

POSITION PAPER

August 2014

CASE STUDY: “If you build it they will come” approach to funding transit. A case for transit specific development charges.

What are Development Charges?

Current state of Acts governing fees for development in ATUCC affiliated provinces.

How can development charges be restructured to fund transit and what will the benefits be?

Further information

Related reading

Development Charges in Canada: It’s More than Fare?

Background

- Development charges are underutilized for transit funding.
- Development charges ensure that those who benefit financially from new development also bear the cost.
- Downside: Development charge increases and/or restructuring could conceivably hinder the provision of affordable housing, a balance of jobs and housing within a community, urban intensification and the promotion of economic development.
- Upside: Provincial governments could change development charge structures in order to achieve provincial policy goals including reducing unemployment, help municipalities achieve their planning goals, and create more robust transit systems.

Actions

- Ensure dedicated funding for public transit at the same rate as the “hard services”¹ such as sewers and roads in those acts.
- Ensure that developers who benefit from the expansion of public transit pay for it.
- Alleviate transportation concerns and the burden of increased taxes or user fees (fares) for precarious/low wage workers.
- Work with provincial and national transit bodies (e.g. OPTA and CUTA) as well as community and social justice groups concerned with low wage/precarious employment in the effort to enshrine dedicated funding for transit in provincial Acts governing development charges or levies.
- Encourage politicians on the regional and municipal level to not engage in “race to the bottom” where development charges are waived to encourage business, housing and other types of development in their region/municipality. Transit is an amenity that benefits home buyers, businesses, workers and the community as a whole and developers should contribute to its sustainability and growth as it directly benefits them and their bottom line.

1. Hard services are typically assumed to be water, sewer, storm, roads and drainage related costs. Transit typically falls under the rubric of “soft services” with parkland, parkland development, recreation facilities and libraries.



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CASE STUDY: The “If you build it they will come” approach to funding transit. A case for transit specific development charges.

The Outlet Collection at Niagara, located beside the QEW on Taylor Road in Niagara-on-the-Lake Ontario opened May 15, 2014 with 102 retailers residing on 520,000 sq. ft. The retail and food outlets there provide an estimated 1500 jobs which are primarily low wage “precarious” employment. Despite this fact, the Town of Niagara on the Lake did not consider how these employees would get to their jobs at a mall in an area heretofore not served by the public transit systems of any of the bordering municipalities.

This is evident in the minutes from the March 3rd, 2014 City Council minutes where a clerk read out the minutes from February 24th, 2014 Public Works Advisory Committee:

“In November 2013, the General Manager of "The Outlet Collection at Niagara" requested information regarding the provision of Transit service to their location. This request was considered at a meeting of the Regional Transit stakeholders including the transit managers for the City of St. Catharines, Niagara Falls and Welland. Unfortunately, other than the Town of Niagara-on-the-Lake, the other parties were not able to commit any resources. *The concept of establishing a transit hub at "The Outlet Collection" has only been discussed at a staff level, no formal request has been made to either the Regional Municipality of Niagara or to the Cities of St. Catharines and Niagara Falls.*”²

The council passed a resolution at this meeting “calling on Niagara Region to provide a transit link at the new Outlet Collection at Niagara, slated to open May 15.” It’s astounding that a scant two months before the opening of this mall the town’s administration was still grappling with the lack of transit to this facility and that discussion of this issue was at a “staff level” only in the few months leading up to this meeting.

After a March 1st 2014 job fair where over 4,000 people applied for the estimated 1,500 jobs the political pressure for transit at the mall increased and the Niagara Region agreed to divert one of their existing routes to include it. This is not ideal for the workers, however, as the regional transit is less frequent, ends at 8pm which leaves those employees working until 9pm without transportation, is more expensive² than all of the three local transit systems and is operating as a pilot project which could conceivably

2. Niagara-on-the-Lake Council Meeting Minutes, Monday March 03, 2014, 07:00 PM <http://cotw.notl.org/sites/notl/NOTLCOTW.nsf/BF5BF13826D2CAA28525783E006E878E/E456483B5031AAA985257C900056360C> (Emphasis mine.)
3. \$6.00 for a one way trip as opposed to \$2.75 for a one way trip via one of the municipal transit systems.



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end in 2015. While the town ran its own transit system to the mall the majority of the 1500 workers came from the more densely populated municipalities of St. Catharines and Niagara Falls and were bereft of transportation to work.

Development charges designated for transit could have lessened the uncertainty for the retail outlet, the municipality and, most importantly, the approximately 1500 workers in precarious employment, regarding public transit by providing dedicated funding for transit whether provided regionally or by any or all of the bordering municipalities. This funding would not have caused undue hardship for the builder of the mall, Ivanhoé Cambridge, a company whose assets, held through multiple subsidiaries and located in Canada, the United States, Europe, Brazil and Asia, total more than Cdn\$40 billion as of December 31, 2013. This designated funding would have kept the planning for public transit to and from the outlet mall on the front-burner rather than as an afterthought to be hastily and potentially incorrectly dealt with by utilizing a pilot project which may no longer be in existence in 2015 leaving the majority of the estimated 1500 workers without affordable and reliable transportation to work.

What are Development Charges?

Development charges are a financial contribution levied by municipalities on promoters of new developments. The purpose of the charges is to ensure financing for new capital projects, or to upgrade existing capital assets, located off-site and required to meet increased demand for municipal services driven by urban growth.

Current state of Acts governing fees for development in ATUCC affiliated provinces.

ALBERTA

Since 1979 development charges have been used under the *Municipal Government Act* (MGA). These charges are identified in this act as “redevelopment and off-site levies” for sewers, water, roads, parks and drainage and the act does not permit municipalities to collect for transit services. Redevelopment levies are imposed when a development permit is issued in a redevelopment area. A redevelopment levy may be collected to provide lands needed for parks and schools, as well as new or expanded recreational facilities. Off-site levies are imposed on subdivided lands and can be collected to provide the land or infrastructure required for new or expanded water, sewage, storm water management facilities, as well as roads.



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BRITISH COLUMBIA

The Local Government Act (LGA) is the legislative means by which a municipality or regional district can impose a development cost charge (DCC). A DCC may be municipal wide or area specific. Only highways, sewage, water, drainage and parkland acquisition and improvement are permitted for DCCs to be established. Transit is excluded.

CITY OF VANCOUVER

The Vancouver Charter allows for “development cost levies” (DCL) for sewers, water, parks, drainage and roads as specified under the LGA as well as for capital costs associated with childcare provision and replacing any low-cost rental units lost during development. Transit is not included.

In an article dated July 22, 2013 Anne McMullin, president and CEO of the Urban Development Institute's branch in Vancouver, said the national non-profit association representing the development industry is pushing for Vancouver and other municipalities to consider using development fees to pay for transit upgrades.⁴

MANITOBA

The Manitoba Planning Act allows municipalities to establish a development charge to recover costs associated with land subdivision. However, discussions with a provincial official revealed that development charges or levies are not used by municipalities in the province. In their place are “development agreements” associated with zoning bylaw amendments, variance application to either collect monies to pay for various hard services such as sewers or roads or require landowners to install the services themselves. Transit is not mentioned.

CITY OF WINNIPEG

Growth development charges (GDC's) are a form of infrastructure charge that seeks to recover the cost of growth-related infrastructure from growth itself.

According to the city's website, because *The Planning Act* does not apply to it, the “City of Winnipeg is the only municipality in South-Eastern Manitoba that is not able to charge the capital cost of growth to development. Our neighbouring rural municipalities have used provisions under *The Planning Act* to establish various growth charges that pass on the cost of growth infrastructure to development while Winnipeg's *The Charter Act* does not contain the same provisions.” “Developments....do not pay for Rapid Transit, which adds significant capacity to our road network. “

4. Cities urged to use development fees to fund transit - <http://www.vancourier.com/news/cities-urged-to-use-development-fees-to-fund-transit-1.576772>



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The City has been working at various levels with the Province to advance the use of GDC and seek legislative change. This culminated in a seminar to Council on November, 4, 2013, where the majority of Council indicated a willingness to proceed with the research and request the change to the Charter.

NEW BRUNSWICK

The *Community Planning Act (CPA)* of New Brunswick, similar to other provinces allows the application of development charges through the creation of a by-law. However, these charges are only to be levied under an approval of a subdivision. Section 43(3)(i) of the Act states that such a by-law could require a person, proposing to subdivide land, provide within the subdivision, or contribute to the cost thereof to the extent required by the by-law: facilities such as streets, curbing, sidewalks, culverts;, drainage ditches, water and sewer lines; and other requirements as may be required. Transit is not mentioned in the Act.

NEWFOUNDLAND

In Newfoundland it is the *Municipalities Act (MA)* that allows a council to impose a “service levy” on land. The Act requires a “local improvement assessment,” to assess the costs or portion of the costs attributed to a public work. The public work mentioned includes the construction of, water and sewer lines, storm systems and their service connection, curbs, gutters, sidewalks or streets and the upgrading or paving of streets.

This Act does not mention the creation of a by-law; council may simply “impose” this fee based on the local improvement assessment. Transit is not mentioned in the Act.

NOVA SCOTIA

Coming into force January 1, 1999, Part 6, Section 81, and Part 9, Sections 274-6, of the *Municipal Government Act*, gives municipalities the authority to collect charges to pay for growth-related infrastructure. Section 81 of the act allows municipalities to impose bylaws to collect development charges. Section 274-6 outlines the regulations for how infrastructure charges are to be calculated and used. The legislation permits the collection of charges, referred to as Capital Cost Contributions (CCC), to pay for new or expanded water, wastewater, storm water, solid waste, and transit facilities, as well as streets.

REGIONAL MUNICIPALITY OF HALIFAX

While the Halifax Regional Municipality (HRM) is governed by specific legis-



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lation—the *Halifax Regional Municipality Charter*—the framework “contains identical provisions for development charges”. Legislation also allows HRM to collect for transit services; however, this development charge is still being finalized and “in general terms Council [has] agreed to CCC’s [Capital Cost Contributions] for Transit services collected in secondary planning areas (in addition to greenfield sites) within the Transit Service Boundary.” (Email correspondence from P. Duncan, 2014).

ONTARIO

Of all the provinces, only Ontario has an Act regulating development charges alone: The *Development Charge Act (DCA)* passed in 1997. It is an act “to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth”. The *DCA* allows the council of a municipality to pass a by-law to impose development charges to pay for increased capital costs arising from development.

The legislation stipulates that aside from water and sewer (including sanitary and storm), roads and related services (e.g. bridges, sidewalks, street lighting), fire protection and police, and electrical power, the amount collected for all other services, including transit, must be discounted by 10 percent. Thus, municipalities can only cover 90% of the costs for new transit service.

Those costs must also be based on the *existing service standard* which is a “retrospective standard based on the average of the previous 10 years immediately preceding the preparation of a development charge background study. The retrospective standard is not to be exceeded in providing for the ensuing 10-year growth-related capital needs forecast.”⁵

QUEBEC

In the Budget 2012-2013, *QUÉBEC, ITS MUNICIPALITIES AND REGIONS, Partnership for Development*, the primary method utilized in recovering monies for development is the Quebec sales tax. Interestingly enough on page 75 *Section 4.6.3 Development charges* offers a brief overview of Ontario’s development charges and states that such a measure is “worth considering” as a source of municipal revenue.

SASKATCHEWAN

Municipalities in Saskatchewan can administer development levies through the province’s *Planning and Development Act (P&DA)*. Section 55.1, of Part 13.1 of the Act entitled ‘*development levy bylaw*’ which allows a municipali-

5. Investing in Public Transit: The Growing Need for Urban Mobility , 2014. http://www.octa.on.ca/downloads/submissions/2014_Pre_Budget_Submission_FINAL.pdf



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ty to pass a by-law for the purpose of recovering all or part of the capital costs of providing, altering, expanding or upgrading of: sewage, water or drainage works; public highways; parks; and recreation facilities. This by-law can only be passed where council has authorized the use of development levies based on a development plan or basic planning statement and where engineering studies have been undertaken on servicing requirements, as well as recreation needs established.

Transit is mentioned only twice in the act. Once under Payments in Lieu of parking Facilities: “(c) the municipality shall hold all moneys received pursuant to subsection (1) in a separate account that is required to be expended only for the acquisition, construction, operation or maintenance of parking facilities or the capital costs of the transit system” and once under Division 2 Subdivision Regulations where it is stated that In making regulations respecting subdivision pursuant to subsection (1), the minister may: “(d) prescribe standards for efficient transportation systems, including matters dealing with public transit”.

How can development charges be restructured to fund transit and what will the benefits be?

The Province of British Columbia, through its *Development Cost Charges Best Practices Guide* (2005) states that charges based on a density gradient are effective because they encourage more compact growth patterns and “compact forms and higher density contribute to sustainability, as these types of development reduce the amount of roads built, make transit more viable, and have smaller ‘ecological footprints’” (Province of British Columbia 2005, 2.16). The irony is that funding for transit through development charges seems to be crucial for growth management but is not provided for within the Act.

Indeed, with the exception of Ontario and, possibly the Halifax Regional Municipality, none of the provincial or municipal Acts responsible for the collection of Development Charges/Levies/Costs includes transit. These Acts must be reformulated to include the costs of providing transit services related to growth. New developments and associated infrastructure costs for transit can erode municipalities’ financial positions, resulting in either tax increases or public debt. The enshrinement of transit in these Acts will encourage implementation by municipalities to compensate for current and future costs rather than imposing fare or property tax increases on passengers, many of whom are mired in part-time precarious work.

If all Provincial governments amend their Acts governing development charges/levies to include transit within their various development charge systems an even playing field will be created which will ameliorate any



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“race to the bottom” where municipalities dispense with such a charge in order to lure businesses to locate or relocate within their boundaries.

Allowing and encouraging municipalities to include transit within their development charges will help finance the expansion of transit systems needed to support more compact, transit-oriented communities. In every province other than Ontario this will mean expanding the types of services eligible for development charges to include transit.

In Ontario, this will require changes to the legislation mandating that municipalities discount the amount they can collect by 10 percent and giving them the flexibility to collect for improved service levels. Ontario’s legislation must also move to a prospective form of funding from its current retrospective average of the previous 10 years for base service levels as it precludes municipalities from collecting development charges for *improved* and *expanded* transit service levels. In the case of Niagara on the Lake, a municipality who only introduced a rudimentary public transit system within the last four years this would in no way enable the formulation of a base service level for the mall and its 1500 workers.

Given that providing transit is an important component of compact communities, funding through development charges seems crucial for growth management. Municipalities across Canada are missing an opportunity to use development charges to achieve the policy objectives of *smart growth principles* which according to the Smart Growth Canada Network includes the provision of varied transportation options and infrastructure for public transit and others.

To return to the case study above, had the Niagara on the Lake outlet mall been built on an existing transit route within one of the more populated cities like St. Catharines or Niagara Falls where the majority of the workers come from a development charge for transit may not have been required. Smart growth principles did not, however, apply as it was located just off the QEW highway to capitalize on the tourist trade driving past toward Niagara Falls. Being on the very edge of each bordering community’s boundary a new public transit route/service was required to help people connect with a job for which they’re qualified for but can’t otherwise reach.

The ATU Canadian Council is committed to lobbying provincial governments to introduce new or amended legislation that allows municipalities to collect development charges for transit. We are also committed to lobbying regional and municipal governments to actually utilize this funding option in order to create more robust transit systems. We feel that development charges can help to ensure safe and reliable transportation for precarious/



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low wage workers.

Further information

For more information on this paper and the ATUCC'S work on development charges contact Mike Mahar, Director, ATU Canadian Council, 61 International Blvd., Suite 210, Rexdale, ON M9W 6K4, Email: director@atucanada.ca

Related reading

Development charges biased against transit

<http://www.canadianconsultingengineer.com/news/development-charges-biased-against-transit/1002635833/?&er=NA>

Development Charges across Canada: An Underutilized Growth Management Tool?

http://www.munkschool.utoronto.ca/imfg/uploads/201/imfg_no.9_online_june25.pdf

Growth Plan for the Greater Golden Horseshoe, 2006

https://www.placestogrow.ca/index.php?option=com_content&task=view&id=9&Itemid=14

Suburban sprawl and bad transit can crush opportunity for the poor

<http://www.vox.com/2014/7/23/5881083/suburban-sprawl-public-transit-economic-mobility>

