



Staff Report for Council Meeting

Date of Meeting: July 12, 2023

Report Number: SRCFS.23.037

Department: Corporate and Financial Services

Division: Financial Services

Subject: SRCFS.23.037 – Section 20 Development Charges Act, 1997,
Complaint by Terra Hill Ambulatory Surgical and Medical Centre,
File No. D06-21076 and D06-22057 9355 Leslie Street

Purpose:

Terra Hill Ambulatory Surgical and Medical Centre has filed a complaint pursuant to Section 20 of the Development Charges Act, 1997, and will be making a deputation at the public hearing portion of the July 12, 2023, Council meeting. This report provides background information and staff recommendation for Council's consideration.

Recommendations:

- a) That Council dismiss the Development Charge Complaint lodged by Terra Hill Ambulatory Surgical and Medical Centre.

Contact Person:

Lisa Chen, Manager of Fiscal Planning and Strategy, ext. 6311

Gigi Li, Director of Finance and Treasurer, ext. 6435

Report Approval:

Submitted by: Sherry Adams, Commissioner of Corporate and Financial Services

Approved by: Darlene Joslin, City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

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Background:

Terra Hill Ambulatory Surgical and Medical Centre (“Terra Hill”) owns 9355 Leslie Street (also known as 20 Brodie Drive). They purchased it from the former owner, Atlas Healthcare Ltd. (“Atlas”), who had originally entered into a site plan agreement with the City and Region, dated December 1, 2015, to facilitate a proposed medical office building at 9355 Leslie Street. The location is zoned for commercial and industrial development. Development charges were assessed and paid prior to issuance of Building Permit Number 2014-35779 to construct the shell of a proposed medical office building and parking garage. Atlas went into receivership in or around December 2018, and the property was subsequently purchased by Terra Hill.

In the summer of 2021, **Terra Hill requested the City of Richmond Hill to confirm the property is zoned to permit medical offices and that their proposed use falls under Ontario Building Code building occupancy classification Group D, business and personal services.** Staff had confirmed the building occupancy classification as Group D and that subject lands are zoned to permit “Business and Professional Offices”, under which “Medical Offices” is defined as “...a building or part of a building used for the medical, dental, surgical and/or therapeutical treatment of human beings,” with an understanding there will not be stays over 24 hours.

Subsequently, Terra Hill applied for Site Plan Amendment applications (D06-21076 and D06-22057) in 2021 and 2022 to permit building additions featuring an enclosed mechanical courtyard, new elevators, floor link connections and entry feature to the existing medical office building on the subject property, leading to a revision to the existing building permit to construct an addition to an existing (shell) building. The two applications added a total of 5,763 square metres, with 2,868 square metres under file D06-21076 and 2,895 square metres under file D06-22057.

Pursuant to City Development Charges (“DC”) By-law 47-19, as amended by By-law 34-21, staff correctly assessed the development charges payable on file number D06-21076 based on 2,868 square metres of added gross floor area. This amounted to \$235,151.34 for the City’s component of development charges payable

Terra Hill disagreed with this assessment but paid the development charges under protest to facilitate the issuance of the building permit while they filed a complaint under Section 20 of the Development Charges Act, 1997. The decision today will also impact the amount payable when the second application, file number D06-22057 – 2,895 square metres of added gross floor area, is ready for building permit issuance.

Section 20 of the Development Charges Act, 1997

Under Section 20 (1) of the *Development Charges Act, 1997* (“Act”), when a person or their agent is required to pay a development charge, they may complain to Council under one of the following three reasons:

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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 with respect to which the credit was given, was incorrectly determined; or
3. There was an error in the application of the development charge by-law

After hearing the submissions of the complainant, Council has two options:

1. Dismiss the complaint; or
2. Rectify any incorrect determination or error that was the subject of the complaint

Terra Hill filed a complaint under the Act that the development charges have been **incorrectly determined and that there has been an error in the application** of the DC By-laws. Staff recommend that **Council dismiss the complaint**. Complaints on Regional or School Board development charges are handled directly by the Region or School Boards.

It is important to note that Section 20 complaints are not meant as a forum for challenging the validity of a DC By-law. There are separate provisions under the Act as the by-law is subject to mandatory public consultations and appeals when DC Background Studies and By-laws are updated.

Terra Hill may appeal the decision of Council to the Ontario Land Tribunal within 40 days after Council's decision. An appeal can also be made if Council does not hold a public hearing within 60 days of receipt. The notice was received via email on June 14, 2023 (correspondence dated June 12, 2023), and a notice of today's hearing was provided on June 27, 2023; staff are in compliance with all notice requirements.

Should there be an appeal, the Ontario Land Tribunal may hold a hearing to deal with the appeal relating to the complaint or they may dismiss without hearing.

City of Richmond Hill Assessment of the Complaint

The list of "errors" outlined in Terra Hill's letter of complaint (Appendix A) is summarized below, accompanied by staff's response.

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Excerpt from Terra Hill’s Letter	City of Richmond Hill’s Response
<p>A. The current calculation of Development Charges does not reflect the intent of the DC By-law to charge new Development proportional to the increased demand for municipal services.</p> <p>Fully exempt or at minimum reduce the required DCs to reflect only the new GFA that would impact City infrastructure demand, and which is not classified F-occupancy.</p> <p>There is a significant amount of non-occupied building area that needs to be constructed and used exclusively for mechanical support.</p> <p>Of this total proposed 5,763 sm increase in Gross Floor Area (GFA) only 307 sm (5.5%) is dedicated to new office/retail, 2,491sm (43.5%) is for washrooms, corridors/circulation and existing ‘client/patient’ waiting areas and the majority 2,965 sm (52%) is exclusive mechanical/service area (F type building occupancy)</p> <p>95% of the increased GFA does not create an increased demand for many of the municipal services listed under the DC Bylaw (including recreation, library, highway, or public works services).</p>	<p>Pursuant to City Development Charges By-law 47-19, as amended by By-law 34-21, staff correctly assessed the development charges payable based on 2,868 square metres of added gross floor area. This amounted to \$235,151.34 for the City component. The amount is assessed based on the major occupancy use of the overall building, which Terra Hill sought and received confirmation of D-occupancy.</p> <p>There was no error in the determination of the development charges payable.</p>

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Excerpt from Terra Hill’s Letter	City of Richmond Hill’s Response
<p data-bbox="203 331 639 401">B. To exempt expansions to industrial facilities.</p> <p data-bbox="203 443 784 1024">Sec 10 (b) of the City-Wide Development Charges By-Law 47-19, Exemptions for Intensification of Residential Lands Uses and Enlargement of Existing Industrial Buildings, permits an enlargement of 50% or less of the original GFA to be exempt from new DCs. Given 95% of the proposed expansion is an F -occupancy (Industrial), we request the City consider this Industrial F Occupancy classification for the exemption of all mechanical areas. This exemption would likewise be consistent with Region of York’s DC exemption for expansion of an industrial/office/institutional building.</p>	<p data-bbox="813 331 1409 772">The site is zoned High Performance Commercial Industrial (MC-1) Zone under By-law 150-80, as amended, which permits a range of industrial and commercial uses. The proposed commercial building was classified as “Group D, business and personal services occupancy” as the major use, allowing construction to proceed after the building permit was issued as commercial development under the Ontario Building Code, as proposed by the applicant.</p> <p data-bbox="813 814 1417 1430">Although expansions less than 50% in an “existing industrial building” provides certain exemptions, the City’s DC By-law defines industrial as: lands, buildings or structures used or designed or intended for use for manufacturing, processing, fabricating or assembly of raw goods, warehousing, or bulk storage of goods, and includes office uses and the sale of commodities to the general public where such uses are accessory to an industrial use, includes cannabis production facilities, but does not include the sale of commodities and the supplying of personal services, self-storage facilities, or mini-self-storage facilities, or as otherwise defined in the zoning by-law.</p>

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Excerpt from Terra Hill’s Letter	City of Richmond Hill’s Response
<p>C. To exempt the development of derelict and unoccupied sites.</p> <p>Sec 10 (b) of the City-Wide Development Charges By-Law 47-19, Renovation/redevelopment of a derelict building provides credits for redevelopment. We bring to the City’s attention, the partially completed structure stood vacant for many years prior to Terra Hill Ambulatory Surgical and Medical Centre’s acquisition of the facility and the extensive costs paid to rehabilitate the structure to occupiable standards.</p>	<p>Derelict buildings fall under strict criteria as defined under the City’s DC By-law.</p> <p>Any building or structure deemed derelict, or the equivalent shall be eligible for development charges credits if a building permit is issued on lands previously occupied by the deemed derelict residential building within 120 months or less of the issuance of demolition permit for the building. The calculation of the DC credit is based on the time that has passed between the date of the demolition permit and the date of the building permit issuance.</p> <p>To be deemed derelict to be eligible for a credit, all conditions must apply: land was previously occupied by a residential building, demolition permit was issued, and a building permit was issued within 120 months of the demolition permit.</p> <p>Although building activity and inspections were not active from September 2018 to March 2022, the site does not meet all of the conditions to be deemed derelict.</p>
<p>D. Full DC exemption given the facility is a charitable organization and this exemption is required by the facility to be viable.</p>	<p>The City does not exempt charitable nor non-profit organizations, nor private hospitals.</p> <p>Development Charges are payable on all new residential and non-residential developments unless the Development Charges Act or By-laws provide an exemption.</p> <p>Exemptions provided in the DC By-laws include:</p> <ul style="list-style-type: none"> • City of Richmond Hill, or local board or commission

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Excerpt from Terra Hill’s Letter	City of Richmond Hill’s Response
	<ul style="list-style-type: none"> • Region of York or any local board thereof • Board of Education • Public Hospitals • The gross floor area of a place of worship (up to 5,000 sq. feet) • The relocation of a residential heritage building within the boundaries of the City • The creation or addition of an accessory building not exceeding 100 square metres (1,076.39 square feet) of gross floor area save and except for any live work units with a retail component, for which development charges will be payable on the retail portion. • The creation of additional dwelling units equal to the greater of one Dwelling Unit or one percent of the existing Dwelling Units in existing Rental Housing or a prescribed ancillary residential dwelling structure to the existing residential building • The creation of one additional dwelling unit in any other existing residential building already containing at least one Dwelling Unit or prescribed ancillary residential dwelling structure to the existing residential building

Financial/Staffing/Other Implications:

The DC charges in dispute are \$235,151.34 for the City component on this particular application. For the reasons set out herein, the DC By-laws were applied correctly and there is no basis that there was an error in the determination of the development charges payable.

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Climate Change Considerations:

Not applicable

Conclusion:

Pursuant to City Development Charges By-law 47-19, as amended by By-law 34-21, staff correctly assessed the development charges payable on file number D06-21076 based on 2,868 square metres of added gross floor area. This amounted to \$235,151.34 for the City component. Accordingly, Council must dismiss the Complaint as there was no error in the determination of the development charges payable.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. All attachments have been reviewed and made accessible. If you require an alternative format please call the contact person listed in this document.

- Appendix A – Correspondence from Terra Hill Ambulatory Surgical and Medical Centre

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Report Approval Details

Document Title:	SRCFS.23.037 Section 20 DCA Complaint by Terra Hill Ambulatory Surgical and Medical Centre File No. D06-21076 22057.docx
Attachments:	- Appendix A - Correspondence from Terra Hill Received June 14, 2023 via email.pdf
Final Approval Date:	Jul 7, 2023

This report and all of its attachments were approved and signed as outlined below:

Gigi Li - Jul 6, 2023 - 10:45 PM

Sherry Adams - Jul 7, 2023 - 9:41 AM

Task assigned to Darlene Joslin was completed by delegate Tracey Steele

Tracey Steele on behalf of Darlene Joslin - Jul 7, 2023 - 2:44 PM