DEVELOPMENT CHARGES AND CITY PLANNING OBJECTIVES: THE ONTARIO DISCONNECT

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Résumé

Dans de nombreuses provinces au Canada, des redevances de développement sont prélevées par les gouvernements municipaux afin de contribuer aux coûts d'infrastructure associée à la croissance urbaine. Néanmoins, il n'y a pratiquement aucun effort pour structurer ces redevances afin d'atteindre les objectifs de la planification. Dans cet article, la divergence entre les objectifs fiscaux et ceux de la planification urbaine est démontrée en analysant l'évolution des régimes de redevances de développement dans le contexte d'une région urbaine particulière, la Grande Région de Toronto en Ontario, Canada. Les auteurs posent la question suivante: pourquoi est-ce que tant de municipalités ont adopté des approches basées sur des coûts moyens quand il est largement accepté qu'une approche basée sur les coûts marginaux est meilleure du point de l'efficacité de l'infrastructure et de l'utilisation du sol (c'est-à-dire, la planification)?

Les raisonnements typiques avancés pour expliquer cette préférence sont analysés et on les trouve mal fondés. Une explication plus approfondie demande une compréhension du conflit entre les municipalités et les promoteurs concernant les principes impliqués dans l'élaboration d'un régime de redevances de développement. Ceci mène à une présentation de l'émergence des redevances de développement en Ontario et du débat entre municipalités et promoteurs concernant qui devrait payé l'infrastructure pour appuyer la croissance. Ce

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compte-rendu historique montre un changement progressif dans les pratiques municipales pour le financement de l'infrastructure, allant d'une approche basée sur les coûts marginaux ou spécifique à chaque site (privilégiée par les promoteurs) à une approche basée sur les coûts moyens ou calculée sur la base de tout le territoire de la municipalité (privilégiée par les municipalités.) Dans les conclusions, plusieurs facteurs qui sous-tendent cette évolution sont identifiés.

Mots clés: La planification urbaine; Redevances de développement**;** Infrastructure; Gestion la croissance urbaine; Instruments d'intervention fiscale

Abstract

In many provinces in Canada, development charges are collected by municipal governments to help pay for the capital costs associated with urban growth. Hardly anywhere, however, is there an attempt to structure development charges so as to achieve planning goals. This article examines the disconnect between fiscal and planning goals by tracking the evolution of development charge regimes in a particular urban region, namely the Greater Toronto Area in Ontario, Canada. The authors pose the question: why do so many municipalities adopt average cost approaches to calculating development charges when it is widely assumed that a marginal cost approach is superior from an infrastructure and land-use efficiency (i.e., planning) perspective?

The typical explanations put forward to account for this preference are examined and found wanting. A fuller explanation requires an understanding of developer-municipal conflict over the principles involved in the design of development charges. This leads us to an account of the emergence of development charges in Ontario and the evolving debate between municipalities and developers over who should pay for the infrastructure needed to support growth. This story reveals that there has been a gradual shift in municipal infrastructure financing practices from a marginal cost or "site-specific" approach, favoured by developers, to an average cost or "municipal-wide" approach, favoured by municipalities. In the conclusions, a number of factors underlying this evolution are identified.

Key words: Land-use planning; Development charges; Infrastructure; Growth Management; Fiscal instruments

Introduction

This article discusses the difficulties in setting development charges as prices to cover the full social (external) cost of development.[1] It reviews Ontario's development charge legislation to show how practical concerns affect the design of schedules in ways that reduce their effectiveness as planning instruments. The next section discusses the link between the design of the schedule of charges and planning goals. The marginal and average cost principles for designing the schedule of charges are discussed. The article tracks the evolution of the development charges system used in Ontario and describes the creation of development charge bylaws in the Greater Toronto Area. The analysis focuses on three features of development charge systems: sensitivity to location, density and affordability. Options for change conclude the article.

Most planners want to reduce the costs of development by intensifying the use of land, retaining prized natural areas, reducing the cost of providing new infrastructure, optimizing the use of existing infrastructure, improving the efficiency of transit systems, and reducing car-based travel (Isin and Tomalty, 1993; Burchell *et al*., 1998). Development charge schedules can help advance planning goals by reflecting the projects' expected net social costs.[2] A well designed development charge system can reinforce planning goals by steering development away from high-cost sites to more efficient locations. "Alternatively, a uniform charge levied across the city regardless of variations in the actual cost of providing services or other social costs, could be seen as encouraging sprawl" (Slack, 2002).

The development charges that would help attain planning goals would differentiate the fee according to the proposed project's attributes that directly affect the net external costs that it creates. For example, projects that are mixed-use, higher density, located in preferred centres or sub-centres, or in sectors designated for intensification, should enjoy lower charges than developments that require extensions to existing infrastructure, or that are low-density and single-use in nature. When this is not the case, compact development is penalized and sprawl encouraged (Downing, 1973).

Despite the potential benefits of using development charges as planning instruments, there are few examples in practice.[3] In Ontario, development charges are almost totally disconnected from planning goals. Because of provincial guidelines, municipal plans are required to contain policies related to the efficient use of land, preservation of farmland and significant natural features, the management of growth to minimize infrastructure costs, the production of affordable housing, and so on. However, most municipalities do not design their development charge schedules to reflect these planning goals. Ontario municipalities typically apply development charges in a uniform manner across

the municipal area, with no distinctions due to mix of uses, location, density or affordability. Given that this approach undermines planning goals, it is important to understand why development charges have evolved the way they have and to consider options for change.

Average verses Marginal Costs in the Design of Schedules

In designing a local development charge regime, municipalities must choose between an average cost and a marginal cost approach. An average cost approach would see the charges assigned on a municipal-wide basis according to specified criteria, such as number and type of dwelling units, so that all projects meeting the criteria pay the same charge, regardless of the actual costs they create. In contrast, a marginal cost approach tries to estimate the actual costs created by specific projects. A site-specific regime estimates the impact that the development is likely to have on the need for public infrastructure provision. In this approach, sites that are more expensive to service because of their topography, their distance relative to existing infrastructure or their location outside areas targeted for intensification would pay higher fees. Sites that are within the existing urban envelope or within designated sub-centres, where infrastructure could be more efficiently provided, would have lower development charges.[4]

In the Greater Toronto Area, the study area selected for this research, we found that of 29 municipalities, 24 were using a municipal-wide system, four had mixed systems and one had no development charges at all.[5] The actual charges levied also varied widely, from zero in the former City of Toronto to $11,531 in Mississauga and $15,822 in Vaughan, both growing suburban municipalities. In the slower growing rural municipalities on the edge of the GTA, development charges tended to be at an intermediate level.[6] When asked why they favoured the average cost system, officials claimed that it is based on easily understood principles of equity: the user pay principle requires that those who benefit from the infrastructure investment should pay for it, rather than having services funded from the general tax base. The municipal-wide (average cost) approach is also justified by its proponents on the basis of its administrative ease. Charges are easily calculated using municipal-wide capital plans and growth forecasts. Furthermore, the system provides maximum flexibility in that collected funds can be shifted to different projects within the municipality as actual development patterns unfold over time. Finally, because it is based on a consistent set of ethical principles and a straightforward methodology, the average cost approach provides a clear framework for developers and is easier to defend before the courts and administrative tribunals than are the alternative approaches.

However, our research showed that these factors could not fully explain the prevalence of municipal-wide systems in the GTA. First, we could find no evidence that a municipal-wide approach was more efficient in terms of administrative

resources needed to negotiate charges with developers. Interviews with municipal officials that had experience with both approaches revealed that the municipal-wide approach required more consulting studies and extensive negotiations with developers over the development charge by-laws. Moreover, we found the argument that infill development using existing capacity should pay charges seems to contradict the notion that development charges are meant to pay for development that increases the need for services. This suggests that the equity principles used to justify the municipal-wide approach - that growth must pay for itself and users should pay for benefits received - may be contradictory. This contradiction helps to explain why officials reported that they have difficulty explaining the system to infill developers, a fact that undermines the argument that the municipal-wide approach was adopted because it is easily justified to stakeholders.

The choice of a municipal-wide approach does not appear to have been made on the basis of clear evidence of its pragmatic superiority over alternative approaches. For a fuller understanding of why municipalities in the GTA use an average cost approach, we explore the evolution of the system in its political and legal context. First we look at the dynamics surrounding the creation of the 1989 Development Charges Act and then turn to the creation of local by-laws under the Act.

Average verses Marginal Costs and the 1989 Development Charges Act

Before 1989, municipalities in Ontario negotiated with developers on a site-specific basis to assess charges (called "lot levies" at that time). Subdivision agreements were used to levy charges to pay for off-site services. In justifying their charges, municipalities were required to show (e.g., to the Ontario Municipal Board[7]) that the services were needed as a direct or indirect result of the subdivision's being built. Furthermore, the Municipal Act stipulated that municipalities spend the collected money on services that benefit the occupants of the land within the subdivisions levied (Amborski, 1988). Thus, developer exactions for off-site services were originally linked to the requirements of specific sites and were negotiated with developers on a site-by-site basis. In theory, this would allow charges to be set at the expected marginal costs imposed by the development.

Since 1989, municipalities in the Province have been empowered by the Development Charges Act (DCA) to adopt bylaws requiring property owners to pay for the capital costs associated with growth. The Act lays out the items for which developers can be charged, including both "hard" infrastructure such as sewers and roads, and "soft" infrastructure such as extensions to the municipal administration buildings, fire and police stations.

Regulations associated with the Act specified certain parameters of the method used in calculating charges. Charge levels were to be calculated not on the basis of site-specific characteristics of the development being charged, but on the basis of uniform parameters (number of dwelling units, square meters of non-residential floor space) that could be applied throughout the municipality. Negotiating on a site-specific basis was no longer permitted.

The circumstances surrounding the creation of the DCA in 1989 reveal that the issue of site-specific versus municipal-wide charges was a hotly debated issue pitting municipalities against developers across the Province and that the outcome in favour of municipal-wide charges reflects power dynamics of the time.

The site-specific system that had organically evolved in Ontario was seen as increasingly inadequate from a municipal perspective. A revenue stream based on site-specific negotiations was unpredictable in that the outcome depended on uncontrollable variables such as the sophistication of the developer involved. Larger, better connected, and more experienced developers were able to reduce contributions for major off-site and soft services, either by influencing municipal councils or by arguing before the OMB that their developments were not directly linked to the need for new services. Municipalities were forced to cover the residual costs associated with growth, threatening some with bankruptcy (Sancton and Montgomery, 1994).

To address the financial risk entailed by the site-specific approach, municipalities began to adopt schedules that uncoupled levies from site-specific considerations. In addition to the site-specific charges for local off-site services, some municipalities calculated municipal-wide levies based on their estimates of the capital expenditures needed to service anticipated population growth, including soft services and major facilities indirectly related to any particular subdivision.[8] By the 1980s, the Association of Municipalities of Ontario was lobbying for legislative changes that would see the continuous, site-specific negotiations with developers replaced by negotiations on the drafting of municipal-wide by-laws occurring at discrete (i.e., five-year) intervals (AMO, 1982: 4).

From a developer perspective, the municipal-wide approach was viewed as a vehicle for transferring to them a greater burden for financing off-site services. Thus, the debate over site-specific versus municipal-wide charges became closely linked to two other major debates, hard versus soft services, and the definition of "growth-related" costs. In their briefs and submissions to government throughout the 1980s, the industry argued that the Planning Act linked the need for services to the subdivision of land and not to the needs of the people who might inhabit the subdivision (e.g., OHBA, 1987). This approach limited the scope of levies in two important ways. First, it followed that charges should be calculated on a site-specific basis and includes only those costs related directly to the need to service that subdivision. Thus, major roads, treatment plants,

waste disposal facilities, major parks, and so on, should be paid for through "other sources of revenue", i.e., property taxes or user fees. Secondly, this perspective clearly rendered illegitimate the levying of costs for soft services as those were linked to the needs of the population rather than land.

This debate reflected the clash of underlying interests. On the one hand, developers wanted to limit levies to cover the hard services needed to bring their particular parcels of land to market and had little interest in funding soft services that would increase the value of land only after sale to the home buyer. From their point of view, municipalities were merely attempting to solve their financial difficulties on the back of developers. On the other hand, municipalities wanted levies to cover all the costs related to new growth, including those costs that would arise in the long-term as new residents arrived and increased their service expectations. From the municipal point of view, developers routinely promised soft services to prospective homebuyers as a marketing technique, but were refusing to take responsibility for paying for such services. Thus, throughout the 1980s, the "population-based" approach, which favoured a municipal-wide, flat-rate calculation method, the inclusion of soft services, and major hard services, competed with a "land-based" approach, which favoured the inclusion of only those off-site hard services directly attributable to that development proposal, to be determined on the basis of site-specific negotiations.

These issues were debated in two forums: through the proceedings and decisions of the OMB and through legislative proposals. As remarked in a discussion paper prepared by the Ministry of Municipal Affairs in 1988:

> [M]any of the arguments at the OMB have centered on the question of whether the lot levies payable on a given development should be based on the growth-related capital costs specifically attributable to that development (the site-specific approach) or be based on the average of all growth-related capital costs for all future development within a given area (the average costs approach). (Ontario Ministry of Municipal Affairs, 1988)

OMB decisions in this respect were inconsistent. In some cases (e.g., Wimpey v. Durham Region, 1983) the board concluded that the uniform municipal-wide levy was reasonable because it spread the financial burden equally among all new residents. In other decisions (e.g., Mod-Aire Homes Ltd. v. Georgina Township, 1984), the board required that the levy be calculated using a mixed system: a site-specific basis for everything except a main road into the municipality, which was to be assessed on a municipal-wide basis.

Although the provincial government had refused to involve itself in the OMB hearings, it felt moved to impose some order on the chaotic situation created by OMB decisions. In 1986, the provincial cabinet issued a statement that confirmed the legitimacy of the municipal-wide approach. But as an industry handbook observed, the statement also allowed a combination of municipal-wide and site-specific charges, and, "it does not preclude a calculation that would be based entirely on an analysis of the costs of services directly attributable to the proposed subdivision." (OHBA, 1987: 8). The handbook recommended that industry members continue to push for municipal levies calculated on this basis. Thus, the fight over the 'average' verses the 'marginal' cost approach was clearly not over.

The need for a cabinet statement also signalled that the OMB was proving to be an inadequate forum for resolving conflicts generated by this issue. This stimulated a secondary forum for the negotiation of an appropriate calculation methodology: the industry and the municipalities argued their cases through a series of legislative proposals and counter-proposals that eventually led up to the adoption of the Development Charges Act in 1989. The need for legislation was one of the few issues agreed upon by both sides, although their expectations were diametrically opposed. On the one hand, developers were calling for legislation in order to limit the scope of municipal discretion on the use of lot levies and to set out clear rules as to what could and could not be included in the levy calculation. On the other hand, municipalities wanted legislation in order to put an end to the legal challenges from the development community and the general uncertainty of the system. Because of the link with new legislation, the debate over lot levies was facilitated in the latter half of the 1980s by the Ministry of Municipal Affairs, which called meetings of the industry and municipal sector, held workshops, and published discussion papers.

Shifting economic conditions were weakening the industry position on the "growth-related" and "hard versus soft" issues, which, as we have seen, were historically linked to the site-specific approach. In the five-year period from 1984-1989, the housing sector in Ontario went into a boom phase unlike anything seen in the province's history. The negative impacts of rapid growth gave rise to anti-growth coalitions, which began to convince the larger public that residential development was not the unalloyed benefit it was once thought to be. Sensing the turning tide of public opinion, competing for quick approvals, and assuming that levies could be passed on to new home buyers in a hot market, the industry's appetite for challenging municipal by-laws waned. Incrementally, the industry moved closer to the municipal position on hard versus soft services, and growth-related shares. Nonetheless, final agreement continued to elude the negotiators.

As the balance of power shifted towards municipalities, "abuses" of the site-specific system became more egregious. Some municipalities demanded what developers considered outrageous standards of service ("gold-plating") in return for "uncomplicated" subdivision approval. Municipalities sometimes implied that future approvals would be in jeopardy for any developer challenging the lot levy at the OMB. Under these conditions, a municipal-wide calculation based on a legally defined method began to look attractive even to developers. This was reflected in the 1988 Discussion Paper that issued from the years of negotiations between the industry and the municipal sector: "The Working Group agreed that the method used to calculate lot levies should be consistent. The average costing approach was recommended" (Ontario Ministry of Municipal Affairs, 1988: 23).

So far, we have focused on the dynamics among those involved in the negotiations over the shape of the emerging development charges system in the province. Also important in explaining the outcome is the range of actors that were *not* involved. For instance, we find that environmental, transit, agricultural, and other groups that might have argued that municipal-wide development charges were contributing to sprawl and car-dependency were wholly absent from the negotiations over the Development Charges Act. Perhaps even more important from an explanatory point of view was the absence of any provincial agency with an interest in linking the fiscal goals of the Act with the planning goals espoused by the Province. Within the Municipal Finance Branch of the Ministry of Municipal Affairs, which took the lead on the Development Charges Act for most of its genesis, officials acknowledged that they had little interest in considering the land use impact of development charges. Rather, their perspectives flowed from the Branch's responsibility to ensure the financial health of Ontario's 800-odd municipal corporations at a time when the Province was transferring responsibility for infrastructure financing to the municipal level. The Land Use Branch, also within the Ministry, had responsibility for supervising municipal land use practices, but was not at the negotiating table.

Not surprisingly, the Development Charges Act that was introduced in 1989 strongly favoured the traditional municipal position. First, it clearly established the legal authority of municipalities to levy development charges, putting an end once and for all to industry allegations that levies were illegitimate or even illegal. Secondly, the Act permitted municipalities to levy charges against both hard and soft services (including land, buildings, rolling stock, and even computers, library books, and furniture) and to calculate charges based on the highest service standards in place over the last ten years. Third, it expanded the scope of development charges by linking them to the issuance of building permits

rather than subdivision agreements. This meant that applications that had previously escaped lot levies, such as rezoning for infill development, would now incur development charges.

Under the new Act, a municipality could no longer negotiate with developers over the funding of off-site services or use subdivision agreements for this purpose. Thus, it fatally undermined the industry's argument that charges were tied to subdivision approval (and thus to specific projects), putting to rest the notion that charges should be assessed on a site-specific basis and ending the historical debate on this important issue.

Area-specific versus Municipal-wide Charges and Municipal By-Laws

Our focus now moves to the aftermath of the DCA, when negotiations over development charges shifted from provincial legislation to the creation of municipal by-laws under the Act. Although it outlawed site-specific negotiations, the Act permitted municipalities to establish sub-areas, over which charges would be averaged. This approach is similar to the municipal-wide system in that it employs a population-based calculation methodology, but differs in that it averages costs over a much smaller area. Because the area-specific approach levies different amounts on different areas of the municipality depending on the cost of servicing that area, it can approximate a marginal cost approach. For instance, an area-specific development charge may reflect cost differences attributable to the distance of the development area from major facilities. Development areas far enough from a water treatment plant that they require an additional pumping station will be charged at a higher rate than an otherwise similar area near major facilities. Furthermore, area-specific charges could be used to reflect infrastructure savings from infill or nodal development by discounting charges on growth in designated areas. However, few municipalities in the GTA exercised these options. Although four of 29 municipalities adopted a mixed municipal-wide and area-specific approach, no municipality used an exclusive area-specific method. Here we explore why this option has not been widely exercised.

The area-specific approach is described by advocates of the municipal-wide system as administratively cumbersome because it requires more elaborate studies to forecast population growth and capital needs for a variety of smaller areas. The smaller area means that capital planning is more sensitive to deviations from planning and engineering projections as the area is built out. It also requires a more complicated accounting system to separate the reserve funds for the various development charge areas. The area-specific approach is also frowned upon by advocates of the municipal-wide approach for equity reasons: i.e., it unfairly burdens the population in some areas of the municipality that happen to have high growth-related costs. These costs might have more to do with terrain

and drainage than with location of development. Finally, according to some interviewees, there is no strong constituency for an area-specific approach in most municipalities.

As with the pragmatic justification for not adopting a site-specific approach, we find these explanations unconvincing. First, we note that a number of municipalities in the GTA show evidence of strong developer interest in area-specific charges. This is especially the case in the Region of York, where two of the focus jurisdictions chosen for this study - Richmond Hill and Markham - adopted an area-specific approach for some services in response to developer pressures. In these municipalities, a municipal-wide charge is applied for soft services such as police, recreation, and government, but hard services are largely covered by area-specific by-laws. Each area-specific by-law is negotiated between the municipality and the major property owners in a given development area.

Richmond Hill and Markham are often held up by developers as examples of communities with "good" development charge bylaws, and developers in the York Region (unlike those in most other jurisdictions within the GTA) have chosen not to appeal either municipality's by-laws to the OMB (Kaiser, 1996). These developers prefer area-specific bylaws for a number of reasons. The greater planning detail, and the fact that funds raised in one development area cannot be spent in another, make the area-specific approach more transparent and provide greater accountability in terms of the spending of development charge revenues.

Another reason why these developers support the adoption of area-specific bylaws is that there is less political interference in the phasing of projects in an area-specific system. Area-specific by-laws are typically adopted in municipalities with large developers who undertake major infrastructure construction projects on behalf of the municipality for which they receive credit against development charges payable. This allows developers to move ahead with projects at their own pace and reduces political control over their activities.

Why did municipalities in York Region adopt area-specific by-laws, but not other municipalities in the GTA? The very large developers in York Region are notorious in the GTA for the political influence they exercise over local councils. Perhaps the more fragmented patterns of ownership in other municipalities in the GTA allowed councils to resist industry pressure to adopt area-specific by-laws. In municipalities with more fragmented development communities, politicians may be more concerned with distributing growth opportunities evenly across municipal development areas. In such municipalities, area-specific charges are perceived to favour the growth of one area over another and thus are considered a threat to the political coherence of the jurisdiction. This is especially the case with "regional" municipalities, which were established in the 1970s in order to spread the costs of financing growth throughout the jurisdiction. Local politicians

do not want to be told by their municipal finance department using an area-specific approach that "their" wards will enjoy less growth due to higher servicing costs.

Interestingly, officials and consultants involved in negotiating area-specific charges do not see them as being more onerous from an administrative point of view. In fact, the calculation methodology is much the same as that used for a municipal-wide approach except capital projects are allocated to municipal sub-areas and charges are based on the bundle of services going into that sub-area rather than municipal-wide services. These respondents point out that area-specific charges are administratively more flexible in that area-specific by-laws can be revised to meet changing development conditions while leaving the municipal-wide bylaw untouched.

Once again we conclude that the choice between a charge regime that is sensitive to location variables and one that ignores location issues in favour of a uniform charge across a municipality has less to do with the typical pragmatic explanations usually put forward for this choice and more to do with group interests and power dynamics within particular jurisdictions.

Sensitivity to Density and Housing Affordability

Nothing in the 1989 Development Charges Act prevented municipalities from differentiating charges based on the density of development. This could be done regardless of whether a municipal-wide or area-specific was being used in the calculation of charges. If a municipal-wide approach was being used, charges on higher density type dwelling units could be reduced substantially below those being charged on single detached units in order to account for the greater efficiency of such development and to encourage development decisions consistent with municipal planning goals. If an area-specific approach was being used, municipalities could also choose service standards for each sub-area to reflect the different levels of efficiency (such as per household water use, trip generation by car, waste generation) associated with various density levels. Lower standards for higher-density development would tend to lower the charges assessed in those areas of the municipality.

The Act also permits municipalities to exempt affordable housing from development charges. This provision in the Act reflects the role played by the Ministry of Housing (at that time a separate ministry from Municipal Affairs) in the formulation of the Act. In fact, housing was the only ministry that showed any interest in the impact of the Development Charges Act on development patterns. Officials within the ministry were responding to concerns raised by its client base – especially housing advocacy groups –

that the legislation might accelerate the decline in the supply of affordable housing and that such a trend would put more pressure on the Province to subsidize affordable housing construction.

As a result, the Ministry of Housing insisted that exemptions for affordable housing and small-scale intensification be included in the legislation. This campaign created considerable tension between the Ministries of Housing and Municipal Affairs, with the latter arguing on behalf of its client base that any exemption for affordable housing would end up being paid for through an increase in property taxes, a result to be avoided at all costs. The upshot of the efforts by officials from the Ministry of Housing was a mandatory exemption from development charges for accessory units (one form of intensification) and a provisional exemption for other forms of affordable housing, to be employed at the discretion of municipalities in the design of their by-laws under the new Act.

Thus, the new Act provided a number of opportunities to design municipal by-laws to reflect planning goals. In fact, however, we found that no municipality in the GTA used its legal discretion to reduce charges on higher density development and furthermore, few were interested in exempting affordable housing, and that municipalities using area-specific charges calculated the costs of infrastructure based on municipal-wide service standards (eliminating any spatial variations due to higher or lower density development), and had not considered using them to attract growth to higher density areas.

Our claim that development charges are not lower on higher-density housing may surprise some readers familiar with the development charges situation in Ontario. They will draw attention to the fact that most municipalities vary charges depending on the type of units within the development being levied. Typically, apartments are charged less than town houses which in turn are charged less than semi-detached and detached housing. This creates the impression that the efficiencies associated with higher density development are being taken into account. To see why this is not true, we need to trace the calculation method in more detail.

The exercise begins with the preparation of a population growth forecast, usually by the municipal planning department.[9] The services that will be needed to support that growth are identified, drawing from a capital plan. The standard of service - expressed on a per person basis - is determined by municipal council and the standard is multiplied by the anticipated growth to equal the growth-related capital cost for that service. This number is reduced by the amount of subsidy normally received for this service from provincial or other sources, giving the net growth-related capital cost. This cost is then distributed among residential and non-residential growth. The residential component is divided by the total population growth forecasted for the municipality to achieve a per capita cost for that service. This is multiplied by the average number of persons

per unit for each dwelling type.[10] The charge for each of the services to be included in the by-law is then aggregated to achieve the total development charge for each dwelling type.[11]

From this account it is clear that the per-unit charge on different dwelling types reflects only population variables: housing that will accommodate 100 people will pay the same amount of development charges regardless of the consumption of land associated with it. To reflect any gains from higher density development, municipalities would have to reduce charges on higher density dwelling types below the level suggested by persons per unit ratios and distinguish units on the basis of lot size (GTA Task Force, 1996). The fact that this is not done anywhere in the GTA raises the question: why not?

On a pragmatic level, the key reason put forward by interviewees was that there is no convincing evidence for the argument that higher density residential development is cheaper to service than lower density development. They argued that only on-site service costs are sensitive to density but that these are paid for directly by developers, not through the development charge system. Interestingly, we found that respondents were willing to believe (without any empirical evidence) that higher density industrial uses were more efficient in terms of municipally-funded services. In fact, several municipalities in the GTA had a development charge exemption for higher density industrial or commercial development (e.g., in Oakville). Moreover, many municipalities charged industrial developers well below the level theoretically required to recover the full municipal costs associated with industrial growth, but no municipality offered a similar reduction on higher density housing.

When asked to explain the different treatment of residential and non-residential development, respondents suggested that many municipalities were attempting to attract more intensive employment-generating land uses, but that there was little municipal interest in attracting high-density residential development, especially if directed at lower-income households. This bias reflects the widespread belief that - among residential uses - only lower-density, high assessment properties “pay for themselves” in that they house higher-income people who are less likely to make demands on social services (e.g., libraries, police and welfare departments) while paying higher property taxes.

Several developers interviewed for this study pointed out that infrastructure savings on off-site services would only be visible at very high densities and that there is no public support for this type of development within suburban areas of the GTA. Residents of these areas have specifically sought out low-density built forms and have little tolerance for the notion that low-density suburban districts must be retrofitted to higher densities for environmental or fiscal reasons.

Even within the development industry itself, there were few firms with a stake in higher-density development that could negotiate more favourable charges in the design of municipal by-laws. This is a reflection of the fact that developers involved in apartment and condominium development had fled those sectors as a result of the dramatic downturn in the market for high-density housing after 1989. As developers interviewed for this research pointed out, lowering charges on apartments would have to be made up by increasing the charges on low-density housing forms, a move that would be unpopular with the industry and inconsistent with the general perception that lower-density housing is more desirable from a fiscal and social point of view. The alternative option, of shifting the burden to property taxes, would not be politically supportable given that it would represent a financial redistribution to the developer or new owners of high density housing from existing municipal taxpayers.

Finally, municipal planning or housing departments, which might be expected to have an interest in promoting more efficient development patterns and more affordable housing, had very little involvement in the design of municipal by-laws in the focus municipalities. Planning departments were required to supply statistical data such as expected population growth and average persons per unit but the negotiations with developers over the design, administration and implementation of the by-law were co-ordinated by officials from finance departments, with little involvement from planners. This reflects the widespread belief that development charges are meant to raise funds for growth-related infrastructure, not to influence development patterns or the production of different housing types.

Conclusions

Despite the evidence of significant repercussions on development patterns, development charges have not been designed either to minimize the negative aspects of those repercussions from a planning point of view or to exploit their positive potential to reinforce planning goals. We found that the typical reasons offered to explain why development charges are structured the way they are in the GTA tend to be superficial, self-contradictory and incomplete. Historical, institutional, and political analysis has revealed a host of other explanations that offer a richer understanding of the issue.

Our case study demonstrated that the municipal-wide approach to designing development charge regimes was advocated by municipalities in order to give them maximum flexibility in the administration of charges, reduce their exposure to financial risk, minimize the need for financial accountability, and strengthen the revenue potential of the charges. Although a site-specific approach was

advocated by the development community, their motivation was related to economic interests. The impacts of either approach on planning goals such as development patterns or housing affordability were not seriously considered.

The victory of the municipal sector over the development industry in this conflict was in turn a reflection of the fact that the Province wanted to ensure the fiscal stability of municipalities as the financial responsibility for an increasing range of capital costs were transferred from provincial to local governments. This victory also reflected the changing social attitude towards residential growth: increasingly, politicians sided with the view that growth was a mixed blessing. Thus, growth should "pay its own way" and any risk associated with land development should be borne by the developers themselves rather than by the municipal corporation. The municipal-wide approach was the best way to ensure this outcome.

We have also noted that some stakeholders involved in the design of the development charge system were unaware or uninterested in the planning implications of their design choices. The Province never undertook to study the connection between development charge systems and planning goals, nor did any municipality in the GTA.[12] Many interviewees claimed that municipal-wide systems were neutral with respect to planning issues because all development was required to pay the same charge no matter where it was located or at what density. Others claimed that location and density had little impact on the cost of providing the services the charges were designed to pay for. Those who agreed that density could affect the cost of services erroneously believed that varying charges by dwelling type accounted for different infrastructural efficiencies associated with different densities. There was some evidence that these false convictions and partial truths were linked to and justified by wider societal prejudices against higher-density, low-income housing.

Another factor we uncovered that helped explain the disconnect between fiscal and planning goals in the design of development charges was the fact that stakeholders with an interest in promoting a marginal cost approach were usually excluded from the negotiating process over the design of provincial legislation or local by-laws. This was consistent with the belief that development charges were meant to finance infrastructure to meet the demand for new housing rather than to guide housing demand to meet land use and infrastructure efficiency objectives. The charge systems were designed unilaterally by municipal finance departments, who were preoccupied with the need to avoid increases in future tax rates and were therefore uninterested in considering rate reductions on specific forms of development in order to achieve planning goals.

The rules governing the development charges system in Ontario were elaborated in an institutional context within which the importance of spatial variables (so important to planning goals) tended to be minimized. For example,

the creation of the "regional" governments within the GTA was partially justified on the grounds that they would provide all residents with the same standard of service and that growth opportunities would be equally distributed throughout the jurisdiction. Indeed, this spatial neutralization gave the new regions a political coherence and sense of identity that defied the spread-out and scattered pattern of settlement found across them. Moreover, the fact that suburban society is designed to be car-dependent and therefore highly mobile also undermines the belief that the need for and use of municipal services is related to geographical factors such as location and density.

The overall conclusion is that development charges in Ontario are geared almost exclusively to their revenue-raising role and are disconnected from planning goals. This emphasis on the revenue raising aspect of development charges reflects an underlying political reality: the municipal politicians who preside over the design of development charges are concerned with reducing the impacts of growth on existing tax payers (alias voters) and are not so much motivated by a desire to maximize the welfare of society as a whole. It may be that provincial politicians, who preside over the framework legislation, are in a better position to require that both revenue-raising and planning issues are considered in the design of local development charge schedules. However, recent trends in Ontario and elsewhere in Canada are for provincial governments to download financial responsibility for an increasing array of services to the municipal level, which places greater emphasis on the revenue-raising aspects of development charges at the local level. In order to reverse this trend and provide local jurisdictions with the political flexibility to consider planning issues in the design of development charge schedules, provincial governments should consider providing subsidies to offset revenue losses due to discounted charges on socially desirable development patterns.

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Notes

[1] Social costs are the full costs of development that include direct, indirect and external costs. The economic prescription that would have development pay its own way would have the social benefits, direct and indirect, netted out. The external benefits produced by development are not considered in municipal calculation of development charges.

[2] Studies on development charges have focused on their revenue potential and price effects (e.g., Amborski, 1988; Skaburskis 1990, 1991; Skaburskis and Qadeer, 1992), legal justification, and the administrative and practical issues related to their implementation (e.g., Nelson, 1988). More recently, Canadian attention has moved towards assessing the impacts of charges on development patterns (e.g., Flowers, 1996; Sancton and Montgomery, 1994; Slack, 1993 and 2002; Tomalty and Skaburskis, 1997; Skaburskis and Tomalty, 2000). This shift in attention is part of a larger resurgence of interest in the cost of different development patterns and the need to achieve more efficient forms of development.

[3] For instance, in BC, municipalities are permitted to vary charges according to the differential cost of providing hard infrastructure (sewage, water, drainage, road improvements and parkland) in different locations, but there is typically no recognition of other planning goals such as the mix of uses in a development, the location of development in designated centres or sub-centres, or the affordability of housing units that result from the development.

[4] When setting the fees, the external benefits generated by the project have to be considered and taken out from the levee. A fiscal analysis would recognize future tax payments as well as the debt retirement component for old infrastructure that may be embedded in the property taxes that the project's future occupants will pay.

[5] A case study approach was used for this research focused on the GTA. Information about development charges in all 29 municipalities was collected but our focus was on five local municipalities and three "regional" municipalities. The latter are municipal jurisdictions that group several local municipalities in part of the GTA and provide overreaching services such as major roads, water, sewer, and police. Both local and regional municipalities have development charges and the focus municipalities chosen for this study cover the range of calculation methods. Five primary sources of information were used to explore development charges in the GTA: 27 intensive interviews (including provincial and municipal officials, developers and development charge consultants); provincial and municipal government documentation (including legislative committee hearings, draft legislation, decisions of Ontario Municipal Board cases, records of public hearings, development charge studies, and development charge by-laws), and local newspapers (Globe and Mail and the Toronto Star).

[6] These figures include lower and upper-tier charges along with those for public utilities, but exclude school board charges. They were current during the period focused on by this research, i.e., in the early 1990s. Since then, most municipalities in the GTA have revised their development charges bylaws in response to the revisions of the Development Charges Act passed by the provincial government in 1997. These revisions affected charge levels by redefining what could and

could not be included in the charge, but did not change the basic approach to development charges as described in this article.

[7] The OMB is a provincially appointed board that decides on planning-related conflicts.

[8] The survey on lot levies done by Price Waterhouse Associates for the UDI in 1977 showed that this approach had become quite common by that date.

[9] The process used in Ontario seems to be very similar to those used in US jurisdictions as presented, for instance, in Kaiser and Burby, 1988.

[10] This number is calculated by the consultant based on the average number of occupants in recently built housing.

[11] Under the revisions made to the Development Charges Act in 1997, municipalities are now required to make a contribution of 10 percent towards the cost of certain services (such as recreation, parkland development, libraries, and transit) if they are included in the bylaw.

[12] The only report on this topic that we could find was a "back of the envelope" type study carried out by Cam Watson, the consultant who was responsible for most of the development charge studies done in the GTA. His study was reported in an eight-page letter to John Livey, the Executive Director of the Greater Toronto Area Task Force (appointed by the provincial government in 1995 to consider options for the restructuring of governance in the GTA). He concluded that based on these considerations, "It would be possible to justify further reductions [i.e., beyond the reduction due to lower persons per unit] in the high density charge, of a tangible (but indeterminate) amount ($1000 per unit?)" if municipalities were encouraged/directed to take into efficiencies of and the reduced use of municipal services per person in higher density development. This represents about 15% of the charge on high density housing.

References

Amborski, D. P. 1988. *Impact Fees Canadian Style: The Use of Development Charges in Ontario*. In *Development Impact Fees: Policy Rationale, Practice, Theory, and Issues*, edited by A. C. Nelson, 52-63. Chicago: Planners Press.

Association of Municipalities of Ontario. 1982. *Municipal Lot Levies: An Update*. Toronto: AMO.

Burchell, R. *et al.*. 1998. *The Costs of Sprawl - Revisited*. Transportation Research Board, National Research Council. Washington, DC: National Academy Press.

Downing, P. 1973. "User Charges and the Development of Urban Land." *National Tax Journal* 26: 631-637.

Flowers, M. 1996. *Using Development Charges to Achieve Housing and Residential Land Use Policy*. Toronto: Program in Planning, University of Toronto.

Greater Toronto Area Task Force. January 1996. *Greater Toronto*. Toronto: GTATF.

Isin, E. and R. Tomalty. 1993. *Resettling Cities: Canadian Residential Intensification Initiatives*. Ottawa, Canada Mortgage and Housing Corporation.

Kaiser, E. J., and R. J. Burby. 1988. *Exactions in Managing Growth: The Land-Use Planning Perspective.* In *Private Supply of Public Services, Evaluation of Real Estate Exactions, Linkage and Alternative Land Policies*, edited by R. Alterman, 113-126. New York: New York University Press.

Kaiser, S. 1996. *UDI's Perspective on Bill 98*, held at Toronto, December 12, 1996.

Nelson, A. C. 1988. *Development Impact Fees: Policy Rationale, Practice, Theory, and Issues.* Chicago: Planners Press.

Ontario Home Builders' Association. January 1987. *Lot Levy Handbook*. Toronto: OHBA.

Ontario Ministry of Municipal Affairs. April 1988. *Lot Levies and Front-End Financing*. Toronto: MMA.

Sancton, A. and B. Montgomery. 1994. *Municipal Government and Residential Land Development.* In *The Changing Canadian Metropolis: A Public Policy Perspective*, edited by F. Frisken, 777-798. Berkeley: Institute of Government Studies Press, University of California.

Skaburskis, A. and M. Qadeer. 1992."Empirical Estimation of the Price Effects of Development Impact Fees" *Urban Studies*. 29:5, pp. 651-666.

Skaburskis, A. 1991. "The Design of Development Cost Charges" *Journal of Property Research*, 8, pp. 83-98.

Skaburskis, A. 1990. "The Burden of Development Impact Fees" *Land Development Studies*, 7, pp. 173-185.

Skaburskis, A. and R. Tomalty. 2000. "The Effect of Property Taxes and Development Cost Charges on Urban Development: Views of Toronto and Ottawa Developers, Planners and Municipal Finance Officials" *Canadian Journal of Regional Science*, XXIII:2, pp. 303-325,

Slack, E. 2002. *Municipal Finance and the Pattern of Urban Growth*. Toronto: C.D. Howe Institute.

Slack, E. 1993. *Land Use Implications of Alternative Municipal Financial Tools*. Toronto: ICURR.

Tomalty, R. and A. Skaburskis. 1997. "Negotiating Development Charges in Ontario: Average Cost versus Marginal Cost Pricing of Services" *Urban Studies* 34 (12): 1987-2002.