

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



ISSUE DATE: February 28, 2019

CASE NO(S): DC180010

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 22(1) of the *Development Charges Act, 1997, S.O. 1997, c. 27*

Appellant: Andy Stone
Subject: Complaint against a Development Charge imposed under the authority of Development Charges By-law No.14-153
Property Address/Description: 390 Aberdeen Avenue
Municipality: City of Hamilton
LPAT Case No.: DC180010
LPAT File No.: DC180010

PROCEEDING COMMENCED UNDER subsection 24(5) of the *Development Charges Act, 1997, S.O. 1997, c. 27* and Rule 10 of the Tribunal’s *Rules of Practice and Procedure*

Motion by: City of Hamilton
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Andy Stone
Subject: By-law No. 14-153
Municipality: City of Hamilton
LPAT Case No.: DC180010
LPAT File No.: DC180010

Heard: Written Submissions

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Andy Stone	Self-represented
City of Hamilton	M. Kovacevic*

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

BACKGROUND

[1] This is a written motion to dismiss the appeal of Andy Stone (“Appellant”). The motion is brought by the City of Hamilton (“City”) to dismiss the appeal filed by the Appellant pursuant to s. 22(1) of the *Development Charges Act, 1997*, S.O. 1997, c. 27 (“Act”).

[2] This written motion was brought in accordance with the Tribunal’s *Rules of Practice and Procedure*, effective April 3, 2018 (“Tribunal Rules”), specifically Tribunal Rule 10.

[3] In accordance with the requirements of the Act, and in accordance with the Tribunal Rules, the Appellant was given a full opportunity to file a written Response to the Motion, and did so. As a result, the Tribunal had before it the Motion, the Response to the Motion and the City’s Reply to the Response.

[4] Andy Stone and Karen Dearness (together “Owners”) converted an existing detached accessory structure to a detached single dwelling unit at 390 Aberdeen Avenue (“Property”) in the City of Hamilton (“City”). Four development charge by-laws are in effect for the area in which this Property is located. They are:

1. City of Hamilton By-law No. 14-153 (“City DC By-law”), the general by-law regarding development and applicable to lands within the City.

2. City of Hamilton By-law No. 11-174 (“GO Transit DC By-law”), a targeted by-law for development charges to pay for increased needs for GO Transit Service arising from development within the City.
3. Hamilton-Wentworth Catholic District School Board Education Development Charges By-law No. 2014 (“Separate School DC By-law”).
4. Hamilton-Wentworth District School Board Education Development Charges By-law No. 14-1 (“Public School DC By-law”).

[5] For ease in reading this Decision, the Tribunal will refer to the City DC By-law together with the GO Transit DC By-law as the City DC By-laws. Similarly, the Tribunal will refer to the Separate School DC By-law together with the Public School DC By-law as the Education DC By-laws.

LEGISLATIVE CONTEXT

[6] This is an appeal made pursuant to s. 22(1) of the Act. An appeal under this section is an appeal by a complainant of the decision of the municipality on a complaint regarding the application of a development charge by-law. The requirements for a complaint, including the statutory grounds for a complaint, are set out in s. 20(1) of the Act.

[7] Section 20(1) sets out three grounds for a complaint:

1. the amount of the development charge was incorrectly determined;
2. whether a credit is available to be used against the development charge or the amount of the credit or the service for which the credit was given was incorrectly determined; or
3. there was an error in the application of the development charge by-law.

[8] The grounds set out in the Act are very specific and quite focused. They do not include a request to be exempt from a development charge by-law nor do they include a request to create a new category of residential development not now found in the development charge by-law.

[9] Section 21(1) of the Act specifies the period in which the complainant may appeal the decision of the municipality on the complaint. The Act states that the last day for appealing the decision is "...40 days after the decision is made..."

[10] Finally, s. 24(5) of the Act provides that the Tribunal may dismiss the appeal without holding a full hearing if the Tribunal "...is of the opinion that the complaint set out in the notice of appeal is insufficient..."

ANALYSIS AND FINDINGS

[11] The Appellant made a request to the City to reduce the fees to be paid. The request for a reduction or exemption was policy driven. The Appellant suggested that the form of housing created on the Property offered a new approach to the provision of affordable housing with intensification by way of a second detached single dwelling unit on a single lot. The Appellant takes the position that this form of intensification should be recognized with a reduction in, or exemption from, the amount of development charges to be paid.

[12] The City refused the Appellant's request.

[13] In effect, through the appeal of this request, the Appellant is asking the Tribunal to substitute its policy preference for that of the City. The Tribunal's role is to implement the specific requirements of the Act, not to alter development charge policy decisions of the City where there has been no deviation from the requirements of the Act.

[14] In this case, the evidence before the Tribunal is that the Appellant applied for and received an amendment to the applicable zoning by-law to convert an existing detached

structure into a separate dwelling unit on the Property that already had one single detached dwelling.

[15] The City takes the position that the Appellant was advised that the full development charge and parkland dedication fee would be payable. The Appellant then elected to proceed and paid the fees required. The development charges had been stated clearly in the respective by-laws, which were in full force and effect and not appealed by the Appellant in this matter.

[16] In the matter now before the Tribunal, the Appellant did not complain that the development charge had been incorrectly determined and did not assert that there was any credit available to be applied to the development charge or that the application of the credit was incorrectly determined. Although the Appellant has suggested that the City should have an additional category that recognizes the form of development that has occurred on the Property with the addition of the single detached dwelling, or should simply exempt that development, the Appellant did not assert that the calculation of the development charge owing was not correctly applied in terms of the existing categories within the City DC By-laws.

[17] The Tribunal finds that no complaint within the meaning of the Act was made and, pursuant to s. 24(5) of the Act, the Tribunal is of the opinion that the complaint set out in the notice of appeal is insufficient.

[18] Additionally, s. 21(1) of the Act requires that the last day for an appeal to be filed is "...the day that is 40 days after the day the decision is made." The Appellant does not dispute that the appeal was not made within this statutory time period. Rather, the Appellant suggests that the 40-day requirement was confusing and thought it meant 40 business days.

[19] The statutory requirement is clear and specific. The Tribunal has no jurisdiction in this case to alter the 40-day requirement. The appeal was filed late.

ORDER

[20] The Tribunal orders that the appeal by Andy Stone is dismissed.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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Local Planning Appeal Tribunal

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