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**TO:** GENERAL COMMITTEE

**SUBJECT:** SECTION 20 COMPLAINT (DCA, 1997) – 10 CENTRE STREET

**WARD:** 8

**PREPARED BY AND KEY CONTACT:** A. GALLANT, SUPERVISOR OF DEVELOPMENT CHARGES, EXTENSION #4503  
M. JERMEY, DEPUTY TREASURER, EXTENSION #4407

**SUBMITTED BY:** C. MILLAR, DIRECTOR OF FINANCE AND TREASURER

**GENERAL MANAGER APPROVAL:** B. ROTH, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES (ACTING)

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** C. LADD, CHIEF ADMINISTRATIVE OFFICER

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**RECOMMENDED MOTION**

1. That the complaint under Section 20 of the *Development Charges Act, 1997*, filed by Kim and Conal Derdall regarding 10 Centre Street, be dismissed.

**PURPOSE & BACKGROUND**

2. Section 20(1) of the *Development Charges Act, 1997* states that:

“A person required to pay a development charge, or the person’s agent, may complain to the council of the municipality imposing the development charge that,

- a) the amount of the development charge was incorrectly determined;
- b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or,
- c) there was an error in the application of the development charge by-law.”

After Council hears the complaint and issues a decision, the complainant may appeal that decision to the Ontario Municipal Board (OMB).

3. Procedural By-law #2013-072 delegates Council’s authority with regards to complaints under Section 20 of the *Development Charges Act, 1997* to General Committee. Appendix “A” of this Staff Report sets out the City’s procedure for complaints.

**ANALYSIS**

4. Kim and Conal Derdall (the owners) of the property known as 10 Centre Street have requested Council waive all development fees for their proposed two unit residential building as described in Appendix “B” of this Staff Report.
5. The owners planned to demolish a single residential unit at 10 Centre Street and build a two unit residential home. Their intent is to rent the units and build a home that adheres to the Allandale Urban Design Guidelines.

6. The owners allege staff erred by miscommunicating when the Development Charge (DC) demolition credit expired for the property previously located at 10 Centre Street. Under the City's DC By-law, owners have 60 months from the date a building is vacant, to demolish the building and be granted a DC credit. In this case the previous dwelling was a single residential unit and the value of the DC credit under question is \$43,378.
7. Staff determined the original residence was vacant on December 10, 2010 based on when the water was shut off, as requested by the owner. Under the City's DC By-law, the demolition credit is available for 60 months from December 10, 2010, meaning it expired on December 10, 2015.
8. The owners are indicating they were told they had 60 months from the close of the demolition permit to rebuild, without paying any developmental fees. As noted in the chronology in Appendix "D", the demolition permit closed on November 15, 2016. Unfortunately, after reviewing the file, staff have not been able to validate the owners claim, and as a result, the conditions imposed in the City's DC By-law are being applied.
9. The owners referred to a 'clerical issue on the part of the City of Barrie' that delayed the close of the demolition permit. Staff have not been able to validate the claim of any clerical issues. As noted in the information material provided with demolition permits (Appendix "C"), owners or contractors are required to contact the City to set up inspections for demolitions.
10. The owners complaint is specific to Section 20(1) b) of the *Development Charges Act, 1997*, whether a credit is available to be used against the development charge. General Committee is being asked to determine whether the DC credit is available.

### **ENVIRONMENTAL MATTERS**

11. There are no environmental matters related to the recommendation.

### **ALTERNATIVES**

12. The following alternatives are available for consideration by General Committee:

#### **Alternative #1**

General Committee could grant a DC credit for the original unit, if it is determined staff provided incorrect information to the owners, indicating they had 60 months from the close of the demolition permit to rebuild, without paying any development charges.

Without sufficient evidence of an error on the part of City staff, General Committee could be setting a precedent by overriding the DC By-law and granting the credit. There are a number of unoccupied units in the City, both residential and non-residential, that could come forward with a similar request upon demolition.

#### **Alternative #2**

General Committee could dismiss the complaint received from the owners, as the former house on the property was not demolished within 60 months of the unit becoming unoccupied. This is the recommended approach by City staff.

**Alternative #3**

General Committee could rule the DC credit has expired. However, General Committee could provide a grant equal to the value of the DC credit of \$43,478, to be funded from Council's Strategic Priority Reserve.

The grant would be a non-cash transaction, reducing the total DC's payable by the owners. The grant would be funded by transferring \$43,378 from Council's Strategic Priority Reserve to the City's DC Reserves.

This approach is not recommended, as it would set a precedent and encourage other developments to seek similar grant funding for Development Charges.

**FINANCIAL**

13. There are no financial implications if General Committee dismisses the complaint.
14. The City relies on Development Charges to fund growth related infrastructure on a City wide basis. In instances where Development Charges would otherwise be collected and exemptions and/or discounts are granted; the cost of the exemption/discount falls to the tax base.

**LINKAGE TO 2014-2018 STRATEGIC PLAN**

15. The recommendation included in this Staff Report supports the following goal identified in the 2014-2018 Strategic Plan:
  - Responsible Spending

**APPENDIX "A"**

**Procedure for Complaints Under Section 20 of the *Development Charges Act, 1997***

**Parties to a Complaint**

1. Any owner of the land in the Corporation of the City of Barrie ("Barrie"), or any applicant for an approval for the development of land within Barrie, who is required to pay Barrie development charges, may complain to the Council of Barrie ("the Council"), (or such property delegated Committee of Council).
2. Barrie is a responding party to any complaint.

**Time, Form and Contents of Complaint**

3. A complaint must be in writing addressed to:  
  
**The Corporation of the City of Barrie  
P O Box 400, 70 Collier Street  
Barrie, Ontario  
L4M 4T5  
Attention: City Clerk**
4. No complaint will be considered by Council if it is received by the Clerk more than 90 days after the latest of:
  - a) The date of building permit issuance for which area development charges are imposed; or,
  - b) The date on which development charges are payable under an agreement with Barrie.
5. The complaint must contain and allege, as a reason for the complaint, one or more of the following:
  - a) The amount of the development charge was incorrectly determined;
  - b) The availability of a credit to be used against a development charge is disputed, or the amount of such a credit or the service with respect to which the credit was given was incorrectly determined; or
  - c) There was an error in the application of the development charge by-law.
6. The complainant must set out the name and address of the person who should be given notice of the hearing of the complaint.

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**APPENDIX "A" (Continued)**

**Notice of Hearing of the Complaint**

7. The Clerk of Barrie ("the Clerk") shall give the complainant written notice of the hearing of the complaint.
8. The Clerk shall mail the notice of hearing to the name and address indicated on the complaint at least 14 days before the date on which the complaint is to be heard by Council.
9. The notice of hearing shall contain the following information:
  - a) The date, time and place of the hearing;
  - b) A statement that the hearing is being held under the authority of Section 20 of the Development Charges Act, 1997, S.O. 1997, c.27;
  - c) A statement that the hearing is being held in response to a complaint from the complainant, indicating the name of the complainant and the date of the complaint.
  - d) A statement that the hearing is being held to allow the complainant to offer evidence and argument concerning the calculation of Barrie's development charges payable or the liability of the complainant to pay any Barrie development charge, or both;
  - e) That a copy of the report submitted to Council under section 11 shall be available to the complainant at the offices of the Barrie Clerk's Department by 4:30 p.m. on the Monday of the week preceding the hearing of the complaint or such earlier time as the Clerk may advise.
  - f) A statement that if the party notified does not attend at the hearing, Council may proceed in the absence of the party and the party will not be entitled to any further notice in the proceeding.

**Procedure at the Hearing**

10. It is the policy of Barrie that the hearing of complaints by Council shall be informal, and that the Council shall deal with the substance and merits of the complaint. Council must nevertheless determine whether complaints are timely under section 4 of this procedure and whether they raise a matter which Council is authorized to consider under section 5 of this procedure.
11. Barrie's staff, solicitor and/or consultant will submit a report to Council containing the following:
  - a) A copy of the development application(s) for which a building permit is required and/or, if applicable, a copy of the agreement with Barrie under which Barrie development charges are payable;
  - b) A copy of relevant correspondence which has passed between the parties;
  - c) An explanation of the manner in which Barrie has calculated the development charges which are payable;
  - d) Submissions on the issues to be decided by Council and the findings of fact which Council must determine;

**APPENDIX "A" (Continued)**

- e) A recommendation as to the disposition of the complaint and the reasons therefore; and,
  - f) Any other information and/or documents that the staff, solicitor and/or consultant may consider may be relevant to the hearing and disposition of the complaint.
12. Council may accept the report from the staff, solicitor and/or consultant as the evidence and argument of Barrie without need for formal proof or verbal submissions at the hearing by staff, solicitor and/or consultant.
13. Council shall give the complainant the opportunity to present evidence and make submissions at the hearing.
14. The evidence and submissions of the complainant may be supplemented with written submissions or other relevant material.

**Powers of Council**

15. Council has the power to:
- a) Administer oaths or affirmations;
  - b) Require that evidence be given under oath or affirmation;
  - c) Admit evidence without requiring that it be given under oath or affirmation;
  - d) Admit relevant evidence whether or not admissible in court;
  - e) Admit as evidence documents or things whether or not given or proven under oath or affirmation;
  - f) Admit copies of documents or things instead of originals where satisfied of the authenticity of the copies;
  - g) Exclude any evidence which is unduly repetitious;
  - h) Limit the further cross examination of a witness where the cross examination has been sufficient for full and fair disclosure of the matters relevant to the issues in the hearing in relation to which a witness has given evidence;
  - i) Make orders and give directions to prevent an abuse of the process of Council;
  - j) Alter the hearing procedure if satisfied that the proposed procedure is consistent with the disposition of the hearing on its substance and merits and will be informal, efficient and expeditious; and
  - k) Adjourn any hearing of its own motion or upon the motion of either party.

**APPENDIX "A" (Continued)**

**Representation by Counsel or Agent**

16. The complainant, and any witness, may be represented by counsel or an agent.
17. It is the policy of Barrie that the hearing of complaints by Council shall be informal, inexpensive and expeditious and that Council shall not require or prefer that the complainant be represented by counsel or an agent.

**Disposition of Complaints**

18. At the conclusion of the hearing of a complaint, Council may
  - a) Confirm the development charge; or
  - b) Amend the development charge to the extent that, in the opinion of Council, a review of any or all of the matters in section 5 of this procedure justified such an amendment.
19. The Clerk of Barrie shall, not later than 20 days after the day that Council's decision is made, give written notice of the decision by mail to the complainant and the notice shall specify the last day for filing an appeal which date shall be no earlier than 40 days after the day the decision is made.

APPENDIX "B"

Correspondence Received from Kim and Conal Derdall

Dear Mayor and Members of Council, City of Barrie

This letter is to request that the development fees for the proposed 2 unit residential building be waived and building be allowed to continue with payment of all other building fees. This request is based on the following:

1. There was a miscommunications between ourselves and the city associated with the start of the 60 month period in which construction could be conducted without the development fees. This miscommunication is the primary reason for the approximately one year delay beyond the 60 month period
2. Our proposed development is modest in both scale and cost. The development fees add more than 17.5% to the overall cost and may make the project unviable.
3. The proposed project will add to the availability of good quality rental units for families with modest incomes.
4. The project is located in an area where all services are existing. Hence no additional local infrastructure or parks are needed.

In background, we purchased the house at 10 Centre St. just over 6 years ago with a vision to invest in our neighbourhood. We reside in the adjacent property at 16 Centre St. The older couple who lived in the house for many years needed more suitable living arrangements and were for a number of years unable to look after the aging house. Although our original intent was to rent the existing home, it was clear that the years of neglect had caused the house to be very prohibitive to repair. There were numerous small issues that had plagued the original tenants that became very large issues related to the lack of foundation and structural issues, dangerous wiring, poor and leaking plumbing and the building was easily accessible to rodents.

After a year of vacancy we decided to demolish the unsafe and potential fire risk of an unoccupied house. For financial reasons, we could not proceed immediately, but planned to replace it later with something suited to the area that would also abide by the City of Barrie's needs for rental housing. During the issuing of the demolition permit, we were advised that we had 60 months from the close of the demolition permit to rebuild without paying any developmental fees. Due to a clerical issue on the part of the City of Barrie, we were not able to close the permit until the ground was re-excavated and a sewer pipe inspected. After submitting our plans for the two unit house on the property we were then told that we would be required to pay development building fees of approximately \$94,000 (Appendix A). This is 17.5% of our building costs and quite prohibitive to continuing with our vision. It was at this time, we were informed that the 60 months commenced when the water was shut off at the property shortly after purchase.

We have worked diligently and have already invested to design a home that adheres to the Allandale Urban Design Guidelines. This includes

- Consistency with height, scale massing and setbacks of buildings on adjacent properties
- Consistency with the pitch of the roof with that of buildings on adjacent properties as seen from street
- Dormers and entrance doors (excluding garage doors) fenestration is encouraged on walls facing streets.
- Consistency in use of building materials and architectural details



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**APPENDIX "B" (Continued)**

- The scale of new development and additions should be proportional to the size of the lot and adjacent buildings to emphasize the 'spacious and deep' characteristics of existing lots in that area
- New development and/or additions should not appear significantly larger than the adjacent existing dwellings.

Our design is consistent in character and feel of the homes on both sides, and although it is a front to back duplex, it appears as one house from the street view. Other rental property developments in our area have avoided paying development charges by building a larger outbuilding and 'attaching' them to the main structure cosmetically. It is disappointing to see the character of a community changed to save money. We were advised by an area landlord to do the same, but we chose instead to invest and design an innovative solution that we believe, will blend in well to existing buildings on our side of the street. It will also be supportive of the need for affordable housing in our RM1 designated area.

The 10 Centre St. lot is an ideal location for affordable rental housing. It is one street away from the Community Improvement Project Area, walking distance to the Allandale Go station and along a primary transit corridor. Our envisioned home may provide an affordable housing opportunity for those with low to moderate incomes. We are aware that Barrie has concerns with current rental housing vacancy rates.

We thank you for considering our application. We are not a large investment firm, or a developer. We are local citizens of Barrie looking to invest in our neighbourhood and in our neighbours. We are eager to support the need for rental housing and increase the densification of our area in a way that is positive and respects the age and character of our street.

Please feel free to contact us for further details

Sincerely

Kim and Conal Derald

APPENDIX "B" (Continued)

Appendix A

Proposed Development Charges

From: Dave Read <Dave.Read@barrie.ca>

To: Arif Khan <Arif.Khan@barrie.ca>, Office of the Mayor  
<OfficeoftheMayor@barrie.ca>

Cc: Alison Gallant <Alison.Gallant@barrie.ca>, Craig Millar <Craig.Millar@barrie.ca>, Michael Jermey <Michael.Jermey@barrie.ca>

Date: January 10, 2017 at 2:09 PM

Subject: RE: Derald 10 Centre St. \$40 000-\$100 000 development charges on a single house

Mr. Derald, I am reviewing your building permit application and can confirm the following development fees are applicable. My understanding is you are building a duplex (a 2 unit house) to replace a single dwelling that was previously located here. I also understand this house was last occupied over 6 years ago. As a result, the following fees will be calculated and collected at the time of issuance of the building permit.

- Development Charges will be owing for these units. This fee is currently \$43,478.00 per unit (\$86,956.00 total).
- Education Levies of \$1,759.00 per unit (\$3,518.00 total) are owing.
- Cash in lieu of parkland is owing. I will require you to submit an appraisal of the land (the value of the vacant land) in order to determine the park fee. The amount owing is based on 5% of the land value, however you do receive a credit for the original unit so the actual amount owing will be 2.5% of the land value.

As an explanation I can advise the Development Charges Act, and the Education Levy Act, allow credits for existing or buildings previously located here, provided the replacement Building Permit is issued within 60 months of when the building was last occupied. As it has been more than 60 months since your building was occupied, there is no credit for these 2 fees.

There is no similar sun set clause within the ~~Parklevy~~ Bylaw, therefore you do retain 1 credit.

If you have any questions on these fees, do not hesitate to contact me.

**Dave Read**

**Development Charges Administrator**

The City of Barrie

Central Ontario's Premier Waterfront Community

Finance ~~Department~~

1st Floor City Hall

70 Collier Street

P.O. Box 400, Barrie ON, L4M 4T5

Tel: 705-739-4220 ext. 5158

Fax: 705-739-4237

APPENDIX "C"

Permit Information Provided by Building Services



70 Collier St, 8<sup>th</sup> Floor  
P.O. Box 400, Barrie L4M 4T5  
Phone: (705) 739-4212

Building and Bylaw Services Department  
**REQUIRED NOTIFICATION FOR INSPECTION**

(pursuant to sub-section 1.3.5. of Division C of the Ontario Building Code)

Permit No.: \_\_\_\_\_ Address: \_\_\_\_\_

Plans for the above noted permit have been reviewed for compliance to the Ontario Building Code. Please review the plans for any additional noted comments, if any, made by this department during review.

Article 1.3.5.3. of Division C of the Ontario Building Code requires a site inspection within 2 business days (5 days for septic system related inspections) of receipt of notification. However, the Building Services Department endeavours to provide same-day inspections if your request is received before 8:00 am. Monday-Friday, except holidays.

**Notification is required for all mandatory stages of construction or demolition as prescribed in the Ontario Building Code.** Please call (705) 739-4231 or email [building@barrie.ca](mailto:building@barrie.ca) to request an inspection once the stage of construction is completed and ready to be inspected. All work must remain exposed until inspected and approved. Plans must be available on site for inspector. The permit holder must ensure safe access is provided for the inspector including ladders, stairs and ramps as necessary.

<input type="checkbox"/>	Footing	the readiness to pour concrete for all footings and/or piers
<input type="checkbox"/>	Foundation	the substantial completion of footings and/or foundations prior to backfilling
<input type="checkbox"/>	Framing	the substantial completion of structural framing prior to covering
<input type="checkbox"/>	HVAC	the substantial complete of ductwork and piping for heating and air conditioning systems
<input type="checkbox"/>	Plumbing	the readiness for inspection and testing of the following plumbing components; <input type="checkbox"/> Underground building sewers and building drains <input type="checkbox"/> Septic Tank pump out <input type="checkbox"/> Water Service Pipes <input type="checkbox"/> Drainage and Venting Systems <input type="checkbox"/> Water Distribution System
<input type="checkbox"/>	Air Barrier	the substantial completion of the Air Barrier
<input type="checkbox"/>	Insulation	the substantial completion of insulation and Vapour Barrier
<input type="checkbox"/>	Fire Access Routes	the substantial completion of Fire Access Routes
<input type="checkbox"/>	Wood Burning Appliance	the commencement of; the construction of masonry fireplaces and masonry chimneys; factory-built fireplaces and allied chimneys; stoves, ranges, space heaters and add-on furnaces using solid fuels and allied chimneys
<input type="checkbox"/>	Fire Separation	the substantial completion of all required fire separations and closures and all fire protection systems including standpipe, sprinkler, fire alarm and emergency lighting systems.
<input type="checkbox"/>	Septic System Site Visit	readiness to construct the septic system
<input type="checkbox"/>	Septic System Final	the substantial completion of the installation of the septic system prior to backfilling
<input type="checkbox"/>	Grading	the substantial completions of site grading
<input type="checkbox"/>	Occupancy	the installation of the minimum components required to permit occupancy by Article 1.3.3.2. of Division C (min. health and safety requirements)
<input type="checkbox"/>	Interior Final	the completion of interior construction (provide commissioning report)
<input type="checkbox"/>	Exterior Final	The completion of exterior construction
<input type="checkbox"/>	Additional	

Failure to notify the Building Services Department and provide access for inspection at the prescribed stages of construction is a violation of the Building Code Act, as amended, and may result in an Order being issued and/or further legal actions.

**APPENDIX "D"**

**Chronology of Events**

December 10, 2010	Water was shut off for this single family dwelling unit at the owner's request. The owner has confirmed that the unit was unoccupied at this time.
November 7, 2011	Demolition permit was issued to demolish the dwelling unit.
November 7, 2011	Email from the owner was sent to Zoning staff, asking for written proof he could rebuild a single family dwelling unit, stating that he hoped to have the existing unit demolished by months end. He also indicated he would rebuild a single family dwelling unit within 2-3 years.
November 8, 2011	Email from Zoning staff was sent to the owner, confirming he would be allowed to rebuild a single family dwelling unit in the same location, with the same size and same height as the original unit.
October 19, 2012	Building Inspector gave the owner an ROI (record of inspection) requiring that the sewer be dug up for inspection. The inspection result was "failed".
November 15, 2016	Building Inspector noted that the inspection passed and closed the demolition permit file.
Week of December 12, 2016	Building permit application submitted to build a new duplex. Finance staff contacted owner to confirm that the redevelopment credit had expired and to indicate that development charges would be owing on both new units.
December 22, 2016	Follow-up discussion between Finance staff and owner, discussing the owner's concerns with respect to the fees owing. Email was sent to owner summarizing the fees and options available for redevelopment (rebuild a single family unit in the same footprint as the previous unit, or build a 2-unit house).
February 2, 2017	Letter received from owners, requesting an exemption with respect to development fees.
February 15, 2017	Follow up discussion between Finance staff and owners; email sent to owners to explain process for requesting a hearing with Council.
February 16, 2017	Building permit is ready to issue, pending payment of outstanding fees.
February 17, 2017	Meeting with Finance staff and Kim Derdall to discuss the expressed concerns, and to confirm the process for requesting a hearing with Council.  Request received from owners to schedule a hearing under the <i>Development Charges Act, 1997</i> , related to Section 20(1)(b) (Appendix "B").