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SUBMITTED ONLINE

John Ballantine
Municipal Finance Policy Branch
College Park 13th floor, 777 Bay St.
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Canada

RE: Proposed regulatory matters pertaining to community benefits authority under the Planning Act, and the Development Charges Act, and the Building Code Act

Dear Mr. Ballantine:

Thank you for the opportunity to comment on the Province's proposal for implementation of the new community benefits charge (the "Proposal"). First Gulf Corporation is a leader in commercial real estate development, with a focus on office, industrial, and retail development. We have completed over 11,000,000 square feet of office and industrial space throughout the Greater Toronto Area, with several million square feet under construction. Our projects contribute significantly to the Region and the Province's ability to accommodate employment growth.

First Gulf supports the introduction of greater transparency and certainty in the municipal planning approvals process, consistent with the intent of the community benefits charge ("CBC"). We do, however, have a number of concerns related to the Proposal, as outlined below.

Unreasonably High Cap for Community Benefits

The Proposal establishes a maximum charge of 15% of land value, as calculated the day before a building permit is issued. This is problematic for several reasons:

1) Calculation of the charge on the basis of overall land value is inappropriate, as it does not acknowledge that many sites already have "as of right" development potential which, in the historic Section 37 scenario, would not have been subject to a contribution towards community benefits. Section 37 was previously applicable only in cases when increases in height or density

were sought, and was levied with consideration of the increase, rather than on the basis of the project as a whole. Office and industrial development proceeding through as-of-right site plan approval applications, or through minor variances, is currently not subject to Section 37.

2) In all of the municipalities in which First Gulf has developed property, the combination of Section 37 charges and parkland dedication is significantly lower than 15% of land value for non-residential development. Based on in-force Planning Act provisions, the maximum contribution of parkland for commercial or industrial purposes is currently only 2%. Thus, the proposed cap is not consistent with the Province's previously stated goal of "maintaining" municipal revenues that were historically collected from parkland dedication and density bonusing. Rather than being revenue-neutral, CBCs could represent a substantial increase in such revenues, and significantly higher charges on new development.

3) There is potential that a formula will be introduced with no acknowledgement of the different impacts generated by different types of development, and the different needs associated with different areas of a municipality. For example, residential and industrial development have different community impacts. More specifically, commercial and industrial development have a significantly lower impact on municipal services, especially community facilities and affordable housing. (This is in addition to lower use of water, sewage and utilities, no generation of school spaces, and low/no reliance on municipal garbage and recycling collection.) Additionally, development that diversifies employment options in an underserved area often serves a benefit rather than simply generating a need.

4) A maximum charge of 15% of land value, on top of development charges, is simply excessive. Development that serves to accommodate the Province's population and employment density targets, and to meet policy objectives for complete communities, should be facilitated, not discouraged. This is particularly a concern in jurisdictions where existing zoning is outdated and has not yet "caught up" to policies intended to satisfy Provincial Growth Plan targets. It is also important in areas where the introduction of certain development classes is desirable in order to provide a greater diversity of options for employment and amenities.

Potential that community benefits will be used to fund facilities that should be funded by property taxes or by other levels of government

The Proposal creates the potential that new development will fund what should otherwise be funded by property taxes. This is particularly the case for items for which a high need is already generally understood to exist, or items for which it is difficult to create a direct link between proposed development and increased need. Affordable housing is an example of such an item, and this is concerning for commercial development types such as office and industrial buildings. Additionally, if the intent of CBCs is to be redistributive – that is, to collect revenues from across municipalities for allocation to the areas of greatest need – this is a function that is better served by property taxes. It is notable that commercial development already represents a net tax benefit to municipalities (compared to residential development, which generally generates a net loss, due to capping.)

Insufficient Timeline for Phase-In

The Proposal is that the outside date for municipalities to transition to the CBC regime will be one year after the date the proposed CBC regulation comes into effect. Given the potential significant increase to development costs that would result from a CBC, the proposed transition approach is insufficient. The development community requires more time to ensure that CBC cost impacts can be appropriately accounted for when determining land values and impacts on tenant rents.

Recommended Revisions

In order to address our concerns, we suggest the Proposal be modified to address the following:

1) Establish a lower cap of 5% of land value for a CBC for non-residential development, including a cap of 2% of land value for parkland dedication purposes. This would be consistent with the principle of revenue neutrality as it applies to parkland dedication.

2) Permit the levying of the non-parkland component of the CBC only on the proportion of land value associated with increased development potential (i.e. if a development is as-of-right, it should be subject only to the parkland dedication portion of a CBC). Further, industrial development, which has historically not generated Section 37 benefits, should not be subject to the non-parkland component of the CBC.

3) Require that municipalities, in their CBC studies, establish a different rate or methodology for different classes of development (e.g. office, industrial, residential, etc.), reflective of the needs generated by each.

4) Require that CBC strategies demonstrate that CBCs will not be used to fund items that should be funded by, or are otherwise funded by, property taxes, or to fund items that are reasonably eligible for funding from other levels of government. Such items include affordable housing and long-term care facilities, which also should not be funded via Development Charges.

5) Public facilities and benefits for which need does not directly result from new development, or to the extent that they benefit existing development, should not be eligible for CBCs or

Development Charges, particularly with respect to non-residential development. This also includes affordable housing and long-term care facilities. This is important because in most municipalities, there is already established need for these types of facilities.

6) If adjustments are not made to ensure the net cost impact to development will be neutral, applications made prior to July 2021 should not be subject to the new CBC regime. This is to allow a reasonable period for adjustments to projects and plans, in order to account for cost impacts resulting from the introduction of a CBC.

First Gulf supports the introduction of transparent tools for ensuring that new development provides a positive contribution to the communities in which we build. However, it is important that such tools do not result in punitive or inappropriate charges on new development. We want to ensure that any charges on development are ultimately fair, and that they do not negatively impact the Province’s ability to deliver space for employment growth at a cost and quality that is competitive with what is offered by other jurisdictions.

Regards,

David Gerofsky, CEO
First Gulf Corporation