
REPORT TITLE: **Complaint Pursuant to Section 20 of the *Development Charges Act, 1997* – Mayfield Development Inc.**

FROM: Gary Kent, Chief Financial Officer and Commissioner of Corporate Services
Kealy Dedman, Commissioner of Public Works

RECOMMENDATION

That, upon review of the evidence and submissions of the complainant, the section 20 *Development Charges Act, 1997* complaint of Mayfield Development Inc. be hereby dismissed, as no error was made in the application of the Region of Peel's Development Charges By-law, and the amount of applicable development charges was correctly determined in accordance with the *Development Charges Act, 1997* as well as the Region's Development Charges By-law.

REPORT HIGHLIGHTS

- On February 3, 2021, Mayfield Development Inc. (MDI) paid development charges (DCs) under protest to the Town of Caledon for five model homes. The total Regional DCs paid amounted to \$300,466.55 which was billed based on the prevailing DC rate of \$60,093.31 per dwelling unit under the Region's Development Charge by-law.
 - On April 8, 2021, the Regional Clerk received a letter from MDI which submitted a formal complaint under Section 20 of the *Development Charges Act, 1997*.
 - The complaint from MDI submits that the DCs for the five model homes were incorrectly determined contending that the DC rate applicable should have been \$53,083.06 if there were no delay in the development approval process.
 - Subdivision application milestones do not impact the ability of the Chief Building Official to review or issue permits for model homes on lands within unregistered plans of subdivision within the Town of Caledon.
 - The Town of Caledon review of the five building permits was completed on January 13, 2021, permitting the payment of DCs at that time under the old DC rates. DCs were not paid by MDI until February 3, 2021 after the new Regional DC By-law came into force.
 - Regional staff submit that the development charges were calculated in accordance with the Region's DC By-law and the legislation.
 - The legislation limits the grounds for development charges complaints; this complaint does not fall within the permitted grounds under the legislation and therefore should be dismissed.
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DISCUSSION

1. Background

MDI is in the process of developing the lands associated with the Stage One development within Mayfield West Phase 2 under Subdivision Application No. 21T-16004C (the “Development”). The proposed subdivision development was initially for construction of 222 dwelling units on 14.81 hectares of the 41 hectares property at 12259 Chinguacousy Road. The subdivision agreement was executed on May 4, 2021.

In December 2020, MDI submitted a building permit application to the Town of Caledon to build five model homes for this development project. On February 3, 2021, MDI paid DCs under protest to the Town of Caledon for the five model homes. The total Regional DCs paid amounted to \$300,466.55 which was billed based on the prevailing DC rate of \$60,093.31 per dwelling unit under the Region’s Development Charge by-law. Subsequently the building permits were issued on February 4, 2021. Appendix I provides a copy of the Town’s DC invoice and payment receipt.

On April 8, 2021, the Regional Clerk received a letter from MDI which submitted a formal complaint under Section 20 of the *Development Charges Act, 1997 (DC Act)*.

2. Findings

a) Issues Raised by the Complainant in the Section 20 Complaint

On April 8, 2021, MDI submitted a formal development charge complaint under section 20 of the *DC Act*.

- The letter submits that MDI experienced delay in approvals relating to Town of Caledon’s ability to process the subdivision agreement associated with the development application 21T-16004C.
- On February 3, 2021, MDI paid the DCs to Town of Caledon, under protest, for the five model homes at the prevailing DC rate of \$60,093.31 per dwelling unit under the new Regional Development Charges By-law which came into effect on January 22, 2021.
- The letter submitted that the DCs for the five model homes were incorrectly determined citing that the DC rate applicable should have been \$53,083.06 under the old Regional DC By-law if there were no delays in the development approval.

It should be noted that, subdivision application milestones do not impact the ability of the Chief Building Official to review or issue permits for model homes on lands within unregistered plans of subdivision within the Town of Caledon. The Town of Caledon review of the five building permits was completed on January 13, 2021, permitting the payment of DC’s under the old DC rates at that time. MDI did not pay DCs until February 3, 2021 after the new Regional DC by-law came into force.

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b) Previous DC Relief Request from MDI

On January 21, 2021, MDI submitted a letter to the Region's Development Services Division requesting a pre-payment of development charges associated with the Development.

As the new Development Charge By-law came into effect on January 22, 2021, there was no sufficient time to bring the matter to Council for consideration in advance of the effective date of the Region's new DC By-law.

It should be further noted that the subdivision agreement which is a requirement that must be fulfilled concurrently with the payment of regional hard services development charges was executed on May 4, 2021, more than 3 months after the initial DC relief request made by MDI.

c) Transition from the Old DC Rate to the Rates under the New DC By-law

The Region's previous DC By-law 46-2015 would have expired on October 5, 2020. Considering the challenges associated with the COVID-19 pandemic, the Region had taken measures to provide more time for the development community to transition from the old DC rates to the new ones:

- At the May 14, 2020 Regional Council meeting, Council endorsed staff's recommendation to extend the 2015 DC By-law expiry date to January 24, 2021 as permitted under Section 9.2 of the *DC Act* as enacted by the Schedule 1 of the *Coronavirus (COVID-19) Support and Protection Act, 2020*.
- The draft DC By-law released on September 18, 2020 proposed to set the effective date of the new By-law as January 1, 2021. On December 10, 2020, Council approved staff's recommendations to move the effective date of the 2020 DC By-law to January 22, 2021 with a view to provide the development community more time for the readiness to draw building permits and to ease administration of the permitting process in and around the busy holiday season.
- The Notice of the Passing of the DC By-law was posted in local newspapers as well as the Region's website. The notice was also provided to Building Industry and Land Development Association (BILD), local municipalities and other organizations as requested.

d) Building Permit Requirement for Model Homes and Subdivision Requirements

The *Building Code Act* requires that all applicable fees, including application processing fees and DCs, be paid prior to the issuance of a building permit. This is a legislative requirement and is not within the discretionary powers of the Chief Building Official to alter or waive. Under normal circumstances, Regional hard services, DCs shall be paid concurrently with the Regional execution of the required subdivision agreement. The remaining DCs are payable at the time of the issuance of individual building permits. Where building permits are issued prior to the execution of the subdivision agreement (model homes), or where a subdivision agreement is not required, the full amount of DCs are payable immediately prior to the issuance of a building permit.

The Town of Caledon Building Division has advised that the 5 building permits subject to this complaint were filed with the Town on December 23, 2020 and the permits

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were ready for issuance on January 13, 2021. Application based fees were paid on January 20, 2021, but MDI failed to pay the applicable DCs until February 4, 2021, by which time the new Regional DC By-law was in effect.

It should further be noted that the subdivision agreement, a requirement that must be fulfilled concurrently with the payment of Regional hard DCs for non-model homes was executed on May 4, 2021, more than 3 months after the initial complaint by MDI. The timing of the processing of the application including the execution of the required subdivision agreement has no impact on the ability of the Town's Chief Building Official to issue building permits for the construction of model homes within the area subject to the application. Notwithstanding this, the subdivision agreement could not have been completed in advance of certain studies and materials as they inform the necessary provisions of the agreement and details necessary to complete the development staging and sequencing plan. These materials were recently satisfactorily resolved by MDI and the land owners group thereby permit the terms within the subdivision agreement to be finalized.

e) Legislation Requirements

Section 20 of the *DC Act* provides that, a person required to pay a Development Charge may complain to Council based solely on the following reasons:

- The amount of the Development Charge was incorrectly determined;
- 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;
- There was an error in the application of the Development Charge By-law.

After hearing the evidence and submissions of the complaint, Council may dismiss the complaint or rectify any incorrect determination or errors that was the subject of the complaint.

The *DC Act* provides that a complainant may appeal the Council's decision to the Local Planning Appeal Tribunal (LPAT) within 40 days after a decision is made by Council.

FINANCIAL AND LEGAL IMPLICATIONS

The Section 20 letter from MDI is requesting a partial refund of the Regional portion of DCs in the amount of \$35,051.25. The detailed calculation is outlined in Table 1 below:

Table 1- DC Amount Calculation for the Five Model Homes

	Amount
Regional DC Paid to the Town for the Five Model Homes under the new DC By-law 77-2020	\$300,466.55
The DC Amount MDI is requesting	\$265,415.30
Difference	\$35,051.25

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MDI contended that the increased development charges payment was due to development application approval delay caused by the Town of Caledon; MDI submitted that the development charges for the five model homes were incorrectly determined for that reason.

A complaint under Section 20 of the *DC Act* does not confer on Council the authority to waive or reduce DCs correctly determined in accordance with the *DC Act* and the Regional DC By-law. Council's authority under Section 20 of the *DC Act* is limited to correcting errors. Staff have reviewed this case and concludes that the development charges were correctly calculated, and the application of the Region's DC By-law was appropriate. Staff recommends that the complaint be dismissed as the complaint does not satisfy any of the grounds permitted under Section 20 of the *DC Act*.

Should Council direct staff to refund any portion of the DCs paid, such refund would need to be funded from a non-DC funding source. Furthermore, Regional DC rates are adjusted semi-annually in accordance with prescribed indexing terms; allowing the complaint and issuing a refund would create a precedent that would impair the Region's ability to consistently apply the Region's Development Charges By-law for future developments in the Region.

Additionally, the decision in this case would likely influence the DC treatment for the remaining 212 units in the same subdivision. As noted in an earlier section, the letter dated January 21, 2021 submitted by MDI requested that the Regional portion of DC rates associated with hard services (Water, Wastewater and Transportation) be frozen at the rates under the old DC By-law that was repealed on January 22, 2021. On May 3, 2021, MDI paid hard services DCs of the 212 units under protest. The estimated financial implication is illustrated in the table below:

Table 2- DC Amount Calculation

	Hard Services DCs	Full Services DCs
Regional DC Payable for 212 Dwelling Units based on the Rates under the New DC By-law	\$11,626,881.36	\$12,739,781.72
Calculated DC Amount based on the Rates under the old DC By-law	\$11,003,274.88	11,253,608.72
Difference	\$623,606.48	\$1,486,173.00

CONCLUSION

Staff from Public Works, Legal and Finance have reviewed the complaint from MDI, as it relates to the applicable provisions in the *Municipal Act, 2001*, the *DC Act* and the Region's Development Charge By-law 77-2020. Staff concludes that the development charges were correctly calculated, and the application of the Region's DC By-law was appropriate. Staff recommends that the complaint be dismissed as the complaint does not satisfy any of the grounds permitted under Section 20 of the *DC Act*.

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APPENDICES

Appendix I – A Copy of the Section 20 Complaint Letter from Mayfield Development Inc.

Appendix II – A Copy of the Town's DC Invoice and DC Receipt

For further information regarding this report, please contact John Hardcastle, Interim Director Development Services, Ext. # 4418, john.hardcastle@peelregion.ca, and Stephanie Nagel, Treasurer & Director of Corporate Finance, Ext. #7105, stephanie.nagel@peelregion.ca.

*Authored By: John Hardcastle, Interim Director, Development Services
Maggie Wang, Manager, Financial Policy and Development Finance*

Reviewed and/or approved in workflow by:

Department Commissioners, Division Directors and Legal Services.