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STAFF REPORT: Finance and IT Services



REPORT TO: Council
MEETING DATE: Wednesday, September 3 2014
REPORT NO.: FIT.14.53
SUBJECT: Blue Mountain Resort Request for Development Charge Refund
PREPARED BY: Sam Dinsmore, Financial Analyst

A. Recommendations

THAT Council receive Staff Report FIT.14.53, entitled “Blue Mountain Resort Request for Development Charge Refund” for information purposes;

AND THAT Council provide Staff with direction regarding Blue Mountain Resort’s August 18, 2014 request for a development charge credit for the Phase II Conference Centre Expansion based on the gross floor area of the demolished pre-existing unit.

B. Background

In July 2013 the Town collected \$508,715.20 from Blue Mountain Resorts (BMR) for development charges to build Phase II of the Conference Centre Expansion. This amount was based on 4,240m² at the current rate of \$119.98/m².

At the August 18, 2014 Committee of the Whole meeting BMR requested that they be refunded based on the gross floor area (GFA) of the demolished tennis dome. As per the demolition permit, the tennis dome was 2,785m² which would give BMR a credit of \$334,144.30 (2,785 x \$119.98). In 2013, the Town contacted Hemson Consulting, the Town’s development charges (DC) consultant, who verified that the Town was following the current By-law 2010-18 of the time and not offering BMR a credit for the tennis dome GFA (Attachment #1).

C. Analysis

Staff have compiled the following four options available to Council regarding the request from BMR for a \$334,144.30 development charge refund:

Option 1

Council may opt to not provide the requested refund. This is the option that Staff recommends, for the following reasons:

- Requiring payment of the DCs by BMR was following the wording in the existing By-law 2010-18, which was discussed and debated in an open and public forum by Council and passed on March 8, 2010. The Town’s DC consultant confirmed this was the correct application of the By-law.

- When the tennis dome was built, no lot levy, impost fee or any development charge equivalent was paid and therefore no credit is warranted. During the life of the tennis dome BMR paid roughly \$55,000 to the Town in taxation for that facility.
- Under Section 20 of *the Development Charge Act* an applicant can file a complaint up to 90 days after the payment is made. BMR suggested that this would have caused delays in the building process. However, this is incorrect as BMR could have paid the DCs, received their building permit, and then filed a formal complaint with Council. BMR did not file any such complaint with Council during this 90 day window following payment.
- By granting this refund, the reserve fund continuity schedules included in the newest Development Charge Background Study (DCBS) would be incorrect and the Town would either be under-collecting for the next 5 year period or Staff could amend the background study and the By-law to increase the rates accordingly.
- By granting this refund and not following the 2010-18 By-law the Town will be forcing future developments to fund this credit refund. During the process of implementing the new DC by-law, Council approved Staff Report FIT.14.43 that requires the Town to refund back to January 1, 2014 for the new redevelopment criteria. If BMR is given a refund the Town is changing the philosophy that was applied to re-development applications covered by the last two DC By-laws. This could lead to an increase in requests for redevelopment credits dating back to the 2005 By-law.

In Staffs' opinion, in addition to the points raised above, it would not be a financially sound move at this time to refund such a large amount that was collected in accordance with the Town's By-law knowing that the Town's development charges' reserve fund balance was \$93,000 as of December 31, 2013.

If Council chooses to go with Option 1, the following resolution is recommended:

AND THAT Council direct Staff to not refund Blue Mountain Resorts for the Phase II Conference Centre Expansion.

Option 2

At this time the Town could not fund this credit from the various development charge reserve funds, as the Town does not have the funding available at this time. Council could authorize funding the credit from taxation and water and wastewater user fees. If Council chooses this option, Staff would recommend that taxation fund the credit for the Soft Services and Roads and Related charge and that user fees fund the Water and Wastewater charges. Table 1 below has the breakdown. By funding the credit in this manner, the DC reserve funds would not be affected and future development would not be forced to fund the credit. If taxation is in a deficit at the end of 2014, Staff will fund the deficit from the Working Capital Reserve. If Water or Wastewater is also in a deficit position, the funds will be pulled from the Water and Wastewater Rate Stabilizing Reserves.

Table 1

	Taxation	User-Fees
Soft Services	\$51,383.25	
Roads and Related	150,195.05	
Water		\$47,456.40
Wastewater		85,109.60
Total	\$201,578.30	\$132,566.00

The following resolution is suggested if Council decides on Option 2:

AND THAT Council direct Staff to refund Blue Mountain Resorts for the gross floor area of the demolished Tennis Dome in the amount of \$334,144.30; \$201,578.30 funded by taxation and \$132,566.00 funded from water and wastewater user-fees;

AND THAT Council direct Staff to not consider development charge refunds for re-development building permit applications made prior to January 1, 2013.

Option 3

Under this option the Town offers BMR the credit on future developments as BMR obtains building permits or planning applications. Under this option, there is no cash flow problem for the Town as this would be a non-cash transaction. However this option poses the same issues, as the Town will be under collecting development charges and future developments will have to fund this credit with an increase to charges in the next Development Charge Background Study. Staff has spoken with BMR representatives and this is not an acceptable solution from their perspective.

Suggested Resolution for Option 3, if chosen by Council:

AND THAT Council direct Staff to apply the \$334,144.30 development charge credit to future growth projects where the applicant is the Blue Mountain Resorts;

AND THAT Council direct Staff to not consider development charge refunds for re-development building permit applications made prior to January 1, 2013.

Option 4

For this option, the Town would refund BMR the \$334,144.30 out of the various development charge reserve funds. Staff does not recommend this option; as the balance of the development charge reserve funds was \$47,000 as of June 30, 2014. Since the balance is too low to cover the refund the development charge reserve funds would be forced to borrow the funds internally from the Town and pay this back as DC collections occur. By choosing this option, the Town would still be forcing future development to pay for this credit refund. Having such a large amount unfinanced would

also delay other development charge projects as the funding would not be available; this could include the library or fire hall expansions, as well as the Town Hall open space project.

Suggested resolution for Option 4 if chosen by Council:

AND THAT Council direct Staff to refund Blue Mountain Resorts \$334,144.30 from the correct development charge reserve funds.

AND THAT Council direct Staff to not consider development charge refunds for re-development building permit applications made prior to January 1, 2013.

C. The Blue Mountains' Strategic Plan

Providing a strong, well-managed municipal government.

D. Environmental Impacts

N/A

E. Financial Impact

If Council chooses to allow a refund, the cost to the Town will be \$334,144.30. The funding would be dependent on which option Council elects from the list above. If Council does grant this refund, the Town might see other applicants come forward that paid the full DC amounts on re-developed property. At this time Staff cannot put a dollar figure on these potential costs. Staff recommend that if Council refunds BMR a hard date, January 1 2013, be used to cap off other older applications coming forward to ask for a refund.

F. In Consultation With

Troy Speck, Chief Administrative Officer
Ruth Prince, Interim Director of Finance & IT Services, and Manager of Revenue
Craig Binning, Partner Hemson Consulting

G. Attached

Attachment 1 Confidential Memorandum from Hemson Consulting

Respectfully submitted,

Sam Dinsmore
Financial Analyst

Ruth Prince
Interim Director of Finance & IT Service, and Manager of Revenue

For more information, please contact:

Sam Dinsmore

sdinsmore@thebluemountains.ca

(519) 599-3131 ext 274

HEMSON
Consulting Ltd.

30 St. Patrick Street, Suite 1000, Toronto, Ontario, Canada M5T 3A3
Facsimile (416) 595-7144 Telephone (416) 593-5090
e-mail: hemson@hemson.com

CONFIDENTIAL MEMORANDUM

To: Darcy Chapman, Town of The Blue Mountains
From: Craig Binning
Date: April 8, 2013
Re: Development Charges and Redevelopment of Land under the Town of The Blue Mountains DC By-Law

Further to our recent conversation, the following memo is intended to provide our opinion on the application of the Town's DC By-law to a proposed redevelopment by Blue Mountains Resort (BMR).

1. Background

It is our understanding the BMR wishes to remove the existing air-supported structure (tennis bubble) and replace it with a more permanent structure that would be used as a year-round tennis facility. The new structure will be on the same location as the existing tennis bubble and may, or may not, be somewhat larger.

BMR has expressed to the Town that, in their opinion, they should receive a DC credit for the existing tennis bubble towards to the DC payable for the proposed new structure.

It is our understanding that the existing tennis bubble was constructed in the mid-1980s and both parties, the Town and BMR, agree that no development charges, or similar charge (i.e. lot levy) was paid at the time of the current facility was constructed.

The purpose of this memo is to examine the application of the Town's current DC By-law, By-law 2010-18, to the proposed BMR redevelopment.

2. *Development Charges Act, 1997 (DCA)*

The following are some key provisions of the DCA related to this situation:

a. **Definition of Development**

The DCA includes the following definition of development

“development” includes redevelopment

Clearly the DCA anticipated that development charges would, or could be, applied against the redevelopment of land, not just “greenfield” land development situations.

b. **When Can a DC be Imposed?**

Section 2(1) of the DCA states:

*s. 2(1) 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.***

A municipality may impose a DC when the development of land (including redevelopment) results in an increase in capital costs arising from increase demands from development within the area to which the by-law applies. What is important in this section of the DCA is that the increase in demand for service is in reference to the entire area to which the by-law applies not individual sites within the area to which the by-law applies.

The DCA supports, and is arguably based on, the applications of averages across the area to which a DC by-law applies. The DC rates have been calculated based on averages. Specific developments will place more or less demand on specific services but all development area treated equally in the area to which the by-law applies.

c. When is a DC triggered?

Section 2(2) of the DCA states:

s. 2(2) A development charge may be imposed only for development that requires,

(a) the passing of a zoning by-law or of an amendment to a zoning by-law under section 34 of the Planning Act;

(b) the approval of a minor variance under section 45 of the Planning Act;

(c) a conveyance of land to which a by-law passed under subsection 50 (7) of the Planning Act applies;

(d) the approval of a plan of subdivision under section 51 of the Planning Act;

(e) a consent under section 53 of the Planning Act;

(f) the approval of a description under section 50 of the Condominium Act; or

(g) the issuing of a permit under the Building Code Act, 1992 in relation to a building or structure. 1997, c. 27, s. 2 (2).

If the proposed BMR development requires one or more of the above actions then a DC can be levied, subject to the rules and policies of the by-law.

d. Rules on the applicability of a DC is critical

Section 5(1)(9) of the DCA states:

Rules must be developed to determine if a development charge is payable in any particular case and to determine the amount of the charge, subject to the limitations set out in subsection (6).;

Section 6 of the DCA states:

s.6. A development charge by-law must set out the following:

1. *The rules developed under paragraph 9 of subsection 5 (1) for determining if a development charge is payable in any particular case and for determining the amount of the charge.*
2. *An express statement indicating how, if at all, the rules provide for exemptions, for the phasing in of development charges and for the indexing of development charges.*
3. ***How the rules referred to in paragraph 1 apply to the redevelopment of land.***
4. *The area of the municipality to which the by-law applies.*

The DCA is very clear that the municipality is to establish rules to determine when and how DCs will apply against specific types of developments. The DCA specifically states that the DC by-law is to set out how the rules, and DCs, will be applied to the redevelopment of land.

3. Town of The Blue Mountains DC By-law

The following are key sections from the Town's current DC by-law that are relevant to these particular situations:

a. Definitions

“redevelopment” means the construction, erection or placing of one or more buildings or structures on land where all or part of a building or structure has previously been demolished on such land, changing the use of a building or structure from residential to non-residential or from non-residential to residential or changing a building or structure from one type of residential development to another or from one type of non-residential development to another;

b. Rules for the Redevelopment of Land

22. (1) Subject to Subsections (2), (3) and (4), 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.

c. Rules for Partial Exemptions for Non-Residential Development on Existing Lots

24. Where there is a non-residential development on land on which development charges or similar fees (lot levy, impost fee, or connection fee) have been paid for services, a credit in the amount of the previous charges or fees paid for those services shall be allowed against the development charges otherwise payable by the owner pursuant to this By-law.

The Town's DC by-law provides very clear and specific rules on the treatment of the redevelopment of land and the applicability of DC credits. Simply, the DC by-law provides for redevelopment credits, equivalent to the existing structure, as long as DCs, or similar fees/charges, has been paid on the subject lands. If no DCs have been paid on the lands related to the structure then no credits are available.

4. Conclusion

The DCA defines that development including redevelopment of land and such activity could attract a development charge. The DCA requires that municipal DC by-laws provide rules on when and where DC charges will apply, relative to specific types of development including the redevelopment of land.

The Town's DC by-laws clearly identify the rules related to the levying of DCs against the redevelopment of land. The Town's DC redevelopment credit rules were developed to allow for development charges to be levied in situations in which an existing use, or lands, is redeveloped and no development charges, or similar fees, have been paid in the past. The intent of this clause is to ensure that all development is treated equitably and contributes to the growth-related capital costs of providing municipal services. This type of redevelopment DC credit is not uncommon across Ontario municipalities that levy development charges.

In our opinion, an appropriate application of the Town's DC by-laws is to levy the charges against the proposed development with no credits for the existing use.