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April 20, 2020

Attn: Hon. Minister Steve Clark
Minister of Municipal Affairs and Housing
17th floor 777 Bay St.
Toronto ON N5G 2E5

Re: Response to Proposed Regulatory Matters Pertaining to Community Benefits Authority (ERO Posting No. 019-1406)

Dear Hon. Minister Clark,

On behalf of Drewlo Holdings Inc., please accept this letter as our comment to consultation on the proposed regulatory matters pertaining to the Community Benefits Authority under the *Planning Act*, the *Development Charges Act* and the *Building Code Act* (ERO posting #019-1406).

With regards to the proposed Community Benefits Charge (CBC) we recommend the following:

1. First and foremost, we strongly caution the Province against implementing the proposed Community Benefits Charge. It is contrary to the intent of the *Housing Supply Action Plan* and will result in significant increases to the cost of housing in Ontario.

2. The Community Benefits Charge should not be tied to Land Valuation. The value of land is too volatile. Similar to the Development Charge, the Community Benefits Charge should be an established, predictable fee.

3. Replacing "bonusing" with a mandatory charge does not accomplish the intended goal of creating a development process that is predictable. The proposed solution introduces further uncertainty into the process and will result in less units if implemented.

4. If valuation is used, the time that land value is determined should be changed from the 'day before building permit issuance' to the 'day before approval'. Further, Municipalities should have the option to enact by-law's to establish value, rather than relying on appraisals.

5. Establishing a new fee that mimics the existing Development Charge creates unnecessary duplication. Why establish a new fee? Growth related community services can be collected through the Development Charge.

6. CBC/DC should only fund increased capital costs associated with new growth. This should not include items such as Long Term Care or Public Health, which are funded by the Municipal Tax Base. Additionally, the CBC/DC should recognize the benefit to existing residents.

7. And finally, more guidance is needed to avoid rogue interpretation of the Community Benefits Charge. This guidance would establish what the Community Service needs are within the municipality and form the basis for appeal.

If implemented, the proposed Community Benefits Charge (CBC) has potential to seriously harm the housing and development industry. This proposed charge will drastically increase the cost of living in Ontario, pushing housing further out of reach.

The above-noted recommendations are explained in further detail below.

Drewlo Holdings Inc. is one of the largest purpose-built rental providers in Southwestern Ontario. Over its 60 year history, Drewlo Holdings has constructed over 12,000 units in Burlington, Kitchener, Woodstock, London and Sarnia – 9,000 of which are still owned and operated by the company. Drewlo Holdings Inc. continues to build across the province, adding much needed stock to the rental market. Two apartment towers were recently completed in London, and three towers (London, Woodstock, Kitchener) are currently under construction.

In addition to building and operating purpose-built rental towers across the province, Drewlo Holdings is a significant land developer in the London area, developing over 600 single family and multifamily units each year. As a substantial residential land holder in Southwestern Ontario, Drewlo Holdings Inc. faces a variety of inter-related challenges that affect our ability to bring necessary housing to market.

Improving Affordability

The *More Homes, More Choice Act* addressed a number of barriers impacting the cost and speed of delivering new housing. Through Bill 108, an outcome of the *Housing Supply Action Plan*, the concept of a Community Benefits Charge was introduced. One goal of that plan was to address the housing crisis; as “the cost of buying a home is becoming out of reach for many and affordable rentals are too hard to find”. The current CBC proposal undermines much of the positive momentum that this government has boldly undertaken. If critical adjustments are not made, implementation of the proposed CBC will only push housing further out of reach for Ontarians.

While we understand that the intent of the Community Benefits Charge was to replace the unpredictable nature of “bonusing”, the proposed solution is trading one problem for another. We feel that the proposal is not the right solution to address issues with the current “bonusing” system under Section 37 of the *Planning Act*. Drewlo Holdings is aware that past interpretation and use of Section 37 Agreements had its challenges – from municipal ‘down zoning’ to leveraging of “bonusing” to fund non-growth related community benefits. As a result, “bonusing” became an unpredictable negotiation for additional density; but the process was in a sense voluntary and resulted in additional units.

The proposed CBC will replace a voluntary ‘benefit’ with a mandatory fee. Not only will this result in increased housing costs, but unless municipal ‘down zoning’ is addressed, there will be a significant decrease in the number of units brought to market – further contributing to supply and affordability concerns.

Land Valuation is not the Right Method

The value of land is completely unpredictable. We are all aware of how much land prices have skyrocketed over the past few years and are all nervously awaiting the impact of COVID-19. To expect municipalities to be able to forecast revenue from CBC collection or for developers to predict CBC rates is ridiculous and creates uncertainty throughout the development process.

Developers should be able, as is the case with Development Charges, to calculate the fee , early in the process, based on the number of units and unit type. Tying a fee to land value is unnecessary and unpredictable.

CBC is not an Adequate Replacement for 'Bonusing'

The establishment of a Community Benefits Charges will considerably increase rents and the cost of housing in Ontario. While the introduction of the CBC was a direct response to complaints that Density Bonusing was unpredictable, the Province has failed to consider that exercising the use of "bonusing" was at the discretion of the developer. The proposal has replaced a voluntary option with a mandatory charge; this is contradictory to the notion of 'making housing more affordable'.

For example: Drewlo has entered into Section 37 "bonusing" agreements in both London and Kitchener. It has been our experience that the 'benefit' of extra density exceeds the 'cost' of "bonusing".

	Units allowed through Zoning	Units permitted through Bonusing	Est. "Cost" of Bonusing	Details of Bonusing	Benefit of extra density
London	110 units	147 units (37 extra)	Short term - Approx. $250,000	4 affordable units (85% CMHC AMR) for 15 years	37 extra units (value of extra units exceeds the 'cost')
Kitchener	196 units	488 Units (292 extra)	Additional building costs - $2,000,000	Various items (Kitchener has a points system)	292 extra units (value added exceeds the 'cost')

Attention should be directed to why lands are being 'down zoned', and efforts re-directed to correcting that issue. If lands were adequately zoned in the first place than "bonusing" negotiations would not be necessary. The lack of adequately zoned land is what enabled certain municipalities to abuse "bonusing" negotiations.

When Land Valuation is Determined

Prior to proclamation of the *More Homes, More Choice Act*, 5% of development land was to be conveyed to the municipality as Parkland dedication. This was either achieved through the conveyance of actual land or a cash-in-lieu payment. Per Section 51.1 subsection (4) of the Act, the value of land, for plans of subdivision, was determined as of the day before draft plan approval.

The proposed restructuring of Parkland dedication under the Community Benefits Charge presents a number of concerns:

Issue #1 – The Point at which Land Value is Established

It is proposed that the value of land for the purposes of the Community Benefits Charge will be determined as of the 'day before building permit issuance'. This is contrary to old legislation which determined land value as of the day 'prior to plan approval'. The difference in land valuation, between these two milestones, is significant – particularly for plans of subdivision (low density residential). "Building Permit Ready" land, which by definition is fully serviced, has a drastically higher value then "Approved" land.

Using London as an example…

134 lot Subdivision	**5% Land Value**	**Valuation determined day before…**	**Difference**
Current	$100,000	Draft Plan Approval	*Baseline*
Proposed	$900,000	Building Permit Issuance	$800,000 more (~$6,000 more per unit) 800% increase

Issue #2 - Using Land Valuation determined through Appraisal
The proposed land valuation is of further concern when considering how parkland rates are determined in practice - particularly for site plan applications (medium/high density residential). The Act grants municipalities the authority to pass a by-law establishing rates for parkland cash-in-lieu; rather than requiring appraisals for each property. Most municipalities have enacted by-laws to this effect. This not only provides predictability to developers but the actual rates imposed are considerably less than what would be executed if land valuation were used.

For example: Kitchener sets parkland conveyance rates based on an established value per hectare of land. The 5% land valuation (determined on the day before building permit issuance) would be approximately 12.63 times then the rate established through their current Parkland Dedication Policy.

Area: 0.8526ha	**Parkland $$**	**Valuation based on…**	**Proposed CBC**
Kitchener Policy	$57,934.17	5% of $1,359,000 / ha	*Baseline*
5% before Building Permit	$732,000.00	5% of $30,000 per unit	$674,065.83 more (~$1,400 more per unit) 1164% increase

The proposed increase would be troublesome enough for condo sales but the impact on purpose-built rental should also be considered. An additional fee of this magnitude would make affordable rentals a thing of the past and further exacerbate the housing crisis.

Why Establish a New Fee?
The *Development Charges Act* allows for the collection of fees to fund capital costs associated with growth. This includes increases in community services that are growth related.

The proposed Community Benefits Charge is structured to mirror the processes already in place for Development Charges, so why establish a new fee? There will be inherent duplication in the process to complete the Community Benefits Strategy. The added bureaucracy of additional background studies, like those required during the Development Charge by-law process, will add costs in time and money to develop the strategy.

What Should be Eligible?

It was originally proposed that 'Soft/Discounted' services would be collected for through the Community Benefits Charge, it is now proposed that they will remain under the *Development Charges Act*. This presents a number of concerns:

Issue #1 – Community Services & Removing 10% Deduction

The draft regulation would result in the removal of the 10% mandatory deduction which recognizes the benefit of these services to existing ratepayers. Not only will the *Development Charges Act* fail to recognize the benefit to existing residents, but community services included in the CBC also have no financial contribution from existing municipal taxpayers. The benefits to the existing must be recognized and accounted for in the CBC.

While ambivalent of where the fees are collected, it seems unnecessary that 'community services' are collected for through two different fees and by two different methods; further supporting the question of 'why create a new fee?' The elimination of the 10% municipal contribution will result in further increases to new homebuyers and fails to recognize the benefit to existing taxpayers.

Issue #2 – What Community Benefits/Development Charges are Growth Related?

It is proposed that five additional services be identified under Subsection 2(4) of the *Development Charges Act*:

1. Public libraries, including library materials for circulation, reference or information purposes;
2. Long-term care;
3. Parks development, such as playgrounds, splash pads, equipment and other park amenities (but not the acquisition of land for parks);
4. Public health; and
5. Recreation, such as community recreation centres and arenas

While both extremely important and valuable services, long-term care and public health are not items that should be included under the *Development Charges Act* or through collection of a Community Benefits Charge. Development Charges (DC's) are meant to pay for the increased capital costs required due to increased need for services arising from growth. The costs of Long Term Care and Public Health should be funded from the current/future municipal tax base and not future residents.

Long-term Care: According to the Ontario Long Term Care Association (OLTCA), as of February 2019 58% of long-term care homes were privately owned and 24% were non-profit/charitable; leaving only 16% of long-term care homes operated/owned by the Municipality. Why should development fund this? Increased municipal tax base resulting from development contributes to items such as Long-Term Care.

Public Health: Similar to the comment above, Public Health should not be funded through the Development Charge. The increase in Municipal Tax base resulting from development contributes to local and provincial funding of Public Health.

Development Charges should only collect for increases in capital costs arising from new growth; and must include the 10% reduction previously applied under the *Development Charges Act* to recognize the benefit of these services to existing ratepayers.

More Guidance Required

To address the ERO posting, we have provided comments below on the regulatory matters proposed to implement the Community Benefits Charge. However, as outlined above we implore the Province to reconsider the introduction of the CBC.

While the proposed strategy is similar to that of a Development Charge Background Study there is no clear evaluation of the need for services under the proposed CBC framework versus a more robust Development Charge framework within a background study under the *Development Charges Act* – which is tied to the municipal capital projects related to growth.

Required Content of a Community Benefits Charge Strategy:

The following eight (8) components are proposed to make up the Community Benefits Strategy which will form the basis of the Community Benefits By-law. Drewlo has provided feedback (in blue) on each component below:

1. *Anticipated type, amount and location of development or redevelopment that would be subject to a community benefits charge*

   The anticipated type, amount and location of development or redevelopment should be mandated to be the same as what has been assessed through the Development Charge Background Study. The Province should consider exempting the types of development listed in Section 26.1 Subsection (2) of the *Development Charges Act* (including purpose-built rental housing).

2. *Anticipated increased in the need for specific community services resulting from new development or redevelopment*

   As noted above, there is no clear evaluation of the need for services under the proposed CBC framework. Similar to the 'to be proclaimed' list provided in Subsection 2(4) of the *Development Charges Act*, the Province should establish a list of community services that are anticipated to have increased need that is related to growth. While funding affordable housing was considered a 'community benefit' under the former Density Bonusing structure, affordable housing is not a growth related capital cost.

3. *A parks plan that examines the need for parkland in the municipality*

   Similar to the Growth Plan and the establishment of a methodology for Land Needs Assessment, the Province needs to set guidelines that help Municipalities to calculate parkland need in their City.

   The CBC strategy should include a Parks Plan that establishes future parks needs based on future growth/population outlined in the Official Plan.

4. *The amount of parkland per person currently being provided in the municipality, and if this is planned to increase, decrease or stay the same*

   Similar to the comment above; like a land needs assessment used to determine the need for Employment land within a municipality, the Province needs to establish a calculation to determine the maximum parkland per person within a municipality. Without this guidance the process could be subject to abuse which would result in appeal and a further strain on the Local Planning Appeals Tribunal (LPAT).

5. *Capital costs associated with the increased need for a specific community service resulting from new development or redevelopment*

   Can this charge be used retroactively; if a community benefit has already been established and will service new growth, will the CBC used to refund the past cost of establishing that service?

6. *The excess capacity that exists in those specific services*

   It is important to also note, that some areas will be adequately serviced by existing community services, that were already developed to accommodate anticipated growth and were potentially already funded through past DC collection. How will that be addressed?

7. *Whether the increased provision of those specific services would also serve existing residents*

   Community Services will always serve existing residents, that's why they were previously called 'discounted services' under the Development Charge and we subject to a 10% reduction that accounted for benefit to existing residents. To ensure consistency, the Province must provide guidelines on how to determine how much will serve existing residents.

   It is currently proposed that the 'discounted services' be left in the Development Charge but can now be fully collected; this should be reconsidered as it further increases the cost of housing.

Percentage of Land Value for Determining a Maximum Community Benefits Charge: As outlined in detail above, we strongly disagree with the proposal to use Land Valuation to determine a development fee. It is unpredictable and will only result in rising housing costs.

Timeline to transition: The proposed timeline is reasonable.

CBC By-law Notice: By-law notice appears to mimic the Development Charge By-law Notice; this approach seems reasonable.

Minimum interest rate for CBC Refunds: The proposed interest rate for CBC refund is similar to the that of an appeal Development Charge. This approach seems reasonable.

While not explicitly addressed in this ERO posting, Bill 138 made changes to the *Planning Act* that allows for the CBC By-law to be appealed to the Land Planning Appeals Tribunal (LPAT). Drewlo Holdings Inc. is supportive of these amendments, however it is unclear what the scope of an appeal would be as there are no rules for the calculation of a Community Benefit Charge. The proposed strategy should establish the basis for appeal.

Building Code Applicable Law: Proposed change to the *Building Code Act* to enable collection of the Community Benefits Charge seems reasonable.

Drewlo Holdings Inc. applauds the Province for recognizing the constraints on housing supply and for their efforts to reduce red tape. We appreciate the Province's commitment to continued and detailed consultation on the proposed Community Benefits Charge. Drewlo Holdings Inc. has provided submissions on previous postings and been involved in numerous technical working groups with MMAH and OHBA. We hope that the feedback provided here will be seriously considered. It is critical that the Province address the significant issues outlined in this submission before implementing proposed Community Benefits Charge.

Drewlo Holdings Inc. remains committed to working with the Province to establish a better solution that would improve the development process, increase the housing stock and improve affordability in Ontario.

Thank you for taking the time to review our concerns. If you have any questions or wish to consult Drewlo Holdings Inc. in further detail on any of the issues raised, please do not hesitate to contact us.

Sincerely,
DREWLO HOLDINGS INC.
Allan Drewlo, President

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