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Blue Mountain Resorts Limited (BMR) - Deputation to Committee of the Whole August 18, 2014

Request for Reconsideration of Development Charges Paid for the Village Conference Centre Phase II Expansion - Presentation Material

PURPOSE

The purpose of this deputation is to ask members of Council to consider BMR's request for a development charge credit against the development charges collected for the Village Conference Centre Phase II expansion. Accounting for the spirit of the Development Charges Act, the history of development charges in the Town - including the previous allowances provided, the recently updated Development Charges Background Study and the adoption of By-law 2014-51 by Council on July 28, 2014, BMR is compelled to revisit this matter. This remains a very significant issue to our organization. BMR firmly believes there is a strong basis for which Council can review our request and provide a credit against the development charges paid for this redevelopment project.

BACKGROUND

In 2013, BMR submitted Site Plan and Building Permit applications to the Town seeking approval to proceed with the Village Conference Centre Phase II expansion. This project involved demolition of the Monterra Tennis Dome, a 2,817 square metre facility erected in 1991, in order to accommodate construction of a 4,240 square metre facility in its place. This project represents a \$10 million investment by BMR.

With the Village Conference Centre Phase II expansion, development of the Orchard Ski Area, renovations to the Blue Mountain Inn, and development of various summer attractions including the Ridge Runner Mountain Coaster, Cascade Putting Course, Timber Challenge and Woodlot Ropes Courses, and the Wind Rider Triple Zips, BMR has invested approximately \$25 million over the last 4 years. This investment program is designed to remain current with customer needs, provide additional attractions, and expand business opportunities. These elements are essential in Ontario's highly competitive tourism sector. Needless to say, these investments also have many positive impacts on our local economy, not the least of which are the creation of jobs and an increase to the local tax base.

When it came time to calculate the development charges applicable to the Village Conference Centre Phase II expansion, BMR was quite surprised to learn it would have to pay development charges for the entire footprint of the new facility and that no credit would be applied for the existing footprint of the Tennis Dome, which was scheduled to be demolished. The Town required proof that development charges or similar fees (lot levy, impost fee, or connection fee) had been paid for the Tennis Dome in order to issue a development charge credit for the demolished Gross Floor Area. Unfortunately, the lengthy historic payment of property taxes was not accepted as a form of fee payment for the Tennis Dome and its associated demands on municipal infrastructure, despite the fact that property taxes paid for much of the initial infrastructure in the municipality.

DEVELOPMENT CHARGES - PRECEDENTS

BMR has undertaken similar projects in the past where older buildings or portions of older buildings were demolished in order to accommodate the construction of new floor area. Some recent examples include:

2003 Operations Building Construction

A new 2,051 square metre Operations building was constructed and the former 1,500 square metre Operations building (constructed in 1973) was demolished. The Town and BMR entered into a *Payment of Development Charges Agreement* - dated January 28, 2002, which calculated a credit in the amount of \$40,740.00 against the Development Charges otherwise payable for the project (recognizing the footprint of the demolished building).

2009 South Base Lodge Expansion

On the Main Floor of the South Base Lodge expansion, a total of 202 square metres of the existing building (constructed in 1979) was demolished and a 308 square metre addition was constructed in its place. The Town calculated development charges based on 106 square metres (the net difference between the addition and the demolished area on the main floor). As a result of the Town recognizing the footprint of the demolished portion of the building, a credit in the amount of \$18,159.80 was issued against development charges otherwise payable. It is very important to note that the language regarding the redevelopment of land in Development Charges By-law 2005-27 in effect at this time was the same as that contained in Development Charges By-law 2010-18, which was in effect at the time of Building Permit issuance for the Village Conference Centre Phase II expansion. Furthermore, as the demolished portion of South Base Lodge was constructed in 1979, development charges or similar fees would not have been previously paid for this Gross Floor Area.

THE DEVELOPMENT CHARGES ACT - COMPLAINTS

Given the change in how the Town was applying credits against development charges owing for redevelopment projects, a fair amount of correspondence ensued between BMR and Town Staff on this matter. BMR had substantial concerns regarding the imposition of this fee and made these concerns very clear to the Town. Town Staff insisted on interpreting and implementing the development charges by-law in a manner that acknowledged no credit whatsoever for the demolished footprint of the Tennis Dome. At BMR's insistence, this matter was referred to the Town's consultant, Hemson Consulting, and they simply confirmed Town Staff's interpretation of the by-law. The end result of this dialogue was that development charges were to be paid for the entire footprint of the Village Conference Centre Phase II expansion - a total cost of \$508,715.20. If a credit (recognizing the demolished footprint of the Tennis Dome) had been issued, the development charges payable would have been \$170,731.54 - a difference of \$337,983.66. BMR advised that it disagreed with this approach but was, in effect, over a barrel due to impending construction deadlines.

BMR acknowledges, as per Section 20(1) of the Development Charges Act, that it has the opportunity to *'...complain to the council of the municipality imposing the development charge that, (a) the amount of the development charge was incorrectly determined; (b) whether a credit is available to be used against the development charge, or the amount of the credit of the service with respect to which the credit was given, was incorrectly determined; or (c) there was an error in the application of the development charge by-law.'* 1997, c.27, s.20 (1). Furthermore, BMR acknowledges, as per Section 20(2) of the Development Charges Act, that *'A complaint may not be made under subsection (1) later than 90 days after the day the development charge or any part of it, is payable.'* 1997, c.27, s.20(2).

The Village Conference Centre Phase II expansion was under very tight planning and construction timelines in order to ensure disruptions to our tennis and conference business units were minimal. Despite the disagreement with Town Staff over interpretation of Section 22(1) of By-law 2010-18, BMR did not challenge this interpretation in the form of a complaint to Council due to concerns it would result in significant time delays to Building Permit issuance - time delays BMR could not afford.

VILLAGE CONFERENCE CENTRE - PHASES I & II

The Development Charges Act states *'The council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.'* 1997, c.27, s.2(1). BMR has always supported the payment of development charges to cover increased costs associated with increased demand on services as a result of development.

It was always anticipated that BMR would pay development charges on the net increase in Gross Floor Area to the Village Conference Centre Phase II expansion. However, we suggest to Council that the Gross Floor Area of the expanded Village Conference Centre that essentially replaced the Gross Floor Area of the original Tennis Dome will not place any *additional* burden on municipal services as a result of this redevelopment. As per The Change In Use Permit (Permit No. 95-114) issued by the Township of Collingwood in September 1995, permitted uses in the Tennis Dome included indoor tennis courts and banquet/conference events. The Village Conference Centre Phase II will continue to be used for indoor tennis and banquet/conference events.

It is also important to note that the Village Conference Centre Phase I Site Plan and Building Permit applications submitted to, and granted by, the Town in 2004 established that a number of support facilities for the Tennis Dome (and ultimately the anticipated future Phase II expansion) were provided for in Phase I. The physical building connection of Phase I to the existing Tennis Dome was included in the Subject Area of the Site Plan application and details regarding this connection were provided in the Building Permit application. Furthermore, the Phase I kitchen facilities were sized to accommodate the existing Tennis Dome banquet/conference events as well as the anticipated future Phase II events. The Fire Alarm System for Phase I connected new fire alarm systems to the Tennis Dome and the water and sewer lines were essentially oversized to support both Phase I and the anticipated future Phase II expansion.

If the intent of a municipality imposing development charges is *'to pay for increased capital costs required because of increased needs for services arising from development'*, BMR respectfully submits that the \$111,108.40 paid for development charges in April 2004 for the Village Conference Centre Phase I accounted for the majority of increased demand for municipal services anticipated to arise from the future Phase II expansion - including kitchen areas, the primary loading dock, parking, and oversized water/sewer lines. Furthermore, BMR submits that the \$170,731.54 paid for development charges representing the *net difference* in Gross Floor Area between demolition of the Tennis Dome and the Phase II expansion would cover any additional increased needs for services arising from this redevelopment and properly reflects the true intent of The Development Charges Act.

HISTORY OF DEVELOPMENT CHARGES BY-LAWS

Township of Collingwood By-law Nos. 91-64 & 96-33 & 1991 Development Charges Policy

Township of Collingwood By-laws 91-64 and 96-33 make no reference to the application of development charges on non-residential development. Section 2.2(10) of The Township of Collingwood's 1991 Development Charges Policy states: *'Municipal Development Charges will be levied on commercial and*

industrial as well as residential development. The commercial and industrial charge is to be further defined on a similar equitable basis with attention to specific site servicing requirements and other municipal services' but no further information on commercial or industrial development charges is included in this policy or the related by-laws. Based on BMR's understanding of these by-laws and the 1991 Development Charges Policy, it is assumed that development charges were applicable only to residential development until By-law 2000-27 came into effect on April 10, 2000.

Town of the Blue Mountains By-law No. 2000-27

Town of the Blue Mountains By-law 2000-27, Section 23(1) 'Rules for Redevelopment of Land' states:

'...where there is a redevelopment of land on which there is a conversion of space proposed, or on which there was formerly erected a building or structure that has been demolished, a credit shall be allowed against the development charge otherwise payable by the owner pursuant to this By-law for the portion of the previous building or structure still in existence that is being converted or for the portion of the building or structure that has been demolished, as the case may be, calculated by multiplying the...non-residential total floor area being converted or demolished, by the relevant development charge in effect on the date when the development charge is payable in accordance with this By-law.'

Under By-law 2000-27, there was no requirement for development charges or similar fees (lot levy, impost fee, or connection fee) to have been paid in order for a credit to be allowed against the development charge otherwise payable by the owner.

Town of the Blue Mountains By-law Nos. 2005-27 & 2010-18

Town of the Blue Mountains By-laws 2005-27 and 2010-18, Section 23(1) and Section 22(1) respectively state:

*'...where there is a redevelopment of land on which **development charges or similar fees (lot levy, impost fee, or connection fee) have been paid in respect of municipal services provided to the land, and there is a conversion of space proposed, or on which there was formerly erected a building or structure that has been demolished, a credit shall be allowed against the development charge otherwise payable by the owner pursuant to this By-law for the portion of the previous building or structure still in existence that is being converted or for the portion of the building or structure that has been demolished, as the case may be, in the amount of the development charges pursuant to this By-law for those services for which previous charges or fees were paid.'***

The interpretation by Town Staff of the specific language highlighted in yellow above appears to be subjective in nature. In 2009 (when By-law 2005-27 was in effect), BMR was granted a credit against the development charge otherwise payable for demolition of a portion of the main floor of South Base Lodge in order to accommodate the new addition. Only the *net* Gross Floor Area was used to calculate the development charges for this project. There was no proof required for payment of development charges or similar fees in order for this credit to be granted and, as the original South Base Lodge building was constructed in 1979, development charges or similar fees would not have been paid.

The decision rendered by the Town under By-law 2010-18 to not issue a credit against development charges payable for the Village Conference Centre Phase II expansion is contrary to the decision rendered by the Town under By-law 2005-27 to issue a credit against development charges payable for the South Base Lodge expansion in 2009. BMR strongly feels that the inconsistency in the Town's interpretation of Section 22(1) of By-law 2010-18 and Section 23(1) of By-law 2005-27, despite the identical language contained therein, is unfair.

CURRENT DEVELOPMENT CHARGES BY-LAW

Town of the Blue Mountains By-law No. 2014-51

BMR has been actively involved in the 2014 Development Charges Background Study and By-law update process. Since December 2013, BMR representative(s) have attended the Development Charges Workshop, the Statutory Public Meeting, and all Committee of the Whole and Council meetings when the topic of development charges was on the Agenda - including the June 9, 2014 Committee of the Whole meeting when Timo Hotari made a deputation regarding development charges and the Town's decision to not issue a credit towards his residential redevelopment. As per the minutes from this meeting, a few members of Council asked questions of Mr. Hotari and there was reference to the Town going through a Development Charges review process. Mr. Hotari was asked to be patient and bear with the Town while it underwent this process and that his comments would be considered as part of the review process. This discussion among Council members gave BMR hope as, similar to BMR's situation, Mr. Hotari had already paid development charges in full (under By-law 2010-18), been issued a Building Permit, and his project was underway.

BMR submitted formal written comments in response to the proposed Town-wide Development Charges By-law in its letter to the Town Clerk, dated June 20, 2014. In this letter, BMR fully supported the recommendations contained within Staff Report FIT.14.37 pertaining to proposed changes to Sections 22, 23, and 24 of Development Charges By-law 2010-18, for the 'Rules for the Redevelopment of Land'. Furthermore, BMR acknowledged that the 'Financial Impact' section of this Staff Report stated that the Town had received three requests in 2014 for a development charge credit on Residential Redevelopment and that an *example* of a New vs. Existing Clubhouse was provided for Non-Residential Redevelopment when illustrating the financial impact of such proposed changes to the By-law. In its letter, BMR expressed it was interested to see how the proposed changes may be applied to previous (and relatively recent) requests for development charge credits - should the recommendations in the Staff Report be incorporated into the new By-law.

The recommendations contained in Staff Report FIT.14.37 were endorsed by Council at its June 23, 2014 meeting and have since been incorporated in By-law No. 2014-51, passed on July 28, 2014. By-law 2014-51, Section 22(1) states:

'Despite any other provision of this By-law, where as a result of the redevelopment of land, a building or structure existing on the same land has been demolished in order to facilitate redevelopment, or converted from one principal use to another principal use on the same land, the development charges otherwise payable with respect to such redevelopment shall be reduced by the following amounts:

(b) in the case of a non-residential building or structure, an amount calculated by multiplying the applicable development charge by the Gross Floor Area that has been or will be demolished or converted to another principal use'

CONCLUSION

BMR respectfully submits that, historically, the Town has provided credit to new development that replaces existing development. Given Council's recent adoption of By-law 2014-51, including changes to the 'Rules for the Redevelopment of Land' as well as the Town's inconsistent interpretation of Sections 23(1) and 22(1) in By-laws 2005-27 and 2010-18 respectively, BMR believes there is a strong basis for the Town to reconsider its position on the development charges imposed against the Village Conference Centre Phase II expansion. BMR requests that the Committee of the Whole consider directing staff to bring forward a report on this matter and, given the time-sensitive nature of this request due to the upcoming election, BMR would greatly appreciate it if this could be addressed at the September 3, 2014 Council Meeting.