



## **General Issues Committee**

### **REPORT 11-017**

**10:00 a.m.**

**Thursday, June 9, 2011**

**Council Chambers**

**Hamilton City Hall**

**71 Main Street West**

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- Present:** Deputy Mayor B. Johnson (Chair)  
Mayor B. Bratina  
Councillors C. Collins, S. Duvall, J. Farr, L. Ferguson,  
T. Jackson, B. McHattie, S. Merulla, J. Partridge, R. Pasuta,  
M. Pearson, T. Whitehead
- Absent with Regrets:** Councillor R. Powers – City Business  
Councillor B. Clark – Illness  
Councillor B. Morelli – Personal
- Also Present:** R. Rossini, General Manager, Finance and Corporate  
Services  
T. McCabe, General Manager, Planning & Economic  
Development  
N. Everson, Director, Economic Development & Real Estate  
C. Biggs, Co-ordinator, Committee Services/Council/Budgets

### **THE GENERAL ISSUES COMMITTEE PRESENTS REPORT 11-017 AND RESPECTFULLY RECOMMENDS:**

**1. Public Meeting respecting 2011 City of Hamilton Water, Wastewater,  
Stormwater and GO-Transit Development Charge By-laws (Item 6)**

That presentations respecting the 2011 City of Hamilton Water, Wastewater,  
Stormwater and GO-Transit Development Charge By-law from the following, be  
received:

- (a) Jeff Paikin, New Horizon Group/Starward Homes;
- (b) Sergio Mangia, IBI Group;
- (c) Adi Irani, Hamilton Halton Home Builders Association;
- (d) Karl Gonnson, Metropolitan Consulting Inc.;
- (e) Chris Barnett, Adi Irani and Fred Losani;

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- (f) Steve Stipsits, Branthaven Homes;
- (g) Adi Irani, on behalf of Starward Homes.

**2. Appeal of Development Charge By-law 09-143, as amended, and 09-144 by Losani Homes (OMB Case No. DC 090025)**

That with respect to the appeal by Losani Homes of City of Hamilton Development Charges By-laws 09-143, as amended, and 09-144 (OMB Case No DC 090025), the Council of the City of Hamilton hereby confirms, authorizes and directs as follows, namely:

- (a) That the City's Offer to Settle by way of counter-offer as set out in a letter from Mr. R. Doumani, solicitor for the City, to Mr. C. Barnett, solicitor for the appellant, dated June 8, 2011, (attached hereto as Appendix "A"), be hereby confirmed;
- (b) That the Mayor and City Clerk, and the City's counsel in this matter, as the case may be, are hereby authorized to execute any documents satisfactory to the City Solicitor to give effect to, and implement, recommendation (a) above;
- (c) That in the absence of any settlement, City staff and the City's outside counsel are hereby directed to appear before the Ontario Municipal Board in defense of By-laws 09-143, as amended, and 09-144, as enacted, in response to the said Appeal, and any other appeals thereof.

**3. 2011 Development Charge Background Study for Water, Waste-water, Storm Water and GO-Transit Services – Watson & Associates (Item 7.1(b))**

That the presentation from Gary Scandlan of Watson & Associates, respecting 2011 Development Charge Background Study for Water, Waste-water, Storm Water and GO-Transit Services, be received.

**4. 2011 City of Hamilton Water, Wastewater, Stormwater, GO-Transit Development Charge By-law and Amendment for Development Charge By-law 09-43 (FCS11053) (City Wide) (Item 7.1(a))**

- (a) That the presentation on the 2011 City of Hamilton Water, Wastewater, Stormwater, GO-Transit Development Charge By-law and Amendment for Development Charge By-law 09-43, be received;
- (b) That Handout #1 to Report FCS11053, attached as Appendix "B" hereto, listing DC projects with unresolved issues brought forward by the development community, be received.

**FOR THE INFORMATION OF COUNCIL:****(a) CHANGES TO THE AGENDA (Item 1)**

The Clerk advised of the following changes:

**ADDED DELEGATION REQUESTS**

- 4.2 Request from Adi Irani, on behalf of the Hamilton halton Home Builders' Association, respecting 2011 Development Charges By-law
- 4.3 Request from Sergio Manchia, IBI Group, respecting Municipal Lands known as 1125 (Trinity Developments) and 1143 (Zurini) Wilson Street West – Part of Lot 35, Concession 3, Geographic Township of Ancaster, now in the City of Hamilton

**ADDITIONAL INFORMATION TO ITEM 7.1(a) – Hand-out #1 to FCS11053 (2011 City of Hamilton Water, Wastewater, Stormwater and GO Transit Development Charge By-law)****ADDED PRIVATE & CONFIDENTIAL**

- 12.1 Update regarding City of Hamilton 2009 Development Charge By-law Appeals – Rob Rossini and Outside Legal Council (Robert Doumani) (No copy)

On a motion, the agenda was approved, as amended.

**(b) DECLARATIONS OF INTEREST (Item 2)**

None

**(c) APPROVAL OF PREVIOUS MINUTES (Item 3)**

None

**(e) DELEGATION REQUESTS**

On a motion, the following delegation requests were approved to address the Committee at this meeting, prior to moving into Closed Session:

- (i) Jeff Paikin, New Horizon Group/Starward Homes
- (ii) Sergio Manchia, IBI Group
- (iii) Adi Irani, on behalf of the Hamilton Halton Home Builders Association

**(f) DELEGATIONS****(i) Jeff Paikin, New Horizon Group/Starward Homes (Item 4.1)**

Jeff Paikin of New Horizon Group/Starward Homes addressed the Committee. His comments included, but were not limited to, the following:

- Has concern with an issue in the new Development Charge By-law as it relates to industrial development and the proposed off-loading of responsibility of stormwater management ponds to non-residential developers.
- Commented that he believes that there is still a future in industrial development in the City; however, a proposed change where the industrial DC increases 33% and storm-pond costs are downloaded will make properties undevelopable based on added expenses to individual owners of such properties.
- Additional cost is unmanageable for those involved in making industrial development work in the City.

**(ii) Sergio Manchia, IBI Group (Item 4.2)**

Sergio Manchia of IBI Group appeared before the Committee on behalf of his clients, owners of municipal lands known as 1125 (Trinity Developments) and 1143 (Zurini) Wilson Street West, Part of Lot 35, Concession 3, Geographic Township of Ancaster, now in the City of Hamilton. His comments included, but were not limited to, the following:

- Wanted to be on record in the event of an appeal of the Development Charge By-law
- Application deals with a new non-res storm-pond to be created in Ancaster which will take into consideration a number of acres, including lands owned by his clients
- Existing policies require front-ending of project funding by Trinity
- Concern is the timing of monies coming back to Trinity
- Expressed concern that other landowners will also be affected
- Noted that his concerns may be able to be resolved; however, policies should be in place
- Wants to insure that monies will come back to his client.

**(iii) Adi Irani, Hamilton Halton Home Builders Association (Item 4.3)**

Adi Irani appeared before the Committee on behalf of the Hamilton Halton Home Builders Association. His comments included, but were not limited to, the following:

- Appreciative of the work done by staff and consultants, and of the co-operation received
- Has presented a list of questions to staff which are outstanding
- Hoping that recommendations can be put forward for Council's consideration; requesting Committee to accept staff recommendations
- One the questions of the Woodward Avenue Water Treatment Plant – cost has increased by \$87 million over the last few years but does not know why the increase is so much; have requested City staff for explanation
- Agree with staff recommendation that \$160 million in grants from the Federal and Provincial Governments be shared between growth and non-growth on a 49/51 split; \$100 million from Federal Government should be shared in the same fashion
- Stated that other issues are of a more technical nature
- Requested Committee to take more time to work out all details that have not been resolved to date and to consider the other recommendations put forward by staff
- Advised that HHHBA has a meeting arranged with staff to attempt to resolve outstanding issues

The Committee requested that staff provide the Committee with a copy of the 5-page letter referred to by Mr. Irani during his presentation. The correspondence will be forwarded to the Clerk for appropriate distribution.

Following the presentations of the registered speakers, Chair Johnson requested if there was anyone present in the gallery wishing to address the Committee with respect to the proposed Development Charge By-law.

The following individuals addressed the Committee:

**(iv) Karl Gonsen, Metropolitan Consulting Inc.**

Karl Gonsen of Metropolitan Consulting Inc. appeared before the Committee to represent Waterdown Bay Ltd., owners of property in the Waterdown South Community; Parkside Hills Inc., owners of property in the Waterdown North community; Silverwood Homes Ltd., owner of property in the Waterdown North community; Paletta International Corporation, owner of property in Ancaster Meadowlands; and, Upper Centennial Developments, owner of property on Stoney Creek Mountain. His comments included, but were not limited to, the following;

- Have been meeting with staff and will continue to meet to resolve clients' issues; optimistic that clients' concerns can be resolved
- Clients' concerns are not about the quantum of the charge but rather, most significant concern is that they be treated fairly
- If clients build infrastructure that benefits other growth or the community at large, then they should be compensated

- Clients should not have to pay for infrastructure twice

The Committee requested that Mr. Gonnsen keep them apprised as to how the discussions with staff progress and the result. Staff was requested to provide copies of the submissions referred to by Mr. Gonnsen to the Clerk for distribution.

Mr. Gonnsen distributed his concerns in writing to the Committee and a copy has been retained for the public record.

Members of the Committee indicated that a common concern from the presenters is that they have not had enough time to review the report and the accompanying information, and stressed that it was extremely important to have the presentations and opportunity to ask questions.

**(v) Chris Barnett, Solicitor representing Losani Homes**

Mr. Chris Barnett appeared before the Committee on behalf of Losani Homes. His comments included, but were not limited to, the following:

- His client is also an appellant to the by-law; matters were scheduled for a Hearing, but was adjourned so that the City could consider an offer made on behalf of his client
- Expressed concern with special area charges in Binbrook in the current by-law

Adi Irani spoke to the substance of the concern with the by-law.

- Losani Homes has made a request to the City to have the Binbrook special area charge merged into the City-wide charge; this was presented at one of the Stakeholder Committee meetings; there is no mention of the special area charge in the staff report; has to do with the 2009 appeal

The Committee requested that they be provided with a copy of correspondence submitted by the Association and the Development Council.

Mr. Fred Losani appeared before the Committee to state that he was pleased to be able to present his views on the Binbrook special area charges to the Stakeholders Committee meeting, where it generated much discussion. He indicated that the issue became more prominent in 2009 as a result of findings of the study done by CN Watson; however, the debate never happened at that time, but is only happening now. He indicated that builders in Binbrook should receive a credit because of duplicity of charges.

**(vi) Steve Stipsits, Branthaven Homes**

Steve Stipsits of Branthaven Homes appeared before the Committee. His comments included, but were not limited to, the following:

- He is represented by Mr. Losani as he is also a landowner in Binbrook
- In 2009, the staff report originally recommended that special area charges be rolled into Development Charges

**(vii) Jeff Paikin, as a non-landowner in Binbrook and Member of the Home Builders Association**

Mr. Paikin addressed the Committee as a non-landowner in Binbrook and a member of the Home Builders Association. His comments included, but were not limited to, the following:

- Step back and look at big picture and what is fair and not fair
- As a non-affected land-owner, fairness would be to follow the original 2009 staff report recommendation

**(viii) Adi Irani, on behalf of Starward Homes**

- Raised issue of stormwater ponds at Redeemer University/College at Kitty Murray Lane and Garner Road – in discussions with the City

**(g) PRIVATE & CONFIDENTIAL**

On a motion, the Committee moved into closed session at 11:20 pursuant to sub-section 8.1(e) of the City's Procedural By-law and the Municipal Act as the subject matter deals with litigation or potential litigation, including matters before administrative tribunals, affecting the City respecting City of Hamilton 2009 Development Charges By-law Appeals.

On a motion, the Committee reconvened in Open Session at 12:43 p.m.

See Item 2 for the disposition of this item.

The Committee requested that they be provided with a copy of the witness statement given by Rob Rossini, General Manager of Finance and Corporate Services at the Appeal Hearing.

**(h) PRESENTATIONS****(i) 2011 Development Charge Background Study for Water, Wastewater, Storm Water and GO-Transit Services – Watson & Associates (Item 7.1(b))**

Gary Scandlan of Watson & Associates provided a power point presentation which included the following:

- Development Charge Background Study and By-law Review
- Public Meeting Purpose
- Format for Public Meeting
- Study Process
- Development Charges – Purpose
- Limitations on Services
- Overview of DCA steps:
  - Identify amount, type and location of growth
  - Identify servicing needs to accommodate growth
  - Identify capital costs to provide services to meet the needs
  - Deduct: grants, subsidies and other contributions; benefit to existing development; statutory 10% deduction (soft services); amounts in excess of 10-year historic service calculation; DC Reserve funds (where applicable)
  - Net costs then allocated between residential and non-residential benefit
  - Net costs divided by growth to provide the DC charge
- Overview of DCA – Policy Matters: Exemptions
- Overview of DC Update Changes
- Population/Employment – 2009 vs 2011
- Woodward Wastewater Treatment Plant
- 2011 Calculated Development Charges
- DC Comparison with Existing By-law
- DC Comparison with Other Municipalities – residential single family
- DC Comparison with Other Municipalities – commercial/institutional
- DC By-law Renewal

The power point presentation provided by Gary Scandlan was distributed to the Committee and a copy retained for the public record.

On a motion, the presentation from Gary Scandlan of Watson & Associates, was received.



(ii) **2011 City of Hamilton Water, Wastewater, Stormwater, GO-Transit Development Charge By-law and Amendment for Development Charge By-law 09-43 (FCS11053) (City Wide)**

Joe Spiler provided a power point presentation which included the following:

- Historical data in terms of the City's Development Charge over the last 10 years
- 2011 Development Charge process and objectives that staff were trying to achieve
- Impact of shared subsidies with development
- Review of recommendations contained in Report FCS11053

Mr. Spiler also referred to Handout #1 to Report FCS11053 which set out a list of DC projects and their respective issues brought forward by the development community. Staff advised that out of this list, an Addendum will be produced to the 2011 Development Charge Background Study dated May 20, 2011 and that as provisions have been met, a 2<sup>nd</sup> public meeting is not required upon the issuance of the Addendum.

The power point presentation provided by Joe Spiler was distributed to the Committee and a copy retained for the public record.

On a motion, Report FCS11053 respecting 2011 City of Hamilton Water, Wastewater, Stormwater, GO-Transit Development Charge By-law and Amendment for Development Charge By-law 09-43, was referred to the June 23, 2011 meeting of the General Issues Committee for consideration.

The Committee requested that for the June 23, 2011 meeting, staff provide additional information with respect to the special charges related to Waterdown and Binbrook. The Committee also requested that staff provide comments to the issues and concerns expressed by the presenters, and copies of all relevant materials referred to during the presentations.

(i) **GENERAL INFORMATION/OTHER BUSINESS (Item 11)**

On a motion, the Minutes of the April 18 and May 13, 2011 meetings of the Development Charge Stakeholders Sub-Committee, was received.

There being no further business, the Committee adjourned at 3:05 p.m.

Respectfully submitted

Councillor B. Johnson, Deputy Mayor  
General Issues Committee

Carolyn Biggs, Co-ordinator  
Committee Services/Council/Budgets  
June 9, 2011

# AIRD & BERLIS LLP

Barristers and Solicitors

Robert G. Doumani  
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VIA EMAIL [[cbarnett@davis.ca](mailto:cbarnett@davis.ca)]

WITHOUT PREJUDICE

June 8, 2011

Our File No. 104478

Chris Barnett  
Davis LLP  
1 First Canadian Place, Suite 6000  
P.O. Box 367, 100 King Street West  
Toronto, Ontario  
M5X 1E2

Dear Mr. Barnett:

**Re: Appeal by Losani Homes from City of Hamilton  
Development Charge By-law No. 09-143 and 09-144  
Case No. DC090025**

I am writing to respond to the offer contained in your letter of May 19 to me as clarified by your subsequent email on that date.

Your client's offer constitutes a useful start toward resolving the appeals but it needs the following refinements before staff could recommend acceptance to Council. Specifically:

1. Item 1 (the SAC) needs to be separated from Item 2 (the Woodward WWTP);
2. If Council approves staff's recommendation of an allocation of at least 51% of grants for the Woodward WWTP to non-growth but does not merge the SAC into a City-wide charge, your client would consent to an order dismissing its appeal of DC By-law 09-144 without costs. The treatment of the grants is shown on page 5-12 of the 2011 Development Charge Background Study prepared by Watson & Associates and dated May 20, 2011;
3. Staff is not recommending that the SAC be merged. Therefore, your client would be at liberty to continue its appeal. If Council nonetheless determines that the SAC should be merged but did not approve an allocation of at least 51% of grants for the Woodward WWTP to non-growth, your client would consent to an order dismissing its appeal of DC By-law 09-143 without costs;
4. If Council approves an allocation of at least 51% of grants for the Woodward WWTP to non-growth and merges the SAC into a City-wide charge, your client would consent to an order dismissing its appeal of DC By-laws 09-143 and 09-144 without costs;
5. The City needs an express written acknowledgment that the merging of the SAC and/or an allocation of at least 51% of grants for the Woodward WWTP to non-growth shall not result in an amendment to DC By-laws 09-143 and/or 09-144 and,

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instead, shall be applicable to any new development charge by-law(s) to be enacted by Council this year.

6. If Council merges the SAC into a City-wide charge and if such merger is appealed, your client, at its sole cost, will appear by counsel and provide professional evidence at the Board on the appeal in support of the merger.
7. If Council approves an allocation of at least 51% of grants for the Woodward WWTP to non-growth, your client will neither appeal such an allocation or cause or support anyone else to do so.
8. Any settlement approved by Council shall be embodied in Minutes of Settlement executed by us on behalf of our respective clients and filed with the Board.

I look forward to your response by no later than 9 a.m. on Thursday, June 9.

Yours very truly,

AIRD & BERLIS LLP

Robert G. Doumani

RGD/eb

c: D. Fisher  
J. Spiler

9390682.2

## **Handout #1 to FCS11053 (2011 City of Hamilton Water, Wastewater, Storm-water and Go-Transit Development Charge Bylaws)**

The following projects and issues brought forward by the development community will be considered by staff in drafting up an addendum to the 2011 DC Background Study dated May 20, 2011.

As at June 8th, 2011 estimated impact on a City-wide SDU is \$50 to \$150

### Section A)

- 1) Book Road - Southcote To Fiddlers Green (AEGD)
- 2) Butter Road - Glancaster to Fiddlers Green (AEGD)
- 3) Carluke Road - Fiddlers Green to Glancaster Road (AEGD)
- 4) Cormorant Road Ext. - Tradewind to Trinity Road (AIP)
- 5) First Rd. - Hwy 20 to Green Mtn Road
- 6) Fruitland Rd. Escarpment Access
- 7) Golf Club Road - Trinity Church Rd. to Second Rd. East
- 8) Highland Road - Pritchard Rd. to U. Mt. Albion (EMIBP)
- 9) McNeilly-Barton to South Service Rd.
- 10) Rymal Rd- w. of Dartnall Rd. to Hwy. 20
- 11) Southcote-Golf Links Rd. to Garner Rd.
- 12) Trinity Church-extension from Rymal to Stone Church
- 13) U. Centennial - 350m of Mud to 830 s of Mud
- 14) Upper James-Rymal to City Limits
- 15) Upper Mount Albion Rd.-Rymal Rd. to Mud St.
- 16) Stoney Creek Mountain projects SM9 and SM10
- 17) Stoney Creek Mountain projects SM1 and SM2
- 18) project SCL1-S-09, wastewater main along South Service Road from Oriole Avenue to Fifty Road
- 19) Project SCL14-W-09, from Fifty Road to Winona 1

### Section K)

- 1) NO7016 Stormwater pond – pond sizing, location
- 2) The sanitary sewer along Dundas Street
- 3) Pond #1
- 4) Pond #2
- 5) Internal Sanitary within phase 1A
- 6) Sanitary Sewers in phase 1B and 2