



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	June 16, 2022
SUBJECT/REPORT NO:	Development Charge Demolition Credit Extension Request for Hamilton Central Business Park (Studebaker Place and Ferrie Street, formerly 440 Victoria Avenue North) (FCS17067(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Shivon Azwim (905) 546-2424 Ext. 2790
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the request for the City Development Charges (DC) demolition credits (623,140 square feet in total) for Hamilton Central Business Park (Studebaker Place and Ferrie Street, formerly 440 Victoria Avenue North) to be extended for three years until July 26, 2025 (310,631.39 square feet) and September 6, 2025 (312,508.61 square feet), be denied;
- (b) That the subject matter regarding the “Correspondence from Paul Paradis, Ross & McBride LLP, respecting a request for extension of Development Charge Demolition Credits, Hamilton Central Business Park – formerly 440 Victoria Avenue North now Studebaker Place and Ferris Street – DCR Holdings Inc.”, be identified as complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

Council, at its' meeting of April 13, 2022, received as Item 5.1 a request (Appendix "A" to Report FCS17067(a)) from Paul Paradis, Ross & McBride LLP, representing DCR Holdings Inc. (DCR) requesting an extension of the Development Charges (DC) demolition credits for the Hamilton Central Business Park (Studebaker Place and Ferrie Street, formerly 440 Victoria Avenue North) and directed staff to report back to the Audit, Finance and Administration Committee on the matter.

A decision to extend the DC demolition credits has a City-wide impact since the funds collected through DCs are used to fund the growth-related portions of capital projects throughout the City. DC By-law 19-142 places a five-year limitation on DC demolition credits to both discourage vacant, undeveloped lots where buildings used to be located and to recognize that excess servicing capacity is absorbed back into the system for DC background study calculations. The five-year limit on DC demolition credits has been contained in the DC By-laws since 2004.

The Hamilton Central Business Park redevelopment covers 26 acres of employment land and required demolishing a total of 653,496.59 square feet of industrial buildings. On July 26, 2012, demolition permit 12-114315 was issued for Phase 1, for 340,987.98 square feet and on September 6, 2012 demolition permit 12-117642 was issued for Phases 2 and 3, for 312,508.61 square feet.

On August 16, 2017, through Report FCS17067, Council extended the credits for an additional five years, until July 26, 2022 (340,987.98 square feet) and September 6, 2022 (312,508.61 square feet). The approved staff recommendation in Report FCS17067 permitted this as a final extension to recognize both the complexity of the redevelopment and a set limit for this recognition.

In July 2017, site plan DA-17-155 was submitted for 440 Victoria Avenue and received conditional site plan approval in October 2017. In March 2019, the conditional site plan approval was revised to include the lands at 3 Studebaker Place and later revised again in May 2021 to include the lands at 4 Studebaker Place. One building permit was issued on June 25, 2019 for 3 Studebaker Place, which used 30,356.59 square feet of the outstanding demolition credits, leaving 623,140 square feet in total remaining.

Currently, no precedent exists for extending DC demolition credits for longer than 10 years. The developer is requesting an extension for at least 13 years and up to 15 years, if deemed appropriate.

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If the demolition credit extension request was granted, the DC reserves would need to be replenished the amount of foregone revenue through other funding sources, such as the related tax and rates service reserves. As at May 2022, the value of 623,140 square feet of non-industrial space in the combined sewer system is \$7,315,663.61 (\$11.74 per square foot). Given that the redevelopment has taken longer than initially planned, the City has not realized increased property taxes on the portion of undeveloped land.

Staff is recommending denying the extension of the DC demolition credits because of the precedence it would set, the accompanying financial impact and the lack of evidence that this delay in development is outside the intended scope for the limit on DC demolition credits.

The City is responsible for collecting Education DCs on behalf of the School Boards but does not have the authority to extend credits for Education DCs. As a result, there are no recommendations, nor is there further mention of Education DCs contained within Report FCS17067(a).

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Any development on the Hamilton Central Business Park property will be subject to the DC rates and policies in effect at the time of development.

Staffing: N/A

Legal: The Development Charges By-law, Section 30(a), establishes the requirement for entitlement to DC demolition credits that a building permit for redevelopment must be issued within five years of the issuance date of the demolition permit. This deadline is extendable by staff either for developments located outside the Urban Area or where staff determine that significant development delays were not the responsibility of the developer. Council has the ability to extend this deadline for other reasons than the foregoing.

However, DCR Holdings Inc. is a commercial enterprise and is, therefore, subject to the anti-bonusing provisions contained in Section 106 of the *Municipal Act*, which prohibit a municipality from providing assistance to commercial or industrial enterprises. Council's ability to extend the deadline for expiry of DC demolition credits is subject to this anti-bonusing rule.

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As staff do not identify sufficient policy reasons for a further extension or precedent for such an extension, the extension could be regarded as the provision of assistance as it would grant DCR Holdings a commercial benefit that has not been made available to other commercial entities.

HISTORICAL BACKGROUND

1987	DCR Holdings Inc. (DCR) purchases property.
1987-2012	DCR manages the industrial park and leases out the buildings until the buildings need significant repair and the decision is made to redevelop the industrial park.
July 26, 2012	Demolition permit 12-114315 issued for Phase 1, 340,987.98 square feet.
August 20, 2012	Council approves Part 1 of the ERASE Redevelopment Grant Application for eligible demolition costs (\$650,000 – Report PED12154).
September 6, 2012	Demolition permit 12-117642 issued for Phase 2 & 3, 312,508.61 square feet.
September 24, 2014	Council approves Part 2 of the ERASE Redevelopment Grant Application for eligible remediation and related costs (\$1,283,375 – Report PED12154(a)).
May 24, 2017	Request to extend DC demolition credits is received by Council and referred to staff.
July 12, 2017	Through Report FCS17067, Council approves that the DC demolition credits (653,496.59 square feet in total) be extended for a period of five years until July 26, 2022 (340,987.98 square feet) and September 6, 2022 (312,508.61 square feet).
July 25, 2017	Site plan DA-17-155 is submitted.
October 19, 2017	Site plan DA-17-155 receives conditional approval.

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March 2019	Conditional approval for site plan DA-17-155 is revised to include the lands at 3 Studebaker Place. A phased conditional site plan approval is issued with separate lists of conditions for 440 Victoria Avenue and 3 Studebaker Place.
June 25, 2019	Building Permit 19-119899 is issued for 3 Studebaker Place to construct an office building. The permit used 30,356.59 square feet of the demolition credit outstanding, leaving a balance of 623,140 square feet of demolition credits in total remaining.
August 2019	Final site plan approval issued for 3 Studebaker Place only, the conditions for 440 Victoria Avenue remain outstanding.
January 2020	Although approved for a total ERASE grant of \$1,933,375, an audit of invoices confirmed the total maximum ERASE grant to be \$1,571,456.76.
May 2021	Conditional approval for site plan DA-17-155 is revised to include the lands at 4 Studebaker Place. A phased conditional site plan approval is issued with separate lists of conditions for 440 Victoria Avenue and 4 Studebaker Place.
March 14, 2022	Request for DC demolition credit extension submitted to the City by Paul D. Paradis, Ross & McBride LLP, on behalf of DCR.
April 13, 2022	The developer submits a site plan application (DA-22-094) to develop the lands for two buildings for self-storage use. To date, the City has not yet issued approval for the site plan application.
July 26, 2022	Expiry of DC demolition credit extension approved by Council on July 12, 2017 for 310,631.39 square feet.
September 6, 2022	Expiry of DC demolition credit extension approved by Council on July 12, 2017 for 312,508.61 square feet.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The General Manager, Finance and Corporate Services, has been delegated authority to provide extensions to DC demolition credits in cases where the demolition was in a rural area and cases where, in the opinion of the General Manager, Planning and Economic Development, there were delays in the redevelopment that were beyond the control of the developer (LPAT appeals, for example). The request from DCR does not fall under either of the circumstances where Council has delegated authority to staff.

Precedent exists for extending DC demolition credits to a maximum of 10 years for a large-scale mall redevelopment through the approval of Report FCS16084 which extended the DC demolition credits for the Centre on Barton redevelopment and through the approval of Report FCS17008 which extended the DC demolition credits for Mountain Plaza Mall in 2017.

Currently, no precedent exists for extending DC demolition credits for longer than 10 years. Staff does not recommend establishing this precedent.

RELEVANT CONSULTATION

Staff from the Economic Development Division and Planning Division of the Planning and Economic Development Department are supportive of the recommendations in Report FCS17067(a).

Staff from the Legal Services and Risk Management Division were consulted in respect of the extension request.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Past Practice

Precedent exists for extending DC demolition credits to a maximum of 10 years for a large-scale mall redevelopment through the approval of Report FCS16084 which extended the DC demolition credits for the Centre on Barton redevelopment in 2016 and through the approval of Report FCS17008 which extended the DC demolition credits for Mountain Plaza Mall in 2017. Currently, no precedent exists for extending DC demolition credits for longer than 10 years.

Five Year Limit on Demolition Credits

The five-year limit on DC demolition credits serve a couple of purposes. First, it recognizes that when preparing the DC Background Study, the City must assess the available capacity within the system and make existing capacity available to new development. If the redevelopment of a demolished property doesn't occur within five years, its capacity will have been absorbed back into the system for the purposes of calculations in the DC Background Study. The five-year limit on DC demolition credits has been contained in the DC By-laws since 2004.

Another benefit of the five-year limit is that it is intended to discourage vacant, undeveloped lots where buildings used to stand. In the correspondence from DCR, attached as Appendix "A" to Report FCS17067(a), they stated that they were able to market the subdivision lots to individual purchasers as of October 4, 2017. This has given the developer approximately five years to market and sell the subdivision lots, during which time, only three lots were sold of the 18 available. DCR has stated in Appendix "A" to Report FCS17067(a) that they sold the remaining 15 lots in January 2022. As of the date of Report FCS17067(a), the developer has only submitted one site plan application for two self storage buildings at the site, which have yet to be approved by the City.

Impact of COVID-19 and Future Development Plans

In Appendix "A" to Report FCS17067(a), DCR noted that they were unable to find purchasers for the available lots because of the effects of COVID-19. COVID-19 related closures in the City of Hamilton and the mandatory Provincial shutdown began in March 2020. DCR indicated they had the ability to market and sell the lots as of October 2017. Since only three lots were sold between 2017 and 2020, staff suggest that the expiry of the credits would have occurred regardless of COVID-19.

Since 2017, the developer has submitted one site plan application in April 2022, which is yet to be approved by the City as of the date of Report FCS17067(a). The site plan application proposes two self storage buildings at the site. The developer had a significant amount of time between the last demolition credit extension approval and the expiry of the remaining demolition credits to sell the remaining lots and submit applications for site plans and building permits. Although DCR noted that they have sold the remaining 15 lots and expect that the developer they sold to will submit site plan applications within the next 12 months, there is no firm indication that development will occur in the near future or within the requested three-year extension time frame.

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Municipal Property Taxes

The undeveloped land results in foregone tax revenue each year the land remains vacant. Per PED12154(a), the estimated municipal property taxes on the vacant land awaiting development totals \$241,427.17 annually. Through Appendix “A” to Report FCS17067(a), DCR identified that the lots on the property are expected to be a mix of self-storage, warehousing and industrial condominiums. As such, it is evident that the City has missed out on a substantial amount in property taxes by the redevelopment taking longer than initially planned.

For the above reasons, staff is recommending denying the request for further demolition credit extension.

ALTERNATIVES FOR CONSIDERATION

Alternative 1 – Provide a three-year extension to accommodate the minimum extension period the developer has requested

Financial Implications: Any development on the Hamilton Central Business Park property that occurs during the period of the DC demolition credit extension would result in foregone DC collections, up to the value of the remaining credits. However, consideration should be given to the intent of the by-law when contemplating the potential foregone revenues.

The requested minimum three-year extension of the DC demolition credits would result in 310,631.39 square feet expiring on July 26, 2025 and 312,508.61 square feet expiring on September 6, 2025 (all industrial class).

The industrial rate in a combined sewer system area, as approved through DC By-law 19-142, is discounted from the full calculated rate of \$20.32 to \$11.74. The industrial DC is comprised of 100% of the wastewater (facilities and linear) and stormwater service categories as well as 65% of the services related to a highway (roads) service category.

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Maximum Potential Foregone DC Collections

Current Industrial DC Rate	\$11.74
Gross Floor Area (square feet)	623,140
Potential Foregone DC Collections	\$7,315,663.61

Staffing Implications: N/A

Legal Implications: N/A

Policy Implications: N/A

Pros: Allows the developer additional time to plan future development and obtain site plans and building permits.

Cons: The foregone DC revenue will have to be funded by other sources such as the tax levy, putting the cost of growth onto the City's taxpayers. Additionally, the City's DC rates are indexed each year, therefore, each year the credit is extended will result in higher foregone DC revenue.

This extension would potentially be vulnerable to legal challenge on the basis that it is a prohibited form of assistance under Section 106 of the *Municipal Act*.

Alternative 2 – Provide a five-year extension to accommodate the maximum extension period the developer has requested

Through their request attached as Appendix "A" to Report FCS17067(a), DCR has requested a minimum three-year extension and up to a five-year extension, if deemed appropriate by the City.

Should Council approve a five-year extension, the same Financial, Staffing, Legal and Policy implications and pros and cons presented in Option 1 exist over a five-year period versus a three-year period.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

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Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Development Charges Credit, Request for Extension, Hamilton Central Business Park (Studebaker Place and Ferrie Street, formerly 440 Victoria Avenue North)

SA/dt