

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: April 18, 2019

CASE NO(S): DC140020

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

Appellant:	Amacon Development (City Centre) Corp.
Appellant:	Building Industry and Land Development Association
Appellant:	Orlando Corporation
Subject:	Development Charges By-law 0161-2014
Municipality:	City of Mississauga
L.P.A.T. Case No.:	DC140020
L.P.A.T. File No.:	DC140020
L.P.A.T. Case Name:	Amacon Development (City Centre) Corp. v. Mississauga (City)

Heard: June 26, 2018 by telephone conference call

APPEARANCES:

Parties

City of Mississauga ("City")

Amacon Development (City Centre) Corp. ("Amacon")

Orlando Corporation ("Orlando")

Building Industry and Land Development Association ("BILD")

Counsel

Paul DeMelo

Susan Rosenthal

Leo Longo

Robert Howe

DECISION DELIVERED BY K.J. HUSSEY AND ORDER OF THE TRIBUNAL

[1] This pre-hearing conference was conducted by way of a telephone conference call. Its purpose was to provide a status update on the remaining appeals to the City of Mississauga Development Charges By-law No. 0161-2014; to set dates for the hearing and to file the procedural order that will govern the hearing.

[2] The Tribunal was advised that the City has resolved the appeals with both Orlando and BILD. The only appellant that remains is Amacon.

[3] The hearing of that appeal is scheduled for 10 days and is set to begin on **Monday, June 10, 2019 at 10 a.m. at:**

**Municipal Hearing Room
City Hall, City of Mississauga
300 City Centre Drive
Mississauga, Ontario**

[4] No further notice is required.

[5] The Tribunal is now in receipt of the final version of the Procedural Order and Issues list, which are attached to this decision, as Appendix 1.

[6] This Member is not seized.

"K.J. Hussey"

K.J. HUSSEY
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

APPENDIX 1

Local Planning Appeal Tribunal

Tribunal d'appel de l'aménagement local

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

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PROCEDURAL ORDER

The Tribunal orders that:

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The Hearing will begin on **June 10, 2019 at 10:00 a.m.** at **City Hall, City of Mississauga, 300 City Centre Drive**. No further notice shall be required.
3. The length of the Hearing will be **10 days**. The length of the Hearing may be shortened as issues are resolved or settlement is achieved.
4. The Parties identified at the Prehearing Conference are listed in **Attachment 1** to this Order.

5. The Issues are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list unless the Tribunal permits, and a Party who asks for changes may have costs awarded against it.
6. The order of evidence at the Hearing shall be as set out in **Attachment 3** hereto.

Requirements Before the Hearing

7. Unless the parties agree otherwise, expert witnesses in the same discipline shall have at least one meeting prior to the commencement of the Hearing to try to resolve or reduce the issues for the Hearing. The experts shall prepare a list of any agreed facts and provide this list to all of the parties and the Tribunal.
8. A Party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other Parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **April 22, 2019**. For expert witnesses, a Party must include a copy of the witness's *curriculum vitae* and the area of expertise in which the witness is proposed to be qualified.
9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the Hearing. Copies of this must be provided as in section 11. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony. For greater certainty, each expert witness statement must comply with the minimum content requirements specified in Rule 7.04 of the Tribunal's *Rules of Practice and Procedure*. In addition, each expert witness shall execute an Acknowledgement of Expert's Duty and shall append the executed Acknowledgement to his/her witness statement.
10. Witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the Party calling them must file an outline of the witness's anticipated evidence, as in section 11.
11. On or before **May 6, 2019**, the Parties shall provide electronic copies of their written evidence and expert witness statements to the other Parties. The Parties shall also deliver hard copies of their witness and expert witness statements to the Tribunal, if requested.
12. On or before **May 24, 2019**, the Parties may provide to all other parties an electronic written reply to any written evidence. The Parties shall also deliver hard copies of their reply witness and expert witness statements to the Tribunal, if requested.

13. On or before **May 31, 2019**, the Parties shall provide electronic copies of their visual evidence to all of the other Parties or, alternatively, shall arrange for a viewing of visual evidence that cannot reasonably be transmitted.
14. A Party wishing to change written evidence, including expert witness statements, must make a written motion to the Tribunal (see Rule 10 of the Tribunal's Rules, which require that the moving party provide copies of the motion to all other parties at least fifteen (15) days before the Tribunal hears the motion).
15. A Party who provides a witness' written evidence or expert witness statement to the other Parties must have the witness attend the Hearing to give oral evidence, unless the Party notifies the Tribunal and other Parties at least 7 days before the Hearing that same is not part of their record.
16. Documents may be delivered by personal delivery, email, courier, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. For documents delivered by e-mail, a hard copy shall also be delivered in the event that the recipient party requests a hard copy. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
17. No adjournments or delays will be granted before or during the Hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is not seized.

So Orders the Tribunal.

ATTACHMENT 1

Parties

Parties

CITY OF MISSISSAUGA

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ATTACHMENT 2

Issues List

General

1. Have the development charges imposed by By-law 0161-2014 (the “By-law”) been calculated using a methodology that is reasonable, fair and in compliance with the requirements of the *Development Charges Act, 1997* (the “DCA”) and Regulations, including with respect to:
 - a. funding increased capital costs required because of increased needs for service arising from development;
 - b. not funding increased services that would result in the level of service exceeding the average level of service provided in the municipality over the 10-year period immediately preceding the preparation of the subject background study;
 - c. appropriately accounting for excess capacity in the municipality’s infrastructure;
 - d. appropriately accounting for post-period benefits;
 - e. appropriately accounting for benefits to existing development;
 - f. appropriately adjusting for capital grants, subsidies and other contributions;
 - i. appropriately calculating a maximum funding envelope; and
 - ii. appropriately including and excluding all capital projects and associated costs?
2. If the methodology used to calculate the development charges imposed by the By-law have not been calculated using a methodology that is reasonable and in conformity with the requirements of the DCA and Regulations, what is an appropriate alternative methodology and resulting development charges?
3. Have exigible development charges been overestimated by not accruing interest on opening reserve fund balances through the application of the cash flow method?

Fire Services

4. Is the residential share of the fire services component of the development charge based on “taxable assessment” appropriate and permitted by the DCA?

5. Has the development charge imposed by the subject by-law for fire services been calculated using a methodology that is reasonable and in compliance with the requirements of the DCA and Regulations (the “Legislative Requirements”), and in particular:
 - a. Is the calculation based on an appropriate estimate of the increase in need for service attributable to anticipated development during the study period (2014-2023) for which the development charge is to be imposed?
 - b. Does the methodology appropriately account for service increases that will benefit existing development?
 - c. Does the methodology ensure that the development charge will not fund an increase in service that would result in the level of service exceeding the average level of service provided in the municipality over the 10-year period immediately preceding the preparation of the subject background study, in compliance with the Legislative Requirements, and in particular:
 - i. does the level of service assessment used take into account both the quantity and quality of the service; and,
 - ii. in determining the quality of service, is the replacement cost of municipal capital works, exclusive of an allowance for depreciation, required to be used, and if so has the level of service assessment used done so?
6. Is it appropriate to use the Fire Station Model as the basis for determining the increase in need for service funding by the Fire service development charge?
7. Has the estimated increase in need for fire service attributable to anticipated development during the study period that forms the basis of development charge calculation been the subject of an indication by the council that it intends to ensure that such increase in need will be met, in accordance with the Legislative Requirements?
8. Has the estimated increase in need for service and increased capital cost of the fire training centre attributed to anticipated development during the study period appropriately taken into account:
 - a. the need for service attributable to development after the study period that will be met by the fire training centre;
 - b. the portion of the fire training centre used by the Department of National Defence, Peel Police or other agencies; and

- c. the extent to which the fire training centre is used as a resource for training the fire services staff of other municipalities (outside Mississauga) or other users?

Transit Services

- 9. Has the Transit development charge imposed by the subject by-laws, including the inclusion of a Transit Adjustment Factor, been calculated using a methodology that is reasonable and in compliance with the Legislative Requirements, and in particular:
 - a. does it appropriately fund increased capital costs that are required because of increased needs for service arising from development;
 - b. would it result in the development charge funding a level of service exceeding the average level of service provided in the municipality over the 10-year period immediately preceding the preparation of the subject background study; and/or
 - c. does it appropriately account for service increases that will benefit existing development?

Other Soft Services

- 10. Is the allocation of one hundred percent of eligible recreation services, library services and Living Arts Centre debt costs to the residential sector appropriate and permitted by the DCA?
- 11. Is the residential share of the General Government component of the development charge based on “weighted taxable assessment” appropriate and permitted by the DCA?
- 12. Should the City Centre Parking Structure be included as a facility to be funded through the City’s development charges, and if so, to what extent? Is the share of the City Centre Parking Structure Costs allocated to the residential sector reasonable? If not, what is the reasonable share, if any, to allocate to the residential sector?
- 13. For Parking services, has Council indicated an intent to commit excess capacity in compliance with the DCA and Regulations?

Roads

- 14. Has the roads charge been calculated using a methodology that is reasonable and in compliance with the DCA, including with respect to:

- a. The appropriate allocation of benefit-to-existing; and,
 - b. Post-period benefit?
15. Regarding grade separations, in addition to the issues set out in issue 14, has the charge been calculated using a methodology that is reasonable and in compliance with the DCA, including with respect to:
- a. The appropriate split between residential and non-residential growth?
16. Has the calculation of the roads charge appropriately considered alternative funding sources?
17. With respect to the cycling network and capital program, has the charge appropriately considered developer contributions provided through development approvals?

Determination of Charges

18. What are the appropriate development charges to be imposed by the subject by-laws, implementing those adjustments that are appropriate, if any, to reflect the Tribunal's decision on the above issues?

ATTACHMENT 3

Order of Evidence

1. City of Mississauga
2. Amacon Development (City Centre) Corp.
3. City of Mississauga – Reply if necessary

Note: The hearing panel will determine the timing for the evidence of participants