

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



19-142-OLT-02 Schedule A

ISSUE DATE: December 02, 2021

CASE NO(S): DC190022

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27

Appellant: 1356715 Ontario Inc., et. al. v. Hamilton (City)
Subject: Development Charges By-law No. 19-141
Municipality: City of Hamilton
OLT Case No.: DC190022
OLT File No.: DC190022
OLT Case Name: 1356715 Ontario Inc., et al v. Hamilton (City)

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27

Appellant: 1356715 Ontario Inc., et. al. v. Hamilton (City)
Subject: Development Charges By-law No. 19-142
Municipality: City of Hamilton
OLT Case No.: DC190022
OLT File No.: DC190023

PROCEEDING COMMENCED UNDER section 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

Appellant: McMaster University
Subject: Development Charges By-law No. 21-102
Municipality: City of Hamilton
OLT Lead Case No.: OLT-21-001402
OLT Case No.: OLT-21-001402
OLT Case Name: McMaster University v. Hamilton (City)

Heard: November 23, 2021 by video hearing

APPEARANCES:

Parties**Counsel**

McMaster University (“McMaster”)	R. Aburto/C. Campos
City of Hamilton (“City”)	A. Knudsen
Mohawk College (“Mohawk”)	S. Fung
West End Home Builders’ Association (“WEHBA”)	R. Kehar

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
NOVEMBER 23, 2021 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The Tribunal held a Case Management Conference with regard to a proposed settlement of two Development Charge By-law appeals by McMaster.

[2] For the reasons set out below, the Tribunal allowed the appeals in part as it found the proposed amendment to be fair and reasonable and to implement the statutory regime.

DECISION

[3] The Tribunal had before it two matters previously consolidated: first being McMaster’s appeal of the City’s 2019 Development Charges By-law No. 19-142 (“2019 DC By-law”) as found in the Tribunal’s file DC190022, and secondly McMaster’s appeal of the City’s 2021 amending Development Charges By-law No. 21-142 (“2021 DC By-law”) as found in the Tribunal’s file OLT-21-001402.

[4] With the assistance of Tribunal-led mediation, the parties were able to resolve their issues, entered into Minutes of Settlement (Exhibit 4), and had agreed upon a proposed amendment to the 2019 DC By-law (Exhibit 3).

[5] The Tribunal was provided with the affidavit of Kirk Weaver in support of the

proposed settlement. Mr. Weaver is the City's Manager, Budgets and Fiscal Policy Section of the Financial Planning, Administration and Policy Division in the City's Corporate Services Department. His affidavit may be found at Exhibit 1. There he opines that the settlement reached between the parties effectively implements s. 6.1 of the *Ministry of Training, Colleges, and Universities Act* ("Act") and sets out a process to assess the statutory exemption for the construction of a McMaster project. This affidavit evidence was unchallenged and uncontradicted.

[6] Having read Mr. Weaver's affidavit, and having heard the submissions of counsel, the Tribunal allowed the appeals in part, and approved the amendment in Exhibit 3 as it found the proposed amendment to be fair and reasonable so as to implement the statutory regime found in the Act, and to provide a process by which to assess the applicability of the exemption to the McMaster project.

[7] Appended hereto and forming part of this Decision as Schedule A is the amendment to the City's 2019 DC By-law, and Schedule B being the Minutes of Settlement dated November 10, 2021 between McMaster and the City.

[8] The Tribunal wishes to congratulate the parties for their willingness to participate in Tribunal-led mediation, arrive at a resolution and thereby avoid a lengthy and costly hearing. The Tribunal was pleased to hear reports that the Tribunal-led mediation was "...of immense help..." in resolving these matters.

[9] Schedules A and B appended hereto form part of this Decision.

[10] This is the Order of the Tribunal.

[11] The Tribunal may be spoken to, should any matters arise respecting the implementation of this Order.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

SCHEDULE "A" TO TRIBUNAL ORDER

Authority: Item __ , Audit, Finance &
Administration Committee
Report: 21-____ (FCS21____)
CM: _____, 2021

Bill No. ____

CITY OF HAMILTON

BY-LAW NO. 19-142-OLT-02

To Amend Development Charges By-law No. 19-142, as amended

WHEREAS Development Charges By-law No. 19-142 was passed on June 12, 2019;

AND WHEREAS Development Charges By-law No. 19-142 was amended by By-law No. 21-102, which was passed on June 9, 2021;

AND WHEREAS pursuant to the Order/Decision of the Ontario Land Tribunal Issued on December 2, 2021, under Tribunal Case Nos. DC190022/OLT-21-001402, Development Charges By-law No. 19-142 and amending By-law 21-102, be amended as hereinafter provided;

NOW THEREFORE the Ontario Land Tribunal, pursuant to the Order/Decision Issued on December 2, 2021, under Tribunal Case Nos. DC190022/OLT-21-001402, enacts as follows:

1. That the following subsections be added to section 25 of By-law No. 19-142, as amended:

(h) development on land vested in or leased to a university that receives regular and ongoing operating funds from the Government of Ontario for the purposes of post-secondary education, if the development in respect of which development charges would otherwise be payable is intended to be occupied and used by the university. The exemption in this subsection (h) shall only apply as long as sections 6.1 of the Ministry of Training, Colleges and Universities Act, R.S.O. 1990, c. M.19, remains in force and effect.

(i) for greater certainty, the exemption from development charges referred to in subsection (h) applies with respect to land described in that subsection regardless of whether an application referred to in clause 26.2(1)(a) or (b) of the Development Charges Act, 1997, has been made with respect to that land on or before December 8, 2020.

Pursuant to the Order/Decision of the Ontario Land Tribunal Issued on
December 2, , 2021, under Tribunal Case Nos. DC190022/OLT-21-001402.

SCHEDULE "B" TO TRIBUNAL ORDER

MINUTES OF SETTLEMENT (the "Agreement")

THIS AGREEMENT made as of the 10th day of November, 2021.

BETWEEN:

MCMASTER UNIVERSITY
(hereinafter referred to as "McMaster")

AND:

CITY OF HAMILTON
(hereinafter referred to as the "City")

(McMaster and the City are collectively referred to herein as the "Parties")

WHEREAS:

- A. On December 8, 2020, amendments to the *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M. 19 came into force, which create a statutory exemption from development charges for land vested in or leased to a publicly funded university;
- B. Section 6.1 of the *Ministry of Training, Colleges and Universities Act* now provides that land vested in or leased to a university that receives regular and ongoing operating funds from the government for the purposes of post-secondary education is exempt from development charges imposed under the *Development Charges Act, 1997*, if the development in respect of which development charges would otherwise be payable is intended to be occupied and used by the university;
- C. McMaster provided the City with a letter including documentation to support McMaster's statutory exemption for the construction of a graduate student residence at 191 King Street West/10 Bay Street North in the City of Hamilton (the "**King Street Site**"), pursuant to section 6.1 of the *Ministry of Training, Colleges and Universities Act*;
- D. The City has had an opportunity to review McMaster's letter dated March 2, 2021, and the Affidavit of Roger Couldrey sworn on August 26, 2021;
- E. The City is satisfied, based on the information contained in the Affidavit of Roger Couldrey sworn on August 26, 2021, that:
 - 1) The graduate student residence at the King Street Site in the City of Hamilton will be constructed on land leased to McMaster;
 - 2) McMaster is a university that receives regular and ongoing operating funds from the government for the purposes of post-secondary education; and
 - 3) The graduate student residence at the King Street Site is intended to be occupied and used by the university;

SCHEDULE "B" TO TRIBUNAL ORDER

- F. In its letter dated September 23, 2021, the City has issued a written decision confirming that the graduate student residence at the King Street Site meets the requirements for a statutory exemption pursuant to section 6.1 of the *Ministry of Training, Colleges and Universities Act*, and is not subject to development charges.
- G. McMaster is in the process of obtaining approvals for the development of a student residence at 1190 Main Street West in the City of Hamilton ("Main Street Site"); and
- H. McMaster currently holds the City's Development Charge By-law No. 19-142 ("**2019 By-law**") and the Amending By-law to the City's Development Charge By-law No 21-102 (the "**2021 Amending By-law**") under appeal;

IN CONSIDERATION of the mutual covenants contained herein and the payment by the City to McMaster of the sum of **Ten (\$10.00) Dollars** of lawful money of Canada, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above noted recitals are true and form the central bases for these minutes of settlement.
2. McMaster's Appeal of the 2019 By-law and 2021 Amending By-law shall be resolved through a settlement hearing granting the appeal in part wherein both the 2019 By-law and 2021 Amending By-law shall be amended by Tribunal order to include the language of section 6.1 of the *Ministry of Training, Colleges and Universities Act*, in section 25 of the 2019 By-law as set out in **Schedule "A"**, and to attach these Minutes of Settlement, which include the process set out in **Schedule "B"** as detailed below. The Parties will cooperate to seek these amendments, and acknowledge that the Tribunal may request or require amendments to this process, but that regardless, these Minutes of Settlement set forth an intention to:
 - a. Amend the 2019 and 2021 By-laws to include the language in Schedule "A";
 - b. Resolve the 2019 and 2021 By-law appeals; and
 - c. Set out the process for the assessment of the applicability of the statutory exemption in section 6.1 of the *Ministry of Training, Colleges and Universities Act* to the construction of McMaster's student residence at 1190 Main Street West.
3. The City's written decision, dated September 23, 2021, confirming the statutory exemption from development charges, shall apply to the graduate student residence at the King Street Site, provided there are no material changes to the information contained in the Affidavit of Roger Couldrey sworn on August 26, 2021 at any point prior to building permit issuance.
4. McMaster shall promptly notify the City at any point prior to building permit issuance for the King Street Site if any of the information included in the Affidavit of Roger Couldrey sworn on August 26, 2021, with respect to the requirements of section 6.1 of the *Ministry of Training, Colleges and Universities Act*, changes or is no longer accurate.
5. In the event that any of the information included in the Affidavit of Roger Couldrey sworn on August 26, 2021, with respect to the requirements of section 6.1 of the *Ministry of*

SCHEDULE "B" TO TRIBUNAL ORDER

Training, Colleges and Universities Act, changes or is no longer accurate at any point prior to building permit issuance, the City reserves the right to reassess the applicability of the statutory exemption to the construction of the graduate student residence at the King Street Site.

6. The Parties shall follow the process set out in **Schedule "B"** hereto with respect to the assessment of the applicability of the statutory exemption in section 6.1 of the *Ministry of Training, Colleges and Universities Act* to the construction of McMaster's student residence at 1190 Main Street West.
7. The Parties agree to bear their own legal costs.
8. The Parties hereby acknowledge that time is of the essence.
9. The Parties hereby acknowledge the accuracy of the recitals to this Agreement.
10. This Agreement shall be binding upon and shall enure to the benefit of the Parties and each of their respective legal representatives, heirs, executors, administrators, successors and assigns.
11. The Parties hereby acknowledge that this Agreement may be executed in separate counterparts and delivered by electronic or facsimile transmission, with each counterpart so executed and delivered constituting one and the same instrument.

IN WITNESS WHEREOF the Parties hereto have executed these presents.

MCMASTER UNIVERSITY

Per: 
Name: Saher Fazilat
Title: Vice-President (Operations and Finance)

I have the authority to bind McMaster University.

CITY OF HAMILTON

Per: 
Name: Stephen Spracklin
Title: City Solicitor

I have the authority to bind the City of Hamilton.

SCHEDULE "B" TO TRIBUNAL ORDER

SCHEDULE "A"

The following language shall be added to section 25 of the City's 2019 By-law, as amended by the 2021 Amending By-law:

(h) development on land vested in or leased to a university that receives regular and ongoing operating funds from the Government of Ontario for the purposes of post-secondary education, if the development in respect of which development charges would otherwise be payable is intended to be occupied and used by the university. The exemption in this subsection (h) shall only apply as long as sections 6.1 of the Ministry of Training, Colleges and Universities Act, R.S.O. 1990, c. M.19, remains in force and effect.

(i) for greater certainty, the exemption from development charges referred to in subsection (h) applies with respect to land described in that subsection regardless of whether an application referred to in clause 26.2(1)(a) or (b) of the *Development Charges Act, 1997*, has been made with respect to that land on or before December 8, 2020.

SCHEDULE "B" TO TRIBUNAL ORDER

SCHEDULE "B"

The Parties shall follow the following process with respect to the assessment of the applicability of the statutory exemption from development charges at section 6.1 of the *Ministry of Training, Colleges and Universities Act* to the construction of a student residence at 1190 Main Street West:

1. Prior to making any building permit application, McMaster shall provide the City with an affidavit similar to the affidavit of Roger Couldrey sworn August 26, 2021.
2. Within 30 days after the delivery of the affidavit, the City shall notify McMaster whether it is satisfied that the student residence at 1190 Main Street West meets the requirements for a statutory exemption pursuant to section 6.1 of the *Ministry of Training, Colleges and Universities Act*, provided there are no changes to the information contained in the affidavit at any point prior to building permit issuance.
3. In the event that acting reasonably the City is not satisfied with the information provided by McMaster, within 30 days after the delivery of the affidavit, the City shall notify McMaster if and why it requires further documentation to assess the applicability of the statutory exemption at section 6.1 of the *Ministry of Training, Colleges and Universities Act*.
4. If applicable, within 30 days after the receipt of a notice requiring further documentation pursuant to paragraph 3, McMaster shall provide the City with a supplemental affidavit including further documentation to support its exemption.
5. If applicable, within 30 days after the delivery of the supplemental affidavit pursuant to paragraph 4, the City shall notify McMaster whether it is satisfied that the student residence at 1190 Main Street West meets the requirements of for a statutory exemption pursuant to section 6.1 of the *Ministry of Training, Colleges and Universities Act*, provided there are no changes to the information contained in the affidavit and supplemental affidavit, if applicable, at any point prior to building permit issuance.
6. McMaster shall not make any building permit application prior to the City notifying McMaster in accordance with paragraph 2 or 5, whichever is applicable.
7. Within 30 days following the submission of a building permit application, the City shall issue a written decision confirming the statutory exemption from development charges applies to the graduate student residence at the Main Street Site, provided at the time of building permit application McMaster notifies the Supervisor of Development Charges Programs and Policies that they have made a building permit application and that the notice period set out in this paragraph has commenced as of said date, and that there are no material changes to the information contained in the affidavit and, if applicable, supplemental affidavit provided by McMaster.
8. The Parties agree that time is of the essence.