

From: Melody Kennedy [<mailto:mkennedy@airdberlis.com>]
Sent: August 21, 2014 9:54 AM
To: Dawn McAlpine
Cc: Patrick Harrington
Subject: Request for Deputation
Importance: High

Dear Ms. McAlpine,

RE: Request for Deputation at August 25, 2014 Meeting of Council

Patrick Harrington will be providing a deputation on behalf of North American Development Group, SmartCentres, Osmington Inc., and Penady (Barrie) Ltd., in respect of the City of Barrie's 2014 DC Background Study and proposed 2014 DC By-law. A letter outlining our deputation will be sent for circulation shortly.

Thank you and Best Regards,

Melody Kennedy

Assistant to Patrick J. Harrington and Josephine A. Matera

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August 21, 2014

BY EMAIL

Our File No. 121234

Wendy Cooke, Deputy City Clerk
City of Barrie
70 Collier Street, Box 400
Barrie, ON L4M 4T5

Dear Ms. Cooke:

**Re: 2014 DC By-law & 2014 DC Background Study
(No. 2013-032)**

As you are aware, our office acts for North American Development Group, SmartCentres, Osmington Inc., and Penady (Barrie) Ltd. (the "Non-Residential Landowners") in respect of the City of Barrie's 2014 DC Background Study and proposed 2014 DC By-law.

We previously wrote to the City's Deputy Treasurer (July 4, 2014) and to the City's General Committee (August 6, 2014) to provide written submissions outlining the Non-Residential Landowners' collective concerns with the City's proposed 2014 DC By-law. We are writing to provide this third submission to summarize the points Council should consider before voting on the General Committee recommendation to pass the 2014 DC By-law. To assist Council in understanding the concerns of our clients, we enclose a series of information slides prepared by our clients' consultant, Altus Group. The undersigned will be in attendance to speak to these slides, and the contents of this letter, during the Council meeting now scheduled for August 25, 2014.

1. Technical Issues and Errors in the 2014 DC Background Study

Slide 1 summarizes the potential impact of four issues being raised by the Non-Residential Landowners respecting the analysis and conclusions contained within the 2014 DC Background Study.

First, the City's own financial reports have previously indicated that a substantial share of the borrowing costs associated with the City's Surface Water Treatment Plant and Water Pollution Control Centre were to be paid by existing landowners through water/sewer user rates (44%/60%). However, the 2014 DC Background Study places 100% of the borrowing costs onto new growth. This substantial change in cost allocation is not justified, and if reversed on appeal, would decrease the proposed DCs by approximately \$6,164 per single-detached unit or \$3.01 per sq. ft. for non-residential construction.

Second, the Non-Residential Landowners have compared the project costs in the City's Fiscal Impact Assessment Report with the project costs included in the 2014 DC Background Study. On average, costs for affected projects have increased by 30%, which works out to an additional \$64 million in asserted revenue needs. If the City's Fiscal Impact Assessment Report figures are used instead of the higher figures included in the 2014 DC Background Study, the result would be a decrease to the proposed DC rates of approximately \$1,164 per single-detached unit or \$0.83 per sq. ft. for non-residential construction.

Third, the 2014 DC Background Study shows a 13% difference between the build-out of the annexed area and the 2031 forecast for the area. However, a 13% post-period benefit is not applied to the cost of roads for the annexed area. Focusing only on roads within the annexed area (and ignoring, for the moment, that many road improvements proposed within existing Barrie are actually required to support growth within the annexed area), this 13% post-period allocation would decrease the proposed DC rates by approximately \$670 per single-detached unit or \$0.38 per sq. ft. for non-residential construction.

Fourth, the 2014 DC Background Study includes provision for sidewalks in existing areas of the City that are 95% attributable to growth. However, according to Barrie's Multi-Modal Active Transportation Master Plan, these sidewalks are to be built within built-up areas of the City that are not expected to receive residential growth over the current DC horizon. Removing this project and pushing it forward to the City's next DC By-law would result in a decrease to the proposed DC rates of approximately \$451 per single-detached unit or \$0.24 per sq. ft. for non-residential construction.

As Slide 1 shows, these four issues alone could reduce the City's proposed DC rates by \$8,449 per single-detached unit or \$4.46 per sq. ft. for non-residential construction. For the non-residential rates, this would represent a 21.4% correction to what is currently proposed in the 2014 DC By-law – a significant correction that should warrant close consideration by Council. With the benefit of additional time for the consultants to meet to discuss these issues, an OMB challenge based on these corrections might be avoided.

2. Economic Contribution of Retail vs. Industrial

Slide 2 summarizes the contribution 100,000 sq. ft. of retail development makes to Barrie's local economy versus the equivalent sq. ft. of industrial development.

On the retail side, 100,000 sq. ft. of new retail floor space would generate 179 employees earning an average of \$527 weekly, generating a combined income of \$94,248 per week.

On the industrial side, 100,000 sq. ft. of new industrial floor space would generate only 94 employees, and while their wages are higher on average (\$911), the total income generated per week would only be \$85,629, which is less than the equivalent in retail development.

The foregoing calls into question the preferential treatment being accorded to industrial lands in terms of receiving breaks/discounts from the new DCs. Retail development contributes the same (if not more) to the health of Barrie's local economy (including the take home pay of more residents) than does the equivalent amount of industrial development. If Council wishes to incentivize development that creates jobs, such incentives should be directed towards commercial development as much as industrial development.

3. Economic Impact of Raising DCs on Commercial Development

Slides 3 and 4 address the potential economic impacts of the 2014 DC rates on future development within Barrie.

As shown on Slide 3, Barrie had been generating approximately 256 new jobs per year in the retail sector between 2006 to 2011. The 2014 DC Background Study projects an even higher pace of retail job creation between 2014 to 2024. In other words, the revenue projected to be generated by the 2014 DC By-law is dependent (in part) on Barrie not only continuing its current pace of retail growth, but accelerating that growth by 69%. Council should be asking itself whether such acceleration will actually be achieved if commercial DC rates are increased by 61% as proposed.

Slide 4 shows the impact of the proposed DC rates on the cost of construction. Under the new rates, DCs will comprise almost $\frac{1}{4}$ of the cost of constructing new retail floor space in Barrie. If we accept that the next 1.2 million sq. ft. of industrial floor space will be built using existing rates (pursuant to the motion adopted by General Committee on August 11, 2014), then Barrie's DCs as a percentage of the total cost of actual construction will range from 8.7% for new office, to 11.1% for new residential, to 15.1% for new industrial. 22.2% for new retail is substantially higher than other forms of development and clearly shows that Barrie's revenue needs are being put on the backs of commercial development – a highly-questionable policy choice, given the statistics noted in Slides 2 and 3.

4. Comparison to DCs Imposed in Similar Municipalities

During the General Committee meeting, it was disclosed that neither City staff or the City's consultant had looked at how Barrie's proposed DC rates compared to those being imposed in other municipalities.

Slide 5 shows relevant comparator municipalities, both within Barrie's trade area and elsewhere in the Province. The graph makes the point crystal clear – while Barrie's existing retail DC was already amongst the highest, Barrie is now proposing the highest retail DC rate of the selected comparator municipalities that are located outside of York Region.

Again, Council should be asking whether having such a high retail DC is an appropriate policy choice when so much of Barrie's future job creation, as well as the revenue anticipated from the 2014 DC By-law, depends upon new retail development. Slide 5 effectively shows the level of financial incentive there will be for existing and new commercial developers to invest in areas other than Barrie.

5. Growth Should Pay For Growth

The City adopted its 2013 DC By-law approximately 18 months ago and that By-law is not set to expire until 2018. The DC rates adopted by Council in February 2013 were deemed to be sufficient cover the cost of Barrie's anticipated growth for the next five years. The only change since February 2013 has been the annexation of lands from the Town of Innisfil. However, instead of seeking to pass area specific DCs to cover the cost of growth in the annexed areas, Barrie is proceeding with an entirely new DC By-law, 3.5 years early, with increased rates for development throughout the City.

Barrie's position on DCs has always been clear and in accordance with the purpose of the *Development Charges Act, 1997* – growth should pay for growth. Yet the 2014 DC By-law is passing infrastructure costs associated with the future development of the annexed areas onto existing Barrie. While the Non-Residential Landowners agree that Barrie is one municipality and should be treated as such, there is an inherent unfairness in the manner in which Council is passing along these new costs. Moreover, the fixing of these new infrastructure costs through a DC By-law would seem to be premature, given that the secondary plan OPAs that will guide development in the annexed areas are presently both before the OMB on appeal.

In addition, Osmington Inc. and Penady (Barrie) Ltd. note that in May 2014 the City entered into a Memorandum of Understanding ("MOU") with various landowners in the annexed areas. This MOU contains specific "benefit to existing" calculations and an estimated breakdown of what will be the DC obligations of the annexed areas. The landowner parties to the MOU retain their rights to appeal the 2014 DC By-law should Council adopt DC rates that do not accord with the MOU. Nonetheless, to the extent that Council has committed itself to passing a new DC By-law that accords with the MOU, such commitment potentially constitutes an unlawfully fettering of Council's discretion – a factor that may be brought to the OMB's attention should an appeal of the 2014 DC By-law become necessary.

As a result of the foregoing, the Non-Residential Landowners cannot accept the substantial increase in DCs now being proposed by the City. If Council adopts the 2014 DC By-law with no further amendments, the Non-Residential Landowners will appeal the DC By-law to the OMB, wherein all of the issues outlined above (and others) will be brought forward for adjudication, potentially leading to a protracted hearing and a further drain on taxpayer resources.

The solution to this situation is simple: Delay Council's decision on the 2014 DC By-law. Permit enough time for City staff to meet with the Non-Residential Landowners and their consultants to address the issues noted above, either through amendments to the proposed rates or amendments to the DC By-law itself (for example, to provide better transition rules for existing and forthcoming development applications). As indicated in our two previous letters, the Non-Residential Landowners are prepared to meet directly with City staff and the City's consultants to address and potentially resolve their issues and avoid a protracted OMB appeal. Given the lack of engagement with commercial stakeholders as part of the 2014 DC Background Study, these discussions would go a long way towards bridging the present gap between the City's expectations and the Non-Residential Landowners' positions.

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The undersigned (along with representatives and consultants on behalf of the Non-Residential Landowners) will be in attendance at the Council meeting on August 25, 2014, to answer any questions that Councillors or staff may have.

Yours very truly,

AIRD & BERLIS LLP

per: [Handwritten Signature]

Patrick J. Harrington
PJH/mk

Enclosure

cc: S. Bishop, North American Development Group
T. Pierce, SmartCentres
B. Keast, Osmington Inc.
H. Kersey, Penady (Barrie) Ltd.
Altus Group
LEA Consulting

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Key Concerns with 2014 DC Study

Key Concerns

Potential Impact of:

	(per SDU)	(per Non-Res Sq.Ft.)
• Allocation of Debenture Costs for SWTP and WPCC	\$6,164	\$3.01
• Project Cost Difference (v. City of Barrie, Fiscal Impact Assessment Report)	\$1,164	\$0.83
• Post-Period Allocation	\$670	\$0.38
• Sidewalks in Non-Growth Areas	\$451	\$0.24
	\$8,449	\$4.46

* **\$4.46 = 21.4%**
of Proposed Non-Res DC
(\$20.87)

Contribution to Economy: Retail & Industrial

100,000 Square-Foot Space

Retail Development



Industrial Development



Contribution to Economy: Retail & Industrial

Employment Growth in Barrie

Retail Sector

256

New Jobs
per year
Over 2006 - 2011



432

New Jobs
per year
(Projected) Over 2014 - 2024

Industrial Sector

19

New Jobs
per year
Over 2006 - 2011

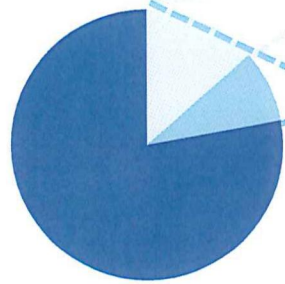


499

New Jobs
per year
(Projected) Over 2014 - 2024

Proposed DC Rate Increase in Context

Retail



\$124
per Sq.Ft.
Construction Cost

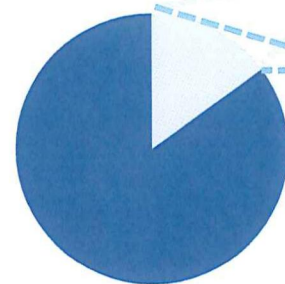
13.6%

Current DC

22.2%

Proposed DC

Industrial



\$74
per Sq.Ft.
Construction Cost

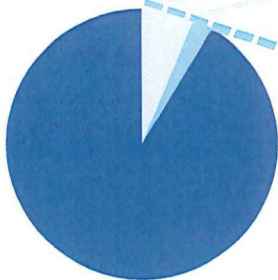
15.1%

Current DC

15.1%

Proposed DC
(1.2 million sq.ft.
exemption)

Office



\$215
per Sq.Ft.
Construction Cost

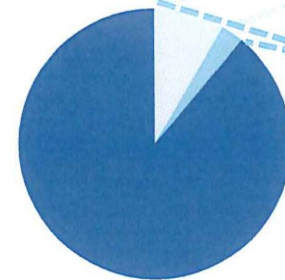
6.3%

Current DC

8.7%

Proposed DC

Res (SDU)



\$175
per Sq.Ft.
Construction Cost

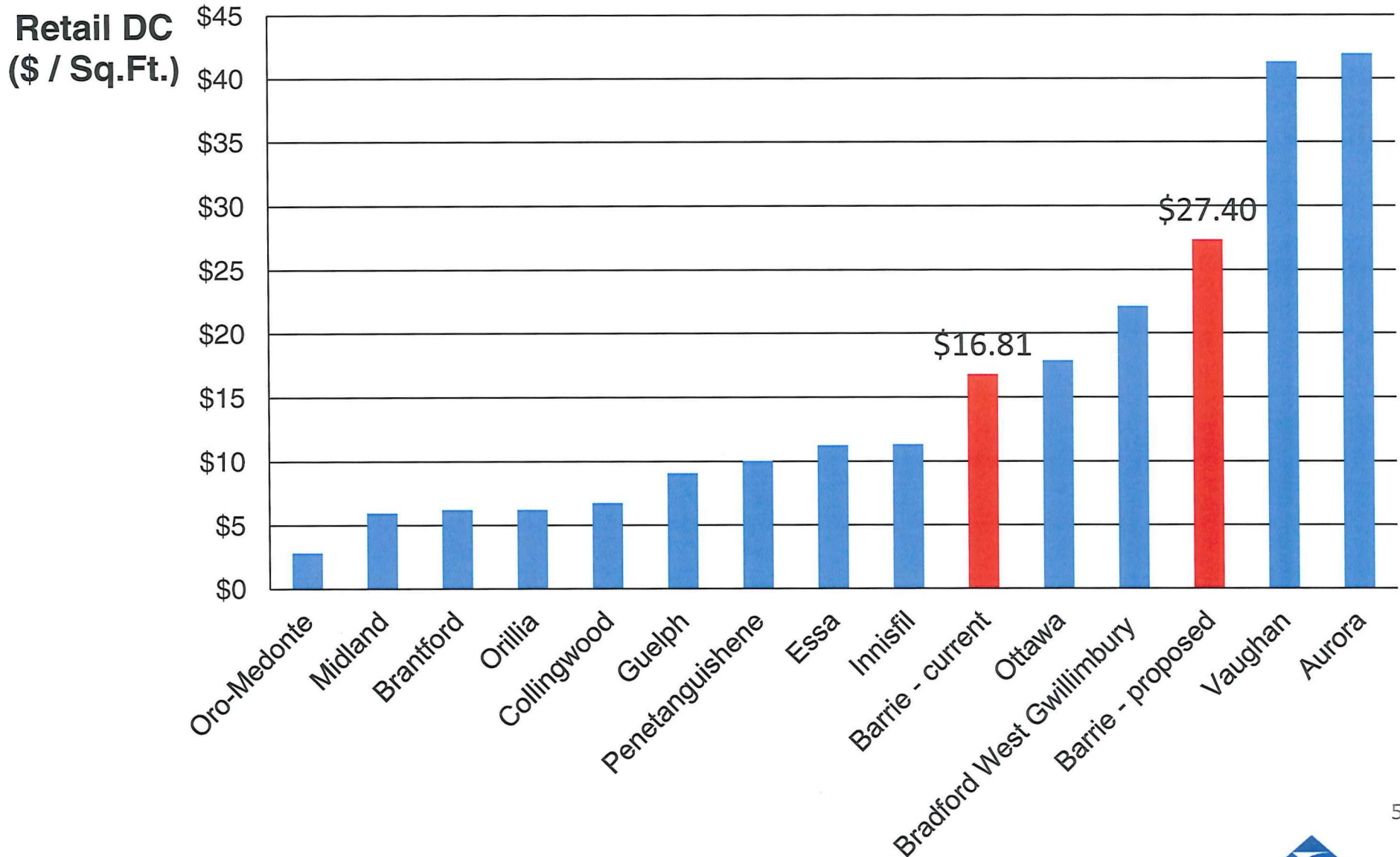
8.4%

Current DC

11.1%

Proposed DC

Retail DC Rates Comparison



Source: Various Development Charges Background Studies