

---

# HALDIMAND COUNTY

## Report FIN-14-2019 Development Charges Appeal

For Consideration by Council in Committee on September 17, 2019

---



### OBJECTIVE:

To update Council on a Notice of Appeal received related to the County's Development Charges (DC) By-Law passed May 13, 2019, and to establish a budget and funding source for the costs related to defending the appeal.

### RECOMMENDATIONS:

1. THAT FIN-14-2019 Development Charges Appeal be received as information;
2. AND THAT the capital budgets be amended to reflect the appropriate costs and funding sources, as identified, to defend the appeal of Haldimand County's Development Charges By-law.

**Respectfully submitted:** Mark Merritt, CPA, CA, General Manager of Financial & Data Services

**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The Development Charges By-law 2042/19 was passed on May 13, 2019. Stakeholders had until June 24, 2019 to file an appeal of the by-law, at which point Haldimand County received one appeal from Losani Homes (1998) Ltd. County staff and the consultants involved in developing the required Development Charges Background Study and ultimately the Development Charges By-law are confident that all Provincial requirements were followed in the establishment of the by-law and related charges. As such, staff are recommending defending the appeal at the Local Planning Appeal Tribunal (LPAT). As the appeal process involves formal hearings and requirements for expert testimony, the County will require both legal representation as well as supporting evidence and testimony from Watson & Associates (Watson), the consultant involved in developing the Development Charges by-law. Losani Homes (1998) Ltd. will also have legal and expert representation on their side. Although there will be costs incurred to defend this appeal, the fundamental basis of the charges enacted through the Development Charges by-law are to ensure growth-related capital costs are recovered from new development. Any amendments to the approved Development Charges by-law would jeopardize this principle and potentially transfer these capital cost to existing taxpayers.

### BACKGROUND:

The Development Charges by-law 2042/19 passed May 13, 2019. Stakeholders had until June 24, 2019 to file an appeal of the by-law. Prior to the expiry of the appeal deadline, Haldimand County received one appeal dated June 20, 2019, by Losani Homes (1998) Ltd., through their representatives Turkstra Mazza Associates and the Altus Group. The appeal was filed through the Local Planning Appeal Tribunal (LPAT). Upon receiving the Notice of Appeal, Haldimand County staff contacted Watson & Associates (Watson), the consultants that compiled the development charges background study, as they will represent the County with respect to the technical aspects of the appeal.

Haldimand County has not previously encountered an appeal of a Development Charges By-law, however, Watson's have indicated that it is not uncommon, and in particular, Losani Homes and their agent, the Altus Group, have recently filed numerous Development Charges By-law appeals across the province.

## **ANALYSIS:**

County staff and the consultants involved in developing the required Development Charges Background Study and ultimately the Development Charges By-law are confident that all Provincial requirements were followed in the establishment of the by-law and related charges. As such, staff are recommending defending the appeal at the LPAT.

The LPAT process will begin with a pre-hearing to allow legal representation and experts from both sides to determine the issue to be heard, and proceed to a hearing there on. Given the potential length of the hearings and the appeal process, the County will incur legal and consultant costs with this appeal. There may be an opportunity to recover some of the appeal costs, primarily the consultant costs, through future Development Charges receipts, in the meantime the costs for the appeal will need to be covered from County reserves.

The Development Charges By-law 2042/19 will continue to be in force and the charges will be collected as passed until the appeal is resolved. It is important to note that LPAT has the power to:

- Dismiss the appeal in whole or in part
- Order Council to repeal or amend the by-law
- Repeal or amend the by-law in such manner as the Board may determine

It should be noted that the appeal process can be very lengthy and could possibly take years to resolve (primarily due to scheduling a LPAT hearing and the backlog of current pending appeals). In the interim, the newly adopted by-law and underlying charges will continue to apply to all new developments and will be collected as such.

## **FINANCIAL/LEGAL IMPLICATIONS:**

Direct financial implications related to a defending the Development Charges Appeal are expected to arise from:

- Legal costs associated with the representation from the County's legal counsel, Sullivan & Mahoney
- Consultants costs for their expertise, Watson & Associates
- Some of the costs associated with this appeal, primarily the consultant fees, may possibly be recovered through future Development Charges receipts.

As any recovery of costs incurred would flow from the resolution of the LPAT hearings, it is not possible to estimate the possible recovery at this time. Additionally, the legal and consultant costs will be based solely on the number of hours required to defend the appeal, including but not limited to: preparation for any and all hearings, attendance at any hearings and follow-up of actions from the hearings.

It is suggested that an initial budget of \$50,000 be established and to be conditionally funded from the Capital Replacement Reserve - General. Any ability to recover these costs from future Development charges will offset the County's share of these costs. Staff will update Council on anticipated costs and potential recoveries as the appeal proceeds.

If LPAT orders a repeal or amendments to the by-law, the County will be responsible to refund any applicable over-payments, including interest, therein. As it is impossible to determine the potential

impacts at this time, any amendments to the current charges will undermine the fundamental basis of the charges enacted through the Development Charges by-law, that being to ensure growth-related capital costs are recovered from new development. Any amendments to the approved Development Charges by-law would jeopardize this principle and potentially transfer these capital cost to existing taxpayers. Again, staff will update Council on anticipated impacts as the appeal proceeds.

### **STAKEHOLDER IMPACTS:**

If, through the LPAT process, the Development Charges by-law is amended, or worse case repealed, the County will have to re-evaluate the underlying projects and funding sources. This could lead to delays, deferral or even removal of these necessary growth-related capital projects.

As this is a legal proceeding, throughout the appeal process, all staff and Council are cautioned not to speak to Losani Homes or their agents in regards to the appeal without legal representation.

### **REPORT IMPACTS:**

Agreement: No

By-law: No

Budget Amendment: Yes

Policy: No

### **ATTACHMENTS:**

1. Notice of Appeal – Turkstra Mazza for Losani Homes