



ISSUE DATE:

**February 19, 2014**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

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LEGAL SERVICES

DC120002

By-law 12-053

IN THE MATTER OF section 19(1) of the *Development Charges Act*, S.O. 1997, c. 27

Appellant:	OREV Investments Ltd. and 992527 Ontario Limited
Subject:	Development Charges By-law No. 12-053
Municipality:	City of Hamilton
OMB Case No.:	DC120002
OMB File No.:	DC120002

## **APPEARANCES:**

### **Parties**

### **Counsel/Agent\***

City of Hamilton ("City")

Michael Kovacevic

OREV Investments Ltd. and 992527 Ontario Limited ("Appellants")

Elbert van Donkersgoed\*

## **MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN STEFANKO ON JANUARY 28, 2014 AND ORDER OF THE BOARD**

[1] On March 7, 2012 City Council passed DC By-law 12-053 ("DCB") which amended DC By-law 09-143, 11-174 and 11-175 and which extended the boundaries for DC exemptions in downtown Hamilton.

[2] Following passage of the DCB, the Appellants appealed it primarily because the exemption area did not apply to properties owned by the Appellants. The properties owned by the Appellants are generally located on the east side of Victoria Avenue North from Barton Street East to Birge Street and include 225 East Avenue North/315 Robert Street.

[3] This teleconference was convened to address the settlement which has been reached by the Parties in relation to the appeal filed. That settlement has resulted in

modifications to the DCB and the By-law which I am now being asked to approve is annexed hereto and marked as Attachment 1 ("Agreed Upon By-law").

[4] With respect to the agreement reached, Adam Smith, a Senior Financial Analyst-Development with the City filed an affidavit which deposed, among other things, that the Agreed Upon By-law has been approved by City Council and is also supported by him.

[5] Based on the evidence of Mr. Smith, City Council's approval and the submissions of the Parties, it is ordered that the Agreed Upon By-law is hereby approved.

"Steven Stefanko"

STEVEN STEFANKO  
VICE CHAIR

ATTACHMENT 1

Schedule "B" to Appendix "A" to Report LS13022

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THE CITY OF HAMILTON  
BYLAW NO. 12-053

Being a by-law to amend By-laws 09-143, 11-174 and 11-175

Respecting development charges on lands within the City of Hamilton

WHEREAS the Development Charges Act, 1997, S.O. 1997, Chapter 27 (hereinafter referred to as the "Act") authorizes municipalities to pass a by-law for the imposition of development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the said bylaw applies;

AND WHEREAS the City of Hamilton did, in accordance with the said Act, on the 24<sup>th</sup> day of June 2009, enact Bylaw 09-143 to Impose Development Charges;

AND WHEREAS the City Of Hamilton did, in accordance with the said Act, on the 4<sup>th</sup> day of July 2011, enact Bylaw 11-174 to Impose Development Charges;

And WHEREAS the City Of Hamilton did, in accordance with the said Act, on the 4<sup>th</sup> day of July 2011, enact Bylaw 11-175 to Impose Development Charges;

AND WHEREAS the Council of the City of Hamilton, at its meeting of February 22<sup>nd</sup>, 2012, has approved the enactment of a Bylaw to expand the Downtown Hamilton Community Improvement Project Area as set out therein; and approved policies to be included in the said Development Charges By-laws 09-143, 11-174 and 11-175 by way of amendments thereto;

AND WHEREAS, in advance of passing this amending Bylaw, the Council of the City of Hamilton has given notice of and held a public meeting on February 15, 2012 in accordance with Section 12 of the Act regarding its proposals for this Development Charges Bylaw;

AND WHEREAS the Council of the City of Hamilton, through its General Issues Committee, has received written submissions and heard all persons who applied to be heard no matter whether in objection to, or in support of, this bylaw, and has determined that no further public meetings are required under Section 12 of the Act;

NOW THEREFORE, the Council of the City of Hamilton hereby enacts as follows:

1. (a) Section 1 of Bylaw 09-143 is hereby amended by adding the following thereto as paragraphs (b) and (k), namely:

"(b) "Adaptive Reuse" means the alteration of an existing heritage building for compliance of its continuing or resumed use(s) with current building code requirements; or, for compliance of its proposed new use(s) with current building code requirements; or, for ensuring its structural integrity; or for optimizing its continued, resumed or new use(s); while maintaining the cultural heritage value or interests of the subject building; and in compliance with the conditions of any Heritage Permit required for the subject alterations."

"(k) "Protected Heritage Properties" means properties that are designated under Part IV of the Ontario Heritage Act; or designated under Part V of the Ontario Heritage Act; or subject to a Heritage Easement under Part II of the Ontario Heritage Act; or Subject to a Heritage Easement under Part IV of the Ontario Heritage Act; or subject to a

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covenant or agreement on title held between the property owner and a conservation authority or level of government in the interest of conserving built heritage."

(b) Existing paragraphs (b) through (ii) shall be renumbered accordingly

2. (a) Section 1 of Bylaw 11-174 is hereby amended by adding the following thereto as paragraphs (b) and (i), namely:

"(b) "Adaptive Reuse" means the alteration of an existing heritage building for compliance of its continuing or resumed use(s) with current building code requirements; or, for compliance of its proposed new use(s) with current building code requirements; or, for ensuring its structural integrity; or for optimizing its continued, resumed or new use(s); while maintaining the cultural heritage value or interests of the subject building; and in compliance with the conditions of any Heritage Permit required for the subject alterations."

"(i) "Protected Heritage Properties" means properties that are designated under Part IV of the Ontario Heritage Act; or designated under Part V of the Ontario Heritage Act; or subject to a Heritage Easement under Part II of the Ontario Heritage Act; or Subject to a Heritage Easement under Part IV of the Ontario Heritage Act; or subject to a covenant or agreement on title held between the property owner and a conservation authority or level of government in the interest of conserving built heritage."

(b) Existing paragraphs (b) through (aa) shall be renumbered accordingly

3. (a) Section 1 of Bylaw 11-175 is hereby amended by adding the following thereto as paragraphs (b) and (k), namely:

"(b) "Adaptive Reuse" means the alteration of an existing heritage building for compliance of its continuing or resumed use(s) with current building code requirements; or, for compliance of its proposed new use(s) with current building code requirements; or, for ensuring its structural integrity; or for optimizing its continued, resumed or new use(s); while maintaining the cultural heritage value or interests of the subject building; and in compliance with the conditions of any Heritage Permit required for the subject alterations."

"(k) "Protected Heritage Properties" means properties that are designated under Part IV of the Ontario Heritage Act; or designated under Part V of the Ontario Heritage Act; or subject to a Heritage Easement under Part II of the Ontario Heritage Act; or Subject to a Heritage Easement under Part IV of the Ontario Heritage Act; or subject to a covenant or agreement on title held between the property owner and a conservation authority or level of government in the interest of conserving built heritage."

(b) Existing paragraphs (b) through (jj) shall be renumbered accordingly

4. Section 25 of By-Law 09-143 is hereby deleted and the following is substituted therefor, namely:

**"Downtown Hamilton Community Improvement Project Area (CIPA) Exemption**

25. All development within the boundaries of the Downtown Hamilton Community Improvement Project Area (CIPA) as shown on Schedule "A" attached to this By-law shall:

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(a) be exempted from ninety percent (90%) of the Development Charges otherwise payable, after all other credits and exemptions are considered, under this By-law;

(b) receive an additional dollar for dollar exemption on any remaining Development Charges payable based on the amount of voluntary contributions to a Downtown Public Art Reserve."

5. Section 18 of By-Law 11-174 is hereby deleted and the following is substituted therefor, namely:

**"Downtown Hamilton Community Improvement Project Area (CIPA) Exemption**

18. All development within the boundaries of the Downtown Hamilton Community Improvement Project Area (CIPA) as shown on Schedule "B" attached to this By-law shall:

(a) be exempted from ninety percent (90%) of the Development Charges otherwise payable, after all other credits and exemptions are considered, under this By-law;

(b) receive an additional dollar for dollar exemption on any remaining Development Charges payable based on the amount of voluntary contributions to a Downtown Public Art Reserve."

6. Section 22 of By-Law 11-175 is hereby deleted and the following is substituted therefor, namely:

**"Downtown Hamilton Community Improvement Project Area (CIPA) Exemption**

22. All development within the boundaries of the Downtown Hamilton Community Improvement Project Area (CIPA) as shown on Schedule "B" attached to this By-law shall:

(a) be exempted from ninety percent (90%) of the Development Charges otherwise payable, after all other credits and exemptions are considered, under this By-law;

(b) receive an additional dollar for dollar exemption on any remaining Development Charges payable based on the amount of voluntary contributions to a Downtown Public Art Reserve."

7. Section 26 of Bylaw 09-143 is hereby amended by adding the following thereto as paragraph (j), namely:

"(j) the Adaptive Reuse of Protected Heritage Properties is exempted from Development Charges within the existing building envelope."

8. Section 19 of Bylaw 11-174 is hereby amended by adding the following thereto as paragraph (e), namely:

"(e) the Adaptive Reuse of Protected Heritage Properties is exempted from Development Charges within the existing building envelope."

9. Section 23 of Bylaw 11-175 is hereby amended by adding the following thereto as paragraph (j), namely:

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"(j) the Adaptive Reuse of Protected Heritage Properties is exempted from Development Charges within the existing building envelope."

10. Schedule "A" to By-law 09-143 is hereby deleted and the Schedule attached to this Amending By-law as Schedule "A" is hereby substituted therefor.

11. Schedule "B" to Bylaw 11-174 is hereby deleted and the Schedule attached to this Amending Bylaw as Schedule "A" is hereby substituted therefor.

12. Schedule "B" to Bylaw 11-175 is hereby deleted and the Schedule attached to this Amending Bylaw as Schedule "A" is hereby substituted therefor.

13. The City Clerk is hereby authorized and directed to consolidate this and any other duly enacted amendments to By-law 09-143 into the main body of the said By-law, and to make any necessary and incidental changes to numbering and nomenclature thereof arising from the said consolidation.

14. The City Clerk is hereby authorized and directed to consolidate this and any other duly enacted amendments to By-law 11-174 into the main body of the said By-law, and to make any necessary and incidental changes to numbering and nomenclature thereof arising from the said consolidation.

15. The City Clerk is hereby authorized and directed to consolidate this and any other duly enacted amendments to By-law 11-175 into the main body of the said By-law, and to make any necessary and incidental changes to numbering and nomenclature thereof arising from the said consolidation.

PASSED AND ENACTED THIS XX<sup>TH</sup> DAY OF (MONTH) 2012.

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MAYOR

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CLERK

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## SCHEDULE A TO BYLAW 12-053

