



Committee Report

To:	Warden Hicks and Members of Grey County Council
Committee Date:	June 10, 2021
Subject / Report No:	CCR-CW-05-21
Title:	Development Charges Appeal Hearing Process
Prepared by:	Heather Morrison, County Clerk Michael Letourneau, Director of Legal Services – County Solicitor
Reviewed by:	Kim Wingrove
Lower Tier(s) Affected:	Georgian Bluffs
Status:	Adopted as presented by Committee of the Whole through Resolution CW95-21; Endorsed by County Council CC51-21. Councillors Woodbury and Desai were appointed along with Warden Hicks.

Recommendation

1. That Report CCR-CW-05-21 regarding establishing a Development Charges Appeal Process be received; and
2. That Council establish an ad hoc hearing committee to adjudicate a formal complaint under the Development Charges Act made on May 10, 2021 to consist of the Warden, as Chair, and two other members of Council; and
3. That Council, pursuant to sections 11 and 23.5 of the *Municipal Act, 2001* delegate to the hearing committee all of its authority to hear and decide of the complaint, including the power to control its own process and establish all rules in accordance with the provisions of the Statutory Powers Procedures Act; and
4. That Council direct staff in the Clerk's and Legal Services Departments to assist and advise the hearing committee in carrying out its mandate, and direct all other County staff involved in any response of the County to the complaint to deal with the hearing committee only through the formal hearing process; and
5. That the following members be appointed to the hearing committee: Warden Hicks, as chair, Councillor _____ and Councillor _____; and
6. That pursuant to 25.6 b of the County's Procedural By-law, in consultation with the chair, staff be authorized to make preliminary preparations for the hearing prior to formal Council approval.

Executive Summary

County Council has received a formal complaint regarding the County's Development Charges By-laws. The Development Charges Act requires Council to hold a formal hearing into the complaint.

The County's Procedural By-law, which establishes the procedures that Council follows in conducting its meetings, does not address hearings of this nature, since they are subject to rules under the provincial Statutory Powers Procedures Act (SPPA).

Staff propose that, in order to provide an efficient and effective hearing process under the SPPA rules, an ad hoc hearing committee be established to conduct the hearing and decide the complaint. The hearing committee would exercise all authority of Council to carry out this hearing.

Background and Discussion

A formal complaint has been made to County Council under the provisions of the Development Charges Act. The Act allows persons required to pay a development charge to file a formal complaint with Council about the application of the County's development charges By-laws.

Staff do not have any record of any other such complaint having been filed since the County first enacted development charges on January 1, 2007.

Under the Act, formal complaints may only be made on a very limited number of grounds. Most are related to the calculation of the charge amount, but a complaint may also be that an error was made in the application of the by-law.

The complaint made to County Council is that there was an error in applying the County's Development Charges By-laws in respect of a building project in Georgian Bluffs. The application of those By-laws is a matter determined by the relevant staff in each lower-tier municipality, typically by those responsible for issuing building permits.

The Act requires that Council hold a formal hearing on the complaint. Based on what is presented at the hearing, it must then either dismiss the complaint or uphold it and correct the error. The hearing is required to be held within 60 days of the formal complaint being filed. This is a process like an appeal to the Local Planning Act Tribunal (LPAT).

Council must act as a tribunal in this hearing, rather than in its usual role as a governing body. Any decision made must be made based on the evidence presented and submissions made during the hearing. The hearing must be open to the public and be held in accordance with the rules provided in the Statutory Powers Procedures Act (the "SPPA").

The SPPA provides "default" rules for the conduct of tribunals and their hearings where no other legislation provides them. In this case, no other rules are provided in legislation for the adjudication of formal development charges complaints.

Since the hearing is required to be held under the SPPA rules, the provisions of the County's Procedural By-law (#5003-18, as amended), do not apply to the hearing (see section 2.2 of the By-law). Because Council has no established processes or procedures for handling such

complaints, Clerk's and Legal Services staff have prepared a proposed approach that will allow Council to fulfil its role effectively and efficiently as an adjudicator for the current complaint.

Proposed adjudication process

Clerk's staff, with the advice and assistance of Legal Services staff, recommend that County Council establish an ad hoc hearing committee to adjudicate the complaint. Since the County has no prior history of such complaints, staff do not recommend that the hearing committee be established permanently. However, the experience from handling this hearing may be helpful in setting up such a future hearing committee if such complaints became more common.

Because adjudicative hearings are, by their nature, more procedurally complex than Council meetings, staff recommend that the hearing committee's membership be small so that the hearing can proceed efficiently. Staff recommend that the hearing committee consist of the Warden and two other members of County Council. Three is a common number of decision-makers in tribunals where multiple people sit as a decision-making panel. The other common approach is to have a single decision-maker; this is, however, most common when tribunals deal with preliminary procedural matters. Staff also recommend that the quorum of the hearing committee be all three members.

In general, since any Development Charges Act complaint that County Council must decide with would arise from a determination made by staff or officials of a lower-tier municipality, staff would recommend that members of that municipality's Council not be members of the adjudication committee for that complaint. This is to avoid any questions of impartiality arising from their role on the lower-tier Council. Staff therefore recommend, with respect to the current complaint, that members of County Council who are also members of Georgian Bluff's Council not be eligible to serve on this committee.

Staff also recommend that Council delegate its full range of responsibilities to the hearing committee, including the responsibility to render a decision on the complaint on behalf of Council, and the responsibility to establish rules consistent with the authority set out in the SPPA. This will allow the hearing committee to adjudicate the complaint expeditiously and without having to proceed through formal Council authorizations.

In order to both provide for resources for the hearing committee to carry out its functions, staff recommend that Council direct the Clerk's and Legal Services Departments to assist the hearing committee in carrying out its duties, and deal with any party involved in the hearing at arm's length.

Clerk's and Legal Services staff are aware that the hearing committee will be called upon to decide the application of the County's own by-laws, and that other County staff may become involved in the hearing as well. In order to avoid improper sharing of information between those staff and the hearing committee and the staff supporting it, Clerk's and Legal Services staff recommend that staff be directed to abide by the following rules regarding communications surrounding the complaint until the hearing committee has concluded its handling of it:

- Clerk's and Legal Services staff may communicate with each other and the hearing committee in support of the committee's process
- all other staff may communicate with each other in respect of any other role the County may have in respect of the complaint

- communications between these two staff groups regarding the complaint shall occur only through the hearing committee's processes
- staff shall not communicate with the members of the hearing committee in respect of the complaint except according to these rules or any process established by the hearing committee.

Legal and Legislated Requirements

Section 20 of the Development Charges Act allows persons required to pay a development charge to make a formal written complaint to a municipal Council on certain grounds, including that an error was made in applying the by-law. Where such a complaint is made in writing no later than 90 days after the charge is payable, the Council must hold a formal hearing where the complainant has an opportunity to present evidence and submissions on their complaint. After hearing the evidence and submissions of the complainant, the Council may either dismiss the complaint or rectify and error or incorrect determination.

It also provides further detail on notices to be provided and time periods – the appeal must be heard within 60 days of it being filed. This appeal was received by the Clerk May 10, 2021.

Section 22(1) of the Development Charges Act provides that the complainant may appeal the decision of the Council to the Local Planning Appeal Tribunal (or the Ontario Land Tribunal, once the *Ontario Land Tribunal Act, 2001* comes into force). If the Council “does not deal with the complaint” within 60 days after it is made, the complainant may also appeal directly to LPAT.

Under section 3 of the Statutory Powers Procedures Act (“SPPA”), the provision of the SPPA apply to such a hearing, as the hearing constitutes “the exercise of a statutory power of decision” where the complainant is entitled to a hearing.

Under section 2.2 of the County’s Procedural By-law (By-law 5003-18, as amended), the provisions of that by-law do not apply to hearings governed by the SPPA.

Sections 11 and 23.5 of the Municipal Act, 2001 allows Council to delegate its powers and duties with respect to holding legally required hearings and rendering decisions.

Financial and Resource Implications

Costs associated with the Development Charges appeal process would include staff time and per diems for those members who are appointed to the hearing committee, both of which can be covered within existing operating budgets. It is anticipated that, given the ongoing pandemic, the hearing would take place through electronic means.

Staff from the Clerks and Legal Services department will assist the hearing committee.

Relevant Consultation

- Internal
- External

Appendices and Attachments

None.