

January 27, 2005

2005 UDS Budget Briefing Note

Issue Establishment of Reserve Fund Under the *Building Code Statute Law Amendment Act, 2002* (Bill 124)

- Background:**
- The Budget Advisory Committee, at its January 24, 2005 meeting requested that the Commissioner of Urban Development Services report with respect to a reserve fund from increased permit fees.
 - “Bill 124” is the largest reform to the building regulatory system since the Ontario Building Code was introduced in the mid-1970s. New requirements to improve service levels legislated in the revised Building Code Act (BCA) require a re-investment in staffing and technology as well as program delivery changes.
 - The November 30, 2004 report to Planning and Transportation Committee recommends the establishment of an obligatory reserve fund with a 2005 contribution of up to \$2.1 million, if projected revenues are realized, in order to fund future year needs to meet statutory requirements.
 - Currently, more revenues are collected through permit fees than are expended through the direct and indirect costs of activities related to the administration and enforcement of the BCA.
 - As of July 2005, the Building Code Act (BCA) stipulates that the total amount of fees paid for building permit application and issuance match the reasonable costs to administer and enforce the BCA. In recognition of the fact that work can carry on for a number of years after permit revenues are received, the regulations under the Act explicitly provide for these costs to include the establishment of reserves to fund future year’s work.
 - The BCA requirements related to the justification of fees charged are similar, in principle, to Municipal Act requirements, Planning Act restrictions and the current case law (e.g., Supreme Court of Canada Decision on probate fees, Re: Eurig Estate 1998)
 - The regulations require that all municipalities produce an annual report (after July 2005) outlining the costs incurred relative to revenues collected to enforce the BCA

for the **previous** year, and that interested parties be provided with notice of the report.

- The Building Division has completed a detailed costing analysis to identify the direct and indirect costs related to enforcement of the Act in anticipation of the 2005 requirements. To justify the fees collected and satisfy the service delivery requirements of the Act, the UDS budget includes increased staffing and service delivery improvements related to BCA enforcement and recommends establishing a new reserve fund, if projected increases in revenues are realized.
- The reserve fund would be used, in part, for service improvements such as technology enhancements to assist in program delivery (as described in the November 30, 2004 report). Reserve funds would also be used to cover staff costs for work that carries over year to year. Work on large permit applications is not usually completed in the year the revenue was received, but takes an average of three years to complete.
- There is a risk of court challenge if the total permit fees collected do not match the reasonable direct and indirect costs of BCA enforcement. If the projected revenues are received in 2005, and not spent on service delivery, or protected in a reserve, it will be difficult to defend against a challenge. Based on current revenue levels an increase in building permit fees is not justifiable.
- While overall development fees are comparatively lower in Toronto than in other GTA municipalities, building permit fees are vulnerable to challenge as Toronto's fees are on average approximately 30% higher than other GTA municipalities (Toronto Area Chief Building Officials Committee 2003 Survey).

Key Points:

1. Amendments to the Building Code Act require that municipalities match building permit fees to the costs of enforcing the Act, with annual reporting requirements as of 2005.
2. Permit revenues held in a reserve fund dedicated to implementation of the Act can be considered as part of the cost of enforcement.
3. Establishing a reserve fund of up to \$2.1 million from permit revenues, if realized, is recommended in the UDS budget to match costs to revenues, and to fund future year work related to applications received in 2005.
4. There is a risk that permit fees will be challenged if costs do not match revenues received.

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