



Regional Municipality of Waterloo

Administration and Finance Committee

Minutes

Tuesday, December 6, 2016

10:26 a.m.

Regional Council Chamber

150 Frederick Street, Kitchener

Present were: Chair S. Strickland, L. Armstrong, E. Clarke, D. Craig, S. Foxton, T. Galloway, D. Jaworsky, H. Jowett, K. Kiefer, G. Lorentz, J. Mitchell, J. Nowak, K. Redman, K. Seiling and S. Shantz

Members absent: B. Vrbanovic

Declarations of Pecuniary Interest under the “Municipal Conflict of Interest Act”

None declared.

S. Strickland provided opening comments, noting the role of the Committee with regards to public hearings for Regional Development Charges (RDC) complaints.

2. Public Hearing of Development Charges Complaint under Subsection 20(4) of the “Development Charges Act”, 1997, as Amended

2.1 Report COR-FSD-16-33, Development Charges Complaint – Grerei Investment Ltd. – 130 Saltsman Drive, City of Cambridge

2.2 Opening Address – Region of Waterloo

Richard Brookes, Solicitor, provided an overview of the process related to development charges complaints per the provincial legislation. He outlined the residential and non-

residential rates and the special category of 'non-residential – industrial', noting the reasons for establishing the special category when the by-law was approved in August 2014.

R. Brookes summarized the details of the complaint received from Grerei Investment Ltd. including the original assessment paid by the complainant. He advised that the Region's position is that the onus is on the complainant to satisfy that the use of the building will be industrial. He stated that the complainant initially had a manufacturing tenant and that this would have met the definition for industrial but that the tenant did not subsequently sign a lease. He summarized the staff interpretation and response to the complainant. He stated that the key issue is that the subject building does not meet the definition of an industrial building, per the Region's Development Charges by-law, since the complainant's position is that they will likely have industrial tenants and that there is no definite intention or plan to lease to industrial tenants exclusively.

He provided an overview of his communications with staff at the City of Cambridge with regards to the issue of zoning and building elements, noting that the permitted uses for zone M3 could potentially be a courier business. He advised the Committee that typically landowners will seek an industrial building permit since it is less costly than a commercial permit and that if circumstances with tenancy change, a landowner may subsequently apply to the City of Cambridge for a commercial permit.

He stated that the complainant is proposing to receive a refund of 50% on the charges paid hoping to be rated for industrial use and when seeking a finishing permit from the City of Cambridge will pay any additional development charges if the tenants are commercial. He noted that Regional staff have not refunded the development charges (DCs) based on building interior after the finishing permits have been issued.

He noted past complaints and outcomes where the Region rejected exemptions on non-industrial use of buildings and he added that it is possible to have a non-industrial tenant in a building located in an industrial mall.

2.3 Opening Address – Grerei Investment Ltd.

Peter Buza, Sorbara Law, stated that his client, Grerei Investment Ltd., has built several industrial mall sites and he acknowledged representatives from the company present in the audience. He referenced photographs of the front and rear of the subject building and outlined the position of Grerei Investment Ltd. being that the by-law was not correctly applied by staff. He raised concerns about the burden of proof standard being set too high by the Region, proof of an industrial tenant in this case. He argued that the subject building is an industrial building, located in an industrial mall and being in an industrial zone. He stated that the Region should consider the industrial permit and

zoning along with the nature of the building. He referenced the affidavit of Mr. Geissler, noting that the owner expects to fill the building with industrial businesses/tenants.

Mr. Buza restated the position taken by Grerei Investment Ltd. being that the subject building qualifies for the Region's industrial development charge. He added that the staff decision was unfair since there is no opportunity for a refund of the commercial rate if and when industrial tenants occupy the building. He expressed concerns that The Region is withholding incentives for industrial development and that it is unnecessary for the Region to charge a commercial DC upfront. He referenced subsection 4(8) under the Regional DC by-law stating that this section could be applied to the subject building since it would allow the Region to collect additional development charges later if commercial tenants occupy the building. He stated that determining how the DCs are set must be clearly laid out in the by-law and, in the view of the complainant and based on their interpretation of subsection 4(8) of the by-law, the Region has the ability to collect additional DCs later if warranted.

2.4 Committee Discussion

R. Brookes responded to Committee questions regarding the prevalence of a two-step building permit process in the local Area Municipalities and the intent of the industrial exemption rate, noting that the two-step process is common and the challenge arising when the type of tenants is an unknown element.

Craig Dyer, Commissioner, Corporate Services/Chief Financial Officer, clarified that the Region's DC industrial rate was set as a discounted rate to encourage industrial development, as specified in the by-law, and not based on municipal zoning or the marketing of a building site.

In response to a Committee question about accepted evidence of eligibility for the industrial rate, staff advised that developers must show that a building will be used for industrial use and that files are reviewed on a case by case basis; where a building has an owner/occupier status, it is easier to determine but the file becomes more complex when the subject building has tenanted units.

Mr. Buza responded to Committee questions regarding the use of the other buildings owned by the complainant, stated that, with the exception of one tenant (FedEx), the other buildings are primarily industrial. He stated that the intended use of the subject building is industrial.

In response to a Committee question about the eligibility for DC refunds, should the tenants of the subject building be industrial, C. Dyer stated that the onus is on the applicant to provide proof of industrial use to be eligible for the discount. He added that staff have used a lease as being proof of the use and that the DC has been paid at the

full residential rate. He stated that there is not an opportunity for a refund if circumstances with tenant use change, noting that the Region's by-law does not allow for additional charges to be applied.

R. Brookes stated that staff are concerned about the client offering to pay additional fees later in time if the building use is not industrial since the by-law is based on per square footage. He added that there would be a significant administrative burden on the Region if a precedent was set to allow a re-calculation.

In response to concerns expressed by some Committee members about the lack of a refund process, S. Strickland reminded the Committee that the by-law doesn't allow for refunds and he noted that the issue at hand during this hearing is whether the current by-law has been applied correctly. He stated that there will be opportunities during the RDC by-law review planned for 2019 to consider any policy changes.

Cathy Deschamps, Director, Financial Services/Development Financing, responded to a Committee question about discounted rates at the Area Municipalities, stating that the lower tier municipalities charge the full rate. C. Dyer added that Kitchener may provide a discount for industrial rates.

The Committee expressed concern for tracking any changes in the use of buildings and applying the RDC rates each time changes occur; the impact on past applicants, and the impact on local infrastructure financing. Some members suggested that Council has the option to interpret the by-law to allow the discount and thus encouraging industrial development.

In response to a Committee inquiry about the options for establishing a new by-law in 2019 to align with the DC bylaws of the lower tier municipalities, C. Dyer stated that this would be problematic since each Area Municipality has a different five (5) year by-law review cycle. He stated that it would be more reasonable for the Region to determine its own by-law based on its own needs.

2.5 Closing Address – Region of Waterloo

R. Brookes stated that the burden of proof has not been met by the complainant; there is no proof that the subject building will be used for industrial purposes. He added that there are significant policy issues to be considered, as well as administrative processes. He stated that staff recommends that the current interpretation of the by-law be maintained and that the complaint be dismissed.

2.6 Closing Address – Grerei Investment Ltd.

P. Buza stated that while Regional staff are concerned that the by-law will be watered down, the complainant seeks only to have all the evidence properly considered. He said
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that the owner expects to have industrial tenants; it is an industrial building. He added that more than a lack of lease or zoning should be considered when making a decision on this matter. He referenced subsection 4(8) of the by-law stating that there is an allowance for the Region to charge additional fees at a later date, if applicable.

The Committee members shared their views on the merits and challenges of the current Regional Development Charges by-law and the case before them, citing the need to execute their fiduciary responsibility and to offer fair and consistent treatment with all developers. Several members noted that a decision made at this time should be based on the current by-law and that the industrial discounted rate should be applied as intended and outlined in the by-law.

2.7 Recommendation of Committee

A recorded vote was requested.

Moved by K. Seiling

Seconded by K. Redman

That the Regional Municipality of Waterloo dismiss the Complaint of Grerei Investment Ltd., dated November 4, 2016, attached as Appendix "B," in regards to the Regional Certification of Development Charges CAM-0044-16, as set out in report COR-FSD-16-33, dated December 6, 2016.

Yays: T. Galloway, D. Jaworsky, H. Jowett, , G. Lorentz, J. Mitchell, J. Nowak, K. Redman, K. Seiling, S. Shantz and S. Strickland

Nays: L. Armstrong, E. Clarke, D. Craig, S. Foxtan and K. Kiefer

Carried

Request to Remove Items from Consent Agenda

There were no requests to remove items from the Consent Agenda.

Motion to Approve Items or Receive for Information

Moved by L. Armstrong

Seconded by J. Nowak

That the following items be approved:

- That the Regional Municipality of Waterloo approve the Standards for Accessibility Policy Statement, attached as Appendix A in report HRC-CIT-16-04, dated December 6, 2016.

- That the Regional Municipality of Waterloo approve the Terms of Reference for the Grand River Accessibility Advisory Committee (GRAAC) as amended, as outlined in Report HRC-CIT-16-06, dated December 6, 2016.
- That the Regional Municipality of Waterloo authorize the Chief Financial Officer, by By-law, to borrow funds as required on a temporary basis to meet current and capital expenditures in 2017 to a maximum of \$118.0 million for current expenditures and \$75.0 million for capital expenditures, as outlined in report COR-TRY-16-114 dated December 6, 2016.

And that the following items be received for information:

- **COR-FSD-16-34**, Annual Indexing of Regional Development Charges
- **COR-FFM-16-14**, LEED Designations Update

Carried

Regular Agenda Resumes

Information/Correspondence

Council Enquiries and Requests for Information Tracking List – No items pending

Next Meeting – January 10, 2017

Motion to go into Closed Session

Moved by S. Foxton

Seconded by L. Armstrong

That a closed meeting of the Administration and Finance and Planning and Works Committees be held on Tuesday, December 6, 2016, immediately following the Administration and Finance Committee meeting in the Waterloo County Room in accordance with Section 239 of the Municipal Act, 2001, for the purposes of considering the following subject matters:

- a) personal matters about identifiable individuals regarding committee appointments
- b) personal matters about identifiable individuals regarding committee appointments
- c) personal matters about identifiable individuals regarding committee appointments
- d) personal matters about identifiable individuals regarding committee appointments
- e) personal matters about identifiable individuals regarding committee appointments
- f) personal matters about identifiable individuals regarding committee appointments
- g) receiving of advice that is subject to solicitor-client privilege related to a legal matter
- h) proposed or pending litigation, receiving of legal advice subject to solicitor-client privilege and proposed or pending acquisition of land in the City of Cambridge

Carried

10. Adjourn

Moved by K. Kiefer

Seconded by D. Jaworsky

That the meeting adjourn at 11:56 a.m.

Carried

Committee Chair, S. Strickland

Committee Clerk, S. Natolochny