**Adam A. Donaldson** @adamadonaldson

Feb 14, 2024 • 53 tweets • adamadonaldson/status/1757890900653420830

Alright, so let's queue up the next meeting. Here's the Politico preview:

**City Council Preview – What's on the Agenda for the Second February …**

Here's something interesting! In what looks to be a very busy week and month for city council, it's a chance for them to sit as a tribunal to hear a complaint, in this case a complaint …

https://guelphpolitico.ca/2024/02/02/city-council-preview-whats-on-the-agenda-for-the-…

Mayor Guthrie calls the meeting to order. We're going to begin with some orientation about what is that council can do as tribunal and what it has to decide tonight.

Matthew Irish, Associate Solicitor, will lead the orientation.

The procedure in respect of the hearing of a complaint under the Development Charges Act is governed, generally, by the Statutory Powers Procedure Act and, specifically, section 20 of the Act.

## *Statutory Powers Procedure Act*

- Under subsection 1(1) of this Act,

"statutory power of decision" means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not

- "tribunal" means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute

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The decision reached tonight will be final, but it will also be appealed about. If one or both of the parties don't like it, they can appeal the decision to the OLT.

Three factors whether a complaint can be brought forward:

**Complaint to council of municipality**

**20** (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

(a) the amount of the development charge was incorrectly determined;

(b) 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

(c) there was an error in the application of the development charge by-law.

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Council then holds a hearing, and after hearing the evidence and submissions of the complainant, the council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.

Council will go into closed session to make a decision. They will not be able to ask any questions in closed so Irish tells council to make sure that the get all their questions answered before they deliberate.

Guthrie says that councillors should think that they're wearing a different hat as opposed to normal business. Irish adds that they're essentially a panel of judges here.

We now pause and wait for the hearing itself to begin at 6 pm.


Guthrie calls the actual tribunal to order.

The case here concerns 1098 Paisley Road. Jennifer Meader, Agent on behalf of Paisley and Whitelaw Inc., will argue that they overpaid some DCs earlier in the process to the tune of $809,318, and that overpayment was supposed to be applied to the Building C part of the project.

Guthrie throws it to Meader to make first submissions. Her client is in the process of building 3 buildings on this site, a fourth one is being planned and is at the OLT now. Meader says there was a valid agreement for pre-payment of DCs in 2019. It was honoured for A and B...

...and it was clear from the emails she has that it would also apply to C, which has not happened. She asks for confirmation that the City was able to enter into such an agreement.

Our story starts in Feb 2019 when the client paid $4.8 million in DCs for the project, and the 2019 rates were applied to A in 2019 and B in 2022. $1.7 mn went to A but the City held on to the rest of the $3.1 mn, collecting interest the whole time.

Nearly $2.3 million in DCs went to building B, which is how we get about $800k remaining, still collecting interest for the City. On Aug 16/22, there was an exchange btw client and the City, it was confirmed that pre-payment would continue.

According to Meader, staff said that they were OK holding on to the remaining funds an applying them to building C, which is identical to B, but the client gave the option of refunding the $800k or applying them to C, and the City chose the later.

Building C site plan was submitted in July 2022, and City applies 2022 rates to that one. Total was $2.7 million, and then did a straight deduction of the $800k credit w/o applying 2019 rates and thus violating pre-payment agreement. Didn't deduct interest either.

Client provided it's calculation of DCs owing according to pre-payment agreement. Once exhausting the credit, they were left with just over $1 million in DCs owing. They aren't disputing that they still have costs to cover, just that the City reneged on the agreement.

Meader says they're asking City to refund $153k, which includes interest.

Klassen asks how the original number of calculated. Meader says it was based on phase 1 number of units, that was covered by A and B, which was readjusted thus resulting with the left over funds. No written and signed agreement, just outlined in correspondences.

Goller asks if there's an email thread from the City about how they ended up with $4.8 million? Meader says she was trying to simplify the supporting materials, but the amount is mentioned in the 2022 correspondences.

Goller asks for where the assurance that C would be charged at 2019. There's a message Meader reads about reverse the amount shortly and then a discussion about retaining the balance.

Goller notes that there seems to be no indication that they would use 2019 rates. Meader disagrees saying that it was implied by the intention to hold on to the leftover funds.

Allison Thornton, Associate Solicitor for the City will now respond.

She says this is just about building C, and her submission is that the DCs in Sept/23 were appropriately calculated. First important date is Feb 2019 when they got the payment for phase 1, which is important under DC Act phases separate for DC purposes.

Thornton says that payment was made based on number of units. Flash forward to July 2022, they looked at when site plan was submitted and that's when they determined DC rate. She says developer told City to apply credit to building C.

This was Aug/22 and the City and Paisley & Whitelaw went into agreement that leftover funds would apply to covering a number of units in C. Not necessarily a pre-payment agreement though. DCA doesn't let Cities agree to different terms for payment.

Council may enter into agreement on different terms though, but that doesn't apply here. Thornton says at common law written agreements can be made, but DC Act overrides those kind of agreements, and only council can make such an accommodation.

A pre-payment agreement is a pretty big deal, Thornton says, because the shortfall would have to be made up somewhere which is why council needs to be the one that signs off on the deal. Money owing is not in dispute, but DCs can only be recorded in accordance with Act.

Thornton adds that there was no unfair acts here, and there is interest that accrues to when the DC becomes payable, and in this case $61k was earned from interest, which is prime calculated on quarterly basis.

So was DC incorrectly calculated? No.
Was there an incorrect calculation of credit? Nope, everyone confirmed it was correct.
DC bylaw misapplied? Nope, it doesn't delegate to staff authority to enter agreement.

Guthries asks why the staff member didn't tell the developer that only council can enter in an agreement. Thornton says its not clear at all through this correspondence that they were support to pay 2019 rates to this 2022 payments.

Guthrie asks about line "keeping money on credit for the lower amounts" that sounds like reference to the 2019 rates. Thornton says that's a "vague statement", and it could be read that the credit arose from the lower rates. She says in hindsight we might see it that way.

Thornton says interest was paid, it may not have been the outcome the developer wanted, but they did get their interest.

Guthrie asks if there's a difference between the old DC rates versus the prime rate? Yes, but they will need to get some math to get that number.

Thornton adds that she can't get into the developers head and know what he was thinking at the time. Did he think that the City holding on to the money got him 2019 rates for building C? Tough to say.

Thornton says, in response to a question from Allt, that the terms of for entering a pre-payment agreement are public and clear, and she doesn't think that the taxpayers should be on the hook for a vague convo in the summer of 2022.

Rebuttal from Meader: If her client had known that he would not get the lower amounts, he would have taken the cheque and the fact that staff didn't follow shows that she understood what the developer was meaning. If she didn't, she should have got clarity.

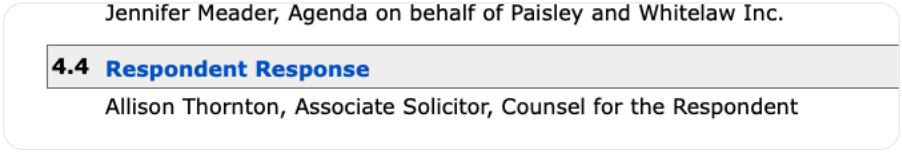
Meader also says that a pre-payment agreement was essentially applied to building B since there was three years between approvals on A and B. Also, it's not for the City to decide what's good business for the developer, Mr. Schembri.

Also, the $61k is a "made up number", that amount is not accounted for in any of this, Meader says.

O'Rourke asks about confusion in the emails in terms of mention of the interest. Meader agrees, the City says that because they didn't change interest to the developer for holding on to their money, that was a benefit to the company. No interest has been accredit to the client.

Goller asks about the interest amount. Meader says it was never applied. Goller asks if they're inferring 2019 amounts from the words, "lower amounts". Meader says Schembri was under the impression that the pre-payment would be charged at 2019 rates all money exhausted.

Downer asks how the $68k was "smoke and mirrors". Meader says that it's because that money was never applied as a credit. She also adds that it's her complaint so she should get the last word. It does say on the agenda that the City gets a rebuttal.




Deputy Clerk McMahon says that this is meant to be a last opportunity to ask questions of either party before deliberations.

O'Rourke asks if its Schrembri's opinion that staff could enter that agreement in 2019. Meader says yes, staff entered into an agreement and acted on it. O'Rourke asks if this developer would know the procedure. Meader says every city does it differently.

O'Rourke asks staff if there wouldn't have been more paper to confirm this agreement. Thornton said it was understood that the credit would be held and applied to a future payment when the DC became payable.

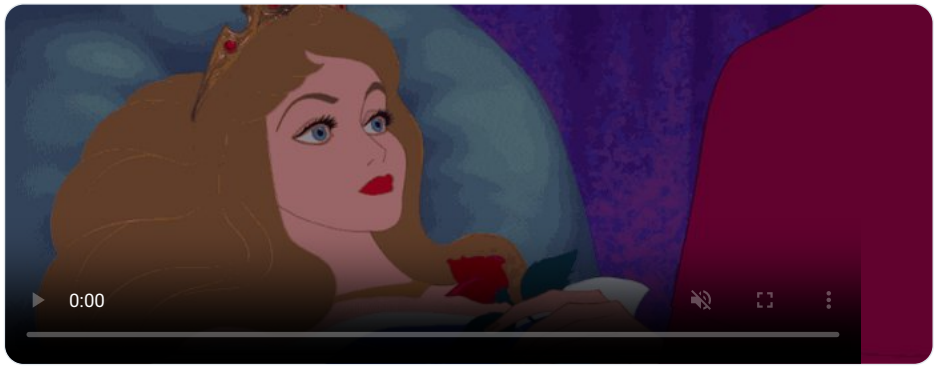
O'Rourke notes that the appellant is saying its more than that, the developer thought they were getting 2019 rates. Thornton says staff couldn't enter into an agreement along those lines though.

Council, as tribunal, will not go in-camera to reach a decision. Stay tuned.


Still waiting for council to reach a decision on the DCs. Here's a supercut of the Kool Aid Man while we wait:


https://www.youtube.com/embed/_fjEViOF4JE

Council is emerging.



Guthrie has re-opened the meeting, and we have a statement: Council sitting as the tribunal has reserved their decision, and it will be delivered in writing to the parties.

That's the end of the tribunal.


@threadreaderapp unroll please!

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