

ISSUE DATE:

June 11, 2013



DC090025
DC110008

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF section 14 of the *Development Charges Act*, S.O. 1997,
c. 27

Appellant: 2054971 Ontario Inc.
Appellant: Losani Homes (1998) Ltd.
Appellant: Paletta International (2000) Inc.
Appellant: Parkside Hills Inc.; and others
Subject: Development Charges By-law No. 09-143
Municipality: City of Hamilton
OMB Case No.: DC090025
OMB File No.: DC090025

IN THE MATTER OF section 14 of the *Development Charges Act*, S.O. 1997,
c. 27

Appellant: 2054971 Ontario Inc.
Appellant: Paletta International (2000) Inc.
Appellant: Parkside Hills Inc.
Appellant: Silverwood Homes Limited; and others
Subject: Development Charges By-law No. 09-144
Municipality: City of Hamilton
OMB Case No.: DC090025
OMB File No.: DC090026

IN THE MATTER OF section 14 of the *Development Charges Act*, S.O. 1997,
c. 27

Appellant: Losani Homes (1998) Ltd.
Appellant: Paletta International (2000) Inc.
Appellant: Parkside Hills Inc.
Appellant: Silverwood Homes Limited
Subject: Development Charges By-law No. 11-173
Municipality: City of Hamilton
OMB Case No.: DC110008
OMB File No.: DC110008

IN THE MATTER OF section 14 of the *Development Charges Act*, S.O. 1997,
c. 27

Appellant: Losani Homes (1998) Ltd.
Subject: Development Charges By-law No. 11-174
Municipality: City of Hamilton
OMB Case No.: DC110008
OMB File No.: DC110009

IN THE MATTER OF section 14 of the *Development Charges Act*, S.O. 1997,
c. 27

Appellant: Hamilton Halton Home Builders' Association
Appellant: Losani Homes (1998) Ltd.
Appellant: Paletta International (2000) Inc.
Appellant: Parkside Hills Inc.; and others
Subject: Development Charges By-law No. 11-175
Municipality: City of Hamilton
OMB Case No.: DC110008
OMB File No.: DC110010

APPEARANCES:

Parties

Counsel

City of Hamilton

Robert Doumani
Jody Johnson

Hamilton Halton Homebuilders'
Association

Lyn Townsend

Losani Homes (1998) Ltd.

Chris Barnett

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON
MAY 24, 2013 AND ORDER OF THE BOARD**

INTRODUCTION

[1] The purpose of the hearing held by way of telephone conference call was to receive evidence and hear submissions with respect to the settlement of the appeals made by Losani Homes (1998) Ltd. ("Losani") and the Hamilton Halton Homebuilders' Association ("HHHBA").

DECISION AND ORDER

[2] The matters before the Board relate to a series of appeals of development charges by-laws. Certain appeals were resolved through a previous order of the Board and two further appellants have resolved their appeals with the City of Hamilton ("City").

[3] Evidence in the form of an affidavit (Exhibit 1) sworn by Gary Scandlan, a land economist, was filed by the City in advance of the hearing. Mr. Scandlan has been involved as a consultant for the City for several years and prepared numerous background studies required prior to the passing of the development charges by-law that are the subject of these appeals. Mr. Scandlan's opinion is that the agreement reached between the parties, as set out in the Minutes of Settlement (Exhibit 2), represents appropriate modification to the by-laws under appeal, complies in all respects with the provisions of the *Development Charges Act* and its regulations and should be approved. The settlement was approved by City Council on April 24, 2013 and the precise terms of the settlement are reflected in the minutes and the disposition of the appeals by the HHHBA and Losani are reflected in an order (Exhibit 3) agreed upon between the parties. The settlement between the parties provides, among other terms, for a 66%/34% residential/non-residential growth split for all water and wastewater projects.

[4] The Minutes of Settlement are set out in Attachment 1. The Board's order disposing of these appeals is set out in Attachment 2.

[5] The appeals of Waterdown Bay Ltd., Paletta International (2000) Inc. and 2054971 Ontario Inc. remain outstanding. Counsel will contact the Board and arrange for a hearing by way of telephone conference call when these remaining matters are resolved. Evidence in support of any agreement reached may be filed by affidavit and if the parties agree on an order, the hearing can be either in writing or by way of telephone conference call. The Case Coordinator should be contacted once the appeals are resolved.

“ J. de P. Seaborn”

J. de P. SEABORN
VICE CHAIR

ATTACHMENT 1

DC090025
DC 110008

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF Section 14 of the *Development Charges Act, 1997, S.O. 2007, c. 27*

Appellants: 2054971 Ontario Inc.
Paletta International (2000) Inc.
Parkside Hills Inc.
Silverwood Homes Limited
Waterdown Bay Ltd.
Losani Homes (1998) Ltd.

Subject: DC By-law 09-143, DC By-law 09-144
Municipality: City of Hamilton

OMB Case No: DC090025

IN THE MATTER OF Section 14 of the *Development Charges Act, 1997, S.O. 2007, c. 27*

Appellants: 2054971 Ontario Inc.
Paletta International (2000) Inc.
Parkside Hills Inc.
Silverwood Homes Limited
Waterdown Bay Ltd.
Losani Homes (1998) Ltd.

Subject: DC By-law 11-173, DC By-law 11-174, DC By-law 11-175
Municipality: City of Hamilton

OMB Case No: DC110008

MINUTES OF SETTLEMENT

**HAMILTON HALTON HOMEBUILDERS' ASSOCIATION, LOSANI HOMES (1998)
LTD. and the CITY OF HAMILTON**

**CITY OF HAMILTON DEVELOPMENT CHARGE BY-LAWS 09-143, 09-144, 11-173,
11-174 and 11-175**

RECITALS: -

- A. On June 24, 2009 Council of the City of Hamilton (the "City") passed development charge by-laws 09-143 and 09-144;

- B. On July 30, 2009 Losani Homes (1998) Ltd. ("Losani") appealed the development charge by-law 09-143 (the "Losani 2009 Appeal");
- C. On July 4, 2011 Council of the City passed development charge by-laws 11-173, 11-174 and 11-175.
- D. Development charge by-law 11-173 amends development charge by-law 09-143;
- E. On August 15, 2011 Losani appealed development charge by-laws 11-173, 11-174 and 11-175 (the "Losani 2011 Appeal");
- F. On August 12, 2011, the Hamilton Halton Homebuilders' Association ("HHHBA") appealed development charge by-law 11-175 (the "HHHBA 2011 Appeal");
- G. Discussions among representatives for the City, Losani and the HHHBA have resolved the Losani 2009 Appeal, the Losani 2011 Appeal and the HHHBA 2011 Appeal; and
- H. By these Minutes of Settlement ("Minutes") the City, Losani and HHHBA have reduced the settlement of the appeals to writing.

NOW THEREFORE THESE MINUTES WITNESSETH that in consideration of the sum of ten dollars (\$10.00) of lawful money of Canada now paid by each party hereto to the other and in consideration of the covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

Disposition of the Appeals

1. The City, Losani and the HHHBA consent to an order of the Board allowing the Losani 2011 Appeal, in part, and the HHHBA 2011 Appeal, in part, by:
 - (a) amending development charge by-law 11-175 by removing Schedule "C" to development charge 11-175 and replacing it with a new Schedule "C", attached as Appendix "A" to these Minutes;

- (b) replacing Table 1 of development charge by-law 09-143 as amended by development charge by-law 11-173 with the table attached hereto as Appendix "B" to these Minutes; and
 - (c) replacing Table 1 of development charge by-law 11-175 with the table attached hereto as Appendix "C" to these Minutes.
2. The amendments set out in:
- (a) subparagraph 1(a) shall be effective commencing on July 6 2011; and
 - (b) subparagraphs 1(b) and (c) of these Minutes shall be effective commencing on January 6, 2013.
3. Except as provided for in paragraphs 1 and 2 above the City, Losani and HHHBA shall consent to an order of the Board dismissing the Losani 2009 Appeal, the Losani 2011 Appeal and the HHHBA 2011 Appeal without costs.
4. The City confirms that it will not use the methodology to obtain the residential/non-residential percentage splits used for development charge by-laws in 2011 for the 2014 development charge background study.
5. Any refunds resulting from the change to development charge by-law 11-175 in subparagraphs 1(a) and 2(a) shall bear interest as prescribed under the *Development Charges Act, 1997*, S.O. 2007, c. 27.

General

6. The parties agree that the recitals herein are true and accurate and form part of these Minutes.
7. The headings contained herein are for reference only and in no way affect these Minutes or their interpretation.
8. These Minutes shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

- 9. No modifications or amendments to these Minutes may be made unless agreed to by the parties hereto in writing.
- 10. These Minutes shall enure to the benefit of and be binding on the City, Losani and the HHHBA and their respective successors and assigns.
- 11. These Minutes constitute the entire agreement between the parties hereto and there are no other oral or written representations or agreements in respect of the matters herein.
- 12. These Minutes may be executed in counterparts with the same effect as if both parties had signed the same document. All counterparts shall be construed together, and shall constitute one and the same Minutes. Counterparts may be executed either in original or faxed form and the parties may adopt any signatures received by a receiving fax machine as original signatures of the parties.

IN WITNESS WHEREOF the parties have duly executed and delivered these Minutes without condition on ^{3 April} ~~March~~ 2013..

) THE CITY OF HAMILTON
)
)
)
) Per: _____
) Name: Bob Bratina
) Title: Mayor
)
)
)

)
)
) Per: _____
) Name: Rose Caterini
) Title: City Clerk
)

) LOSANI HOMES (1998) LTD.
)
)
) Per: _____
) Name: William Liske
) Title: President General Counsel
) I have authority to bind the Corporation.
)

- 9. No modifications or amendments to these Minutes may be made unless agreed to by the parties hereto in writing.
- 10. These Minutes shall enure to the benefit of and be binding on the City, Losani and the HHHBA and their respective successors and assigns.
- 11. These Minutes constitute the entire agreement between the parties hereto and there are no other oral or written representations or agreements in respect of the matters herein.
- 12. These Minutes may be executed in counterparts with the same effect as if both parties had signed the same document. All counterparts shall be construed together, and shall constitute one and the same Minutes. Counterparts may be executed either in original or faxed form and the parties may adopt any signatures received by a receiving fax machine as original signatures of the parties.

IN WITNESS WHEREOF the parties have duly executed and delivered these Minutes without condition on March 2013.

) THE CITY OF HAMILTON
)
)
) Per: Bob Bratina
) Name: Bob Bratina
) Title: Mayor
)
)
) Per: Mary Gallagher
) Name: ~~Rose-Caterini~~ Mary Gallagher
) Title: City Clerk
)
) Alexis
) LOSANI HOMES (1998) LTD.
)
)
) Per: _____
) Name: _____
) Title: President
) I have authority to bind the Corporation.

OFFICE OF THE CLERK	
APPROVED BY COUNCIL	
DATE: <u>December 12, 2012</u>	
AUTHORITY <u>OMB DC090025</u>	
INTL. <u>A.P.</u>	YEAR/FILE <u>2013/9157</u>

) HAMILTON HALTON
) HOMEBUILDERS' ASSOCIATION
)
)
)
)
)
)
)
)

Per: 

Name: Anthony Chiarella

Title: President

I have authority to bind the Hamilton Halton
Homebuilders' Association

Appendix "A"

NEW SCHEDULE "C" TO BY-LAW 11-175

SCHEDULE OF DEVELOPMENT CHARGES

SERVICE	RESIDENTIAL					NON-RESIDENTIAL (per s.f. of Gross Floor Area)
	Single-Detached Dwelling & Semi- Detached Dwelling (per unit)	Apartments 2 Bedrooms + (per unit)	Apartments Bachelor & 1 Bedroom (per unit)	Multiple Dwellings (per unit)	Residential Facility Dwelling (per bedroom)	
Water and Wastewater Services:						
Wastewater Services	8,316	5,153	3,435	5,961	2,698	5.12
Water Services	3,151	1,952	1,301	2,259	1,022	1.94
Stormwater Services	5,123	3,174	2,116	3,672	1,662	0.69
Total Water and Wastewater Services	16,590	10,279	6,852	11,892	5,382	7.75

*Note: there are two categories of non-residential charge, "Industrial" and "non-Industrial" as defined in this by-law

New "non-Industrial" developments are charged as follows:

- 1-5,000 sq ft: 50% of the Total Water & Wastewater Services charge in effect
- 5,001-10,000 sq ft: 75% of Total Water & Wastewater Services charge in effect
- 10,000 sq ft and greater: 100% of the Total Water & Wastewater Services charge in effect

For expansions of "non-Industrial" developments already in existence at the commencement of this by-law, the following rates apply:

- 1st 5,000 sq ft of expansion: Exempt
- sq footage in excess of 5,000: 100% of the Total Water & Wastewater Services charge in effect

*Note: where a permanent/centralized stormwater management facility in a particular subdivision has been provided at the cost of the developer as a condition of approval of a plan of subdivision, the facility shall be considered a credit for services-in-lieu and accordingly, DC's on any of the proponents unbuilt lots within the subject subdivision shall be reduced by the extent of the stormwater management facility sub-component which is 65% of the total stormwater drainage and control services.

Appendix "B"

REPLACEMENT TABLE 1 TO BY-LAW 09-143 AS AMENDED BY BY-LAW 11-173

Table 1				
Non-Residential Industrial Charge To Be Imposed				
Service		July 6, 2011 to July 5, 2012	July 6, 2012 to January 5, 2013	January 6, 2013 to July 5, 2014
Roads		\$2.27	\$2.66	\$2.96
*Rates subject to indexing as per section 38 of By-law 09-143				

Appendix "C"

REPLACEMENT TABLE 1 TO BY-LAW 11-175

Table 1				
Non-Residential Industrial Charge To Be Imposed				
Service	July 6, 2011 to July 5, 2012	July 6, 2012 to January 5, 2013	January 6, 2013 to July 5, 2014	
Wastewater Services	\$3.92	\$4.56	\$4.96	
Water Services	\$0.00	\$0.00	\$0.00	
Stormwater Services	\$0.46	\$0.53	\$0.58	
*Rates subject of Indexing as per section 35 of By-law 11-175				

PL 110278
DC 090025
DC 110008

ATTACHMENT 2

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF Section 14 of the *Development Charges Act, 1997, S.O. 2007, c. 27*

Appellants: 2054971 Ontario Inc.
Paletta International (2000) Inc.
Parkside Hills Inc.
Silverwood Homes Limited
Waterdown Bay Ltd.
Losani Homes (1998) Ltd.

Subject: DC By-law 09-143, DC By-law 09-144
Municipality: City of Hamilton
OMB Case No: DC090025

IN THE MATTER OF Section 14 of the *Development Charges Act, 1997, S.O. 2007, c. 27*

Appellants: 2054971 Ontario Inc.
Paletta International (2000) Inc.
Parkside Hills Inc.
Silverwood Homes Limited
Waterdown Bay Ltd.
Losani Homes (1998) Ltd.

Subject: DC By-law 11-173, DC By-law 11-174, DC By-law 11-175
Municipality: City of Hamilton
OMB Case No: DC110008

DECISION AND ORDER OF THE BOARD DELIVERED BY J. de P. SEABORN ON MAY 24, 2013

Upon reading the Minutes of Settlement provided to the Board and upon reading the affidavit of Gary Scandlan:

1. THE BOARD ORDERS THAT the appeal dated July 30, 2009 by Losani Homes (1998) Ltd. ("**LOSANI**") from the City of Hamilton's (the "**City**") Development Charge By-law 09-143 enacted June 24, 2009, the appeal dated August 12, 2011 by the Hamilton Halton Homebuilders' Association ("**HHHBA**") from the City's Development Charge By-law 11-175 enacted July 4, 2011 and the appeals dated August 15, 2011 by Losaini from the City's Development Charge By-laws 11-173, 11-174 and 11-175 enacted July 4 (collectively, the "**Appeals**"), 2011 are allowed in part, without costs, by:

- (a) amending the City's Development Charge By-law 11-175, effective commencing July 6, 2011 by removing Schedule "C" to development charge 11-175 and replacing it with a new Schedule "C" attached as Appendix "A" to this Order;
 - (b) replacing Table 1 of the City's Development Charge By-law 09-143, effective commencing January 6, 2013, as amended by Development Charge by-law 11-173 with the table attached as Appendix "B" to this Order;
 - (c) replacing Table 1 of the City's Development Charge By-law 11-175, effective commencing January 6, 2013, with the table attached as Appendix "C" to this Order.
2. THE BOARD ORDERS THAT except for the Appeals allowed in part as hereinbefore provided, the Appeals by Losani and HHHBA from the City's Development Charge By-laws 09-143, 11-173, 11-174 and 11-175 are hereby dismissed, without costs.

So orders the Board.

J. de P. SEABORN

VICE CHAIR

Appendix "A"

NEW SCHEDULE "C" TO BY-LAW 11-175

SCHEDULE OF DEVELOPMENT CHARGES

SERVICE	RESIDENTIAL					NON-RESIDENTIAL (per s.f. of Gross Floor Area)
	Single-Detached Dwelling & Semi- Detached Dwelling (per unit)	Apartments 2 Bedrooms +	Apartments Bachelor & 1 Bedroom (per unit)	Multiple Dwellings (per unit)	Residential Facility Dwelling per bedroom	
Water and Wastewater Services:						
Wastewater Services	8,316	5,153	3,435	5,961	2,698	5.12
Water Services	3,151	1,952	1,301	2,259	1,022	1.94
Stormwater Services	5,123	3,174	2,116	3,672	1,662	0.69
Total Water and Wastewater Services	16,590	10,279	6,852	11,892	5,382	7.75

*Note: there are two categories of non-residential charge, "industrial" and "non-industrial" as defined in this by-law

New "non-industrial" developments are charged as follows:

- 1-5,000 sq ft: 50% of the Total Water & Wastewater Services charge in effect
- 5,001-10,000 sq ft: 75% of Total Water & Wastewater Services charge in effect
- 10,000 sq ft and greater: 100% of the Total Water & Wastewater Services charge in effect

For expansions of "non-industrial" developments already in existence at the commencement of this by-law, the following rates apply:

- 1st 5,000 sq ft of expansion: Exempt
- sq footage in excess of 5,000: 100% of the Total Water & Wastewater Services charge in effect

*Note: where a permanent/centralized stormwater management facility in a particular subdivision has been provided at the cost of the developer as a condition of approval of a plan of subdivision, the facility shall be considered a credit for services-in-lieu and accordingly, DC's on any of the proponents unbuilt lots within the subject subdivision shall be reduced by the extent of the stormwater management facility sub-component which is 65% of the total stormwater drainage and control services.

Appendix "B"				
REPLACEMENT TABLE 1 TO BY-LAW 09-143 AS AMENDED BY BY-LAW 11-173				
Table 1				
Non-Residential Industrial Charge To Be Imposed				
Service		July 6, 2011 to July 5, 2012	July 6, 2012 to January 5, 2013	January 6, 2013 to July 5, 2014
Roads		\$2.27	\$2.66	\$2.96
*Rates subject to indexing as per section 38 of By-law 09-143				

Appendix "C"				
REPLACEMENT TABLE 1 TO BY-LAW 11-175				
Table 1				
Non-Residential Industrial Charge To Be Imposed				
Service	July 6, 2011 to July 5, 2012	July 6, 2012 to January 5, 2013	January 6, 2013 to July 5, 2014	
Wastewater Services	\$3.92	\$4.56	\$4.96	
Water Services	\$0.00	\$0.00	\$0.00	
Stormwater Services	\$0.46	\$0.53	\$0.58	
*Rates subject of indexing as per section 35 of By-law 11-175				

14718321.1