

Lot levy bylaws may face court challenge

By MARIANNE TAKACS
The Ontario Home Builders' Association (OHBA) has declared its intent to mount a legal challenge against the implementation of the province's new Development Charges Act by a municipality or board of education.

In a report to Oakville's administration and finance committee, town treasurer Peter Wagland forewarned councillors that the new lot levy bylaws currently being prepared to conform with the provincial legislation by the town, all other municipalities in Halton and the Halton Board of Education, may be facing a court contest.

"... the Ontario Home Builders' Association has obtained a legal opinion which suggests that the Development Charges Act violates Canada's constitutional law vis-a-vis the Constitution of 1867, and the Charter of Rights and Freedoms," wrote Wagland in his report.

"It is their objective to challenge the validity of the legislation at the point where a municipal development charges bylaw and an educational development charges bylaw have been enacted somewhere in Ontario."

In a letter to Ontario Premier David Peterson, the OHBA has stated its position that the Development Charges Act passed in November of last year constitutes indirect taxation contrary to the provisions of sections 91 and 92 of the Constitution Act. Under those sections only the federal government may implement an indirect tax (a tax which is levied on a certain party, presumably in this case the home builder, but paid by

another (the purchaser).

The association also maintains that Part III of the provincial legislation, the part which establishes the right of school boards to levy development charges, contravenes the denominational school rights protected in the constitution. The reason given is that landowners and new home buyers who are separate school supporters would be required to pay an education development charge imposed by a public school board for the construction of a public school.

According to the OHBA, Part III of the Development Charges Act also contravenes the minority language education rights enshrined in the Charter of Rights and Freedoms.

As well, the association contends that many of the provisions of the provincial legislation contravene the equality rights enshrined in section 15 of the

charter.

"For example," states the letter, "it is grossly unfair for the cost of new school construction to be borne entirely by new home buyers where the pupils will be a mix of children living in new and old homes."

At present Oakville uses measures allowed under the provincial Planning Act to collect lot levies to cover the capital costs of development (providing sidewalks, sewers, libraries etc.). The town has until November of 1991 to implement a new development charges bylaw to conform to the provincial Development Charges Act, which prohibits some of capital cost retrieval measures in current use.

If the OHBA court challenge is successful, said Wagland in an interview, then Oakville could probably simply go back to its present levy system.

"The only difficulty we might end up in is if we get dragged

into the challenge as one of the defendants," he said.

Wagland said the association appears to be more concerned about the part of the provincial development charges legislation that applies to education costs. At present, he noted, town and regional levies on new residential construction amount to approximately \$8,000 per single family unit.

"The levy is going to go up quite a bit as a result of adding a third party (the school board) to it," said Wagland, noting that developers are also facing the implementation of the federal government's new goods and services tax (GST) next year.

So far no school board in Ontario has yet implemented a development charges levy, according to OHBA director of policy and research Bryan Kozman. Development charges bylaws under the new act have been introduced in the City of

Hamilton and the Region of Hamilton-Wentworth.

"What we're waiting for now is to have both parts of the case in place before we can move forward with our challenge," he said.

Kozman maintained the OHBA is not "trying to knock the legs out from under the municipal finance system in this province."

While the association is promoting the use of municipal bond financing rather than lot levies to fund the municipal capital needs generated by growth, Kozman agreed that in some cases it makes sense for developers to finance at least a portion of those capital costs. But he maintained the lot levy system is used unfairly by some municipalities, that it is pushing up the cost of housing, and that it is partly responsible for the shortage of affordable housing.

Marianne Takacs is a reporter with our sister newspaper, *The Oakville Beaver*

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Fire briefs

Strong fumes

An alarm was set off at Larry Baldwin Tire on Trafalgar Rd. Tuesday evening. Workers were painting in the garage when the fumes set it off, according to the fire department.

False alarm

A malfunction in the sprinkler system set the fire alarm off at the seniors' centre on Elizabeth Dr. in Acton Wednesday afternoon. Firefighters responding to the scene shut the alarm off, according to the fire department.

Wall torched

Firefighters responded to the Eagle Dominion building, formerly Heller's, on McDonald Blvd. Wednesday afternoon. Someone was operating a welding torch by a dust collector when sparks ignited a small fire between the walls, according to the fire department. There were no injuries, but the damage estimate is tagged at \$1,000.

Get a handle on it!

HINT 2 ...All sewers hear this! Reuse your old milk pouches to store your used patterns. The original envelopes often get torn and the milk bags keep them neat and tidy and still allow you to read and see the contents. They are just the right size for most patterns too.

Send your hints to Blue Bag Hints, 211 Armstrong Ave., Georgetown, L7G 4X5