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**Report of the Commissioner of Finance**

**Keith Ho and Cindy Luk – 10 Grenfell Crescent, City of Markham –  
Development Charge Complaint**

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**1. Recommendation**

1. Council dismiss the Development Charge Complaint lodged by Keith Ho and Cindy Luk, included as Appendix A.
2. Council authorize staff to defend the dismissal of the Development Charge Complaint at the Ontario Land Tribunal, if necessary.
3. Council authorize the Regional Solicitor to settle the Development Charge Complaint and execute Minutes of Settlement, where appropriate.

**2. Purpose**

This report addresses a Development Charge Complaint by Keith Ho and Cindy Luk (“Complainants”) for development charges imposed by the Region, on lands known as 10 Grenfell Crescent (“Proposed Development”) located in the City of Markham (“City”).

**Key Points:**

- Development charges were levied at the single/semi-detached rate in effect as of November 8, 2023 for a single-family dwelling unit, for a total development charge of \$73,112
- On May 1, 2024, the Complainants paid development charges and filed a Development Charge Complaint (“DC Complaint”) under section 20 of the *Development Charges Act, 1997*
- The Complainants allege the Regional development charge was incorrectly determined, a credit is available to be used against the development charge and that credit was not

properly applied, and there was an error in the application of the Region's [2022 Development Charge Bylaw](#) ("DC Bylaw")

### **3. Background**

#### **The original applicant, the architect, applied for a building permit from the City in October of 2022**

On October 6, 2022, the architect submitted an application for a building permit to the City. On January 17, 2023, an application for a demolition permit for a single-family dwelling was also submitted. Subsequently, the structure was demolished without a demolition permit. Having received the request for building permit issuance, the City issued development charge statements reflecting the payable amount due, when the rate changed. Although the DC Complaint is from Keith Ho and Cindy Luk, they are not the registered owners of the property.

#### **The City's Building Standards Department observed that the demolition of the dwelling was complete prior to the issuance of the demolition permit**

On March 13, 2023, the City's Building Standards Department observed that no building remained on the lot. As a result, the City issued an Order to Comply to the owners at the time due to a violation of the *Building Code* for demolition without a permit. A Cancellation Notice was also provided to the owners at the time, stating that "a demolition permit is not available since the building has been completely demolished".

The building permit was later issued on May 1, 2024, resulting in an overall payment of \$73,112 in Regional development charges to the City. The redevelopment credit was not applied to this building permit as a demolition permit was not issued by the City.

#### **Complainants argue they should have been entitled to a redevelopment credit**

The Complainants dispute the Region's development charges levied for the structure at 10 Grenfell Crescent. They believe they should have been entitled to a redevelopment credit. The DC Complaint outlines that the City's website states that development charges may be required if erecting a new building, making an addition or alteration to an existing building which increases gross floor area or number of units, or redeveloping a property which results in a change of use. The Complainants argue that the development does not meet any of those criteria.

The Complainants further claim that since a demolition permit was applied for but cancelled due to demolition without permit, this is documented proof that a house previously existed on the property and thus does not meet the criteria of erecting a new building.

## **The Act provides for a complaint process for disputed development charges**

When there is disagreement with the amount of development charges payable for a particular development, the complainant may pay the development charges under protest and file a complaint to be heard by Council. The Act prescribes that a complaint may only be made on three grounds:

- The amount of the development charge was incorrectly determined
- 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
- There was an error in the application of the development charge bylaw

For a complaint to be heard by Committee, an applicant must bring a written complaint forward within 90 days of the development charges becoming payable. Council delegated the hearing of such complaints to the Finance and Administration Committee under Bylaw A-151-92-114 and, subsequently, Committee of the Whole. After hearing the complaint, Council has the authority to dismiss the complaint, or rectify any incorrect determination or error that was the subject of the complaint. After Council renders its decision, an applicant may further appeal any decision of Council to the Ontario Land Tribunal.

## **4. Analysis**

### **DC Bylaw governs the determination of Regional development charges credit**

Definitions in the Region's DC Bylaw determine the redevelopment credit applied to a particular development.

Section 3.15 of the Region's DC Bylaw provides that a landowner has 48 months from the date of issuance of a demolition permit to rebuild a structure on the same property to be granted redevelopment credits:

#### **Reduction of Development Charges Where Redevelopment**

3.15 Where, as a result of the redevelopment of land, a building or structure existing on the land within 48 months prior to the date of payment of development charges in regard to such redevelopment was, or is to be demolished, in whole or in part, or converted from one principal use to another, in order to facilitate the redevelopment, the development charges otherwise payable with respect to such redevelopment shall be reduced by the following amounts:

- a) in the case of a residential building or structure, or in the case of a mixed-use building or structure, the residential uses in the mixed-use building or structure, an amount calculated by multiplying the applicable development charge under Section 3.6 of this bylaw by the number, according to type, of dwelling units that have been or will be demolished or converted to another principal use; and

- b) in the case of a non-residential building or structure or, in the case of mixed-use building or structure, the non-residential uses in the mixed- use building or structure, an amount calculated by multiplying the applicable development charges under Section 3.9, 3.10, 3.11 or 3.12 of this bylaw by the gross floor area that has been or will be demolished or converted to another principal use. Development charges shall not be reduced under this subsection for a non-residential building or structure or, in the case of mixed-use building or structure, the non-residential uses in the mixed- use building or structure, being demolished or converted for which development charges were not imposed or were exempted, or which was not subject to development charges after November 23, 1991;
- c) provided that such amounts shall not exceed, in total, the amount of the development charges otherwise payable with respect to the redevelopment. The 48 month time frame shall be calculated from the date of the issuance of the demolition permit.

Further, section 3.15.1 in the DC Bylaw states that:

3.15.1 For the purposes of Section 3.15, the onus is on the applicant to produce evidence to the satisfaction of the Region, acting reasonably, to establish the following:

- a) the number of dwelling units that have been or will be demolished or converted to another principal use; or
- b) the non-residential gross floor area that has been or will be demolished or converted to another principal use; and
- c) in the case of a demolition, that the dwelling units and/or non-residential gross floor area were demolished within 48 months prior to the date of the payment of development charges in regard to the redevelopment.

### **A redevelopment credit is not available as demolition permit was not obtained**

As the building was demolished without obtaining a demolition permit and the City takes the position that no demolition permit is available, the Complainants are not eligible for a redevelopment credit. The DC Bylaw states that “the 48 month time frame shall be calculated from the date of the issuance of the demolition permit.” Without a demolition permit, staff are unable to apply the credit.

## **5. Financial Considerations**

If the complaint is upheld, the Region would forego collecting approximately \$73,112 in development charges, representing the prevailing rate that would be applied to a single-family dwelling.

## 6. Local Impact

Local municipalities collect development charges on the Region's behalf. The City of Markham has also received a similar development charge complaint, which is anticipated to be addressed by City Council.

## 7. Conclusion

The Complainant's single-family dwelling structure is not eligible for redevelopment credit under the Region's DC Bylaw as no demolition permit was issued prior to demolition of the structure. Accordingly, the full hard and general components of the development charges apply to the development.

It is recommended that Keith Ho and Cindy Luk's DC Complaint be dismissed, and staff be authorized to defend any challenge of this decision at the Ontario Land Tribunal.

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For more information on this report, please contact Bonny Tam, Director (A), Treasury Office at 1-877-464-9675 ext. 75885. Accessible formats or communication supports are available upon request.

Recommended by:



**Laura Mirabella**

Commissioner of Finance and Regional Treasurer



Approved for Submission:

**Erin Mahoney**

Chief Administrative Officer

May 27, 2024

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Appendix A – Development Charge Complaint Letter

May 1<sup>st</sup>, 2024

Regional Clerk  
Region of York  
17250 Yonge St.  
Newmarket, ON  
L3Y 6Z1

**Attention:** Christopher Raynor, Regional Clerk

**RE: Development charges complaint for 10 Grenfell Crescent, Markham ON L3P 1S5**

Please accept this letter as a submission of a formal complaint to City of Markham about the payment of development charges pertaining to a residential house located on (Building permit# **22 258289 000 00 HP**) at the address of **10 Grenfell Crescent, Markham ON L3P 1S5**. The complaint is being submitted as per Development Charges Act Section 20 (1) (a) *the amount of development charge was incorrectly determined* and (b) *whether a credit is available to be used against the development charge* and (c) *there was an error in the application of the development charge by-law*

The fee under formal complaint for the above-noted address is as follows: Development Charges Residential of \$142,580.00  
Application number: 22 258289  
Bill number: 548543  
Transaction# 322038 (Paid on May 1st, 2024)

Based on the City of Markham's website, it states that "you may be required to pay development charges for any residential or non-residential development if you are:

- erecting a new (not replacement) building(s)
- making an addition or alteration to an existing building(s) which increases the gross floor area or number of units
- redeveloping a property or properties which result in a change of use

I firmly believe that the development charge was incorrectly determined as our property does not meet any of the above criteria. The particulars of the reasons for the complaint are as follows:

- There was always an existing detached house (with services) at this location and we are erecting a single detached house as a replacement.
- There is no change of use for this property. It was a single detached home before and will remain as a detached home after the project is complete.
- City of Markham confirms that development charges are not applicable if a demolition

permit was processed. A demolition permit was applied for but was cancelled due to violation of demolition without permit (Order# 23 116500 000 00 BV) The violation was fully executed and paid for on March 16, 2023. The infraction is documented proof that a house had always existed on this property and does not meet any of the above criteria regarding development charges.

Based on the above reasonings, I argue that the above development fee has been calculated incorrectly. Please understand that the development charge is not a small figure and has created significant financial impact to our family. We have been living in Markham since 2014 and will continue doing so considering Markham as our home. I hope you will consider the above reasonings when reviewing and assessing the miscalculation of development fees related to this property.

Sincerely,

A handwritten signature in cursive script that reads "Keith H".

Keith Ho and Cindy Luk  
Landowners