

ISSUE DATE:

December 04, 2013



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

DC090029

DC100002

DC100005

DC130013

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

Appellant: Smooth Run Developments Inc.
Appellant: Brookfield Homes (Ontario) Limited
Appellant: Players Business Park Ltd.
Appellant: West Diamond Properties Inc.
Appellant: Building Industry and Land Development Association
Subject: Development Charges By-law No. 2010-028
Municipality: Municipality of Clarington
OMB Case No.: DC100005
OMB File No.: DC100005

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

Appellant: Amacon Development (City Centre) Corp.
Appellant: Building Industry & Land Development Association
Subject: Development Charges By-law No. 0197-2009
Municipality: City of Mississauga
OMB Case No.: DC100002
OMB File No.: DC090044

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

Appellant: Amacon Development (City Centre) Corp.
Appellant: Building Industry & Land Development Association
Subject: Development Charges By-law No. 0342-2009
Municipality: City of Mississauga
OMB Case No.: DC100002
OMB File No.: DC100002

IN THE MATTER OF section 14 of the *Development Charges Act*, R.S.O. 1990, S.O. 1997, c. 27, as amended

Appellant: 1644138 Ontario Inc. & 1107656 Ontario Inc.
Appellant: Building Industry and Land Development Association
Subject: Development Charges By-law No. 2009-120
Municipality: City of Markham
OMB Case No.: DC090029
OMB File No.: DC090029

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

Appellant:	Building Industry and Land Development Association
Subject:	Development Charges By-law No. 2013-81
Municipality:	City of Markham
OMB Case No.:	DC130013
OMB File No.:	DC130013

APPEARANCES:

Parties

Counsel

DC100005

Brookfield Homes Ltd, Building Industry and Land Development Association
Players Business Park Ltd.
Smooth Run Developments Inc. West Diamond Properties

R. Howe

Municipality of Clarington

P. DeMelo

DC100002

Building Industry and Land Development Association

R. Howe

Amacon Development

S. Rosenthal

City of Mississauga

P. DeMelo

DC090029

Building Industry and Land Development Association

R. Howe

Times Group Corporation

I. Kagan (**this appeal is on hold**)

City of Markham

P. DeMelo

DC130013

Building Industry and Land
Development Association

R. Howe

City of Markham

P. DeMelo

**DECISION AND ORDER OF THE BOARD DELIVERED BY S.W. LEE AND K.
HUSSEY AT THE FIRST PRE-HEARING CONFERENCE**

[1] This is the first and probably the only pre-hearing conference (“PHC”) in these matters. This PHC follows two case management meetings with the Ontario Municipal Board (“Board”) to design a hearing process that can be at once simple and labyrinthine. As a result, these proceedings, involving the Development Charges (“DC”) By-laws of three municipalities have not been consolidated. In fact, they remain as separate and distinct files. The Board directs that these appeals will be heard together in order to lend efficiency to the hearing process. In addition, such an approach will avoid the possibility of conflicting findings where common issues are involved.

[2] Common to these appeals is a dispute involving the legitimacy of a chosen methodology in the Background Studies in the DC calculation for these three municipalities. At the heart of it is the question whether a methodology based on the combined population-based and household-based approach is acceptable within the permitted purview of the *Development Charges Act*. These disputes have arisen as the aftermath of the Board decision in *Orangeville v. District Home Builders Association* File No. DC090049 rendered by the same panel, which decision had been subsequently upheld at the Divisional Court (*Orangeville District Home Builders Association v. Orangeville (Town)*, [2011] O.J. No. 1393 (Div. Ct.)).

[3] The Board will set the following hearing dates for two separate phases:

1. Phase 1: October 20, 2014 to November 7, 2014, inclusive, addressing the methodology disputes for the DC By-laws for the City of Markham, the Municipality of Clarington and the City of Mississauga. As well, this phase will address the associated disputed matters of the Municipality of Clarington. All parties to these appeals will participate at this phase.

2. Phase 2: December 1 - 12, 2014, inclusive, addressing the disputes unique to the City of Mississauga. The clients of Mr. Howe, Ms. Rosenthal and Mr. DeMelo will participate at this phase.
3. These proceedings commencing at **10 a.m.**, will be held at:

**The Ontario Municipal Board
655 Bay Street
16th Floor
Toronto ON M5G 1E5**

Phases 1 and 2 can be heard by separate panels.

[4] The Board directs the parties to prepare for a hearing process that will focus on only what is disputed. Where there is commonality, the parties should admit them either as a fact or as a concept and reveal it to the hearing panels. Where appropriate, simple sample calculation should be used for the purpose of illustrations and explanations. The Board also trusts that the parties will work out the issues list and exchange dates and can issue the requisite orders on consent.

[5] The Board so orders.

“S.W. Lee”

S.W. LEE
ASSOCIATE CHAIR

“K. Hussey”

K. HUSSEY
VICE CHAIR