

## Report to Planning & Environment Committee

**To:** Chair and Members  
Corporate Services Committee  
**From:** Scott Mathers, MPA, P.Eng  
Deputy City Manager, Planning and Economic Development  
**Subject:** Development Charge Complaint  
2050 Linkway Boulevard  
**Date:** October 31, 2022

## Recommendation

That, on the recommendation of the Deputy City Manager, Planning and Economic Development, the Development Charges complaint submitted by Mr. Derek Satnik, Vice President of Technology EVE Park London LP, related to development at the property situated at 2050 Linkway Blvd., **BE DISMISSED**.

## Executive Summary

A complaint letter from Derek Satnik, Vice President of Technology EVE Park London LP, with respect to Development Charges (DC) to be paid for the residential development of 2050 Linkway Blvd. (hereinafter referred to as 'complaint'), was received on August 22, 2022, and is included in Appendix 'A' of this report. The complaint pertains to incorrect DC rates used for the calculation of the charges. Staff has reviewed the complaint and are of the opinion that no errors were made in the calculation of the Development Charges due.

## Linkage to the Corporate Strategic Plan

Growing our Economy

- London is a leader in Ontario for attracting new jobs and investments.

Leading in Public Service

- The City of London is trusted, open, and accountable in service of our community.
- Improve public accountability and transparency in decision making.

## Analysis

### 1.0 Background Information

A complaint letter from Derek Satnik with respect to Development Charges to be paid for the development of 2050 Linkway Blvd.

The aforementioned letter makes mention of various reasons as to why the requested Development Charges amount should be adjusted to reflect the 2021 Development Charges rates. The following reasons have been listed:

1. City of London's website provides documents relating to Industrial Lands - Community Improvement Plans Financial Incentives
2. Section 4 of the Development Charges By-law states "Development types under a Site Plan Application or Zoning By-law Amendment, the DC is calculated at the day a complete application is received.
3. City staff promised to freeze the DC fee rate for two years.
4. Overwhelmed Building Department staff were delayed in issuing the building permit resulting in missing the frozen period.

For this development, a total of four building permit applications were received.

2021 009953 – 2050 Linkway Blvd. – Block A  
2021 009956 – 2050 Linkway Blvd. – Block B  
2021 009959 – 2050 Linkway Blvd. – Block C  
2021 009961 – 2050 Linkway Blvd. – Block D

A site plan depicting the proposed development is provided in Appendix 'B'. The drawings for Block A were reviewed by staff and a permit was ready to be issued allowing for foundation work to commence on September 9, 2021, at which time the assessed Development Charges of \$485,000.00 were to be paid.

Block B's permit was ready to be issued on May 30, 2022, at which time the assessed Development Charges of \$541,380.00 were to be paid.

The remaining two permit applications are under review.

## **2.0 Discussion and Considerations**

Section 2 of the Development Charges By-law C.P.-1551-227 (DC By-law) states:

### ***2. Owner to Pay Development Charge***

*The Owner of any land in the City of London who develops or redevelops the land, or any building or structure thereon shall pay Development Charges (DC) to the City in accordance with the terms of this by-law.*

Building permit applications were submitted for the construction of a stacked townhouse block with 21 units at 2050 Linkway Blvd. As this is considered development, Development Charges are due based on the provisions of the DC By-law and the Development Charges Act.

Bill 108, More Homes, More Choice Act, 2019, and Bill 197, COVID-19 Economic Recovery Act, 2020, which came into force on January 1, 2020, and September 18, 2020, respectively (the "Bills"), introduced changes to the collection of development charges. Notably, the legislation introduced a framework to calculate and "freeze" a development charge when a development is subject to a related site plan or zoning by-law amendment application. Prior to these introductions, charges were simply calculated and due at the time of issuance of building permit.

The Bills provided for transition to this new approach, that is now included in section 26.2 (6) of the *Development Charges Act*:

### ***Transition, date of application***

*Clauses (1) (a) and (b) do not apply in the case of an application made before the day subsection 8 (1) of Schedule 3 to the More Homes, More Choice Act, 2019 comes into force. 2019, c. 9, Sched. 3, s. 8 (1).*

The development charges paid by the applicant were calculated at the date of building permit issuance in accordance with section 26(1) of the *Development Charges Act* for the following reasons:

- (a) the legislation that provided a framework to calculate and "freeze" a development charge (Bill 108, *More Homes, More Choice Act, 2019*) came into force was January 1, 2020;
- (b) the related site plan application was made in August, 2019 (before January 1, 2020);

- (c) the related zoning by-law amendment application was made in December, 2019 (before January 1, 2020); and
- (d) the day that subsection 8(1) of Schedule 3 to the More Homes, More Choice Act, 2019 came into force was January 1, 2020.

In accordance with section 4 of the City of London's DC By-law:

#### **4. Calculation of Development Charge**

*For all development types, unless application is made under a Site Plan or a Zoning By-law Amendment, a Development Charge under section 2 shall be calculated on the date a building permit is issued under the Building Code Act.*

*For development types under a Site Plan Application or a Zoning By-law Amendment, the Development Charge is calculated at the day a Complete Application is received. If a building permit has not been issued within the Frozen Period, the Development Charge shall be calculated on the date a building permit is issued under the Building Code Act.*

Given that the Act transitions applications made prior to January 1, 2020, section 4 is to be read as if no application for site plan or zoning by-law amendment has been made. As such, "a development charge under section 2 shall be calculated on the date a building permit is issued under the *Building Code Act*."

#### **Building Permit "Issuance"**

The date that a building permit is issued is the date on which it is picked up by the applicant/ agent. The act of picking up the permit includes paying all fees that are due on that date. Once the Chief Building Official has approved the permit, the applicant/ agent is advised that the permit is ready for issuance, however, it is not issued until all fees are paid.

On September 9, 2021, the Building Division sent an invoice to the permit applicant, indicating readiness to issue a permit allowing for foundation work to commence for Building A. The invoice depicted a total DC amount of \$485,000, based on the 2021 DC rates in effect at the time. The applicant did not pick up the permit at this time; therefore, the permit was not issued.

The permit allowing the foundation work and above-grade work for Building A was issued on June 15, 2022. In accordance with section 4 of the DC By-law, the DC charges were recalculated using the 2022 rates.

The permit for Building B was issued on July 7, 2022 allowing the foundation and above-grade work. In accordance with section 4 of the DC By-law, the DC charges were calculated using the 2022 DC rate.

The Ontario Building Code prescribes timeframes whereby the Chief Building Official shall process and issue a building permit. This implies that the permit application has been deemed as complete, applicable law has been complied with, and that any outstanding deficiency items found during the review of the application have been adequately addressed. Any outstanding fees must also have been paid as well. Considering Site Plan Approval (part of applicable law) was pending, the permit applications were not considered as being complete. As such, the provincially prescribed timeframes per the Ontario Building Code for the Building Division to review, process, and issue the building permit were not applicable. As such, item no.4 of the complaint letter, pertaining to overwhelmed staff contributing to delays, is not valid.

Details related to each of the four building permit applications are provided below.

Note: the 2021 and 2022 DC payable amounts below are provided simply for comparison purposes.

**Building A** - Permit application 21-009-953

- Permit application received on April 01, 2021
- 21 Unit Townhouse Block
- DC payable using the 2021 rates:  $\$23,100 \times 21 = \$485,100$
- DC payable using the 2022 rates:  $\$25,780 \times 21 = \$541,380$
- Status: A permit allowing for foundation was ready to be issued on September 9, 2021; the invoice was provided to the applicant. A permit was ultimately not issued until June 15, 2022 after the balance of the fees owing were paid in full.

**Building B** - Permit application 21-009-956

- Permit application received on April 01, 2021
- 21 Unit Townhouse Block
- DC payable using the 2021 rates:  $\$23,100 \times 21 = \$485,100$
- DC payable using the 2022 rates:  $\$25,780 \times 21 = \$541,380$
- Status: A permit allowing for foundation and shell work was ready to be issued on June 23, 2021, the invoice was provided to the applicant. The permit was ultimately not issued until July 07, 2022 after the balance of the fees owing were paid in full.

**Building C** - Permit application 21-009-959

- 21 Unit Townhouse Block
- Permit application received on April 01, 2021
- DC payable using the 2021 rates:  $\$23,100 \times 21 = \$485,100$
- DC payable using the 2022 rates:  $\$25,780 \times 21 = \$541,380$
- Status: Permit not issued and application is under review

**Building D** - Permit application 21-009-961

- 21 Unit Townhouse Block
- Permit application received on April 01, 2021
- DC payable using the 2021 rates:  $\$23,100 \times 21 = \$485,100$
- DC payable using the 2022 rates:  $\$25,780 \times 21 = \$541,380$
- Status: Permit not issued and application is under review

**Development Charges By-law C.P.-1551-227 and Grounds for Complaints**

Part IV, s.27 of the Development Charges bylaw provides the following grounds for a complaint:

***7. Grounds of Complaint***

*An Owner may complain in writing to the Corporate Services Committee (with a copy provided to the Chief Building Official) upon such grounds as are established by and in accordance with the Development Charges Act in respect of the Development Charge imposed by the City:*

- 1. that 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 with respect to which the credit was given, was incorrectly determined; or*
- 3. that there was an error in the application of this By-law.*

In reviewing the three grounds above, it is staff's position that the amount of the DC was correctly determined. Regarding item 1 noted above, the DC rate used was that in

effect at the time the permit was ready to be issued and was calculated in accordance with section 4 of the DC By-law and the Development Charges Act. Regarding item 2, there was no credit due against the Development Charges. Staff are also of the opinion that there was no error in the application of the DC By-law itself addressing item 3.

Staff maintains that the DC amount was properly determined under the By-law in force and effect at the time when the building permit was ready to be issued and therefore recommends dismissal of the complaint.

**Conclusion**

The letter submitted by Mr. Derek Satnik, Vice President of Technology EVE Park London LP suggests that the DC amounts due, should be based on the 2021 DC rates. Indeed, staff used the 2021 rates when the permit allowing for foundation work for Building A was ready to be issued. The DC amount was not paid at that time. Subsequent to additional reviews and processing, whereby foundation and above-grade work could commence, yielded a permit issuance date of June 15, 2022. As such, in accordance with section 4 of the DC By-law, the DC rates were to be those in effect in 2022 (the time the permit is issued).

It is the Chief Building Official’s opinion that the Development Charges were correctly determined, and that the complaint filed by Mr. Satnik should be dismissed.

The assistance provided by Aynsley Anderson, Solicitor II and Kyle Wilding, Manager Plans Examination, is acknowledged.

<b>Prepared by:</b>	<b>Peter Kokkoros, P.Eng</b> <b>Director, Building and Chief Building Official</b> <b>Planning and Economic Development</b>
<b>Submitted &amp; Recommended by:</b>	<b>Scott Mathers, MPA, P.Eng</b> <b>Deputy City Manager, Planning and Economic</b> <b>Development</b>

## APPENDIX “A”



Dear Corporate Services Committee,

### **Re: Complaint Regarding the Mis-Application of the Development Charges By-Law**

In accordance with the City of London's Development Charges by-law Sect. 26, this letter is being submitted as a formal appeal and complaint under section 20 of the Development Charges Act.

**This letter will appeal the DC Fees assessed to EVE Park Buildings A (permit #21-009953), B (permit #21-009956), C (permit #21-009959) and D (permit #21-009961), on the grounds that there was an error by the City in the application of the DC by-law.**

First, we wish to acknowledge and thank Mr. Kyle Wilding and his team for their ongoing support with the various challenges we've faced in bringing this project to permit. The City of London employs many exceptional staff for whom we have utmost respect, and whom we truly have enjoyed working with.

For the benefit of the Committee, EVE Park is an 84-home development consisting of 4 stacked-townhome buildings which are nearly identical to one another and are being built in sequential (alphabetical) order. The first two of these (Phase 1) have just begun construction: building A first, then B is starting imminently. There is a webcam broadcasting our progress live at <https://eveparklivestream.cpx.ca/stream.html>. The City has been helping us with this project for several years now, having approved our Zone Change request on Dec. 10, 2019, and our Development Agreement on Feb. 17, 2021, and of course there were many meetings and consultations prior to those approvals as well. It has been quite a journey to get this far! We have continued to work towards building permits over the past ~18 months, with many delays.

The City of London's e-permits website shows that our building permit applications were made and accepted (ie: deemed complete) on Apr. 20, 2021. We understood that this initiated the typical internal review processes wherein we were pleased to be supported by many professional and courteous staff across the City's various departments, who both provided technical reviews and process advice / guidance along the way. The City's website includes several useful documents as well, such as a DC rates brochure explaining the rules in place as of when we applied, which states:

*"The DC is calculated the day a complete application is received and is frozen for a period of up to two years. If a building permit has not been issued within the two year frozen period, the DC rate will revert back to the rate in effect on the date the building permit is issued"* ([https://london.ca/sites/default/files/2021-12/CofL\\_2021\\_DcRatesBrochureDigital\\_Web.pdf](https://london.ca/sites/default/files/2021-12/CofL_2021_DcRatesBrochureDigital_Web.pdf), pg. 1, green dialogue box on the top right).

Further, Sect. 4 of the DC By-law states that for development types under a Site Plan Application or Zoning By-Law Amendment, the DC is calculated at the day a complete application is received.

Based on these references and on advice we received repeatedly from City staff, our team was assured that our DC rate was fixed as of Apr. 20, 2021 (for all four of our buildings) and would not change until Apr. 2023. The same brochure later goes on to say that the DC fee is calculated and due for payment on the day





the building permit is issued, but we were assured by City staff that the earlier clause (promising to freeze the DC fee amount for two years) would be applied to our project, and that the DC would only be recalculated if not paid within the two-year frozen period. We paid our permit application fees and submitted complete packages for all four buildings at that time simply to ensure that the DC rate would remain fixed, even though we were planning to build our buildings sequentially over a period of 18-24 construction months and did not truly need our permits for all four buildings at that time. City staff had encouraged us that this was a wise approach, and we were happy to comply.

We continued to work with city staff towards obtaining our building permits, and London experienced ongoing increases in application/construction activity, overwhelming City staff and resulting in many further delays. While the two-year DC freeze period would typically be more than adequate to get the project to permit and get the DC paid, COVID and other challenges have made it difficult for the City to keep up to typical work flows, and this exceptionally challenging two years has been punishingly difficult for everyone. We were in regular contact with various City staff, but our building permit was ultimately not approved until June 1, 2022 (>14 months after application). We had been advised by City staff on Dec. 19, 2021, that our Foundation Permit was ready for building A (#21-009953), but the permit itself was never issued, and we, as a new developer in the region, misunderstood and believed that our permit was issued and waiting for us to pick it up. At that point we had already experienced 36 weeks of delays in reviewing our applications and had missed the 2021 construction season, so we opted to wait out the winter (avoiding winter heating costs and complications with pouring concrete during freezing weather) and pursue construction in the spring of 2022. We were also confident that we had secured our DC rate when our application was deemed complete and we had paid our building permit fee, and that we did not need to pay the DC until we were ready to pick up the building permits. The DC amount was understood at that time to be approximately \$485,000 per building, which clearly is a large enough sum that we did not wish to pay until we were ready to begin construction.

Additionally, our project team and the industry have all been very busy all the while, navigating lockdowns, supply chain disruptions, significant cost increases, and more. The delays we have experienced over the past year have been far from typical and have truly cost our project tens of millions of dollars: our 2019 construction budget has since nearly doubled (to about \$70MM including soft costs, from closer to \$40MM in 2019). We hold the City of London staff in the highest respect for their professionalism: they are truly a lovely team to work with. Yet the City has been responsible for delays in our project which caused us to miss the 2021 construction season, and inflation since that time means that the City's delays have directly resulted in significant cost increases to our project, so we believe it is only right and fair that the City should honour the DC rate set in 2021, and follow the language quoted above from the City's own website, promising that our DC fee would be frozen as of Apr. 20, 2021, for a period of two years. If the two year freeze period were to be calculated instead from the date when our Site Plan Application was submitted in 2019, we would then ask the Committee to consider the exceptional nature of the intervening years since that time and the delays caused by the City's inability to keep up to work flow demands, and extend the freeze period by another year (to at least Dec. 2022, or preferably to Apr. 2023) to make up for the cost impacts which the City's delays have already imposed on our project.



This letter is submitted as a formal appeal to the Corporate Services Committee for your intervention, and we would humbly request that you direct that the Development Charges due and payable by EVE Park be re-assessed at the 2021 levels, for all four buildings which had submitted complete Building Permit applications, and that those DC fee amounts be fixed and honoured until Apr. 20, 2023. If we, EVE Park London LP, do not pay the DC by Apr. 20, 2023, then we will expect that the applicable rates would update to the rates then in force, and would ask no further consideration.

And finally, we wish to advise the Corporate Services Committee that we did in fact pay the DC fee for buildings A and B at the higher (2022) rate even though we do not agree with the assessment, because we could not afford a further delay to our construction schedule. We therefore ask the Committee to instruct that, after reassessing the DC amount payable, that the surplus amounts paid on our account be either refunded or be allocated to offset DC fees payable for our upcoming buildings C and D.

Please do not hesitate to contact me directly to discuss this further at your earliest convenience. I will expect to delegate to the Committee at your next earliest convenience to present this request formally. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek Satnik".

Derek Satnik, P.Eng., LEED® AP  
Vice President of Technology  
EVE Park London LP  
226-339-0943 | dsatnik@s2etech.com

cc. Chief Building Official, City of London  
Ashley Hammerbacher, Project Leader, EVE Park London LP  
Francisco Wulff, Director of Finance, EVE Park London LP



