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April 20, 2020

RE: ERO #019-1406 – Proposed regulatory matters pertaining to community benefits authority under the Planning Act, the Development Charges Act, and the Building Code Act

Dear Mr. Ballantine,

We welcome the opportunity to provide additional practical input into how the proposed changes to municipal finance and planning tools can be revised to offer workable approaches for communities across Ontario. We recognize that housing affordability is a challenge which the government is trying to solve and we acknowledge that these efforts can be complicated and should not be rushed.

We appreciate the progress thus far and thank the Ministry for facilitating previous municipal feedback and for making important changes to the previously drafted regulations, specifically:

- Allowing certain services (Parks Development, Recreation, Public Libraries, Long-Term Care and Public Health) to remain as eligible services in the Development Charges Act; and
- Removing the 10% mandatory deduction for all services that remain eligible in the DC.

We continue to have some concern that the proposed changes to the *Planning Act* will adversely affect the City's ability to maintain neutral revenues from the previous regime. More specifically, the elimination of 42 (6.0.1) of the *Planning Act*, which gives municipalities the ability to require a payment-in-lieu of parkland calculated by using a rate of one hectare for each 500 dwelling units, will create a negative economic impact for the City that will not be overcome by alternatively using a Community Benefit Charge (CBC). Future growth within the City will have a much larger emphasis on medium and high density units, due to its focus on increasing intensification. Our findings show that with higher intensification, the City will receive fewer dollars for parks acquisition per capita when the charge is based on land value rather than by the number of dwelling units being constructed.

Further, by not allowing municipalities to use the currently available *Planning Act* tools to collect funds for future park acquisitions in conjunction with, and not the exclusion of, the future CBC for other growth related capital costs, local authorities will not be in a position to make the necessary policy decisions that are right for their own communities.

This will impact the City's ability to deliver complete communities in growth areas, particularly at a time when intensification is the preferred means for allocation of development and will undoubtedly

force municipalities to either reduce the services in one or more areas or transfer additional future growth related costs to existing taxpayers.

Our recommendations support the Province's stated objectives of maintaining municipal revenues, providing cost certainty and housing affordability while ensuring that existing taxpayers are not additionally burdened with the cost of growth.

Specific Inquires of the ERO

1. Required content of a community benefits charge strategy

We support this section of the proposal as a fair and reasonable approach. However, we must note that it will take more than one year after the date the proposed CBC regulation comes into effect to perform the necessary work to put a comprehensive strategy in place (see #4 below).

2. Services eligible to be funded through development charges

We support making the capital costs relating to the following services fully recoverable as eligible services through development charges:

- Waste diversion
- Ambulance services
- Public libraries
- Long term care
- Parks development
- Public health
- Recreation

We would support increasing the list of eligible services to include:

- Parking
- Social Housing
- Growth related studies (such as Infrastructure Plans, Official Plan, Parks and Recreation Plans, Facilities Plans, Fire Master Plan, etc.)
- Any other reasonable services required as a result of growth

Growth drives many needs beyond the list described in the proposed eligible services list. While the proposed CBC offers some flexibility to provide for additional services such as affordable housing and child care centres, it ignores many of the other services that are required or important to any particular community like entertainment and cultural facilities, waste disposal infrastructure, a community's share of hospitals, etc.

Recommendation:

- A. That the Province expand the list of eligible services to include Parking, Social Housing, Growth Related Studies and any other reasonable services required as a result of growth as determined by the local municipality. The Province should offer the flexibility for local municipalities to determine which growth related services are important to its communities and which tools to use through local policy to fund said services. This reflects a collaborative and respectful approach to determining what works best at the local level.

3. Percentage of land value for determining a maximum community benefits charge

We believe that there are a number of problematic issues that come with a CBC that is both based on the value of land and is capped at a rate determined by someone other than at the local level.

Disconnect between land values and services

Land value is not an appropriate metric for determining how much revenues to be collected to service the cost of growth. Land values are wholly unrelated to the cost of infrastructure required to service a community; nor are land values connected to the need for services.

It is reasonable to associate the value of land to parkland acquisition, as it is the intention to use that source of revenue to purchase land. By contrast, facility construction has no connection to land value. Additionally, land values vary widely across Ontario, whereas the capital costs of construction do not. Any municipal tool used to recover growth related costs must account for a range of community needs and of land markets both within and across municipalities.

People living in the community drive the need for community based services. A revenue collection model that does not consider the amount of people and employment that are arriving in a community with the dispersion of the charge, disconnects the necessary services of the community from the funds required to construct them.

A model that does not consider and address the full cost of services needed will result in fewer services being offered in the future or the costs of those services being shifted to the existing taxpayer.

Determination of Rate Cap at Upper Level of Government

Any capped system is best determined at the local level to ensure that the various needs of the local community are met.

One size does not fit all. Some municipalities are in high growth situations while others are mature resulting in fewer parkland dedication and payment-in-lieu needs. A cap system based on land value that is set by the Province is not the appropriate mechanism for funding the needs of communities where intensification requirements and land values vary widely across the Province.

The services local governments provide and the policies they develop have a direct effect on the lives of citizens. Local governments, in consultation with their citizens, play a key role in the development of communities, are best suited to determine the needs and appropriate level of service to be provided, and make key investment decisions about infrastructure.

CBC Redevelopment Credits

At this time, it is unclear from the proposed legislation how redevelopment credits will be managed. It is essential that there be a mechanism in the upcoming legislation to allow for redevelopment credits in order for municipalities to collect for services in the CBC while crediting previously made payments-in-lieu of parkland.

Front-Ending and Credit Agreements

At this time, it is unclear from the proposed legislation if front-ending or credit agreements will be allowed under a CBC. This is a tool that is often used and can be beneficial to both the municipality and the development community to move projects forward. Any legislative change should consider giving municipalities the optional tool of entering into such agreements.

Revenue Neutrality

Any changes to the methodology ought to be revenue neutral for municipalities.

As currently proposed, there is significant risk that the Community Benefits Charge regime is likely to compromise Ontario municipalities' ability to provide and deliver the same level of community-focused infrastructure. The City has not had adequate time or means to assess the full impact of the proposed legislation, however our preliminary analysis indicates that under this proposal, we will collect fewer dollars for the same services.

Municipalities such as ours will be required to choose between transitioning more growth related costs to the existing taxpayer and lowering current levels of services.

Higher Density Developments

Future growth within the City of Barrie will have a much larger emphasis on medium and high density units, due to its focus on increasing intensification. This fact creates significant challenges in applying a capped rate against land value. Our preliminary findings show that with higher intensification, the City will receive fewer dollars for parks acquisition per capita. With intensification, there is greater need for municipalities to provide citizens with greenspace to enjoy and to maintain quality of life.

Section 42 (6.0.1) of the Planning Act, which gives municipalities the ability to require a payment-in-lieu of parkland calculated by using a rate of one hectare for each 500 dwelling units allows for a fair and equal distribution of future growth related costs. The proposed elimination of this section will undoubtedly create a negative economic impact for the City that will not be overcome by using a CBC charge.

The proposal as it stands will lead to fewer dollars received from development in intensified areas for future parks acquisitions.

Cost Certainty

Tying community benefit charges to land values causes increased uncertainty. There is no nexus between cost of services and land value.

The uncertainty will limit the municipalities' ability to appropriately plan for and fund future infrastructure needs. This uncertainty will likely delay the construction of those services which could delay and slow growth overall.

The uncertainty will also impact the development community's ability to predict their future costs. They will no longer be able to calculate their own charges with certainty based on publicly posted per unit or square footage rates against their own development plans which would include the number of units or square footage of space being constructed.

Should the proposed changes go forth as is currently contemplated, developers will need to predict the future appraised value of their land. This value may subsequently be challenged.

The development community will certainly be concerned by the risk of delays and the ability of municipalities to construct the related community facilities that make these developments more attractive to the buying public. Vibrant and complete communities are good for everyone. These risks could be further exacerbated in the event of an economic downturn.

Recommendations:

- B. That the Province remedy the fundamental structural issues of using land values to address cost recovery of growth related services. Recovery of costs relating to growth is best accommodated through the development charges regime on a gross floor area or per unit basis rather than a land value basis;
- C. That the Province not legislate a rate cap for the CBC and allow local governments to set its own rates through its own policies based on local needs;
- D. That the Province consider redevelopment credits and providing municipalities with the ability to enter into CBC credit agreements as well as front-ending agreements in the same way that it currently does under the DC Act;
- E. That the Province affirm its commitment to revenue neutrality for municipalities under any future legislative changes and release the Province's consultants' findings for each municipality so that we may better evaluate the impact of the proposed changes;
- F. That section 42 (6.0.1) of the Planning Act, which gives municipalities the ability to require a payment in lieu of parkland calculated by using a rate of one hectare for each 500 dwelling units not be eliminated;
- G. That the Province allow municipalities to use all current available Planning Act tools for the collection of funds for future park acquisitions, inclusive of section 42 (6.0.1), in conjunction with, and not to the exclusion of, the future CBC charge for other growth related capital costs;
- H. That the Province implement a mechanism for calculating the required community benefit charges that provides additional certainty similar to the existing development charges system. This would include publicly posted per unit or floor area rates that are developed through a background study and implemented by by-law which would equally benefit the municipality and the development industry. A per-unit or floor area rate is more predictable than fluctuating land values. It provides developers with control and certainty over the amount they will be required to contribute based on the size of the development they construct.

4. Timeline to transition to the new community benefits charge regime

Insufficient Transition Time

It is proposed that municipalities transition to the new CBC regime no later than one year after the date the proposed CBC regulation comes into effect.

This timeframe is too short and unrealistic. Twelve months will not be enough time for municipalities to procure the various external experts needed, complete the necessary background studies and parks plan, prepare a comprehensive Community Benefits Strategy, undertake meaningful consultation, prepare a by-law and obtain Council approval.

The migration to a new Community Benefit Charges regime within one year will be unattainable for many if not most municipalities across the province.

Given the importance, pace and complexity of growth in the City of Barrie, the conversion from the existing system to the new Community Benefits Charge must provide for a financially seamless transition. The City's success will depend on it.

Recommendation:

- I. That the Province provide a minimum of 2 years from the date of proclamation for municipalities to undertake the work that is necessary to transition to the new Community Benefits regime and bring a Community Benefits by-law into force. This should allow adequate time for an appropriate level of consultation and analysis to facilitate an orderly transition to the new system.

5. Community benefits charge by-law notice

We support this section of the proposal as a fair and reasonable approach.

6. Minimum interest rate for community benefits charge refunds where a by-law has been successfully appealed

We support this section of the proposal as a fair and reasonable approach.

7. Building Code applicable law

We support this section of the proposal as a fair and reasonable approach.

Additional points of clarifications sought by the City's external consultant (Watson & Associates Economists Ltd.) and of interest to the City:

- What capital costs will be eligible as capital infrastructure for community services? The D.C.A. has an existing definition for capital costs which includes land, buildings, capital leases, furnishing and equipment, various types of studies and approvals, etc. Will these capital costs continue to be eligible as capital infrastructure under a C.B.C.?
- Will there be any limitation to capital costs for computer equipment or rolling stock with less than 7 years' useful life (present restrictions within the D.C.A.)?
- Will the cost of land appraisals, including annual appraisal studies, required for the C.B.C. be an eligible cost to be recovered through the C.B.C.?
- Will the cost of an appeal to LPAT to support the charge be eligible for funding from C.B.C. revenues?
- For parkland dedication, most municipalities have a local service policy that defines the minimum standard of development on which the land will be dedicated (e.g. graded, seeded, fenced, etc.). Will the local service policy be allowed to continue? If not, how will this matter be handled policy-wise or cost-wise?
- Confirm that "special account" and reserve fund have the same meaning. If they don't, please provide a definition for "special account."
- 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. childcare facility in year 5 of a forecast period) or are they to be allocated for immediate spending only?
- Similar to D.C. reserve funds, can the funds in the special account only be used for growth-related capital costs (i.e. cannot be used as an interim financing source for other capital expenditures)?
- The current reporting under s. 42 (15) of the Planning Act allows funds to be used "for park or other public recreation purposes," while the scope in this regulation is for "land and machinery." Confirm whether the scope of services has been limited or continues to be the same.
- Is the third land appraisal binding, should it be sought? Can this appraisal be appealed to the LPAT?

- Do all municipalities across the Province have a sufficient inventory of land appraisers (i.e. at least three) to meet the demands and turnaround times specified within the regulations?
- How are mixed-use developments that include exempt development types to be handled? For example, exempt institutional uses are planned for the first floor of a high-rise commercial/residential building.
- Will ownership or use determine the ability to impose the C.B.C.?
- In situations where large industrial or commercial properties are purchased for long-term purposes and only small portions of the full site are initially developed, is the C.B.C. calculated for the entire property or only the portion being developed at that time (with lot coverage provisions)? As the property continues to develop, is the percentage applied to the existing and undeveloped portion of the land?
- D.C. by-laws must be revisited at least every five years. Is there a similar time period to be established for the community benefits strategy underlying the C.B.C.?

Conclusion

We look forward to continuing to provide the Province with workable solutions that will help yield success of any future legislation.

These matters are of critical importance to the communities across Ontario and will impact and shape the future daily lives of our citizens.

Respectfully submitted,



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