period for municipalities to pass a CBC By-law is between January 1, 2020 to January 1, 2021. This implementation date will be difficult to achieve given that a CBC strategy must first be undertaken, the requirements of which have not

yet been released. It is anticipated that the extent of study and documentation required as part of the CBC strategy would be comparable to the requirements for developing and implementing a DC by-law, which typically takes 18 months. If so, the proposed timelines would be difficult to achieve.

The Town recently completed a significant undertaking to enact DC By-law No. 2018-93 on October 1, 2018 and which expires on October 1, 2023. The proposed amendments to the Development Charges Act will significantly impact the Town's financial planning, revenues, collection risks, and the ability to manage cash flow for necessary growth-related infrastructure. Given the magnitude of changes proposed, effective transition will be critical for the Town.

As such, the Town respectfully requests that the Province revise the proposed transition provisions to tie the prescribed enactment date for all proposed amendments to the Development Charges Act to the expiry date of an existing DC by-law. This would allow CBCs to be phased-in at the time of DC By-law expiry and would allow for proper planning and consultation with municipalities to better understand administrative resourcing, tools, and processes required for this major transition.

The proposed regulations are not clear as to when municipalities would cease to have access to the alternative parkland rate with respect to the elimination of Planning Act Sections 42 and 51. **The Town requests that the alternative rate not be repealed until a CBC by-law is passed.**

The Town also requests transition details for existing cash-in-lieu of parkland reserve funds. Municipalities should be allowed to use existing reserve funds for the scope of services for which the funds were originally collected. Restrictions placed on CBC special accounts, such as spending 60% of the funds each year, should not be applied to reserve funds that have already been collected by municipalities.

Development Charge Deferral:

The proposed definitions of development types that are eligible for DC payment deferrals, such as for rental housing or non-profit housing, do not require the development type to retain their status over any given period of time. As such, these development types could be converted to another use such as condominium developments. **The Town requests that the proposed regulations be revised to require retained status over a given period of time, or that municipalities be provided with the ability to impose such requirements.**

There are no proposed regulations to protect municipalities against collection losses where development charges are deferred, should the owner default or ownership change. **The Town requests that municipal protections be included, such as the ability for municipalities to place notice of unpaid DC installments on title of the land or to restrict the sale of a property until unpaid DC installments are paid.**

Development Charge Freeze:

The proposed regulation to freeze DCs at the date of application submission to two years after the date of site plan approval or zoning amendment approval reduces the incentive for developers to work towards timely application approval and building permit issuance. A significant period of time could lapse from the date of submission of an application up to a period of two years after application approval. This will provide uncertainty with respect to municipal revenue collection and may lead landowners to apply for minor zoning amendments in order to freeze the DC amount. **The Town requests that the DC rate freeze be reduced to a maximum of two years from the application date, not from the application approval date.**

Development Charges Act Clarification of Proposed Regulations:

Further detail is requested on the transition of soft service charges from DCs to a CBC By-law. In some instances, soft service capital projects have been built and require future DC contributions to recover capital costs. Please clarify that the collection of future CBC funds will allow for the full anticipated recovery of these costs.

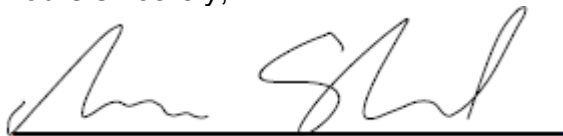
Planning Act Clarification of Proposed Regulations:

Please clarify additional residential unit regulations. It is uncertain if municipalities are required to authorize additional residential units on residential properties serviced by private on-site sewage and water systems.

The Town has received and is in support of comments provided by Watson & Associates on the proposed Development Charge and Community Benefits Charge Regulations in a letter dated July 25, 2019. The Watson letter is enclosed for your review and consideration.

The Town appreciates the opportunity to provide these comments and looks forward to participating in further consultation opportunities. Should you require any further information or clarification please do not hesitate to contact the undersigned.

Yours sincerely,



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Attachment: Watson & Associates Letter

- C. Teri Trewolla, Acting Director of Finance & Administration, Town of Lincoln
- Kathleen Dale, MCIP, RPP, Director of Planning & Development, Town of Lincoln

July 25, 2019

To Our Development Charge Clients:

Re: Bill 108: Draft Regulations for the Development Charges Act and Planning Act (Community Benefits Charge Related)

On behalf of our many municipal clients, we are continuing to provide the most up-to-date information on the proposed changes to the *Development Charges Act* (D.C.A.) as proposed by Bill 108. The Province has recently released draft Regulations related to the D.C.A. and the community benefits charge (C.B.C.). These Regulations are posted on the Environmental Registry of Ontario for public comment which is open until August 21, 2019. Comments may be made at the following websites:

- Development Charge Regulation – <https://ero.ontario.ca/notice/019-0184>; and
- Community Benefits Charge Regulation – <https://ero.ontario.ca/notice/019-0183>.

We would note that the Province has established a Technical Working Committee to advise on the methodological approach for the development of a proposed formula to be used in the C.B.C. calculation. Gary Scandlan has been invited and will participate as a member of this committee.

This letter provides a review and commentary on the Regulations proposed for the D.C.A. and the *Planning Act* (as they relate to the C.B.C.). These draft Regulations are included in the attached Appendices. Note that some of the proposed changes are provided directly in the draft Regulations while other comments were included in other documents circulated by the Province.

Proposed D.C.A. Regulation Changes – ERO Number 019-0184

1. Transition of Discounted Soft Services

Provides for transition to the C.B.C. authority during the period of January 1, 2020 to January 1, 2021.

- Confirm that all D.C.A. provisions of Bill 108 will be effective at the municipality's discretion during the transition period (i.e. by January 1, 2021), such that development charge (D.C.) by-law amendments for collections and statutory exemptions can take effect at the same time as transitioning soft services.



2a). D.C. Deferral

Provides for the deferral of D.C.s for rental housing development, non-profit housing development, institutional/industrial/commercial development until occupancy.

- This speaks to “until occupancy;” however, it is proposed to be collected during a term (5 or 20 years) beyond occupancy. Clarify that this means period “from the date of occupancy.”
- As the landowner may change during the period when payments are being made, how will municipalities be able to track the changes in ownership? Is there an ability to place a notice on title of the land?
- Can security be taken to ensure recovery of the payments?

2b). Deferral Definitions

“Non-profit housing development’ means the construction, erection or placing of one or more buildings or structures for or the making of an addition or alteration to a building or structure...”

- This appears to cover both new developments as well as redevelopment. Need to consider how the application of D.C. credits would apply on redevelopments.

“Rental housing development’ means...four or more self-contained units that are intended for use as rented residential premises.”

- Definition speaks to “intended.” What requirement is in place for these units to remain a “rented residential premises” and over what period of time?
- Can municipalities impose requirements to maintain status over the term of installments?
- How will this be substantiated at the time of occupancy?

“Non-profit housing development’ means...by a non-profit corporation.”

- Any requirement to remain a “non-profit corporation” for a period of time?
- Can municipalities impose requirements to maintain status over the term of installments?
- How will this be substantiated at the time of occupancy?

“Institutional development’ means...long-term care homes; retirement homes; universities and colleges; memorial homes; clubhouses; or athletic grounds of the Royal Canadian Legion; and hospices.”

- Long-term care homes and retirement homes are considered in some municipalities as residential developments with charges imposed based on



number of dwelling units. Does this require these developments to be charged as non-residential developments based on gross floor area of development?

- Does the phrase “universities and colleges” relate only to the academic space? Many municipalities impose charges on the housing related to the institution.

“Commercial development’ means...office buildings as defined under subsection 11(3) in Ontario Regulation 282/98 under the Assessment Act; and shopping centres as defined under subsection 12(3) in Ontario Regulation 282/98 under the Assessment Act.”

- This would appear to apply to a subset of commercial types of development. The *Assessment Act* defines a shopping centre as:
 - “i. a structure with at least three units that are used primarily to provide goods or services directly to the public and that have different occupants, or
 - ii. a structure used primarily to provide goods or services directly to the public if the structure is attached to a structure described in subparagraph i on another parcel of land.”
 - “‘Shopping centre’ does not include any part of an office building within the meaning of subsection 11 (3).”
- Office includes:
 - “(a) a building that is used primarily for offices,
 - (b) the part of a building that, but for this section, would otherwise be classified in the commercial property class if that part of the building is used primarily for offices.”
- Confirm all other types of commercial will continue to be charged fully at the time of building permit issuance.
- Will these definitions require D.C. background studies to further subdivide the growth forecast projections between shopping centre, office and other commercial development for cashflow calculation purposes?

Administration of deferral charges in two-tier jurisdiction.

- Regulation does not speak to policies for upper- and lower-tier municipalities. Areas where variation could occur include collection of installments (e.g. who monitors and collects installments), commonality for processing payment defaults, interest rates, etc.

3. D.C. Freeze for Site Plan and Zoning By-law Amendment

The D.C. quantum would be frozen “until two years from the date the site plan application is approved, or in the absence of the site plan application, two years from the date the zoning application was approved.”



- D.C.s are frozen from date of site plan or zoning by-law application up to a period of 2 years after approval. In the situation where the planning application is appealed by the applicant, would they still be entitled to the rates at the date of planning application submission?
- This provision may provide for abuse where land owners may apply for minor zoning changes in order to freeze the D.C. quantum for several years.

4. Maximum Interest Rates on D.C. Deferrals for Freeze

Minister is not proposing to prescribe a maximum interest rate that may be charged on D.C. amounts that are deferred or on D.C.s that are frozen.

- Municipalities will need to consider what rates are to be used in this regard (e.g. annual short-term borrowing rates, long-term debenture rates, maximum rates on unpaid taxes, etc.).
- Should there be consistency between upper- and lower-tier municipalities?
- If interest rate selected is too high, would it discourage paying installments?

5. Additional Dwelling Units

It is proposed that the present exemption within existing dwellings be expanded to allow "...the creation of an additional dwelling in prescribed classes of residential buildings and ancillary structures does not trigger a D.C." Further, in new single, semi and row dwellings (including ancillary structures), one additional dwelling will be allowed without a D.C. payment. Lastly, it is proposed that, "...within other existing residential buildings, the creation of additional units comprising 1% of existing units" would be exempted.

- All the noted exemptions should be granted once, so as to not allow for multiple exemptions in perpetuity.
- Need to define a "row dwelling." Does this include other multiples such as stacked and/or back-to-back townhouses?

C.B.C. – Proposed Planning Act Regulation - ERO Number 019-0183

1. Transition

The specified date for municipalities to transition to community benefits is January 1, 2021.

- While this seems like a long period of time, there are over 200 municipalities with current D.C. by-laws. As it will take some time to evaluate the approach to these studies, carry out the studies, undertake a public process and pass by-laws, the time frame is limited and should be extended to at least 18 months.



2. Reporting on Community Benefits

“Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the community benefits charge special account, such as:

- *Opening and closing balances of the special account*
 - *A description of the services funded through the special account*
 - *Details on amounts allocated during the year*
 - *The amount of any money borrowed from the special account, and the purpose for which it was borrowed*
 - *The amount of interest accrued on money borrowed.”*
- Confirm that “special account” and reserve fund have the same meaning.
 - In regard to amounts allocated, within the context of the legislation where 60% of funds must be spent or allocated annually, can amounts be allocated to a capital account for future spending (e.g. recreation facility in year 5)?
 - Similar to D.C. reserve funds, can the funds in the special account only be borrowed for growth-related capital costs?

3. Reporting on Parkland

Prescribed reporting requirements for parkland, “Municipalities would be required annually to prepare a report for the preceding year that would provide information about the amounts in the special account, such as:

- *Opening and closing balances of the special account*
 - *A description of land and machinery acquired with funds from the special account*
 - *Details on amounts allocated during the year*
 - *The amount of any money borrowed from the special account, and the purpose for which it was borrowed.”*
- In regard to the amount of interest accrued on money borrowed, confirm that the “special account” and reserve fund have the same meaning.
 - This section of the Regulation is introduced to allow municipalities to continue using the current basic parkland provisions of the *Planning Act*. However, in contrast to the current reporting under s. 42 (15) which allows funds to be used “for park or other public recreation purposes,” the scope in this Regulation is for “land and machinery.” Confirm whether the scope of services has been limited.

4. Exemptions from Community Benefits

“The Minister is proposing that the following types of developments be exempt from charges for community benefits under the Planning Act:

- *Long-term care homes*
- *Retirement homes*
- *Universities and colleges*



- *Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion*
- *Hospices*
- *Non-profit housing.”*
- Confirm that for-profit developments (e.g. long-term care and retirement homes) will be entitled to exemptions.
- Will Regulations prescribe that exemptions must be funded from non-C.B.C. sources, similar to D.C.s?
- Does the phrase “universities and colleges” relate only to the academic space? Many municipalities impose charges on the housing related to the institution.
- Does the phrase “universities and colleges” include private institutions? Should a definition be provided to clarify this?

5. Community Benefits Formula

Provides the authority for municipalities to charge for community benefits at their discretion, to fund a range of capital infrastructure for community services needed because of new development.

- The Regulation notes that, “This capital infrastructure for community services could include libraries, parkland, daycare facilities, and recreation facilities.” Is the inclusion of libraries, parkland, daycare facilities, and recreation facilities as capital infrastructure for community services intended to be exhaustive, or are all other “soft” services (e.g. social and health services) eligible to be included as community benefits?
- The C.B.C. payable could not exceed the amount determined by a formula involving the application of a prescribed percentage to the value of the development land. The value of land that is used is the value on the day before the building permit is issued to account for the necessary zoning to accommodate the development. Will a range of percentages be prescribed to take into account varying values of land for different types of development or will the C.B.C. strategy require a weighting of the land values within the calculations?
- Will the range of percentages account for geographic differences in land values (e.g. municipal, county, regional, etc.)?
- Will they account for differences in land use or zoning?
- It is noted that, at present, municipalities may impose parkland dedication requirements and D.C.s on non-residential lands. Will non-residential lands be included as chargeable lands? If not, does this allow municipalities to place 100% of the servicing needs onto residential development?
- This Ministry is not providing prescribed percentages at this time. Can the Province confirm that no prescribed percentages will be proclaimed during the transition period?



6. Appraisals for Community Benefits

It is proposed that,

- *“If the owner of land is of the view that the amount of a community benefits charge exceeds the amount legislatively permitted and pays the charge under protest, the owner has 30 days to provide the municipality with an appraisal of the value of land.*
- *If the municipality disputes the value of the land in the appraisal provided by the owner, the municipality has 45 days to provide the owner with an appraisal of the value of the land.*
- *If the municipality’s appraisal differs by more than 5 percent from appraisal provided by the owner of the land, the owner can select an appraiser from the municipal list of appraisers, that appraiser’s appraisal must be provided within 60 days.”*
- Is the third appraisal binding? Can this appraisal be appealed to L.P.A.T.?
- Can the costs for appraisals be included as eligible costs to be funded under the C.B.C.?
- Do all municipalities across the Province have a sufficient inventory of land appraisers (i.e. at least 3) to meet the demands and turnaround times specified within the Regulations?

7. Excluded Services for Community Benefits

“The following facilities, services or matters are to be excluded from community benefits:

- *Cultural or entertainment facilities*
- *Tourism facilities*
- *Hospitals*
- *Landfill sites and services*
- *Facilities for the thermal treatment of waste*
- *Headquarters for the general administration of municipalities and local boards.”*
- This would be consistent with the ineligible services list currently found under the D.C.A. Is there a distinction between “the thermal treatment of waste” and incineration?
- Will there be any limitation to capital costs for computer equipment or rolling stock with less than 7 years’ useful life (present provision within the D.C.A.)?
- Will the definition of eligible capital costs be the same as the D.C.A.?
- Question this relative to the description of community services in item 5 above.

8. Community Planning Permit System

Amendments to the Planning Act will allow conditions requiring the provision of specified community facilities or services, as part of the community planning permit system (which combines and replaces the individual zoning, site plan and minor variance processes). It is proposed, “that a community benefits charge by-law would



not be available for use in areas within a municipality where a community planning permit system is in effect and specified community services are identified.”

- The above suggests different charges to different lands. It is unclear as to the amount of recovery provided under the C.B.C. and that allowed under the community planning permit system.
- Will the community planning permit system have the same percentage of land value restrictions as the C.B.C.?

9. Other Matters

The following are questions arising from the new cost recovery approach which is not clearly expressed in the draft legislation.

- If a land owner sells the property at a discounted value, does an appraisal of that land relative to similar lands override the discounted value shown in the actual sale?
- Will Counties and Regions be allowed to continue the collection of their soft services? How will their percentage of the land value be allocated? If they are required to provide an averaged percentage across their jurisdiction, how are they to recover their costs if, say, their percentage of land value can be absorbed within the urban municipalities but not absorbed within the rural municipalities?
- How are mixed uses to be handled? For example, exempt institutional uses are planned for the first floor of a high-rise commercial/residential building.
- Will ownership vs. use impact on the ability to impose the charge?

Yours very truly,

WATSON & ASSOCIATES ECONOMISTS LTD.

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