### RECOMMENDATION

(a) That the request to waive the Development Charge (DC) Liability of $3,324.20 for the conversion of 168 West Avenue North, from a place of worship to a single family dwelling, be denied;

(b) That the request to waive the Cash-in-Lieu of Parkland Dedication Fee in the amount of $3,404 for the conversion of 168 West Avenue North, from a place of worship to a single family dwelling, be denied.

### EXECUTIVE SUMMARY

At the February 13th, 2012 Audit, Finance and Administration Committee, the owner of 168 West Avenue North, Hamilton, presented as a delegation requesting relief from DC and Cash in Lieu of Parkland Dedication fees. The subject property is being converted...
from a place of worship to a single family dwelling, attracting the aforementioned fees as a result of a change in use. Since the Downtown Hamilton Community Improvement Project Area (CIPA) for DCs was scheduled to be expanded at the February 15th, 2012 General Issues Committee meeting to include the subject property, the delegation was received with no further action.

On March 7th, 2012, Council approved report FCS12015 “Development Charge Exemption Policies for the Expanded Downtown Hamilton Community Improvement Project Area and Protected Heritage Properties Across the City and Demolition Credit Extension for 85 Robinson Street” which expanded the Downtown Hamilton CIPA to include the property in question, however, imposed DCs equivalent to 10% of the total DCs payable. Developers can choose to voluntarily contribute their DCs payable from development within the Downtown Hamilton CIPA to the Public Art Reserve or maintain them as DCs. The owner of the subject property has requested relief from the balance of DCs and Cash-in-Lieu of Parkland Dedication Fees owing as referenced in a letter dated July 11, 2012 (refer to Appendix A to Report FCS12062).

The subject property is located in the newly expanded Downtown Hamilton CIPA; the City’s DC By-laws currently exempt the Municipal DC and GO Transit DC liability for development within the outlined area to 10% of the original charge, or in this case, from $27,142, total, to $2,714.20. By-laws 09-143, 11-174 and 11-175, all as amended, originally exempted 100% of DCs for development located within the Downtown Hamilton CIPA. The property of 168 West Avenue North, however, is not located in the previous Downtown Hamilton CIPA and therefore would not have qualified for the exemption originally outlined within the aforementioned By-laws.

The Cash-in-Lieu of Parkland Dedication fee is normally calculated as 5% of the land value to be developed for single family dwelling residential development in urban or rural settlement areas. While the newly expanded Downtown Hamilton CIPA has not been applied to Parkland Dedication, all single family dwelling residential development within the Downtown Hamilton CIPA is still subject to 5% of land value.

The City collects Education DCs on behalf of the Hamilton Wentworth Catholic District School Board (HWDSB). Therefore, the City is unable to waive or exempt Education DCs. The request for relief from Education DCs will have to be directed to the HWDSB by the owner of the subject property.

Staff are recommending that request for DC relief be denied, as development within the Downtown Hamilton CIPA already receives a 90% reduction in DC fees payable and the request is not consistent with the Province’s “Growth Plan for the Greater Horseshoe, 2006” targets. Refer to the “Analysis/Rationale for Recommendation” section of Report FCS12062.
In addition, the owner of the subject property requested that the City “reconsider the practice of imposing DC liabilities on all properties initially developed before the Development Charges Act was made effective”, as indicated in Appendix A to Report FCS12062. This request is addressed in “Alternatives for Consideration” of Report FCS12062. This alternative is not recommended by staff, as it not reflective of the intent of DCs.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:**

The DCs (Municipal, Education and GO Transit) and Cash in Lieu of Parkland Dedication fees payable for this development total $6,728.20. The City acts only as a collecting agent on behalf of the HWDSB and cannot exempt Education DCs. Therefore, the total fees payable for this development, subject to the discretion of the City, totals $6,118.20, as per Table 1 of Report FCS12062.

**TABLE 1**

<table>
<thead>
<tr>
<th>168 West Ave. N, Hamilton Development Fee Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal DCs</td>
</tr>
<tr>
<td>GO Transit DCs</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
<tr>
<td>Less: Downtown Hamilton CIPA reduction (90%)</td>
</tr>
<tr>
<td>Remaining Municipal &amp; GO Transit DCs Payable</td>
</tr>
<tr>
<td>Add:</td>
</tr>
<tr>
<td>Education DC</td>
</tr>
<tr>
<td>Cash in Lieu of Parkland Dedication</td>
</tr>
<tr>
<td><strong>Total Fees Payable</strong></td>
</tr>
</tbody>
</table>

**Staffing:** N/A

**Legal:** N/A
HISTORICAL BACKGROUND  (Chronology of events)

At the February 13th, 2012 Audit, Finance and Administration Committee, the owner of 168 West Avenue North, Hamilton, presented as a delegation requesting relief from DC and Cash in Lieu of Parkland Dedication fees. The subject property is being converted from a place of worship to a single family dwelling, attracting the aforementioned fees as a result of a change in use. Since the Downtown Hamilton CIPA for DCs was scheduled to be expanded at the February 15th, 2012 General Issues Committee meeting to include the subject property, the delegation was received with no further action.

On March 7th, 2012, Council approved report FCS12015 “Development Charge Exemption Policies for the Expanded Downtown Hamilton Community Improvement Project Area and Protected Heritage Properties Across the City and Demolition Credit Extension for 85 Robinson Street” which expanded the Downtown Hamilton CIPA to include the property in question, however, imposed DCs equivalent to 10% of the total DCs payable. Developers can choose to voluntarily contribute their DCs payable from development within the Downtown Hamilton CIPA to the Public Art Reserve or maintain them as DCs.

On July 11th, 2012, Council received correspondence from the owner of the subject property (refer to Appendix A to Report FCS12062), requesting relief from the balance of DCs, as well as, the Cash-in-Lieu of Parkland Dedication fee for the development at 168 West Avenue North, Hamilton. Council referred the matter to the Audit, Finance & Administration Committee for consideration. This report addresses that request.

The development is a conversion of a former church to a single family dwelling.

By-law 09-143, as amended, states that:

“where an existing non-residential building or structure is converted in whole or in part to a residential use, the residential development charge payable for the residential units created shall be reduced by an amount equal to the non-residential rate per square foot established under this By-law and set out in Schedule "B" applied against the gross floor area so converted to residential use”.

Since the acquired property for development had previously been used as a “place of worship” as defined in By-law 09-143, as amended, no DC equivalent reductions are available, as no DCs would have been imposed on this property in its prior use. Therefore, no credits or reductions are available for the property relating to conversion.
However, the property is located in the newly expanded Downtown Hamilton CIPA, exempting the Municipal DC and GO Transit DC to 10% of the original charge, or from $27,142 total, to $2,714.20. By-laws 09-143, 11-174 and 11-175, all as amended, originally exempted 100% of DCs for development located within the Downtown Hamilton CIPA. The property of 168 West Avenue North, however, did not fall within the boundaries qualifying for the exemption originally outlined within the aforementioned by-laws. On March 7, 2012, Council approved Report FCS12015, which expanded the Downtown Hamilton CIPA to include the property in question, however, imposed DCs equivalent to 10% of the total DCs payable. Developers can then choose to voluntarily contribute their DCs payable from development within the Downtown Hamilton CIPA to the Public Art Reserve or maintain them as DCs.

The owner of the subject property recommends that DCs be exempt on all development in existence prior to the introduction of the Development Charges Act, 1989 (refer to Appendix A to Report FCS12062). This scenario is addressed in “Alternatives for Consideration” on page 5 of Report FCS12062.

The City collects Education DCs on behalf of the HWDSB. Therefore, the City is unable to waive or exempt Education DCs. The owner of the subject property will have to contact the HWDSB directly to request relief.

The Cash-in-Lieu of Parkland Dedication fee is normally calculated as 5% of the land value to be developed for single family dwelling residential development in urban or rural settlement areas. While the newly expanded Downtown Hamilton CIPA has not been applied to Parkland Dedication, all single family dwelling residential development within the Downtown Hamilton CIPA is still subject to 5% of land value.

**POLICY IMPLICATIONS**

Should Council decide to provide the relief sought, it may set a precedent for fees charged to future residential development within the Downtown Hamilton CIPA. DC fees charged within the area are reduced by 90% to promote development and redevelopment. The City requires DC revenue to fund growth infrastructure needs and service level increases. If this revenue source is removed, the funding generated will need to be replaced, therefore likely putting increased pressure on the tax levy.

- DC By-laws – requests do not conform with By-laws 09-143, 11-174 and 11-175, all as amended.
- Planning Act – the City is authorized to collect Cash-in-Lieu of Parkland Dedication under the Planning Act.
RELEVANT CONSULTATION

Planning and Economic Development Department – Staff recommend not to waive the $3,404 relating to the Cash-in-Lieu of Parkland Dedication Fee.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The following criteria were used to form the basis of the recommendation:

- A 90% reduction of DCs is already in place as per the Downtown Hamilton CIPA. The Downtown Hamilton CIPA was created for the purpose of spurring development within the Downtown core. The 90% reduction achieves this purpose by reducing DCs to a largely nominal amount relative to the entire DC fee payable otherwise.

- Ontario’s “Growth Plan for the Greater Horseshoe, 2006” dictates population growth targets and how growth is to be comprised. The document dictates that as of 2015 and thereafter, 40% of development, and therefore DC funding, is to come from intensification within a “built-up area”. This mandate requires effective DC policies to sufficiently capture funding sources for growth infrastructure. While incentives in urban areas are currently required and many are in place, the City must ensure revenue sources are maintained to fund necessary infrastructure.

ALTERNATIVES FOR CONSIDERATION

Alternative:

As proposed by the owner of the subject property, exempt all DCs on properties initially developed before the Development Charges Act, 1989, was made effective, as outlined in Appendix A to Report FCS12062. This alternative would effectively exempt all development which was in place in prior to 1989 from future DCs.

As per the Province’s “Growth Plan for the Greater Horseshoe, 2006” population forecasts, 40% of the growth infrastructure has to be funded from intensification. Also, as per the above alternative, the proposed exemption would require the City of Hamilton to fund approximately $413 million (40% of net costs to be recovered by DCs using the “City of Hamilton 2009 Development Charge Background Study”) from tax levy sources, which is not affordable.
This would be a change to the existing by-law and would require at least one public meeting according to the Development Charges Act, 1997, S.O. 1997, c. 27. Twenty days public notice would be required for this meeting and all documents would have to be made public at least two weeks prior to the meeting. A forty day appeal period would also exist.

**Pros:**
Would avoid some confusion relating to redevelopment conversion credits.

**Cons:**
This alternative is not reflective of the intent of DCs. DCs are imposed to account for increased capacity and service requirements as a result of new development or redevelopment. When existing properties are redeveloped, additional DCs only arise when a “change in use” occurs, above and beyond current service levels, or the nature of property changes. “Change in use” can result in an increase in service requirements, increasing capacity requirements and pressures on current infrastructure and services. If DCs were not collected for such “changes in use”, a significant deficit would occur relating to increased service needs and alternative funding would be required to alleviate these pressures.

The current practice of providing credits, for prior use, is effective in netting the service requirements and capturing the need for increased services as a result of redevelopment. If DCs were not collected for properties built, prior to the introduction of the Development Charges Act, 1989, the City would not be able to effectively fund increased service requirements due to property redevelopment. Also, similar fees for growth were previously collected under Lot Levies, as authorized under the Planning Act. Therefore, the collection of fees for increased service requirements, due to development and redevelopment, is not confined to the introduction of the Development Charges Act.

**Staffing Implications:** None.

**Legal Implications:** None.

**Policy Implications:** Any changes to current DC policies will require amendments to be made to the DC By-law. The amendment process is outlined above.

**This alternative is not recommended by staff.**
CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Skilled, Innovative & Respectful Organization
• More innovation, greater teamwork, better client focus
• Council and SMT are recognized for their leadership and integrity

Financial Sustainability
• Financially Sustainable City by 2020
• Effective and sustainable Growth Management
• Generate assessment growth/non-tax revenues

Social Development
• Everyone has a home they can afford that is well maintained and safe

Healthy Community
• Plan and manage the built environment
  • Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services)

APPENDICES / SCHEDULES

Mark McMaster  
168 West Avenue N  
Hamilton, ON  L8L 5C6  

11-Jul-2012  

Mayor and Councillors  

Re: Request for Relief from Development Charges Liability at 168 West Avenue N  

On 1-Apr-2011 I purchased the above property which is a former church (built c. 1910) that, at the time of purchase, bordered the former “Downtown Community Improvement Plan” (DCIP) area and is now within its recently expanded borders. I have previously sought relief from the development charges (DCs) in a presentation to the AFA Committee on 13-Feb-2012 (where my request was received and no further action taken) and through meetings and phone conversations with my Councillor and various members of City staff going back over one year. I was prepared to pay 10% of the DC liability under the new regime for the downtown ($2,714.20) until I was recently made aware of DCs that were not subject to the 90% exemption (education, cash in lieu of parkland – an additional $4,014.00). I would have made another delegation request to appear before the AFA Committee again, but they are not meeting until September.

I am redeveloping a downtown property that had decayed for decades due to neglect and converting it to a less intense use that is a good fit with the existing residential neighbourhood. I have chosen to redevelop in the downtown because of its vibrant communities and cultural life, despite the fact that the completed development will be worth far less than my financial investment. I have no means of absorbing DCs by profit and, unlike suburban residential developers subject to DCs, no future buyer to pass them on to.

Since my purchase, MPAC has changed the status of the property to residential and increased the assessment by 60%. I will pay residential taxes for all of 2012 despite not yet receiving the building permit that will make the conversion official. Throughout my ordeal I have followed the proper procedures and virtually every interaction with the City has resulted in increased costs, delays, and frustration in some combination. I believe that this explains why so many developments occur without a permit and why the City misses out on long-term tax revenue through increased assessment by imposing so many barriers to redevelopment.

I am aware that the “change of use” from “place of worship” to “single-family dwelling” gives the City the legal right to impose DCs and to assume that my redevelopment will increase the need for services. That said, Council has the authority to waive DCs in the interest of good planning as is the case here and as they have done recently with much larger amounts. I respectfully request that at its meeting of 12-July-2012, Council relieve my property of its DC liability. Further, and in the interest of quality development and long-term financial benefit, I request that Council reconsider the practice of imposing DC liabilities on all properties initially developed before The Development Charges Act was made effective.

Sincerely  

Mark McMaster