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MEMORANDUM

To: Jonathan Janzen, Town of Fort Erie
From: Hemson Consulting
Date: February 7, 2024
Re: Development Charges and Affordable Housing Initiatives

At the meeting on January 29, 2024, staff presented a report to Town Council regarding policy options for residential development charges. The policy options were presented as part of the ongoing work related to the 2024 DC By-laws.

During this meeting, Council asked that the Town's development charges consultant (Hemson) further consider options to support affordable housing initiatives in the Town. The following provides a brief discussion of the issue and potential policy options for Council's consideration in approving the 2024 DC By-laws.

A. RECENT CHANGES TO THE DEVELOPMENT CHARGES ACT WILL INCENT AFFORDABLE HOUSING

In November 2022, the Province through Bill 23 (the *More Homes Built Faster Act*), introduced a series of changes to the *Development Charges Act* (DCA). Several changes come into force the day of receiving royal assent, whereas other changes were to take effect at a later date to be determined.

Of particular relevance to the issue of affordable housing, the Province amended the DCA to provide exemptions for **affordable housing** and **attainable housing**. However, the implementation of these exemptions is contingent on the Minister developing a definition of "attainable residential unit" as well as bulletins to establish eligibility and (possibly) standard forms of agreement to assist with administration. Section 4.1 of the DCA (which is not yet in force) describes the legislative rules and requirements for the exemption of **affordable** and **attainable housing**. An excerpt of the legislation is provided below:

Exemption for affordable and attainable residential units

Definitions

4.1 (1) *In this section,*

“affordable residential unit” means a residential unit that meets the criteria set out in subsection (2) or (3);

Note: *On the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force, subsection 4.1 (1) of the Act is amended by adding the following definition: (See: 2023, c. 18, Sched. 1, s. 1 (1))*

“Affordable Residential Units bulletin” means the bulletin entitled the “Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin”, as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario;

“attainable residential unit” means a residential unit that meets the criteria set out in subsection (4).

Affordable residential unit, rented

(2) A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

1. The rent is no greater than 80 per cent of the average market rent, as determined in accordance with subsection (5).

Note: *On the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force, paragraph 1 of subsection 4.1 (2) of the Act is repealed and the following substituted: (See: 2023, c. 18, Sched. 1, s. 1 (2))*

1. The rent is no greater than the lesser of,

i. the income-based affordable rent for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing in accordance with subsection (5), and

ii. the average market rent identified for the residential unit set out in the Affordable Residential Units bulletin.

2. The tenant is dealing at arm’s length with the landlord. 2022, c. 21, Sched. 3, s. 3.

Affordable residential unit, ownership

(3) A residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

1. The price of the residential unit is no greater than 80 per cent of the average purchase price, as determined in accordance with subsection (6).

Note: On the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force, paragraph 1 of subsection 4.1 (3) of the Act is repealed and the following substituted: (See: 2023, c. 18, Sched. 1, s. 1 (3))

1. The price of the residential unit is no greater than the lesser of,
 - i. the income-based affordable purchase price for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing in accordance with subsection (6), and
 - ii. 90 per cent of the average purchase price identified for the residential unit set out in the Affordable Residential Units bulletin.
2. The residential unit is sold to a person who is dealing at arm's length with the seller.
2022, c. 21, Sched. 3, s. 3.

Attainable residential unit

(4) A residential unit shall be considered to be an attainable residential unit if it meets the following criteria:

1. The residential unit is not an affordable residential unit.
2. The residential unit is not intended for use as a rented residential premises.
3. The residential unit was developed as part of a prescribed development or class of developments.
4. The residential unit is sold to a person who is dealing at arm's length with the seller.
5. Such other criteria as may be prescribed. 2022, c. 21, Sched. 3, s. 3.

Average market rent

(5) For the purposes of paragraph 1 of subsection (2), the average market rent applicable to a residential unit is the average market rent for the year in which the residential unit is occupied by a tenant, as identified in the bulletin entitled the "Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario. 2022, c. 21, Sched. 3, s. 3.

Note: On the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force, subsection 4.1 (5) of the Act is repealed and the following substituted: (See: 2023, c. 18, Sched. 1, s. 1 (4))

Rent based on income

(5) For the purposes of subparagraph 1 i of subsection (2), in identifying the income-based affordable rent applicable to a residential unit, the Minister of Municipal Affairs and Housing shall,

- (a) determine the income of a household that, in the Minister's opinion, is at the 60th percentile of gross annual incomes for renter households in the applicable local municipality; and
- (b) identify the rent that, in the Minister's opinion, is equal to 30 per cent of the income of the household referred to in clause (a). 2023, c. 18, Sched. 1, s. 1 (4).

Average purchase price

(6) For the purposes of paragraph 1 of subsection (3), the average purchase price applicable to a residential unit is the average purchase price for the year in which the residential unit is sold, as identified in the bulletin entitled the "Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario. 2022, c. 21, Sched. 3, s. 3.

Note: On the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force, subsection 4.1 (6) of the Act is repealed and the following substituted: (See: 2023, c. 18, Sched. 1, s. 1 (4))

Purchase price based on income

(6) For the purposes of subparagraph 1 i of subsection (3), in identifying the income-based affordable purchase price applicable to a residential unit, the Minister of Municipal Affairs and Housing shall,

- (a) determine the income of a household that, in the Minister's opinion, is at the 60th percentile of gross annual incomes for households in the applicable local municipality; and
- (b) identify the purchase price that, in the Minister's opinion, would result in annual accommodation costs equal to 30 per cent of the income of the household referred to in clause (a). 2023, c. 18, Sched. 1, s. 1 (4).

Arm's length

(7) For the purposes of this section, in the determination of whether two or more persons are dealing at arm's length, section 251 of the Income Tax Act (Canada) applies with necessary modifications. 2022, c. 21, Sched. 3, s. 3.

Affordable residential unit, exemption from development charges

(8) The creation of a residential unit that is intended to be an affordable residential unit for a period of 25 years or more from the time that the unit is first rented or sold is exempt from development charges. 2022, c. 21, Sched. 3, s. 3.

Same, agreement

(9) A person who, but for subsection (8), would be required to pay a development charge and the local municipality shall enter into an agreement that requires the residential unit to which subsection (8) applies to be an affordable residential unit for a period of 25 years. 2022, c. 21, Sched. 3, s. 3.

Attainable residential unit, exemption from development charges

(10) The creation of a residential unit that is intended to be an attainable residential unit when the unit is first sold is exempt from development charges. 2022, c. 21, Sched. 3, s. 3.

Same, agreement

(11) A person who, but for subsection (10), would be required to pay a development charge and the local municipality shall enter into an agreement that requires the residential unit to which subsection (10) applies to be an attainable residential unit at the time it is sold. 2022, c. 21, Sched. 3, s. 3.

Standard form agreement

(12) The Minister of Municipal Affairs and Housing may establish standard forms of agreement that shall be used for the purposes of subsection (9) or (11). 2022, c. 21, Sched. 3, s. 3.

Registration of agreement

(13) An agreement entered into under subsection (9) or (11) may be registered against the land to which it applies and the municipality is entitled to enforce the provisions of the agreement against the owner and, subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land. 2022, c. 21, Sched. 3, s. 3.

Transition

(14) Subsection (8) does not apply with respect to a development charge that is payable before the day section 3 of Schedule 3 to the More Homes Built Faster Act, 2022 comes into force. 2022, c. 21, Sched. 3, s. 3.

Non-application of Legislation Act, 2006

(15) Part III (Regulations) of the Legislation Act, 2006 does not apply to,

(a) a bulletin referred to in this section; or

(b) a standard form of agreement established under subsection (12). 2022, c. 21, Sched. 3, s. 3.

Since Bill 23 received royal assent in November 2022, the Province has continued to consult with municipalities, development industry stakeholders and other organizations on the definitions of affordable and attainable housing. The Province proposed further changes to the DCA through Bill 134, *Affordable Homes and Good Jobs Act, 2023* which received royal assent on December 4, 2023, resulting in modifications to the definition of “**affordable residential units**”. The approved definition changes are set out below:

Affordable Residential Unit, Rental

A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

The rent is no greater than the lesser of:

- i. the income-based affordable rent for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing; and*
- ii. the average market rent identified for the residential unit set out in the Affordable Residential Units bulletin.*

Income-Based Affordable Rent

In identifying the income-based affordable rent applicable to a residential unit, the Minister of Municipal Affairs and Housing shall:

- i. determine the income of a household that, in the Minister’s opinion, is at the 60th percentile of gross annual incomes for renter households in the applicable local municipality; and*
- ii. identify the rent that, in the Minister’s opinion, is equal to 30 per cent of the income of the household.*

Affordable Residential Unit, Ownership

A residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria:

The price of the residential unit is no greater than the lesser of:

- i. the income-based affordable purchase price for the residential unit set out in the Affordable Residential Units bulletin, as identified by the Minister of Municipal Affairs and Housing in accordance with subsection (6); and*
- ii. 90 per cent of the average purchase price identified for the residential unit set out in the Affordable Residential Units bulletin.*

Income-Based Purchase Price

In identifying the income-based affordable purchase price applicable to a residential unit, the Minister of Municipal Affairs and Housing shall:

- i. determine the income of a household that, in the Minister’s opinion, is at the 60th percentile of gross annual incomes for households in the applicable local municipality;*
- and*
- ii. identify the purchase price that, in the Minister’s opinion, would result in annual accommodation costs equal to 30 per cent of the income of the household.*

These amended definitions (and the overarching development charge exemptions for affordable and attainable units first introduced by Bill 23) are not yet in force and will come into force on a day to be named by proclamation of the Lieutenant Governor of Ontario.

B. CONSIDERATIONS FOR THE TOWN OF FORT ERIE 2024 DC BY-LAW

Extensive work has been completed by the Province to date on the issue of affordable housing and it is likely the proposed changes will take effect sometime in the near future. Our understanding is that the Town would like to continue to facilitate the development of affordable housing prior to these changes coming into force. With that in mind, we have prepared a few options for Council’s consideration below.

i. Option 1: Support Affordable Housing through a Grant Program

Grant programs, often thru Community Improvement Plans (CIPs), are an important tool for municipalities in order to support development and achieve community goals. The Town can provide financial incentives, including DC exemptions for desired land uses outside of the DC By-law. This provides the Town with greater flexibility should the program need to be amended or changed prior to the repeal and replacement of the DC By-law. This is a particularly important given that the affordable housing exemptions introduced through changes to the DCA would supersede any affordable housing exemptions the Town implemented. It would also allow the Town to couple a DC exemption with other financial mechanisms (e.g. tax increment based grants, building/planning fee reductions). Alternatively, the Town could consider implementing an affordable housing DC grant program external the DC By-law, similar to the proposed industrial DC grant program.

The Town’s current Official Plan identifies affordable housing as an objective of a CIP. More specifically, Section 6.3 of the Official Plan states:

Community Improvement Plans will be prepared to provide direction regarding one or more of the following activities:

a. The provision of public funds such as grants, loans and other financial instruments designed to encourage and promote:

i. physical remediation, repair, rehabilitation, redevelopment or improvement of lands and/or buildings;

ii. residential and other types of infill and intensification; iii. a range of housing types;

iv. affordable housing; [emphasis added]

v. heritage and architectural preservation, restoration and improvement;

vi. Ongoing viability and revitalization of commercial areas and commercial uses.

ii. Option 2: Include Affordable Housing Discount/Exemption in the 2024 DC By-law

We do not recommend the Town include affordable housing exemptions in the 2024 DC By-laws for a few key reasons. First, once the Province enacts the exemptions for affordable and attainable housing units, the legislation will supersede the Town's DC By-law. This could cause challenges with administering the exemption or discount in the event that the Town's policies did not align with the Province's legislative requirements. Second, if the Town would like to set thresholds for affordable housing similar to the Province, the Town would need to define "affordable" based on current market conditions which can vary from year-to-year. This would require significant data and staff time to track and administer the program. Ongoing monitoring of qualifying affordable housing units would also be required to ensure the units did not become "unaffordable" in the future.

As discussed in the staff report presented at the January 29, 2024 meeting of Council, creating a revenue neutral rate category for smaller homes based on a defined size threshold is not possible unless there is robust data to substantiate the breakpoint. In municipalities where this has been implemented successfully, the size threshold has been monitored over several years based and is informed by a large sample of existing and proposed developments. The Town could consider implementing a new rate for smaller homes as part of future DC By-laws, but we recommend that data on the unit size, number of bedrooms, development type be collected prior to the next DC Background Study update.

It is important to note that Council has the ability to discount units based on a size threshold; however, this would not be revenue neutral and would require funding from non-DC revenue sources such as property taxes.

C. CONCLUSION

Should the Town wish to provide exemptions for affordable housing in advance of the legislative changes coming into effect, we recommend the Town consider implementing a grant program external to DC By-law to support affordable housing. This would allow the Town the greatest amount of flexibility in administering the program and could easily be reviewed once the legislation takes effect.

We would be pleased to discuss the options further with Council and respond to any questions that may arise.