SUBJECT: City of Hamilton Development Charge Credits – Transition Policy regarding Spencer Creek Village (50 Hatt Street) (FCS06011) (City Wide)

RECOMMENDATION:

That the City of Hamilton’s Development Charge Demolition Credit Policy, as outlined in Section 29 of By-law 04-145 regarding permit issuance date, be interpreted as the initial permit issuance date when dealing with multi-phase developments.

EXECUTIVE SUMMARY:

Section 29 of Development Charge (DC) By-law 04-145 states that the value of a demolition credit is to be based on the relevant DC rates, in effect, on the date when the DC’s are payable (DC’s are payable upon permit issuance).

In 2001, Urban Horse Developments (UHD) began a multi-phase Brownfield redevelopment project at 50 Hatt Street in Dundas. The project included the demolition of a 220,793 square foot industrial building and the construction of about 590 residential units along with commercial space.

UHD based their financial decision to proceed with the project, in part, due to a development charge (DC) demolition credit of about $1,355,000 which was based on the industrial rate in the Development Charge By-Law in effect at that time.

DC demolition credits are based on the square footage demolished and the current DC rate, in effect, for the demolished building. The rate, in effect, is the rate on the date of...
permit issuance for the new development. Refer to Table 1 below for the remaining value of the credit as of July 5, 2004.

<table>
<thead>
<tr>
<th>Industrial</th>
<th>Sq Ft</th>
<th>Original Value</th>
<th>Credit Rate</th>
<th>Credit Remaining</th>
<th>Credit Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional</td>
<td>$ 3.63</td>
<td>220,793</td>
<td>$ 801,479</td>
<td>71%</td>
<td>$ 569,050</td>
</tr>
<tr>
<td>Local</td>
<td>$ 0.18</td>
<td>220,793</td>
<td>$ 39,743</td>
<td>0%</td>
<td>$ -</td>
</tr>
<tr>
<td>Special Area</td>
<td>$ 2.33</td>
<td>220,793</td>
<td>$ 514,448</td>
<td>72%</td>
<td>$ 370,402</td>
</tr>
<tr>
<td><strong>Total value of DC credit</strong></td>
<td></td>
<td></td>
<td>$ 1,355,669</td>
<td></td>
<td>$ 939,452</td>
</tr>
</tbody>
</table>

By July 5, 2004 two 62 unit apartment buildings had already been issued permits and DC credits applied. However, about 70% or about $940,000 of the credit remained. Also, at that time, a new DC by-law was passed which had the effect of reducing the value of the DC credit. This is because the industrial DC rate was changed from $3.63 to $1.00 per square foot (in 2004) and the special area charge changed also. On July 6, 2005, the industrial rate was increased to $1.60 per square foot. Since demolition credits are based on the rate in effect on the date of permit issuance, the new rates have an impact on the value of the credit. As a result, future permits would be entitled to a much smaller credit. Refer to Table 2 below for the remaining value of the credits as of July 6, 2004.

<table>
<thead>
<tr>
<th>Industrial</th>
<th>Sq Ft</th>
<th>Original Value</th>
<th>Credit Rate</th>
<th>Credit Remaining</th>
<th>Credit Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal</td>
<td>$ 1.00</td>
<td>220,793</td>
<td>$ 220,793</td>
<td>71%</td>
<td>$ 156,763</td>
</tr>
<tr>
<td>Special Area</td>
<td>$ 0.92</td>
<td>220,793</td>
<td>$ 203,130</td>
<td>72%</td>
<td>$ 146,253</td>
</tr>
<tr>
<td><strong>Total value of DC credit</strong></td>
<td></td>
<td></td>
<td>$ 303,016</td>
<td></td>
<td>$ 303,016</td>
</tr>
</tbody>
</table>

Overnight UHD’s credit was reduced by about $640,000.

The new by-law did not contemplate such negative effects on redevelopment projects that were already in progress. As a result, staff are recommending that, for multi-phase redevelopments, the DC Demolition Credit Policy be interpreted so that the DC rate used in the credit calculation is the DC rate, in effect, on the date of permit issuance of the initial permit of the redevelopment.

Using the date of the initial permit issuance is fair and reasonable and allows for a concrete credit value to be determined.

To date, two 62 unit apartment buildings, 15,360 sq ft of commercial space and a 136 unit retirement home have been issued permits. Taking into account all of the developments to date, the original credit of $1,355,000 would be worth $676,097 if the recommendation is approved. Otherwise, the credit is only worth $84,583. Another 329 residential units and 30,000 sq ft of commercial space is planned.

It should be noted that, if the recommendation is not approved, UHD may pursue other legal avenues to obtain the original credit of $1,355,000. The “Spencer Creek Village"
Subdivision Agreement states that a DC credit is to be applied against DC’s otherwise payable. Because the credit was a known amount at the time of the agreement it could be argued that the full $1,355,000 credit is applicable. It would be reasonable to interpret that the parties intended to fix the amount of the credit to be applied. In summary, UHD has a strong legal case that they should be entitled to the original value of the credit.

**BACKGROUND:**

In January 2001, Urban Horse Developments (UHD) began a multi-phase Brownfield redevelopment project at 50 Hatt Street in Dundas known as Spencer Creek Village. The redevelopment included the demolition of an existing 220,793 square foot industrial building. When completed, the redevelopment would consist of approximately 590 residential units and 45,360 square feet of commercial space in several new buildings.

Since an existing industrial building was demolished, on site, the redevelopment is entitled to receive a development charge credit. The credit is calculated by taking the square footage demolished (220,793 sq ft) and multiplying by the industrial DC rate for industrial buildings. The industrial DC rate to be used in determining the value of the credit is the rate, in effect, at the time of permit issuance for the redevelopment.

As a result, UHD made a financial investment decision based, in part, on an expected $1,355,669 development charge (DC) demolition credit.

Refer to Table 1 below for the remaining value of the credit as of July 5, 2004.

<table>
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<tr>
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<th>Original Value of DC Credit</th>
<th>Credit Remaining</th>
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<tbody>
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<td>71%</td>
<td>$569,050</td>
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<tr>
<td>Local</td>
<td>$0.18 x 220,793</td>
<td>$39,743</td>
<td>0%</td>
<td>$-</td>
</tr>
<tr>
<td>Special Area</td>
<td>$2.33 x 220,793</td>
<td>$514,448</td>
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<td><strong>$939,452</strong></td>
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<td></td>
</tr>
</tbody>
</table>

By July 5, 2004 two 62-unit apartment buildings had been issued permits with DC credits applied. About 70% of the original credit was still remaining.

On July 6, 2004, a new DC by-law was passed which had the effect of reducing the value of the DC credit. This is because the industrial DC rate was changed from $3.63 to $1.00 per square foot and the special area charge changed also. Since demolition credits are based on the rate, in effect on the date of permit issuance, the new rates have an impact on the value of the credit. As a result, future permits would be entitled to a much smaller credit. Refer to Table 2 below for the remaining value of the credits as of July 6, 2004.
Prior to the new by-law coming into effect, the remaining credit value was about $940,000. As shown in Table 2, the remaining credit value under the new by-law was reduced by about $640,000.

To date, two 62 unit apartment buildings, 15,360 sq ft of commercial space and a 136 unit retirement home have been issued permits. Taking into account all of the developments to date, the original credit of $1,355,000 would be worth $676,097 if the recommendation is approved. Otherwise, the credit is only worth $84,583. Another 329 residential units and 30,000 sq ft of commercial space is planned.

Needless to say, the financial basis for UHD’s investment decision made in 2001, has been significantly and negatively altered from what was originally expected. As a result, the next phases of the redevelopment have been delayed.

**ANALYSIS/RATIONALE:**

Demolition credits are given to recognize that a certain level of infrastructure and services are already in place and so that a redevelopment is only required to pay for the net increase in new square feet and/or new units. Section 29 of DC by-law 04-145 states that the value of a demolition credit is to be based on the relevant DC rates, in effect, on the date when the DC’s are payable (DC’s are payable upon permit issuance).

Staff are recommending that this policy be interpreted as the initial date that DC’s are payable when dealing with multi-phase developments. In other words, the DC credit value would be based on the DC rates, in effect, on the date the initial permit of the redevelopment was issued. The full $1,355,000 credit would be reinstated in this case.

Major redevelopments of this magnitude where redevelopment is occurring in multiple phases over multiple years and which transcends more than one DC by-law period are rare. In fact, section 29 of the by-law did not contemplate the possible negative effects of the demolition credit valuation method on developments in progress. Section 29 of By-law 04-145 is more appropriate for single phase redevelopments for which DC credits are used up immediately.

As a result, staff feel that, basing the credit value on the rate, in effect, on the initial permit issuance of the first phase of redevelopment, is a reasonable interpretation since a fixed credit value is important in making a business decision.
Major redevelopments such as this one on 50 Hatt Street are beneficial to the City, in many respects, such as revitalizing Brownfields and providing for efficient urban redevelopment while contributing to the City’s property tax revenues. DC credits play a valuable role in Brownfield regeneration. By factoring in a concrete value for DC credits, a better business model can be adapted for future Brownfield redevelopment projects of this type.

**ALTERNATIVES FOR CONSIDERATION:**

The alternative would be that the DC credit is recalculated each time a new building permit is issued for each phase of the redevelopment. Since the industrial DC rate (the rate the credit is based on in this case) has been reduced, the value of the credit to UHD would be reduced by about $640,000.

The final phases of the 50 Hatt Street project will include 329 apartment units, a 136 unit retirement home and 30,000 sq ft of commercial space. This project is often held up in provincial circles as a shining example of Brownfield redevelopment.

It should be noted that, if the recommendation is not approved, UHD may pursue other legal avenues to obtain the original credit of $1,355,000. The “Spencer Creek Village” Subdivision Agreement states that a DC credit is to be applied against DC’s otherwise payable. No credit value is stated but because the credit was a known amount at the time of the agreement it could be argued that the full $1,355,000 credit is applicable. It would be reasonable to interpret that the parties intended to fix the amount of the credit to be applied. In summary, UHD has a strong legal case that they should be entitled to the original value of the credit.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:**
About $640,000 in DC revenues would be foregone if the recommendation is approved; however, the development has been halted meaning that no DC revenue would be realized anyway. If the development were not to proceed there would be lost spin-off benefits such as jobs and an increase in the local economy.

**Legal:**
If the recommendation is not approved, UHD may pursue other legal avenues to obtain the original credit of $1,355,000. The “Spencer Creek Village” Subdivision Agreement states that a DC credit is to be applied against DC’s otherwise payable. No credit value is stated but because the credit was a known amount at the time of the agreement it could be argued that the full $1,355,000 credit is applicable. It would be reasonable to interpret that the parties intended to fix the amount of the credit to be applied. In summary, UHD has a strong arguable legal case that the City is obliged to give him the benefit of the credit as it would have been calculated on the date of the Subdivision Agreement on present and future phases of this development until the amount of the original credit has been depleted.
POLICIES AFFECTING PROPOSAL:

If this recommendation is approved, the interpretation would apply to similar cases in the future.

RELEVANT CONSULTATION:

Legal Services
Planning and Economic Development

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Evaluate the implications of your recommendations by indicating and completing the sections below. Consider both short-term and long-term implications.

Community Well-Being is enhanced.  ☑ Yes  ☐ No

Environmental Well-Being is enhanced.  ☑ Yes  ☐ No

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☐ Yes  ☑ No