



The Corporation of the Township of King Report to Council

From: Finance Department

Report Number: FIN-2025-005

Date: Monday, March 17, 2025

Title: **Development Charge Complaint 860 19th Sideroad**

Recommendation

1. That Council receive Report FIN-2025-005 for information.
2. That Staff be authorized to defend the Township's position at the Ontario Land Tribunal.
3. That Report FIN-2025-005 be received and adopted within the Open Session of Council, as business arising from this evening's Closed Session.

1. Report Highlights

- A Zoning By-law amendment application was approved March 20, 2023, to allow a separate second single detached dwelling of 5,100 square feet, on a 53 acre property located at 860 19th Sideroad.
- The property owners believe they are eligible for the Development Charge exemption, through s. 2(3.3) of the Development Charges Act 1997 (DCA) relating to "additional residential units in new residential buildings."
- Staff at the Township and York Region are of the opinion that the property owners are not eligible for the exemption and should be required to pay Development Charges (DCs) for the new single detached dwelling.
- The property owners have bypassed the required steps outlined by s. 20 of the DCA, "Complaint to council of a municipality" and filed an Appeal directly to the Ontario Land Tribunal (OLT).
- The Township plans to coordinate efforts with York Region to defend Staff's interpretation of s. 2(3.3) and s. 20 of the DCA at the upcoming OLT hearing.

2. Purpose

The purpose of this report is to provide council with information about the Notice of Appeal to the Ontario Land Tribunal (OLT) filed February 6, 2025, with respect to DCs payable at 860 19th sideroad, and seek council permission to defend the matter, in partnership with the Region of York at the OLT.

3. Background

The subject property is located on the north side of 19th Sideroad, west of Bathurst Street. The subject property has an area of approximately 21.36 hectares (53 acres) and an existing single detached dwelling totalling 1,700 square feet. The property owners applied for a zoning bylaw amendment on September 23, 2022, to allow them to construct a second single family dwelling measuring 5,100 square feet on the same lot, approximately 600 feet from the existing single detached dwelling. The new dwelling will require separate septic systems, hydro connections and gas services (see Attachment 1: Justification Report Thorstone Consulting August 2022).

Council approved the Zoning By-law Amendment on March 20, 2023 (see Attachment 2: Zoning By-law Amendment Application, File No. Z-2022-15), and the property owners applied for a building permit September 23, 2024.

Development Charges

In accordance with s. 26 of the Development Charges Act 1997 (DCA), DCs are payable at building permit issuance. Upon receiving the invoice for DCs (see Attachment 3: DC calculation), the property owners sent a legal letter from Michael Foderick of McCarthy Tetraault legal (see Attachment 4: Property Owner's Response to DCs Payable), arguing that the new 5,100 square foot home should not pay DCs because it qualifies for the new "Exemption for residential units **in** existing houses" under s. 2(3.3) of the DCA.

Section 2(3.3) was recently added to the DCA as part of the changes introduced by Bill 108 More Homes, More Choice in June 2019. It is intended to lower the cost associated with accessory apartments and increase the supply of affordable housing.

Section 2 (3.3.1) Notes:

Exemption for additional residential units in new residential buildings

(3.3) The creation of any of the following is exempt from development charges:

1. A second residential unit **in a new detached house**, semi-detached house or rowhouse on a parcel of land on which residential use, other than ancillary residential use, is permitted, if all buildings and structures ancillary to the new detached house, semi-detached house or rowhouse cumulatively will contain **no more than one residential unit**.

Both the Township and York Region staff maintain that in order to be eligible for the exemption, the additional unit must be **within** or **ancillary** to a new dwelling unit. Neither apply to the development proposed at 860 19th Sideroad.

The Township reached out to Aird and Berlis to provide a legal interpretation of the relevant sections of the DCA and attended a virtual meeting with Michael Foderick and the Region of York on October 11th, 2024 to discuss the applicability of the proposed development with s. 2(3.3). The legal interpretation was subsequently emailed to Michael Foderick October 28, 2024 (see Attachment 5: Township's Response).

Complaints About Development Charges

On November 26, 2024, the property owners submitted a complaint to the Township under s. 20 of the DCA (see Attachment 6: Section 20 Notification Letter).

Complaint to council of municipality section 20 (1) of the Development Charges Act notes:

Section 20 (1) 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.

The DCA contemplates that **if** DCs are paid in full, the council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representation at the hearing. After hearing the evidence and submissions of the complainant, the council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.

If the complainant is unhappy with council's decision, they can appeal to the OLT.

The Act clearly states that **DCs must be paid** prior to a complaint being heard by council. However, the Complainant disagrees with this interpretation despite having received a letter from the Region's development lawyer on December 20, 2024 (see Attachment 7: York Region's letter to the Complainant) that provides clarification of the s. 20 requirements for before the complaint can be heard by a council.

The Complainant subsequently submitted a response to the Region's development lawyer's letter on January 6, 2025 (see Attachment 8 Letter re DC Complaint), stating they do not agree with our interpretation of s. 20 of the DCA.

On February 6, 2025, Clerks received notice that the property owners had filed an appeal with the OLT (see Attachment 8: Appeal to the OLT). Township and York Region staff plan to defend our position and require that full DCs be paid for the second single family dwelling.

Summary of Key Events

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| August 2022 | Property owners present Justification report for a Zoning By-law Amendment | Attachment 1 |
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| September 23, 2022 | Zoning By-law Amendment Application deemed complete by planning staff | |
| March 20 2023 | Council approves By-law 2023-032 to amend Zoning By-law | Attachment 2 |
| September 23, 2024 | Property owners apply for building permit issuance. DCs Payable. | Attachment 3 |
| September 30, 2024 | Letter received from Michael Foderick "860 19 th Sideroad, Township of King, Collection of Development Charges and Parkland Dedication (Cash-in-lieu) Payment | Attachment 4 |
| October 2, 2024 | Staff responded to Mr. Foderick's letter with an email that explained Staff's interpretation of the affordable housing exemption | |
| October 11, 2024 | Township and York Region staff met with Michael Foderick | |
| October 28, 2024 | Staff response provided with review for external legal that provides an interpretation of section 2(3.3) and staff provided a response to | Attachment 5 |
| November 26, 2024 | A letter of complaint was received by the township. | Attachment 6 |
| December 20, 2024 | The York Region's legal team sent Michael Foderick a formal letter in response to their November 26 th letter of complaint and clarified that section 20 of the DCA requires DCs to be paid before a complaint to be presented to Council. | Attachment 7 |
| January 6, 2025 | Michael Foderick sent a letter to the Region refuting the interpretation of section 20. | Attachment 8 |
| February 6, 2025 | Michael Foderick filed an Appeal to the Ontario Land Tribunal, referencing section 20 of the DCA (<i>Note: Payment in the correct amount of the OLT Appeal fee was received on March 4, 2025</i>). | Attachment 9 |

4. Analysis

Municipalities need the OLT to provide a decision on the interpretation of s. 2(3.3) of the DCA. The results of this hearing will set a precedent that will inform how second homes on a shared lot are applied to the DCA going forward. The cost implication of this exemption will be borne by the existing taxpayer, and likely not contribute to increased affordable housing supply as the new legislation intended.

Township staff have worked closely with the York Region Development team to evaluate the appropriate approach to the appeal. Given that the legal representative of the property owners has not followed the prescribed steps to file a complaint under s. 20 of the DCA or appeal to the OLT, staff are unclear how to respond. The options considered were:

1. To respond to the OLT and argue that the Complainant did not follow the prescribed steps for a s. 20 Complaint and therefore there should be no hearing: or
2. Respond to the Notice of the Appeal and attend the hearing at the OLT to defend our interpretation of s. 2(3.3) of the DCA. And make note of the disregard for the s. 20 process in conjunction with the s. 2(3.3) discussion as the applicant did not follow the process.

It was determined that option two is preferred because it will result in a quicker resolution and may be considered more favourably by the OLT.

Assuming the Tribunal finds the Appellant didn't follow the correct steps by paying for the DC's before making the complaint, it may find it doesn't have the jurisdiction to proceed with a hearing.

5. Financial Considerations

The cost to attend the OLT will be funded from the planning OLT budget and if needed the legal reserve fund. Legal costs will be shared with York Region.

The benefit of attending the hearing is to have a clear decision on the language and intent of the legislation. Ideally, the OLT will agree that the exemption is limited to accessory units within or ancillary to a primary residence (new or existing) and not allow it to be applied to second single family homes on a shared property.

The value of the DC for 860 19th Sideroad is as follows:

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| Township | \$44,921 |
| Region | \$54,742 |
| School Board | \$8,184 |
| Total | \$107,847 |

6. Alignment to Strategic Plan

The 2023-2026 Corporate Strategic Plan (CSP) was adopted by Council on June 12, 2023. The CSP reflects the priorities of upmost importance to the community and defines the obligations and commitments of the Township of King to its citizens and to the public. The CSP is aligned with the Townships long-term vision defined in the “Our King” Official Plan. The CSP also aims to ensure that staff initiatives focus on and work towards supporting King’s Vision, Mission and Values.

This report is in alignment with the CSP’s Priority Area(s), and/or associated Objective(s) and/or Key Results(s):

Priority Area: Complete Communities

Objective: Enrich community well-being and make King the ideal place to live, work and play.

Key Result: Not Applicable.

7. Conclusion

Staff plan to coordinate efforts with York Region to defend the interpretation of s. 2(3.3) and s. 20 of the DCA at the upcoming OLT hearing. The results of the hearing will set a precedent for second single family dwellings on a shared lot for the rest of the province and ensure that the cost of growth (i.e. infrastructure needed to accommodate growth) is funded by growth, and not the existing taxpayers.

8. Attachments

Attachment 1 - 2022-08 860 Sideroad PJR with Appendices

Attachment 2 - 2023-03-20 GMS-PL-2023-17 – Zoning By-law Amendment Application

Attachment 3 - DC Calculation – 860 19th sideroad

Attachment 4 - 2024-09-23 Letter to Township of King – 860 19th Sideroad – Sep 30, 2024

Attachment 5 - 2024-10-28 Township’s response with legal review

Attachment 6 - 2024-11-26 Section 20 Notification Letter

Attachment 7 - 2024-12-20 York Region’s Letter to the Complainant

Attachment 8 - 2025-01-26 Letter RE Development Charges Complaint – Jan 2025

Attachment 9 - 2025-02-05 860 19th Sideroad – OLT DC Appeal Package – Township of King February 6. 2025

Prepared by:

Christel Gregson, CPA, CMA

Manager of Revenue/ Deputy Treasurer

Recommended by:

Peggy Tollett, CPA, CGA

Director of Finance/ Treasurer

Approved for submission by:

Daniel Kostopoulos

Chief Administrative Officer