



Mayor Fred Eisenberger
City of
Hamilton
71 Main St West
Hamilton, ON
L8P 4Y5

Dear Mayor Eisenberger,

Trillium Housing Winona Non Profit and Trillium Housing Highbury Non Profit are appealing to Hamilton City Council the decision of city staff with respect to the application of the Development Charges Act (the "Act") to our non profit housing developments. We are doing this under section 20 (1) of the Act.

Our Non-Profit Housing Developments

Trillium Housing through Trillium Housing Winona Non-Profit is currently constructing 60 traditional and back-to-back townhouses at 27 Rachel Drive (formerly 1288 Baseline Road, Stoney Creek) on land formerly owned by Infrastructure Ontario ("Winona"). Similarly, Trillium Housing Highbury Non-Profit has a shovel-ready, fully permitted site consisting of 71 traditional and back-to-back townhouses at 19 Picardy Drive on the mountain in Stoney Creek on land also purchased from Infrastructure Ontario ("Picardy"). The Province sold the land to Trillium Housing for the express purposes of supporting affordable housing initiatives such as these Trillium Housing developments. Together these 131 units are providing affordable ownership options to families wishing to live in the Stoney Creek area of Hamilton.

Nature of Appeal

. We are appealing the decision taken by staff that our development is not a non-profit housing development as contemplated in Section 26.1(2) 3 of the Act. We are asking City Council to confirm that our developments are non-profit housing developments for the purposes of that section. Our developments would therefore qualify as a matter of right to pay development charges in 20 equal annual payments as provided for non-profit housing developments in section 26.1(3)(b) of the Act.

While there has never been a direct conversation with legal staff, we have been told they have narrowly interpreted the term "use" of the residential premises in section 11.1.(3) of the General Regulation under the Development Charges Act (the "Regulation"). That Section provides guidance on the meaning of "non-profit housing development" for the purposes of the Act.

By determining that our developments do not qualify as non-profit housing developments, City legal staff have effectively excluded non-profits that develop residential units to be provided as ownership housing from the Development Charge deferral regime set out in the Act.



The test set out in the Regulation to qualify as a non-profit housing development is the “development of a building or structure intended for use as residential premises by ... a non profit corporation”. Our developments are being developed by a non-profit corporation for use as residential premises and should therefore qualify. We also note that while the drafters of the Regulation understand that it is possible to treat rental and ownership properties differently, as they have singled out for profit rental in section 26.1(2)1 of the Act, they make no distinction between rental and ownership housing when dealing with non-profit housing development. Had the drafters wished to exclude ownership housing from the development charge deferral regime, they had only to add the word “rental” to the text in section 11.1(3) of the Regulation. They did not do so. Further, had the drafters wished to require that a non-profit continue to own a development, they had only to require that buildings be owned by the non-profit, rather than say developed by the non-profit.

Precedent Established

We are not asking the City of Hamilton to break new ground as our non-profit housing development structure has already been approved by other municipalities. They have acknowledged that the 20 year payment period for Development Charges for non-profit housing developments provided for in the Act applies to our non-profit ownership housing model. The regime is set out in a Section 27 Agreement,

Attached you will find further background demonstrating the legitimacy of the Trillium Housing Non Profit model, its validation by all levels of government (including previous Hamilton Council Motion) and the improved outcomes for the delivery of housing affordability.

Voluntarily and without prejudice, we have also provided a series of compromise proposals that would allow Hamilton to support housing affordability in the most cost-effective and lowest risk manner.

We hope that Council will continue to show leadership in the provision of housing affordability for its residents and support our appeal.

Yours,

Joe Deschenes Smith
Trillium Housing Winona Non Profit
Trillium Housing Highbury Non Profit

Cc: Councillors Brenda Johnson, Chad Collins, Maria Pearson, Brad Clark
Edward John, Janette Smith



Housing Developments and New Development Charge Act Payment Schedule for Non Profits

BACKGROUND

Trillium Housing Winona Non Profit and Trillium Housing Highbury Non Profit (“the Non Profits” are each developing an affordable housing site in Hamilton, Ontario. The Non Profits are non-profit housing developments exclusively established to purchase and use sites to deliver housing affordability to home purchasers.

Each of the Non Profits has purchased a site from the government of Ontario through the province’s program to provide priority access to surplus provincial land to NON PROFITS for the purpose of providing community benefit;

Both of the Non Profits have been funded by the federal government through CMHC to support the delivery of housing affordability.

Hamilton City Council has already passed a Motion supporting financing of housing affordability of \$1,800,175 combined at the Non Profits. The City of Hamilton staff previously recognized our two projects’ non profit status and this was validated by Council. Twice in the motion that legal staff approved in 2018 to support housing affordability at our developments and which Council adopted, the Motion specifically refers to “...the two Trillium Housing Non-Profit housing developments (Winona and Highbury)...” the exact language in the Act.

APPEAL

Legal staff at the city have refused to provide the Non Profits with the 20 year payment schedule as set out in the Development Charge Act. The Non Profits are appealing this to Council.

If Council were to overturn the legal staff decision, it would NOT create a dangerous precedent nor cost the City additional funding. To our knowledge there is only a few other non-profits active in affordable ownership housing in Ontario. Our proposal would REDUCE the amount of housing affordability funding allocated by the city to these residents.

The total of the DC’s payable represents less than 3% of Hamilton’s DC reserves (2019 audit). According to City Financial Statements, the City’s Development Charge reserve fund increased in 2019 to over \$180 million (an increase of over 30%).

DEVELOPMENT CHARGE ACT

The province amended the Development Charges Act in 2019 and on January 1, 2020 promulgated the revised Act and enacted Regulations that support the provision of housing affordability, both for rental and ownership housing.

In introducing his Bill to the Legislature, the Minister specifically referenced the Government intention for the new Act to support ownership housing affordability.

Furthermore, the Non-Profits qualify as a Non-Profit Housing Development as this would be the appropriate application of the spirit of the Act and Regulation. It has been long held that when interpreting the words of Parliament one should aim to reduce a result that would swing contrary

to the legislator's intention. Put another way, statutes and regulations should be interpreted in a way that supports the spirit with which they were created. And more certainly, where a plain reading of legislation leads to absurd results, meaning results that would negate Parliament's intention, the Supreme Court of Canada has instructed courts to consider the full context of the legislation, including the intention of the legislature and the social policy it was passed to effect.

To this effect, courts have accepted Hansard debates as admissible evidence of legislative intent. When Bill 108 was being debated in the legislature its social policy and purpose was highlighted. The Honourable Steve Clark, the Minister of Municipal Affairs and Housing, stated as follows:

"Speaker, Ontario needs more housing, and we need it now. Our government believes that adding more homes to the market and different types of homes will help turn this situation around. Our action plan, More Homes, More Choice, was informed by a broad public consultation we held in the fall. The consultation focused on five major themes: speed, cost, mix, rent and innovation. What does that mean? It means our government wants to cut red tape to make approval times faster for building new housing. We want to make costs more predictable for homebuyers. We also want to give people more choice. We want a different mix of housing types, including rental housing. And we need to encourage innovative approaches to both housing design and home ownership. ... We want to put affordable home ownership in reach of more Ontario families..."

Government cannot address the housing crisis on its own, but we can make it easier for municipalities, non-profits and private firms to build new homes. The Development Charges Act lays out how municipalities can impose fees for infrastructure...on new construction. Let me be clear: We believe growth should pay for growth, and the changes we are proposing would make development costs clear from the outset. This will make costs more predictable for home builders, and it will protect new homebuyers, because these charges are often passed along directly to the consumer.

...

Innovation is also important, and this government is encouraging ideas from every sector to address this crisis, whether it's tiny homes or whether it's complete communities. We encourage the public, our municipal partners, and the development and non-profit sectors to continue to bring forward ideas and innovation.

...

We've also extended the development charge deferral for non-profit housing from five to 20 years, to help encourage more affordable housing developments."



This points out what Parliament has intended, to allow innovative and creative housing solutions to flourish in Ontario. Excluding the Non Profits from qualifying as a Non-Profit Housing Development would deny Parliament from realizing on its hopes for Bill 108 which are to create more affordable housing options through innovative platforms, such as ours.

OUR NON PROFITS

The Non Profits are both non-profit housing developments and both meet the requirements of the current Development Charges Act.

We understand that the issue for Hamilton legal staff is that because we deliver housing affordability through the sale of homes that we will not continue to “use” the homes as residential premises.

Trillium Housing Non Profit housing developments (Winona and Highbury) will each use the lands they have acquired to develop homes intended for use as residential premises. All of the units sold at both Non Profits sites meet the Canada/Ontario OHPI ownership housing program criteria (OHPI is administered by the city). Trillium Housing Non Profit will finance from its own funds Trillium Mortgages to many potential purchasers who meet the OHPI programs income threshold.

Trillium Housing has developed a unique and innovative housing affordability model that used the sale of homes to provide Trillium Mortgages. Trillium Mortgages are the MOST effective means of delivery of housing affordability. The chart below demonstrates the costs and positive impacts of Trillium delivery of housing affordability versus typical municipal support of affordable rental developments. It utilizes a Municipal Grant value of \$200,000 per unit – typical of OHPI subsidies to achieve units rented at 80% of AMR. In our example the Municipal loan is \$40,000 per Trillium Mortgage – close to the value of DC’s under consideration today.

Affordable Housing Comparison				
		Typical Rental Per Unit	Trillium Housing Per Unit	
Government Grant (expense) 1		-\$200,000	\$40,000	Government Loan (asset) 2
Grant Repayment		\$0	\$40,000	Loan Repayment (20 years)
Financial Return		\$0	\$47,645	4% Earned Share Appreciation
Government Total 20 Year Cost		-\$200,000	\$87,645	Government Loan Repaid + RETURN
Housing Affordability Impact				
Average Market Rent 3		\$2,000	\$2,131	Full Cost Mortgage/mth
			\$140,000	Avg Trillium Mortgage
80% AMR	80%	\$1,600	\$1,435	Reduce 1st Mortgage/mth
Other Housing Costs		\$100	\$500	Other Housing Costs
MONTHLY HOUSING COST SAVINGS		\$400	\$696	MONTHLY HOUSING COST SAVINGS 3
Total Housing Cost Savings over 20 years		\$96,000	\$167,040	Value of Housing Cost Savings over 20 years
Household Income	30%	\$68,000	\$77,400	30% Household Income 4
Family Equity Impact - after 20 years.				
Investment		\$22,500	\$22,500	Home Value less T. Mort.
Compound Interest	4%	\$26,800	\$209,000	Investment/Down Payment
			\$342,448	4% Share Appreciation
Family Equity after 20 years		\$49,300	\$573,948	Family Equity after 20 Years

1 In addition a partner contribution

2 Loan secured by Mortgage. Trillium will provide matching \$100,000

3. AMR according to Rental.ca, Feb 2021 for Hamilton is \$2070/2beds

3 Per Meridian CU Mortgage Calculator

4 Avg Trillium house price \$450,000 with 5% down, 3.5% interest -

The regulations of the revised Act have now been in place for 17 months and they require that for non-profit housing developments, the Development Charges “shall be paid in equal annual instalments beginning on the earlier of the date of the issuance of a permit under the Building Code Act, 1992 authorizing occupation of the building and the date the building is first occupied, and continuing on,...(b) the following 20 anniversaries of that date, in the case of a development charge in respect of a type of development set in in paragraph 3 (which reads: 3. Non-profit housing development). “

In practice and according to the Act, the Non-Profits should pay development charges according to the following schedule:

Starting from the date specified by the Act when notice will be provided of occupancy, the development charges will be paid in 20 equal annual installments.

For Trillium Housing Winona Non-Profit the City will charge our non profit \$2,231,580 in DC's. The equal annual payment would be \$111,579.

For Trillium Housing Highbury Non Profit the City will charge our non profit a total of \$2,640,703 in DC's. The equal annual payment would be \$132,035.

Total annual payments would be \$243,614. This recognizes that, to our knowledge, Hamilton City Council has NOT passed a motion to charge interest on Development Charges payable by non profit housing developments under section 26.1 (7).

COMPROMISE

Trillium Housing is a good partner and while it is not a requirement of the Act, we are willing to offer here, voluntarily and without prejudice, additional comfort to the city that it will get paid the DC's according to the payment schedule specifically described in the new direction from the Province or sooner.

Trillium Housing is willing to voluntarily:

1. First we will provide the City a confidential annual report outlining the amount of City deferred dollars allocated to individual Trillium Mortgages, the status of those mortgages and the amount of the annual DC payments paid by Trillium Housing and proportionately allocated to the amount assigned to individual mortgages.
2. We will pledge to the City an interest in those residents' Trillium Mortgage equal to the amount of funding provided from the deferred DC's payable. Should Trillium Housing fail to make the annual payment, the City can obtain satisfaction from the mortgages.
3. Trillium Housing will continue to be prudent in its cash management and will maintain a cash reserve at its discretion to ensure annual payments are made.

4. We will have recipients acknowledge that as a condition of receiving their Trillium Mortgage, that in the event Trillium Housing does not meet the prescribed payment schedule, that the City has the right to assume ownership of their Trillium Mortgage and that under the Act the City could choose to move to the tax roll the remaining annual DC payable still included in their Trillium Mortgage (this would be the initial amount of the DC payable included in the Trillium Mortgage LESS any annual payments already made).
5. Trillium Housing will pledge that at no time will it have a total of DC's payable to the City that exceeds the amount of DC's secured by Trillium Mortgages.
6. The City passed in 2018 a Motion to allocate \$1,800,175 of its funds to invest in its own 2nd mortgages for buyers at our Non Profits. Trillium Housing proposes to limit the DC payable amount allocated to Trillium Mortgages to the same \$1,800,175 amount already approved by Council. Our offer is that our Non Profits would pay total DC's of \$4,872,283.
 - a. The first payment would occur at unit sales closings of the last project to be completed. This would be \$3,072,108 and represents 76% of the DC's payable) and,
 - b. the balance of the DC's payable of \$1,800,175 (24% of the DC's payable by our Non-Profits and the amount already committed by Council) would be paid according to the Act in 20 equal annual payments of \$90,009. This amount would be fully utilized in the financing of Trillium Mortgages.

We believe that by voluntarily offering these 6 items we are once again demonstrating the multi-year efforts that Trillium Housing Non Profit has made to deliver housing affordability to residents of Hamilton. They are offered without prejudice. They may be withdrawn. Our proposals will deliver more housing affordability for residents, increase cash flow for the City than what is provided for under the Act and reduce potential risk for the City.

By any measure, Trillium Housing is the MOST cost-effective delivery of housing affordability available in Hamilton or Ontario. Dollar for dollar we deliver more housing affordability than any other program delivered in the City.

Having outlined the reasoning for us to challenge city staff's restrictive interpretation of the Act which will REDUCE the amount of housing affordability we can deliver at the Non Profits, we respectfully request to appeal the decision to Council for it to fairly (and in compliance with the intent) apply the new Act in support of housing affordability.

We continue to be available at any time to work with city staff to deliver housing affordability to residents of Hamilton.