

Angered by rapid increases in municipal lot levies, developers in Ontario want the government to reform these 'obscene' practices.

Lashing out at levies



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Al Zabas, associate editor of Canadian Building Magazine, has covered the real estate, development, construction industries for seven years in a career that spans 16 years. Most of that time has been spent working for daily newspapers.

No doubt reasoning that it's best to show as well as tell a story, Ontario's development industry is citing examples to back its argument that increases in municipal lot levies are out of hand and are driving up the cost of housing.

In Vaughan Township, north of Metropolitan Toronto, for instance, the levy on a standard residential lot has risen 47% to \$9,102 since 1985.

In Mississauga, a rapidly growing city on Metro Toronto's western doorstep, the levy has risen a more modest 29% to \$8,179. But it's still the second highest in Ontario.

Newmarket, which ranked 20th in 1985, now ranks fourth - the result of a 117% increase in its total municipal and regional government levy. It is now \$8,046.

In the case of Vaughan, the levy, which is passed through from the developer to the builder to the homebuyer, adds \$85.65 to a monthly mortgage payment. With a 10% mortgage rate, a homebuyer ends up paying an extra \$20,556 over the life of a 20-year mortgage.

That direct relationship between the levy - traditionally, a fee to a developer to cover the municipal cost of growth-related water, sewer and road services - and the cost of a new house is even acknowledged by one of those charging the levy - Newmarket Mayor Ray Twinney.

He proposes to waive the town's minimum levy of \$2,500 if developers of a planned subdivision build 30 townhouses priced between \$110,000 to \$120,000, still considered affordable in the Greater Toronto market. "We don't expect the developer to supply and do everything for the town to get affordable housing," says Twinney, "and so what we're saying is 'We can help you a bit'."

But the help is too little, too late, an isolated gesture that falls flat in the face of the enormity of the problem, according to the Ontario chapter of the Urban Development Institute, the Ontario Home Builders' Association and panelists at a round-table discussion conducted by Canadian Building to look specifically at the issue of lot levies.

"The two biggest obscenities with lot levies are these," says Bruce Kerr, Canadian Building panelist and senior vice-president of the land/urban development division of Bramalea Ltd. "First of all, after municipalities collect them there's no accountability, nothing that says where they have to spend them or how they're spent. They trade these pools of money at whim. You think it's gone in to pay for a sewer; you think it's supposed to be directed toward your site and they build a recreation centre 10 miles away.

"The other problem: where else in any other business or industry would you find the calculation of something like this done on such an indiscriminate basis. There is not a system that says 'Here's how to calculate a lot levy.'"

His criticism alongside that of fellow panelists Frank Giannone, vice-president of the Toronto Home Builders' Association, and OHBA president Hugh Heron, establishes the parameters of the development/homebuilding industry's attack on levies as well as the road to reform. They suggest:

- There must be a clear definition of what constitutes a lot levy and its actual dollar cost.
- A specific, standardized set of rules must show clearly what the levy pays for, i.e., only the traditional 'hard' services or the 'soft' services that range from waste treatment facilities to community centres.

Says Giannone: "We'd like to see it spelled out. What do these levies cover? How much of a levy does this home have to bear? Spell it out so that we know exactly what we are paying for."

- A manual or other framework common to the entire province, produced by the government, must detail the method municipalities use to calculate a levy. Two basic methods are possible - the site specific and the average cost approach (or a melding of the two). The first bases the levy on the specific capital costs prompted by a specific housing, commercial or industrial project that are borne by the municipality. The second takes in the growth-related capital costs of all developments within the municipality over time.
- There must be legislative assurance that prevailing service levels will be maintained without municipal gold-plating.

According to Kerr: "They're not there to improve the level of service for anybody. It's not for the new guy - that is, he gets a better arena - it's for the level of service that the community at large possesses."

- Lastly, a clearly defined and established appeal must be set in place.

In the face of levies that double, even triple, in the space of one year, the industry charges that municipalities are running amok and have taken \$1 billion out of homebuyers' pockets in the last three years.

"There's a lot of things lining up that suggest to us that there's a steam-roller effect going on right now," Kerr says. "And you know when it happens? It only happens when the perception, politically, is that we're making money."

This perceived "steam-roller effect" prompted UDI and OHBA to call on the Ontario government in mid April to impose an immediate, province-wide freeze on increases in municipal levies. The unheeded demand was seen as providing breathing room, an interim move to allow a special working group consisting of representatives of UDI, OHBA, the Association of Municipalities of Ontario and the Ministry of Municipal Affairs to hammer out a final, new consensus on levies and give the Ontario government a chance to produce new legislation to govern the way municipalities impose them.

"Housing affordability is the province's number one issue," says UDI Ontario president John Switzer. "It

should be relatively simple for a provincial government to respond to an issue of such major proportion. Yet we have still heard nothing from government."

The industry had expected a government policy paper when a report of the working group's deliberations was released in late April. Instead it got a 59 page "history lesson," as one UDI spokesman put it, devoid of the new policy that the industry had originally expected in the fall of 1987.

It merely re-states AMO and UDI/OHBA positions, where the two parties concur and where they differ. It adds a historical context and speaks about the legal battles fought over the "loosely worded" legislation empowering municipalities to charge levies. "The findings of the courts and the Ontario Municipal Board varied from case to case and were sometimes confusing and conflicting," it says.

The failure of the government to produce a new policy is blamed on an intervening provincial election, a change in priorities for new Municipal Affairs Minister John Eakins and a need to bring him up to speed on the controversial issue.

"There was tremendous momentum in the fall," says Haydn Matthews, chairman of the land use committee of UDI Ontario and thus UDI's representative on the working group. "We were getting down to the short strokes. Then nothing; it went flat."

Since the report was issued, and because the government cannot introduce lot levy reform in the Legislature this session, an agreement has been reached to try to resolve outstanding issues before the end of June. That precedes what one highly placed ministry official says will be a Fall, 1988, introduction of draft legislation.

In the meantime, the industry will remain angry and the issue of economic injustice and political opportunism, out-and-out ill-treatment and sense of abuse that developers feel will continue.

All this is not to suggest that the talks begun by the working group three years ago failed to produce some consensus. Agreement was found on the following:

- Comprehensive provincial legislation must exist to ensure consistency and certainty for developers and municipalities alike. It must be permissive, thereby allowing a municipality to decide whether or not it wants to impose levies.
- Municipal levy bylaws covering residential, industrial and commercial land must be adopted only after notice of intent to do so has been given and public comment sought. Bylaws must remain in force for five years unless amended via clearly defined procedures.

- If a developer appeals a levy to the Ontario Municipal Board, the municipality collects the levy and the developer proceeds with the project. Money changes hands in the form of a refund or surcharge once the OMB rules on the appeal.
- A phase-in period of two years must be established for new municipal levy bylaws.
- Increases in levies should be linked to an agreed-upon price index.
- Payment of levies should occur when building permits are issued with a legislative provision for mutually agreed-upon partial pre-payment.
- Calculation of the levy, determined by using the preferred average-cost approach, must be consistent.
- To quote the report: "All parties agree that lot levies from new development should not be established to fund a community-wide upgrade of service or the replacement of depleted facilities. Nor should lot levies be used to recover ongoing municipal costs."
- Furthermore, future levying policy must consider only growth-related capital costs and only to the standard currently prevailing in the community - no gold-plating as municipalities are charged with doing.
- Municipalities must be fully accountable for the collected levies and must disclose clearly how they are spent.

The working group found no resolution on appropriate levies for land governed by development agreements or zoned before a municipality's levy bylaw was in place.

Similarly the working group failed to get far in the debate over what portions of a municipality's infrastructure can legitimately be funded by levies. The debate falls apart on the division between hard services, what might legitimately be called 'semi-hard' services like waste treatment and soft services.

The industry has no difficulty paying 100% of the cost of growth-related sewer, water and road expansion. But it rejects extending the 100% coverage to solid waste treatment plants and local police and fire stations. Here it's willing to pay 75% while AMO wants 90%.

With soft services, opinion diverges dramatically. Two examples illustrate the gulf. The industry is willing to pay 50% of the growth-related cost per housing lot for a new arena while AMO wants 75%. The industry settles on nothing for hospitals and day care centres while AMO wants the same 75%.

Where the industry moves from these positions remains unclear. On the way to the renewed talks, UDI president Switzer was both playing his cards close to the chest and trying not to give cause for new disputes.

"Our mood is peace, not war," Switzer said, "to build bridges, not walls."

Who's accountable?

In Toronto in mid April, Canadian Building brought together Ontario Home Builders' Association president Hugh Heron, Toronto Home Builders' Association vice-president Frank Giannone and Urban Development Institute, Ontario, vice president Bruce Kerr for a round-table discussion on the impact of municipal lot levies on housing affordability in Ontario. This is an edited version of that conference with Canadian Building editors John Fennell and Al Zabas.

Q Given the impact of levies on the cost of housing, why haven't buyers been more vocal in opposing levies?

A **Kerr:** One of the reasons is probably because most people are not aware of them. If we canvassed the street and stopped half the people coming down Bay Street right now and asked about lot levies, it wouldn't mean anything to them.

Heron: The public are not aware of the homebuilding industry, they really are not. The public don't know what a building permit is, never mind a lot levy. But they don't even care.

Giannone: Those buying the home that a builder builds in Newmarket, for instance, doesn't live in Newmarket and won't live in Newmarket until he actually takes occupancy. Until that time, he can't vote for the politician sitting on the municipal council that is voting to impose - or increase - lot levies.

Q Why hasn't the development industry put up a bigger fight over levies in the past and why has it only become a major issue today?

A **Heron:** We as an industry are more professional. We're no longer in a situation where we're going to be black-mailed.

Kerr: Somehow, when the sun's shining, there's this perception that you as a politician might as well do it now. They can do it because we're almost too damn busy to take them to the Ontario Municipal Board. I can't stop. They have that hammer. We can't get a board hearing for three or four months, and they can delay it, and smooze it along, and their solicitor gets sick. And it's a year later and you don't have your project. And you can't afford it; you go along with the process.

Q How serious is the final impact of a lot levy on a project?

A **Kerr:** I've got to pass it through (an \$18,000 and industrial acre levy imposed on a Bramalea Ltd.

industrial park a month from registration) and the guy who comes to buy from me and build that plant . . . he's going to pay for it.

Giannone: And the guy across the street from you, Bruce, who got his land registered two months ahead of you . . . He's going to beat me by \$18,000 an acre worth of something - either land cost or in the built form in terms of a lease rate.

Heron: Take it right through. This is how complex the whole issue is. In the park is somebody who is trying to compete in the local market, trying to compete in the Pacific Rim.

Kerr: Now why would you attack something like the industrial market-place? If anything, it's apple pie and motherhood and it should be wrapped up in the flag. It's industrial development and that's jobs. And yet they still continue to pound away.

Q Is it that 'pounding away' that keeps the industry angry?

A **Kerr:** Yes, the very people who represent us - the politicians - are directly to blame for the abuse of the lot levy system.

Giannone: When a purchaser moves in, how many arenas are built before the subdivisions are built?

Kerr: It never happens.

Giannone: How many parks are completed even two years after the subdivision is completed? The politicians will tell you that money is used for the arenas, the parks and such. But how many of those parks are in even a year after the people move in? None.

Q In your heart of hearts, do you believe the Ontario government will come through with reforms and new legislation?

A **Kerr:** I don't know; I hope so. The cynic in me says, 'No, I'm going to get finessed.' And they're going to skate and waltz me and say 'See you later.' I'm from Missouri, but I got to tell you, I believe we have made an honest, legitimate, time consuming, laborious attempt to come finally to the point where the province said 'Okay, guys, we can't expect you to do any more than that, it's back in our arena.' And when it spits out that door, it better have a provincial stamp on it. Without that we're going to smooze along for another 15 or 20 years, except that the industry is going to go absolutely crazy.

"If you want to understand why the industry is upset: it's being attacked by politicians who don't understand what's going on" - Hugh Heron

"No one knows the game right now, and, today, I don't even get to see the cards" - Bruce Kerr

"The usual response from a politician when you ask him to cut the levies is 'Well, if I cut the levies, you wouldn't drop your price would you?' But I'd drop my price if the levies dropped and if the market dictated it." - Frank Giannone

"This indiscriminate attitude by all levels of government means they will not be able to react when the marketplace changes." - Hugh Heron