

August 21, 2019

Ministry of Municipal Affairs and Housing
Municipal Finance Policy Branch
13th Floor, 777 Bay Street
Toronto, ON
M5G 2E5

Attention: Mr. John Ballantine
Manager

**Re: Proposed new regulation pertaining to the community benefits authority
under the Planning Act
ERO 019-0183**

Dear Mr. Ballantine:

On behalf of our Client, the Municipality of Brighton, we submit herein comments in respect of the proposal as referenced above, being ERO 019-0183.

A report to Council on August 14, 2019 served to summarize the proposal as currently understood, together with providing comments on the proposed content of the new regulation. As passed by resolution of Council, Staff have been directed to provide a copy of the report to the Ministry, representing the Council of the Municipality of Brighton's comments on the proposed regulatory changes.

Thank you.

Sincerely,

LANDMARK ASSOCIATES LIMITED



Darryl J. Tighe, M.Sc., RPP,
Municipal Planning Consultant



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Enclosure

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cc: Municipality of Brighton - Client



Municipality of Brighton
Council Meeting

Council Meeting Date: August 14, 2019

To: Council

Prepared By: Darryl Tighe and Amanda Dougherty, Municipal Planning Consultants

Reviewed By: Bob Casselman, CAO

Department: Planning Services

Subject/Title: Amendments to the *Development Charges Act* and the *Planning Act* (Bill 108 – More Homes, More Choice, 2019)

RECOMMENDATION:

1. That Council receives the report regarding *Amendments to the Development Charges Act and Planning Act (Bill 108 – More Homes, More Choice, 2019)* for information; and
2. That Council direct Staff to submit a copy of the report to the Province, representing the Council of the Municipality of Brighton's comments on the proposed regulatory changes.

BACKGROUND/PURPOSE:

On June 6th, 2019, *Bill 108 – More Homes, More Choice* received Royal Assent. Currently no proclamation date has been issued, and as such the amendments of Bill 108 are not fully in effect. Council has received reports in respect of the proposed amendments to each the *Conservation Authorities, Local Planning Appeal Tribunal* and *Planning Acts*; together with certain of the corresponding proposed Ontario regulations.

The following will serve to review changes to the *Development Charges Act* and related changes to the *Planning Act*. Comments are being received until August 21st on the Environmental Registry of Ontario (ERO).

The Development Charges Act (O. Reg 82/98)

Under Bill 108 services which can be collected via a DC by-law would be restricted to the following:

- Water supply services (including distribution and treatment)
- Wastewater services (including sewers and treatment)
- Storm water drainage and control services
- Electrical power services
- Services related to a highway
- Fire and police protection
- Transit services
- Waste diversion services

ERO Posting #19-0184 proposes that municipalities with a current DC by-law, must transition into a Community Benefits Charge (CBC) by-law no later than January 1st, 2021, in order to keep collecting fees for any soft services (e.g. parks, recreation, libraries, daycare facilities).

The amount of DC payable by a property owner or developer would be determined at the time an application (e.g. site plan or rezoning) is received by Council; and would then freeze for 2 years from the time an application is approved. Property owners would also be able to postpone paying DC for certain types of development (e.g. rental (4+ units) and non-profit housing, commercial, industrial and institutional development) until the time of occupancy and could pay in installments. However, municipalities would be permitted to charge interest. Currently no maximum interest rate has been proposed by the Province.

The proposed regulatory changes will also prevent DC from being applied to a second dwelling unit either within an existing principle dwelling or ancillary building.

The Planning Act

Section 37 (Increased density, etc., provision by-law) of the *Planning Act* will be replaced in its entirety. The alternative legislation introduces the Community Benefits Charge (CBC). The CBC is intended to allow municipalities to collect funds for services no longer eligible under a DC by-law.

ERO Posting #19-0183 outlines the proposed content of a new regulation under the *Planning Act* which will prescribe the matters in respect of the CBC.

Cultural, entertainment or tourism facilities, hospitals, landfills, facilities for thermal treatment of waste and municipal administrative offices cannot be included in the CBC. However, this list is reflective of those services already ineligible under the *Development Charges Act*.

To calculate the amount of CBC payable by a property owner, the proposed regulation will include a formula, which will be applied at the time of application. The CBC formula will reportedly include a range of percentages to implement and be based in part on the value of the land as assessed on the day an application for development is submitted to a municipality. Currently the *Development Charges Act* prescribes that only 90% of the anticipated cost of soft services can be recovered through collecting fees; however, under Bill 108 a CBC by-law can recover 100% of the anticipated costs.

If an owner disagrees with the assessed value of land, they are provided 30 days to submit their own appraisal. If the municipality disagrees with the owner's appraisal, 45 days is provided to the municipality to seek their own appraisal. Should the two resulting appraisals differ by greater than 5% a third appraisal would be conducted. The owner would choose the appraiser; however, it must be from an approved list maintained by the municipality.

For those municipalities opting to pass a CBC by-law, it is proposed that annual reporting requirements will be prescribed, similar to those already implemented for DC. The reporting is intended to ensure that CBC are spent on community benefits.

Certain types of development will be exempt from paying CBC inclusive of long-term care and retirement facilities, post-secondary education institutions, hospices and non-profit housing.

Municipalities which do not collect a CBC will be permitted to continue using the parkland provisions currently prescribed under the *Planning Act*. However, a new annual reporting requirement will be prescribed for those municipalities collecting fees for parkland. Municipalities that have a CBC by-law cannot also have a parkland dedication by-law.

COMMENTS:

It is anticipated that the Municipality of Brighton's DC By-law 058-2014 will require amendments should the regulations proceed as proposed. Currently the Municipality's by-law includes charges for administrative, library and parks and recreation services (attached); which will need to be converted to a CBC by-law in order to continue collecting these fees.

Fees collected for soft services under the current DC By-law account for 35% of the fees in the Rural area and approximately 23% in the Urban area. The difference is accounted for by the inclusion of wastewater and water services for urban properties only. While soft services

therefore do not comprise the majority of DC within the Municipality, it does represent an important portion of the fees collected.

Given the potential impact to the Municipality it is unfortunate the regulations have not yet been provided by the Province for review. It is anticipated that the regulations would come into effect in January 2020. That being the case, a transition deadline of 2021 seems potentially unreasonable. Alternatively, setting a transition deadline to 2022 would be a more appropriate amount of time for Council to consider impacts and otherwise implement any revised or new by-laws.

It has not been made clear whether municipalities that currently collect fees for soft services under a DC by-law will be able to simply pass a new CBC by-law or whether a strategy/study would first need to be undertaken. However, it would be reasonable to afford an alternative transitional policy to those municipalities already collecting fees for soft services, particularly as the work was already completed under the DC by-law for those services. In those cases, soft service fees should be 'grandfathered' into a new by-law for a period, in order to allow a future study to be undertaken without disruption to the municipalities' revenue.

While the Province's goal is to ease the burden of developing housing, certain of these amendments may ultimately upset the delivery of services that current and future residents benefit from. For example, fluctuations in the market can be unpredictable; this may create challenges for municipalities in terms of adequately planning for future services. While market changes may decrease the value of land, it would be unlikely that the cost of implementing, maintaining or repairing services would ever result in anything other than an increase in cost over time.

As well, specifics regarding the percentages for calculating CBC have not been released, so it is currently unclear whether they will vary by region or types of land use. Regionally property values may vary greatly, however the same cannot necessarily be said for the cost of implementing or maintaining services. The question arises as to whether municipalities outside of the Greater Toronto Area, where property values are lower, will therefore be able to maintain an adequate level of services. It is anticipated that further regulations, inclusive of the formula, will be made available this fall.

Additionally, freezing the rate of a DC for 2 years and calculating the CBC at the time of application, may create a discrepancy between the fee collected and the actual cost of services. In some cases, years may pass from the time of planning approvals to the point of issuing a building permit. While the freeze/delay of payment will likely have a positive impact to the development community, it would be more appropriate to calculate the fee at the time of building permit rather than at the time of application. It is further anticipated there will be an increased

administrative demand created by both freezing rates and delaying payment, as some form of a monitoring system will need to be implemented and maintained.

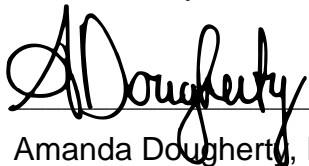
The addition of dwelling units on a property is intended to provide greater housing options. While the addition of a second or even third unit may not increase the building footprint, it will increase the population density of a community, increasing the demand on hard and soft services. By additional residential units being exempt from paying DC, municipalities may experience a shortfall in revenue amongst a growing population. Proposed regulations do not appear to indicate a prohibition on charging the CBC to second dwelling units. Alternatively, a municipality should be able to collect DC for additional units; but perhaps a lesser portion of the total amount in order to still promote development.

To date the amount of time provided to municipalities for submitting comment in respect of the on-going changes has not been adequate. We would request that the Province ensure proper engagement with municipalities at such time as the new regulations become available, and to provide adequate time for review, consultation and comment prior to those regulations being approved.

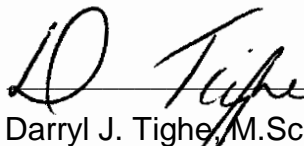
Should Council direct, this report can be submitted to the Environmental Registry of Ontario for official comment.

All of which is respectfully submitted for Council's consideration and hopeful assistance.

Submitted by:



Amanda Dougherty, B.A,
Planner
Landmark Associates Limited



Darryl J. Tighe, M.Sc., RPP,
Director of Planning
Landmark Associates Limited



Attachments

Attachment # 1 – Development Charges By-law 058-2014