



STAFF REPORT

TO: COUNCIL
FROM: Tracey Atkinson CAO/Clerk/Planner
MEETING DATE: April 5, 2023
SUBJECT: Development Charges Background Report (Second Dwellings)

PURPOSE

The purpose of this report is to provide background information related to development charges and updated information regarding applicability of charge to second dwelling building permits and seek direction on implementation.

BACKGROUND

Amongst other changes, Bill 23 changed the applicability of Development Charges to second dwellings and also removed the authority under section 41 of the Planning Act to apply site plan control to residential developments of less than 10 units.

The Planning Act still provides express authority to municipalities to enter into section 29 community improvement agreements, section 39 garden suite agreements, section 40 parking exemption agreements, section 41 site plan control agreements for greater than 10 units, section 51(26) subdivision agreements and section 53(4) consent agreements. There are various other agreements available to municipalities under the Municipal Act.

The Township has historically entered into "Consent" or "Development" agreements to implement building envelopes. The scope of these agreements is limited to addressing matters raised through the proposed development such as implementing mitigation measures provided for in an Environmental Impact Assessment supporting a severance. The Township has also used zoning to implement site specific setbacks and vegetative/fencing buffers to attain rural character and address conflict between neighbors.

ANALYSIS:

DEVELOPMENT CHARGE EXEMPTIONS

Amendments to the Planning Act and Development Charges Act as a result of Bill 23 allow up to 3 units on any lot where residential uses are permitted in fully municipally serviced areas. To date, there are no areas in Mulmur with full municipal services, being

a water system and sewage disposal system, and as such the legislative change does not increase the number of permissible units in Mulmur, and specifically Mansfield.

Section (2) (3.1-3.3) of the Development Charges Act continues to exempt Development Charges from second units within an existing dwelling and extended the legislation to third units within existing dwelling.

Section (2) (3.1-3.3) also exempts a residential dwelling in a detached structure, but only “on a parcel of urban residential land”. As such, detached residential units are subject to a Development Charge in Mulmur.

Section 2 of O. Reg 82/98, which sets out exceptions relating to the creation of additional dwelling units no longer apply as this section references clause 2 (3)(b) of the Development Charges Act, which was removed through Bill 23 amendments. The section of the Ontario Regulation previously exempted second dwelling units where they were located in ancillary buildings (not attached to the main dwelling), where the gross floor areas was equal or less than the existing dwelling. This means that the exemption no longer limits the application of a Development Charge to detached second dwellings.

When the Township’s Development Charges By-law was updated in 2021 through by-law 46-2021, the exemption section was updated to reflect the legislation in effect at the time, and exempted second (detached) dwellings that were smaller than the existing dwelling.

The legislative change allows the Township to apply a Development Charge to all detached second dwellings, regardless of their size. The Township would be required to amend the Development Charge by-law to make the charge applicable to all detached second dwellings.

SITE PLAN CONTROL APPLICABILITY

The Township’s zoning by-law currently permits a range of detached dwellings, but includes a provision that such development is subject to site plan control.

The current provisions are as follows:

3.3.2 Detached Additional Single Dwellings

Where an additional detached single dwelling is permitted, such dwelling shall comply with the following provisions:

- i) Minimum lot size shall be 2.0 ha.
- ii) The gross floor area of the additional single dwelling shall be no more than 50% of the gross floor area of the principal single detached dwelling, and no more than 80 m², and shall not exceed the lot coverage for all accessory structures in subsection 3.2.3.

iii) Such dwelling shall only be permitted where there is a site plan agreement between the owner and Township.

- iv) A detached accessory dwelling unit shall not be permitted if there is already more than one dwelling unit.

The “Severability Provision of section 1.5 of the zoning by-law states that

1.5 SEVERABILITY PROVISION

A decision of a Court that one or more of the provisions of this By-law are invalid in whole or in part does not affect the validity, effectiveness, or enforceability of the other provisions or parts of the provisions of this By-law.

As staff are aware that a portion of the by-law is invalid due to legislative changes, site plan control is no longer applicable to second dwellings. At the time of the next housekeeping by-law this provision should be removed. While the provisions of section 1.5 reference a court decision, it is the opinion of staff that site plan should not be applied, regardless of a housekeeping amendment, as the Township does not have the authority to require it.

Staff have made note of the amendment requirement at the time of the next housekeeping by-law.

STRATEGIC PLAN ALIGNMENT:

1. Growing a Sustainable Mulmur

FINANCIAL IMPLICATIONS

The current Development Charge expires in 2029. Township is required to undertake a study and create a new Development Charge by-law should it desire to continue to charge. Mulmur is permitted to do amendments or full replacements at any time. The Township allocates funds each year to fund full updates undertaken by a consultant.

The proposed amendment is simple and can be undertaken by the Clerk/Planning staff.

RECOMMENDATION:

THAT Council receive the report of Tracey Atkinson CAO/Clerk/Planner;

AND THAT Council direct staff to undertake an amendment to the Development Charges By-law to remove the exemption for second detached dwellings.

Respectfully submitted;

Tracey Atkinson

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CAO/Clerk/Planner