

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



**ISSUE DATE:** August 15, 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** subsection 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 No. 0161-2014
Municipality:	City of Mississauga
OMB Case No.:	DC140020
OMB File No.:	DC140020
OMB Case Name:	Amacon Development (City Centre) Corp. v. Mississauga (City)

**Heard:** June 10 – June 19 in Mississauga, Ontario, and by Written Submissions on July 8, 2019

**APPEARANCES:**

**Parties**

Amacon Development (City Centre) Corp.

**Counsel**

S. Rosenthal  
A. Lusty

City of Mississauga

P. DeMelo  
L. Magi

Building Industry and Land  
Development Association

S. Rosenthal for R. Howe

## **DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL**

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[1] Amacon Development (City Centre) Corp. (“Amacon”), Orlando Corporation (“Orlando”) and Building Industry and Land Development Association (“BILD”) appealed the City of Mississauga (“City”) Development Charges By-law No. 0161-2014 (“By-law”).

[2] At the outset of the hearing, the Tribunal was advised that the appeals of Orlando and BILD had been settled. At this point, the appeal by Amacon had not settled and the hearing of the merits of that appeal commenced.

[3] During the hearing, the Tribunal’s decision on appeals of a Regional Municipality of Peel Development Charges By-law issued. The Parties advised the Tribunal that the decision in that matter might have implications for this Mississauga By-law. The Parties engaged in further review and discussion resulting in the settlement of the Amacon appeal as well.

### **LEGISLATION**

[4] The *Development Charges Act* (“Act”) is specific and precise. Its requirements, and the role of the Tribunal, have been set out in various decisions including those by this panel of the Tribunal. They are repeated here for context in this Decision.

[5] The Tribunal’s role in deciding an appeal does not include analysis of the policy preference that may underlay a municipality’s decision on the form and application of its By-law. For example, there may be a policy preference to encourage a particular sector and a wish to do so through discounted development charges. The policy preference remains that of the municipality. The Tribunal’s role is simply to determine if the

expression of that policy preference in the By-law and its application has met the requirements of the Act.

[6] Section 2(1) of the Act sets out the principle to guide the development of the By-law. This principle is often summarized as “growth pays for growth”:

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.

[7] If a cost is unrelated to an increased need that arises because of growth, then it cannot be included in the By-law. If there is benefit to existing development, that benefit must be identified and deducted in the calculation of the By-law’s charge. This is set out in section 5(1)6:

The increase in the need for service must be reduced by the extent to which an increase in service to meet increased need would benefit existing development...

[8] Similarly, section 5(1)4 requires that if there is a benefit that extends beyond the period permitted by the Act then that, too, must be identified and deducted in the calculation of the By-law’s charge.

[9] Where a municipality has identified different types of development it may only impose a development charge on that type of development for the increased need that is generated by growth in that particular type of development. Where a municipality sets different categories of development, it is then constrained to ensure that the development charge applied to a category results solely from the increased need generated by growth in that category.

[10] A development charge by-law is forward looking in that it is based on projected growth. Identifying that projected growth requires a background study that must meet certain requirements that are set out in the Act. Central to the requirements of the background study is that it must analyze and set out clearly the basis for the proposed

charges to ensure that they are for the increased service needs that are required by the anticipated growth within a specified category within the period. The study must be transparent in its analysis and its chosen methodology must support development charges that conform to the requirements of the Act.

## **ISSUES, ANALYSIS AND FINDINGS**

[11] Evidence on the final settlement was submitted in written form. The Tribunal had before it the affidavit of Craig Binning, a qualified land economist and municipal finance analyst.

[12] As a result of the settlements between the City and Orlando and BILD, the calculation methodology in the By-law was amended to a net methodology rather than an alternative methodology.

[13] Alternative methodologies will occasionally include the use of proxies such as weighted taxable assessment of different categories or simple tax assessment of those different categories to determine historic service levels and project future need based on future growth. With growth expressed in population and jobs, alternative methodologies may result in proxies that do not align with a correct allocation of the growth that precipitates need in a given service area.

[14] There was no challenge to the population/employment growth assumptions, no challenge to most of the projects the City had identified as needed to accommodate estimated growth and no challenge to the costing estimates for those identified projects.

[15] Matters that Amacon pursued are summarized below:

1. The allocation of costs between residential and non-residential development, including those for General government and Fire Services;
2. The appropriateness of the Cash Flow calculation with respect to interest

on the reserve funds;

3. The inclusion within the development charges of the parking structure within the City Centre;
4. The methodology used to determine the development charges for transit services and for fire services;
5. The amount to be attributed to in-period growth for the City's cycling program within Road and within Recreation services;
6. The amount to be attributed to in-period growth for certain new roads and grade separations; and
7. The amount attributed to post-period growth for certain Road projects.

[16] For General Government and Fire Services, a recalculation was made based upon the proportion of projected growth between the residential and non-residential sectors rather than a weighted taxable or taxable assessment basis. The result is 44.6% residential and 55.4% non-residential.

[17] For the parking structure within City Centre, the settlement now apportions the project cost as 25% residential and 75% non-residential, based on an analysis and projection of the extent to which each category accounts for the future need for the parking service.

[18] For the Recreation cycling program, 30% of the recreation component of the cycling capital infrastructure is now attributed to in-period growth.

[19] For certain identified Road grade separations, the settlement has reduced the in-period costs attributed to growth to 60%.

[20] Consistent with the 60% attribution to in-period growth for the identified grade separations, the settlement includes 60% of the cycling infrastructure costs, less the available reserve fund balance, attributed to in-period growth.

[21] Amacon challenged the recovery amounts for certain Roads projects that attributed the costs to in-period growth. The settlement has increased the post-period attribution of certain identified projects and, in one case, an increase in the attribution of benefit to existing. The increases range from 1.06% to 27.46%, as set out below:

- a) 27.46% – Project 1.1.5 - Courtney Park Dr. E./Hwy 410 Ramp
- b) 27.46% – Projects 1.1.14, 1.1.15, 1.1.16, and 1.2.19 - Creekbank Crossing and Road Widening
- c) 27.46% – Projects 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.13, 1.2.14, 1.2.17, 1.2.18, 1.2.21, 1.2.25, 1.2.26 - City Centre Related
- d) 4.42% – Projects 1.2.10 and 1.2.12 – New Roads, Drew Road
- e) 10% – Project 1.2.11 – Widening, Drew Road
- f) 1.75% – Project 1.2.15 - Edwards Blvd
- g) 1.75% – Project 1.2.16 - Highway 401 EB Ramp Ext.
- h) 1.06% – Project 1.2.23 - Sheridan Park
- i) 8.28% – Project 1.2.24 - Credit River Crossing

[22] In Mr. Binning's unchallenged professional opinion, each of the changes set out in the preceding paragraphs and that resulted from the settlement is appropriate.

[23] On the affidavit evidence of Mr. Binning, the Tribunal finds that no new background study is necessary, and the calculation of the change has been done in a manner consistent with the requirements of the Act and Ontario Regulation 82/98.

[24] The settlement with Amacon built upon the settlements the City reached with Orlando and with BILD. The detail of the changes from the original rates in the By-law through the settlements with Orlando, with BILD and with Amacon were set out by Mr. Binning in three schedules. Schedule A1 shows the original rates, Schedule A2 shows the rates resulting from the settlements with Orlando and BILD and Schedule A3 shows the rates further adjusted as a result of the settlement with Amacon. These Schedules are set out in Attachment 1 to this Decision.

## **ORDER**

[25] The Tribunal Orders that the appeals by Amacon Development (City Centre) Corp., Orlando Corporation and Building Industry and Land Development Association are allowed in part and the City of Mississauga Development Charges By-law No. 0161-2014 is amended in accordance with Schedule A3 as set out in Attachment 1 to this Decision.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Local Planning Appeal Tribunal**

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ATTACHMENT 1

**Schedule A.1:  
Original Rates Included in Development Charges By-law 0161-2014**

**Amount of Charge Residential**

Service	Residential Charge By Unit Type			Percentage of Charge
	Small Units	Apartments Units	Other Residential	
General Government	\$95.69	\$140.20	\$211.28	0.8%
Library	\$452.53	\$663.02	\$999.12	3.8%
Fire Services	\$852.19	\$1,248.59	\$1,881.52	7.2%
Recreation	\$4,358.37	\$6,385.68	\$9,622.68	36.9%
Transit	\$685.71	\$1,004.68	\$1,513.97	5.8%
Public Works	\$272.82	\$399.72	\$602.34	2.3%
Parking	\$130.58	\$191.32	\$288.30	1.1%
LAC Debt	\$67.16	\$98.39	\$148.27	0.6%
Roads	\$4,910.90	\$7,195.23	\$10,842.61	41.5%
<b>Total Charge</b>	<b>\$11,825.95</b>	<b>\$17,326.83</b>	<b>\$26,110.09</b>	<b>100.0%</b>



**Schedule A.1:**  
**Original Rates Included in Development Charges By-law 0161-2014**

**Amount of Charge Industrial**

Service	Industrial Charge		Percentage of Charge
	Charge per Square Metre of Total Floor Area	Charge per Square Foot of Total Floor Area	
General Government	\$0.54	\$0.05	0.7%
Library Services	\$0.00	\$0.00	0.0%
Fire Services	\$3.42	\$0.32	4.4%
Recreation	\$0.00	\$0.00	0.0%
Transit	\$9.58	\$0.89	12.3%
Public Works	\$3.79	\$0.35	4.9%
Parking	\$1.82	\$0.17	2.4%
LAC Debt	\$0.00	\$0.00	0.0%
Roads	\$58.47	\$5.43	75.3%
<b>Total Charge</b>	<b>\$77.62</b>	<b>\$7.21</b>	<b>100.0%</b>

**Schedule A.1:  
Original Rates Included in Development Charges By-law 0161-2014**

**Amount of Charge Non-Industrial**

<b>Service</b>	<b>Non-Industrial Charge</b>		<b>Percentage of Charge</b>
	<b>Charge per Square Metre of Total Floor Area</b>	<b>Charge per Square Foot of Total Floor Area</b>	
General Government	\$0.54	\$0.05	0.6%
Library Services	\$0.00	\$0.00	0.0%
Fire Services	\$3.42	\$0.32	3.6%
Recreation	\$0.00	\$0.00	0.0%
Transit	\$9.58	\$0.89	10.0%
Public Works	\$3.79	\$0.35	4.0%
Parking	\$1.82	\$0.17	1.9%
LAC Debt	\$0.00	\$0.00	0.0%
Roads	\$76.33	\$7.09	79.9%
<b>Total Charge</b>	<b>\$95.48</b>	<b>\$8.87</b>	<b>100.0%</b>

**Schedule A.2:  
Rates Arising from Settlement with BILD and Orlando**

**Amount of Charge Residential**

<b>Service</b>	<b>Residential Charge By Unit Type</b>			<b>Percentage of Charge</b>
	<b>Small Units</b>	<b>Apartments Units</b>	<b>Other Residential</b>	
General Government	\$95.95	\$140.29	\$211.34	0.6%
Library	\$431.70	\$631.16	\$950.84	4.3%
Fire Services	\$640.83	\$936.91	\$1,411.45	3.9%
Recreation	\$4,122.84	\$6,027.69	\$9,080.68	40.7%
Transit	\$590.54	\$863.39	\$1,300.68	5.9%
Public Works	\$219.94	\$321.55	\$484.42	2.2%
Parking	\$130.93	\$191.43	\$288.39	0.7%
LAC Debt	\$67.34	\$98.45	\$148.32	0.7%
Roads	\$4,924.29	\$7,199.44	\$10,845.91	40.9%
<b>Total Charge</b>	<b>\$11,224.36</b>	<b>\$16,410.31</b>	<b>\$24,722.03</b>	<b>100.0%</b>

**Schedule A.2:  
Rates Arising from Settlement with BILD and Orlando**

**Amount of Charge Industrial**

<b>Service</b>	<b>Industrial Charge</b>		<b>Percentage of Charge</b>
	<b>Charge per Square Metre of Total Floor Area</b>	<b>Charge per Square Foot of Total Floor Area</b>	
General Government	\$0.54	\$0.05	0.7%
Library Services	\$0.00	\$0.00	0.0%
Fire Services	\$2.57	\$0.24	3.4%
Recreation	\$0.00	\$0.00	0.0%
Transit	\$8.20	\$0.76	11.0%
Public Works	\$3.05	\$0.28	4.1%
Parking	\$1.82	\$0.17	2.4%
LAC Debt	\$0.00	\$0.00	0.0%
Roads	\$58.47	\$5.43	78.3%
<b>Total Charge</b>	<b>\$74.65</b>	<b>\$6.93</b>	<b>100.0%</b>

**Schedule A.2:  
Rates Arising from Settlement with BILD and Orlando**

**Amount of Charge Non-Industrial**

Service	Non-Industrial Charge		Percentage of Charge
	Charge per Square Metre of Total Floor Area	Charge per Square Foot of Total Floor Area	
General Government	\$0.54	\$0.05	0.6%
Library Services	\$0.00	\$0.00	0.0%
Fire Services	\$2.57	\$0.24	2.8%
Recreation	\$0.00	\$0.00	0.0%
Transit	\$8.20	\$0.76	8.9%
Public Works	\$3.05	\$0.28	3.3%
Parking	\$1.82	\$0.17	2.0%
LAC Debt	\$0.00	\$0.00	0.0%
Roads	\$76.33	\$7.09	82.5%
<b>Total Charge</b>	<b>\$92.51</b>	<b>\$8.59</b>	<b>100.0%</b>

**Schedule A.3:  
Rates Arising from Settlement with Amacon**

**Amount of Charge Residential**

Service	Residential Charge By Unit Type			Percentage of Charge
	Small Units	Apartments Units	Other Residential	
General Government	\$64.15	\$93.79	\$141.29	0.6%
Library	\$431.70	\$631.16	\$950.84	4.3%
Fire Services	\$387.19	\$566.09	\$852.81	3.9%
Recreation	\$4,059.34	\$5,934.85	\$8,940.82	40.7%
Transit	\$590.54	\$863.39	\$1,300.68	5.9%
Public Works	\$219.94	\$321.55	\$484.42	2.2%
Parking	\$73.36	\$107.25	\$161.58	0.7%
LAC Debt	\$67.34	\$98.45	\$148.32	0.7%
Roads	\$4,083.40	\$5,970.03	\$8,993.82	40.9%
<b>Total Charge</b>	<b>\$9,976.96</b>	<b>\$14,586.56</b>	<b>\$21,974.58</b>	<b>100.0%</b>

**Schedule A.3:  
Rates Arising from Settlement with Amacon**

**Amount of Charge Industrial**

<b>Service</b>	<b>Industrial Charge</b>		<b>Percentage of Charge</b>
	<b>Charge per Square Metre of Total Floor Area</b>	<b>Charge per Square Foot of Total Floor Area</b>	
General Government	\$0.89	\$0.08	1.3%
Library Services	\$0.00	\$0.00	0.0%
Fire Services	\$5.37	\$0.50	7.8%
Recreation	\$0.00	\$0.00	0.0%
Transit	\$8.20	\$0.76	12.0%
Public Works	\$3.05	\$0.28	4.5%
Parking	\$2.47	\$0.23	3.6%
LAC Debt	\$0.00	\$0.00	0.0%
Roads	\$48.51	\$4.51	70.8%
<b>Total Charge</b>	<b>\$68.49</b>	<b>\$6.36</b>	<b>100.0%</b>

**Schedule A.3:  
Rates Arising from Settlement with Amacon**

**Amount of Charge Non-Industrial**

Service	Non-Industrial Charge		Percentage of Charge
	Charge per Square Metre of Total Floor Area	Charge per Square Foot of Total Floor Area	
General Government	\$0.89	\$0.08	1.1%
Library Services	\$0.00	\$0.00	0.0%
Fire Services	\$5.37	\$0.50	6.4%
Recreation	\$0.00	\$0.00	0.0%
Transit	\$8.20	\$0.76	9.8%
Public Works	\$3.05	\$0.28	3.7%
Parking	\$2.47	\$0.23	3.0%
LAC Debt	\$0.00	\$0.00	0.0%
Roads	\$63.30	\$5.88	76.0%
<b>Total Charge</b>	<b>\$83.28</b>	<b>\$7.73</b>	<b>100.0%</b>