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..... Affidavit of Christopher Paul Bloye.....
Affirmed before me, this 27th day of July, 2018



A Commissioner for Taking Affidavits

Padraic Ryan
LSO# 61687J



Urban Development Institute / Ontario

**THE EDUCATION QUALITY IMPROVEMENT ACT
(BILL 160)**

**A NEW METHODOLOGY FOR CALCULATING
EDUCATION DEVELOPMENT CHARGES**

Submitted to:

The Ministry of Education and Training

Submitted by:

The Urban Development Institute/Ontario

October 1997



f) Notice Requirements

The current Act and the Bill stipulates that the board must make the EDC background study available at least two weeks prior to the public meeting, but there is no minimum statutory timeframe between the holding of the public meeting and the passing of the by-law. Unfortunately, in practice, this period is usually quite short (approximately 3 weeks) and this denies the industry of an opportunity to properly review the complex calculations contained in the EDC background study.

Recommendation: The EDC background study and the draft by-law should be made available well in advance of the public meeting and at least 60 days prior to the passage of the by-law. Ideally, the public should have access to this material at the same time it is submitted to the Ministry for their review and approval.

g) EDC Credits for Land

Bill 160 indicates that a board may, with the consent of the Minister, give an owner an EDC credit for land which has been provided to the board for pupil accommodation.

Recommendation: UDI supports this provision but would suggest that the credit be mandatory rather than permissive. The term "may" should therefore be replaced with the term "shall." In addition, it should be made explicit that full or partial credits are permitted.

h) Exemptions for Small Additions and Temporary Structures

The current Act and Bill 160 provides for a number of limited statutory exemptions, relating mainly to the addition of one or two units to existing residential dwellings and enlargements to existing dwellings. However, certain building types generate limited (if any) pupils and do not trigger a "need for service."

Recommendation: UDI recommends that provisions be introduced which exempt all structures less than 100 square feet in size, external parking garages and all temporary structures (e.g. sales trailers, seasonal bubble structures, un-enclosed weather protection structures), from the payment of an EDC.

E. RULES FOR OPTIONING SCHOOL SITES

Most school boards use option agreements to reserve school sites within new growth areas. The agreements are usually executed after draft plan approval has been obtained but are not actually exercised until final funding approval has been granted by the Ministry, which often occurs after the mature state population of the community has been achieved. This practice imposes an unfair burden on the developer to care for property which is effectively owned by the school board, and is particularly frustrating when all other municipal obligations associated with the project have long since been fulfilled. UDI believes that option agreements will continue to be the preferred mechanism to secure sites under the new model and, accordingly, recommends that certain rules be prescribed by Regulation to ensure that they are fair and equitable for both the school board and the development industry.

a) Term of Agreement

Most option agreements today specify a term of seven to ten years. While this may have been appropriate under the old system, UDI believes that the new model will result in the release of Ministry pupil place grants in a more timely fashion. The term for new agreements should therefore be reduced to five years for both elementary and secondary schools. The option period should be deemed to commence upon registration of a plan of subdivision or similar approval.

b) Determination of Land Value

Most option agreements today do not specify a purchase price but instead require an appraisal to be done when the option is being exercised and the site is being acquired, to determine fair market value. To be consistent with the approach for calculating the value of the land for the EDC based on full market value, the appraisal under the option agreement should determine market value at the date of acquisition based on the permitted alternate use (e.g. low density residential) and the fact that the site is building permit ready, serviced to the property line and pre-graded.

c) Reimbursement for Property Taxes

Developers are usually required to pay property taxes for several years on school sites which are reserved under option agreements but this cost is not always recovered in the purchase price when the site is acquired. Designated school sites should receive a tax exempt status or the cost of property taxes should be included in the option agreement as a reimbursement to the developer at the time of acquisition.

d) First Right of Refusal

In some cases a board concludes that a school site is surplus to its needs after the option agreement has been exercised and the site fully acquired. Boards should be bound by a "first right of refusal" clause which requires them to offer the lands back to the original developer (if the firm still exists) at the same price that it was acquired, subject only to indexing.

e) Optioning Limited to Specific Projects

Boards today often enter option agreements to reserve or secure school sites for future use in growth areas but, due to the lack of enrolment, may not actually require their purchase. This prevents those developers who are forced to reserve sites from using them at the time they are actively developing the subdivision and would force the loss of associated revenue. To limit this practice, UDI recommends that boards be limited to only optioning the amount of land which has been specifically estimated in the board's Long-Term Plan and EDC Background Study. This will require an accounting of "land under option versus enrolment" on a regular basis, but should prevent unnecessary school site reservation.

f) Purchase of School Sites Limited to Option Agreements

In some rare situations, school boards have let their option agreements expire to allow the site to be purchased at a more favourable price through the expropriation process. This penalizes the developer who has entered into the agreement in good faith and who is prepared to live by all conditions contained therein, including the purchase price. As such, if an option agreement fixes the purchase price up-front but a board does not ultimately exercise that option, the board should not be permitted to acquire the same lands at a lower price through expropriation. The board and the developer must be able to rely on all of the terms of the agreement, regardless of who "wins" and "losses" in that specific situation.

g) Option Agreements as Draft Plan Conditions

Some school boards require developers to enter into option agreements in order to fulfil a condition of draft plan approval. This is often used as a lever to obtain certain concessions in the agreement (i.e. term and land value) when the developer is at the final and most critical stage in the development approvals process. UDI is prepared to accept this practice provided the other "optioning" rules referred to above are met. If a board does not require an option agreement prior to registration (or similar approval), the period the site has to be held by the developer for school purposes should commence at registration and be of the same term as identified in the option agreement rules.

CONCLUSION

UDI's position on the issue of education development charges (EDCs) has been clearly defined for many years. Education provides a general benefit to society and the general public as a whole should pay for this service. It should be financed from general tax sources available to municipalities and the Province and not be limited to those who can afford to pay for new housing or establish new businesses. Municipal and education development charges act as a hidden tax, the combined effect of which undermines Ontario's competitiveness and impedes housing affordability.

As such, while UDI does not believe that EDCs are an appropriate funding mechanism for education, it does support the Ministry of Education and Training's new model for funding school construction (i.e. bricks and mortar) through provincial grants. However, if EDCs are to be imposed, UDI supports the principle that EDCs be limited to cover the cost of land only and anticipates that EDC quantum will drop accordingly. Elimination of the construction cost from the EDC will allow the development industry to focus its by-law review efforts on the business which it is most familiar - the land component and its associated value.

The Education Quality Improvement Act (Bill 160) will, amongst other things, give effect to the Ministry's new model and, as the implementing legislation for EDCs, will establish the methodology for their calculation in the future. However, the details necessary for interpreting the effectiveness of the Bill are lacking and have yet to be articulated in the Regulations. UDI has taken this opportunity to propose a more streamlined and accountable EDC methodology, consistent with many of the recommendations of the Expert Panel on Pupil Accommodation. We have also highlighted a number of technical and administrative concerns with the current EDC regime and Bill 160, and offered suggestions for improving the current process for "optioning" school sites. In doing so, UDI has drawn from the extensive experience it has accumulated in negotiating 16 individual EDC by-laws since 1989 and the municipal development charge provisions of Bill 98.

The need for new schools in Ontario over the next 25 years is real and significant but it is critical that the funding mechanism be fair to all stakeholders who are responsible for making contributions. The Ministry's new model is a step in the right direction and UDI looks forward to participating in its implementation and refinement.

APPENDIX A

Recommendations by Expert Panel on Pupil Accommodation

Accountability Framework for Pupil Accommodation Grants

The proposed accountability framework for Pupil Accommodation Grants would consist of four components.

A. Long-term Plan

- to outline activities related to pupil accommodation that the board is contemplating during the next five years

B. Annual Report on School Operations

- to provide information to assess the relative efficiency and effectiveness of expenditures made for heating, lighting, cleaning, etc.

C. Annual Report on School Renewal

- to provide information regarding improvements made during the past year

D. New Schools or Additions to Existing Schools

- to provide information to assess the relative efficiency and effectiveness of project design, construction, financing etc. Information would be made available to other boards also planning new schools

A. Long-term Plan

- to be submitted every three years by each board before the end of May following each municipal election
- plan is to provide background information on current and projected enrolment levels and describe activities related to pupil accommodation that the board is contemplating during the next five years under the following headings:
 - New schools;
 - Additions to existing schools;
 - Renovations and repairs to existing schools; and,
 - School closures.

1. Enrolment

- current enrolment levels for each school; and,
- projected enrolment levels for each school (including new schools) for

each of the next five (ten) years.

2. New Schools

For each new school planned to be built in the next five years:

- proposed location.
 - how will the site for the new school to be acquired (including BDC by-laws);
- proposed capacity;
- program to be offered (JK to 6? JK to 8; Grades 6 to 8?; Secondary School?);
- will the new school be owned or leased;
- expected cost to construct, furnish and equip
 - how will those costs be met
 - rationale for additional expenditure if costs exceed ministry benchmarks; and,
- anticipated impact on transportation cost

3. Additions to Existing Schools

For each addition to an existing school planned to be built in the next five years:

- will additional land be required
 - if so, how will the additional land be acquired;
- what impact will the addition have on the school's capacity;
- will the addition alter the programming at the school;
- is the addition to an owned or leased facility;
- expected cost to construct, furnish and equip
 - how will those costs be met;
 - rationale for additional expenditure if costs exceed ministry benchmarks; and,
- anticipated impact on transportation costs.

4. Renovations/Repairs to Existing Schools

- what renovations or repairs are planned during the next five years
 - anticipated cost by category (eg. roofs, boilers, accessibility)
 - anticipated benefits for program delivery
 - anticipated impact on school operating costs; and,
- description of process used by the board to identify and prioritize renovation/repair projects
 - are any changes to that process contemplated within the next five years.

5. School Closures

- does the board have any plans to close any schools within the next five years;
- what factors will be considered in the decision to close a school; and,
- what processes does the board plan to use to consult with parents and the community regarding possible school closures

APPENDIX B

EDUCATION DEVELOPMENT CHARGES IN ONTARIO

		Residential (per unit) (\$)	Commercial (% of Declared Building Permit Value) (%)
In Force			
YORK	Public Board	1,620	1.102
	Separate Board	730	0.497
	Total	2,350	1.599
PEEL	Public Board	1,594	1.00
	Separate Board	677	0.42
	Total	2,271	1.42
DURHAM	Public Board	1,389	1.07
	Separate Board	339	0.26
	Total	1,728	1.33
DUFFERIN	Public Board	974	0.65
	Separate Board	312	0.20
	Total	1,286	0.85
HALTON	Public Board	764	0.470
	Separate Board	505	0.310
	Total	1,269	0.780
CARLETON*	Public Board	689	0.94
	Separate Board	381	0.52
	Public French Board	20	0.028
	Separate French Board	164	0.224
	Total	1,254	1.712
HAMILTON-WENTWORTH**	Wentworth County Public Board	737	1.00
	Hamilton Wentworth RCSSB	333	0.45
	Total	1,070	1.45

* Not Applicable to Ottawa, Vanier or Rockcliffe Park

** Not Applicable to City of Hamilton

Source: C.N. Watson and Associates Limited Economists, July 25, 1997.

APPENDIX C

Urban Development Institute / Ontario

August 6, 1997

Mr. Drew Nameth
 Co-Chair
 Expert Panel on Pupil Accommodation
 c/o Ministry of Education and Training
 900 Bay Street
 21st Floor Mowat Block
 Toronto, Ontario
 M7A 1L2

Dear Mr. Nameth;

RE: BENCHMARKS FOR NEW SCHOOL SITE SIZES

We would like to start by indicating our initial support for the Ministry's proposed model for the funding of new school construction and associated site acquisition. We believe it will help to clarify the role of the Government and that of the development industry with respect to education funding and should ultimately assist in reducing the extent of capital that is necessary to deliver schools in the future. It is critical, however, that appropriate benchmarks be established to ensure that the new Pupil Accommodation Grants and the Education Development Charges not only ensure that the space needs of Ontario's students are met, but that they also help to drive further efficiencies and cost-effectiveness into the system. It is on this basis that we have undertaken a benchmark analysis of elementary and secondary school site areas and enclose it now for the Expert Panel's review and consideration.

In essence, we have taken the "best practices" of schools that have recently been built or are now under construction in and around the GTA and applied them to a series of test cases to determine the most efficient site size. For elementary and secondary schools we have examined the following factors:

Elementary

building footprint
 driveway area
 kindergarten play area
 hard play area
 soccer field area
 baseball field area
 parking area
 portable area (fixed)
 remainder/buffer

Secondary

building footprint
 driveway area
 additional field area
 baseball field area
 track and field area
 hard play area
 parking area
 portable area (fixed)
 remainder/buffer





OUR MEMBERSHIP

The Urban Development Institute/Ontario (UDI) has acted as the voice of the development, building and property management industry in Ontario for 40 years. The Institute is a non-profit organization supported by its members which include firms and individuals who own sizeable holdings of raw land, apartment units and business space. Our membership is engaged in all aspects of the planning and development of communities and the construction of residential, industrial and commercial projects. UDI serves as a forum for knowledge, experience, and research on land use planning and development.

Today, UDI's members include: land developers, builders, land use and environmental planners, investors, financial institutions, engineers, lawyers, surveyors, economists, landscape architects, marketing and research firms and architects. Together they constitute the collective forces guiding the creation and improvement of Ontario's built environment.

The Institute is a partner in UDI Canada, the coast-to-coast organization representing the national interests of the development community.



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EDUCATION DEVELOPMENT CHARGES A TIME FOR CHANGE

The Urban Development Institute/Ontario

On May 21, 1997 the Minister of Education and Training announced the Government's new "student-focused" funding model for elementary and secondary education. According to the Ministry's "Excellence in Student-Focused Funding for Ontario" Guide Book, which was released as part of the announcement, a school board's 1998 budget will be based on three components: a *foundation grant* to provide for students' core education needs; seven *special purpose grants* to recognize the different circumstances faced by students and school boards across Ontario; and, a *pupil accommodation grant* to pay for the cost of operating, maintaining and constructing schools. The Government's funding proposal, however, does not provide grants for the acquisition of new school sites but school boards will be given considerable flexibility under the new system to acquire sites in growth areas of the province, including the use of Education Development Charges (EDCs).

Also on May 21, 1997, the Minister announced the appointment of an Expert Panel on Pupil Accommodation to provide technical advice on the new funding model. On September 5, 1997, the Panel filed its report and made a number of recommendations regarding space, construction, operation, renewal and site size benchmarks, all of which will be used when a board is calculating their per-pupil grants and associated EDCs.

Finally, on September 22, 1997, the Education Quality Improvement Act (Bill 160) was introduced in the Legislature for first reading. Part IX, Division E of the Act replaces Part III of the existing Development Charges Act (retitled the Education Development Charges Act by Bill 98) and will allow school boards to continue to impose Education Development Charges (EDCs) to pay for the cost of schools associated with new development. However, in keeping with the Minister's announcement in May, the Bill limits the use of EDCs to cover the cost of land only - provincial grants will now cover 100 percent of all building related costs (i.e. bricks and mortar).

The development industry has a fundamental interest in ensuring that new school facilities are provided consistent with the pace of growth. Moreover, as a result of the 1989 Development Charges Act and more recently with Bill 98, the development industry will continue to directly fund the cost of new schools through the contribution of an EDC on new homes and businesses. So while the need for new schools in Ontario is no doubt real and significant (estimated at approximately \$3 billion over the next 25 years), it is critical that the funding mechanism be fair to all stakeholders who are responsible for making contributions - the partnership must be equitable.

The Urban Development Institute (UDI) and many of its members have invested considerable effort on the issue of school funding over the last several years and have accumulated extensive experience as a result of direct negotiations with school boards on 16 individual EDC by-laws. More recently, UDI and the Dufferin-Peel Roman Catholic Separate School Board jointly authored a study entitled, "Working Together to Build Ontario's Schools - A Case Study to Explore Public/Private Partnerships" which "pushed the envelope" by exploring more cost-effective methods of providing schools through public and private sector delivery. UDI also played a lead role on behalf of the development industry in advancing many of the Bill 98 principles and suggesting refinements throughout the legislative review process.

Accordingly, this paper builds on these efforts and provides UDI's commentary on the Ministry's new funding model, the Expert Panel's recommendations and the EDC portion of Bill 160. We highlight a number of technical, administrative and legal concerns with the current legislation and Bill 160, and offer suggestions for improving the current process for "optioning" school sites. It is important to note, however, that while UDI endorses a number of the principles and concepts of the Government's new model and the implementing legislation, much of the detail will need to be articulated by forthcoming Regulations. UDI looks forward to working with the Ministry to ensure that the detail mirrors the principles and provides the necessary direction and control to school boards in their calculation of EDC quantum in the future.

A. THE MINISTRY'S PROPOSED NEW FUNDING MODEL AND BILL 160

Under the Ministry's new funding model, it is proposed that school boards would receive grants on a "per pupil" basis for school operation (i.e. heating, cleaning and maintenance) and renewal (repairs and rehabilitation of existing buildings). Funding will be calculated to recognize realistic costs for these activities and boards will be required to report annually on their spending. In addition, if boards have demonstrated that they have utilized all "excess" capacity within their system and that their enrolment cannot be accommodated without new space, they will be entitled to receive block-grants, also calculated on a per-pupil basis, to allow them to construct additions to existing schools and/or build new ones. The new Pupil Accommodation Grant, in total, will be structured using the following formula:

Total Annual Grant for Pupil Accommodation	=		Grant for School Operation	+	Grant for School Renewal	+	Grant for New Pupil Places
Grant for School Operation	=	Number of Pupils	X Benchmark Area Requirement per Pupil	X	Benchmark Operating Cost per Square Foot	X	Geographic Adjustment Factor
Grant for School Renewal	=	Number of Pupils	X Benchmark Area Requirement per Pupil	X	Benchmark Renewal Cost per Square Foot	X	Geographic Adjustment Factor
Grant for New Pupil Places	=	Enrolment in excess of Capacity	X Benchmark Area Requirement per Pupil	X	Benchmark Construction Cost per Square Foot	X	Geographic Adjustment Factor

It is important to note, however, that the new Pupil Place grant (last line of the formula) will be limited strictly to the cost of constructing, equipping and furnishing new schools and will not include any contribution towards the acquisition of land for school sites. Instead, boards will be "encouraged" to acquire sites by using undeveloped land within their current portfolio, entering into cooperative arrangements with developers and municipalities for joint and multi-use facilities and seeking long-term leases with the private sector. Boards will also be able to purchase new sites using savings from board operating grants and will be permitted to impose Education Development Charges (EDCs) if they have a projected net increase in student population resulting from new development.

On September 22, 1997, the Education Quality Improvement Act (Bill 160) was introduced in the Legislature for first reading and is, amongst other things, the implementing legislation for the Ministry's new model. Part IX, Division E of the Act replaces Part III of the existing Development Charges Act (retitled the Education Development Charges Act by Bill 98) and allows school boards to impose EDCs to cover the cost of school site acquisition. While UDI recognizes that Bill 160 is a much broader piece of legislation dealing with education governance, finance and labour relations, it will be referred to in this paper exclusively as the EDC bill.

B. ROLE OF THE EXPERT PANEL ON PUPIL ACCOMMODATION

To obtain technical advice on the new funding model, the Government established four expert panels, one of which focused on the issues of pupil accommodation and the associated grant structure. The Expert Panel on Pupil Accommodation, as it came to be called, was comprised of a team of specialists from school boards, the provincial government and the private sector, including representation by the Urban Development Institute. On September 5, 1997, the Panel filed its report with the Minister which, amongst other things, recommended improvements to the allocation model as well as "benchmarks" to be used by individual school boards when calculating the per-pupil grants and Education Development Charges, as follows:

a) The New Pupil Place Grant

In essence, the Panel concurred with the Ministry's model that the grant for New Pupil Accommodation should be determined on a per-pupil basis and comprised of three components: a school operation grant, a school renewal grant and a new pupil place grant. More specifically, it recommended that the following formula, benchmarks and accountability framework be used to determine the annual grant for New Pupil Places (i.e. construction grant):

Grant for New Pupil Places	=	Enrolment in excess of Capacity	X	Benchmark Area Requirement per Pupil	X	Benchmark Construction Cost per Square Foot	X	Geographic Adjustment Factor
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i) Benchmarks

- Enrolment in Excess of Capacity for elementary schools should be computed as the difference between "Day School Average Daily Enrolment" of students enrolled in Junior Kindergarten, Kindergarten and Grades 1 through 8, (as defined in the General Legislative Grant (GLG) Regulations as they apply for the appropriate academic year) and the capacity of the board's elementary schools as at September 1, 1998, determined jointly by the Ministry and the board using loading factors;
- Enrolment in Excess of Capacity for secondary schools should be computed as the difference between "Day School Average Daily Enrolment" of students enrolled in Grades 9 through OAC, (as defined in the General Legislative Grant (GLG) Regulations as they apply for the appropriate academic year) and the capacity of the board's secondary schools as at September 1, 1998, determined jointly by the Ministry and the board using loading factors;

- The Benchmark Area Requirement per Pupil in the elementary and secondary panels should be 100 square feet and 120 square feet respectively. The Panel believed that these benchmarks would provide sufficient teaching and ancillary space to permit the effective delivery of school programming and provide the additional space required to accommodate the typical distribution of special education, ESL programming, etc; and,
- The Benchmark Amortized Construction Cost per Square Foot for new elementary and secondary school facilities should be \$11 and \$12 respectively. The Panel believed that a benchmark of this magnitude reasonably reflects the cost to design, construct, furnish and equip new schools and additions to existing ones, including taxes and fees, over a 25 year period. (This cost does not consider the additional savings that could be realized by boards entering into partnerships with co-terminous boards, municipalities and/or the private sector to reduce area requirements).

ii) The Long-Term Plan

As part of the accountability framework for Pupil Accommodation Grants, the Panel also recommended that a Long-Term Plan be submitted by each board before the end of May following each municipal election. This plan would relate specifically to the new Pupil Place Grant and provide background information on current and projected enrolment levels and describe activities related to pupil accommodation that the board is contemplating during the next five (ten) years under the following headings: new schools; additions to existing schools; renovations and repairs to existing schools; and school closures. (Appendix A)

b) Education Development Charges (EDCs)

As outlined above, the Government's funding proposal does not provide grants for the acquisition of school sites. Instead, school boards will be given considerable flexibility under the new system to acquire sites they need for new schools in growth areas of the province and will be encouraged to sell surplus properties, lease space from the private sector and joint venture with other parties (i.e. for multi-use facilities). Boards will also be permitted to impose Education Development Charges but must adhere to the Ministry's site size benchmarks and the parameters for estimating land value. Accordingly, the Expert Panel made recommendations in this regard:

i). Site-Size Benchmarks

The benchmark area requirements for new elementary school sites should range from 4 to 8 acres of usable area depending upon the proposed capacity of the new school. The Panel believes that to accommodate the building footprint and provide reasonable parking for staff and visitors, and adequate hard surfaced play areas and playing fields for the student body:

- a usable area of 4 acres is required for up to 400 students;
- approximately one acre more is required for each additional 100 students; and,
- a usable area of 8 acres is large enough to accommodate enrolments in excess of 750 students.

The benchmark area requirements for new secondary school sites should range from 12 to 18 acres of usable area depending upon the proposed capacity of the new school. The Panel believes that to accommodate the building footprint and provide reasonable parking for staff and visitors, and outdoor teaching areas/playing fields for the student body;

- a usable area of 12 acres is required for up to 1000 students;
- approximately one acre more is required for each additional 100 students; and,
- a usable area of 18 acres is large enough to accommodate enrolments in excess of 1800 students.

ii) *Estimating Land Value*

The EDC rate established for each school board should be based on the local fair market value of a serviced, pre-graded site that allows full utilization of the site to the recommended benchmark area. Any required remediation of the site should be done by the vendor prior to the purchase by the school board, or the purchase price discounted below fair market value by the estimated cost of any required remediation, since boards may have no other revenue sources to offset these costs. This means that all site-related costs to bring a site to building permit ready stage must be eligible to be included in the EDC.

C. A NEW MODEL FOR EDUCATION DEVELOPMENT CHARGES

a) UDI's Historical Position

On November 23, 1989, the Development Charges Act received Royal Assent and was intended to bring greater certainty, uniformity and accountability to the former lot levy practices. The Act permits municipalities to impose development charges to finance capital not only for typical "hard" services such as roads and sewers but all forms of soft services such as police and fire, parks, libraries and transit. Boards of Education were also permitted, for the first time, to pass by-laws and impose a charge on new homes and businesses to fund new schools required in growth areas. Over the last seven years, 16 school boards have adopted EDC by-laws as a vehicle to fund the local share (approximately 20% to 35%) of the school construction and land acquisition costs associated new pupil accomodation (Appendix B).

UDI's position on the whole issue of development charges has been clearly defined for many years but was articulated most recently in its position paper entitled "Development Charges - A Time For Change" which was submitted to the Ministry of Municipal Affairs and Housing in July 1996 in advance of Bill 98. In simplest terms, UDI believes that the use of municipal and Education Development Charges has created a group of taxpayers (residential, commercial and industrial) who are disenfranchised because they are unable to participate in the decision-making process regarding the need for certain services. The entire development charge process is undertaken well in advance of building permit withdrawal and certainly before the taxpayers who will ultimately be paying the charges realize that they will be resident in the area. In essence, the development charge acts as a hidden tax but its impact on Ontario's competitiveness, housing affordability and on the existing and future taxpayer, is significant.

In this paper, UDI reiterated its position on the use of development charges to fund education, as follows:

"Education provides a general benefit to society and the general public as a whole should pay for this service. It should not be limited to those who can afford to pay for new housing or establish new businesses. In addition, schools are not given final funding approval until after the mature state population has been achieved, similar to hospitals and long-term care facilities. Finally, the municipality has no control over how funds for school facilities are spent. For these and other fundamental reasons, education should be financed from general tax sources available to municipalities and the Province."

b) **The New Methodology**

Having said this, UDI realizes that EDCs are a key ingredient in the Ministry's new funding model and will no doubt be used by growth boards to generate significant land-related revenue for new schools. As such, while UDI cannot endorse the use of EDCs as a general funding mechanism, we do support the funding of new school construction through provincial grants and the implementation of a formula-based approach to see this occur. However, if EDCs are to be imposed, UDI supports the principle that they be limited to cover the cost of land only. Elimination of the construction cost from the EDC, as proposed under Bill 160, will allow the development industry to focus its EDC By-law review efforts on the area of business which it is most familiar - the land component and its associated value.

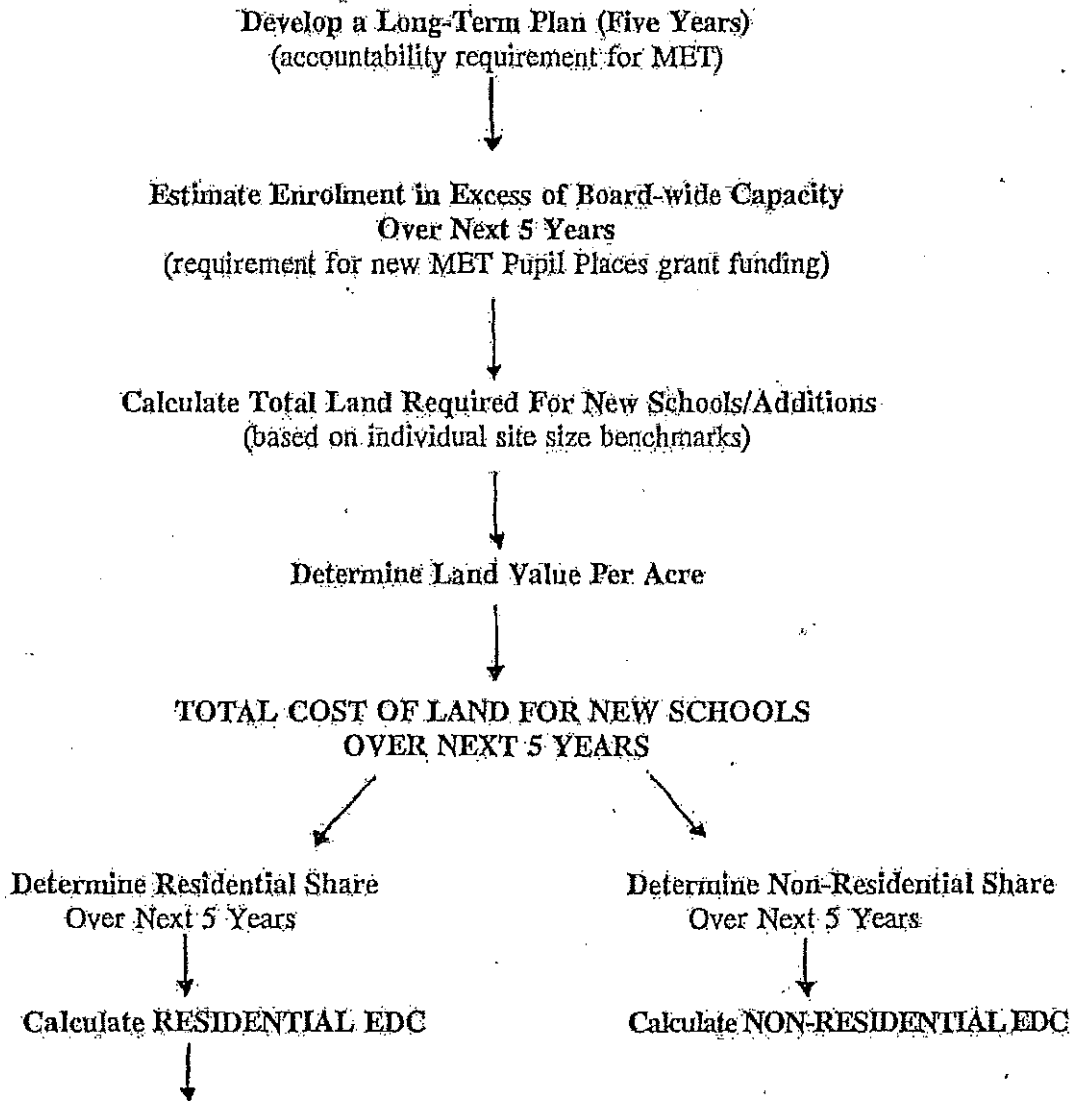
The current methodology for calculating EDCs is laid out, step by step, in Provincial regulations and is further directed by the Ministry of Education and Training's (MET) "Guidelines for Education Development Charges." While this approach has led to some conformity across the province, it has required the development industry to invest considerable energy in scrutinizing detailed unit projections, pupil yield factors, pupil generations, land and construction costs and other related inputs. The new funding model, which limits EDCs to land only, coupled with the Panel's recommendations for site size benchmarks and the preparation of a Long-term Plan, provides an opportunity to dramatically simplify the calculation of EDCs while maintaining sufficient rigour in the process.

Bill 160, section 257.61 (1) provides a general framework for the calculation of the EDC by requiring the associated background study to include:

- estimates of the anticipated amount, type and location of residential and non-residential development;
- the number of projected new pupil places and the number of new schools required to provide those new pupil places;
- estimates of the education land cost, the net education land cost and the growth-related net education land cost of the new schools required to provide the projected new pupil places; and,
- such other information as may be prescribed.

Since a more detailed methodology has not been included in the Bill nor has it, as yet, been prescribed by Regulation, UDI offers the following methodology for calculating EDCs in the future and the rationale behind the key inputs:

EDC CALCULATION METHODOLOGY



c) **Rationale Behind Key Inputs in Methodology**

i) *Long-Term Plan and Estimate of Land Requirements*

In order to qualify for the new Pupil Place Grants, a school board will be required to prepare a Long-Term Plan. This Plan will provide background information on current and projected enrolment levels and describe activities related to pupil accommodation that are being contemplated during the next five (ten) years. The plan will examine the need for school closures/mergers, temporary accommodation (i.e. portables) and, more

importantly, will also estimate the number, location and capacity of new schools and/or additions to be built and the amount of land required for each. The total estimated land requirement should be calculated by applying the site size benchmarks (discussed below) and adjusted for surplus school sites not included in the estimate of available capacity in existing schools.

ii) *Enrolment in Excess of Capacity*

A school board will also be required to determine its enrolment in excess of board-wide capacity on an annual basis in order to qualify for the Ministry's Pupil Place Grants. However, a board will need to project their enrolment in excess of capacity over the next five to ten years (as per the Long-Term Plan above), and should be required to undertake the following specific calculations:

- project the number of housing units to be built in the school district over the next five years by housing type;
- determine the pupil generation factors based on the average over the past 10 years of actual pupils per unit by housing type calculated over the entire housing stock;
- calculate the number of elementary and secondary pupils by multiplying housing unit projections for each housing type by appropriate pupil generation factors; and,
- subtract capacity available in existing schools on a board-wide basis (versus review area basis as is the current practice) to estimate the number of new pupil places that will be required to accommodate pupils from new homes.

It is important that co-terminous boards undertake their capacity analyses jointly to ensure the use of a consistent methodology and to prevent "double-counting" of units, pupils, etc. UDI sees the "Enrolment in Excess of Capacity" analysis and the Long-Term Plan as the foundation of the board's BDC Background Study and should be prescribed by Regulation.

iii) *Site Size Benchmarks*

Boards across Ontario have, for the most part, relied upon outdated standards for determining site sizes and this has led to excessive land requirements. Under the new funding model, boards will be required to apply elementary and secondary school site size benchmarks when calculating the amount of land required for new stand-alone schools and for additions. UDI supports this approach and sees it as being critical to driving efficiencies and cost-effectiveness into the land calculation process where none existed previously. However, while the Panel's site size benchmark recommendations represent a definite improvement over current board practices, we believe they could be improved further, particularly as a means of motivating boards to continue to pursue joint and multi-use facilities. In fact, in a recent "best practices" analysis which was shared with the Expert Panel in August, UDI concluded that more aggressive benchmarks could

be achieved, resulting in a 2.6 acre standard for a 530 pupil elementary school and a 7.3 acre standard for a 940 pupil secondary school (Appendix C).

Nonetheless, it is important to recognize that the Panel's benchmark recommendations have been developed to ensure that reasonable space is available for the building footprint, staff and visitor parking, and outdoor teaching areas/playing fields. While unusual or extraordinary circumstances may warrant site sizes in excess of the prescribed benchmarks (i.e. septic systems in rural Ontario), Ministry approval to accommodate excessive or "gold-plated" municipal standards should be offered cautiously.

iv) *Cost of Land*

Bill 160 requires, as a condition of draft approval, that a developer must offer a school site for sale to a board at a value that does not "...exceed the value of the land on the day before the day of the approval of the draft plan of subdivision" (i.e. raw land). Unfortunately, the full market value of that property would be much higher, reflecting the fact that the land is fully serviced, pre-graded and within a registered plan. It is critical that developers who are impacted by a school site receive fair market value for their land and those who are not impacted be required to pay the same value. Large neighbourhood plans are usually developed today by landowner groups who look to share the cost or burden of "non-productive" uses such as schools, even though the actual site may fall on only one landowner's parcel. This owner must receive fair market value for the site or they will end up subsidizing the other developers. The principle of fairness must apply and UDI recommends that the value of land for calculating an EDC (the input factor) be the same as the value of land for purchasing sites in the future (the output factor) and in both cases that it be based on full market value.

As such, UDI supports the Panel's recommendation that the cost of land be based on the local fair market value of a building permit ready, serviced (to the property line) and pre-graded site that allows for full utilization to the benchmark area. More specifically, UDI suggests that the value should be calculated on the basis that the alternate use is residential (as expressed through dual zoning) and averaged in a weighted manner to reflect the local lot mix used in the local and Regional Official Plans (i.e. the extent of low, medium and high density housing).

v) *Residential/Non-Residential Apportionment*

To determine an appropriate balance of burden, UDI recommends a residential/non-residential split based on the projected activity in each sector over the next five years, unless a different ratio can be negotiated between the school board and the local development community.

vi) *Residential EDC*

To determine the residential EDC, the residential share of the land cost should be divided by the total number of new housing units projected for that five year period, as defined in the local and regional Official Plans. However, in contrast to the flat rate approach which the current legislation appears to dictate, the EDC should be adjusted to reflect the different occupancies and pupil ratios that are generated by different unit types. This approach is consistent with most municipal development charge by-laws and more closely reflects the cost of providing school services to new residential growth. As such, the EDC should be differentiated by the following unit types:

- single and semi-detached;
- low density multiples/townhouses (excluding apartments); and,
- apartments - two bedroom and larger
apartments - bachelor and one bedroom.

Specific definitions for these unit types should be developed and incorporated in the Regulations to ensure fairness in the application of EDCs.

vii) *Non-Residential EDC*

To determine the non-residential EDC, the non-residential share of the land cost should be divided by the total gross floor area (GFA) for all industrial, commercial and institutional development projected for that five year period, as defined in the local and regional Official Plans. This is in contrast to the current practice of most boards where the total non-residential net building permit value is used.

d) **Other Measures Complementary to EDCs**

As part of the grant allocation and EDC calculation process, boards should also be encouraged to pursue other operational measures to maximize or expand the capacity of their existing systems including the use of multi-use facilities and more effective timetable scheduling. Many innovative options have not been fully explored in Ontario and yet, if adopted either individually or in combination, can release considerable space within the system and is an effective method of reducing the demand for new pupil places. A best practices directory on the Ministry's web page should be implemented to enable boards to share innovative ideas and successful examples of efficient use.

D. OTHER TECHNICAL AND ADMINISTRATIVE CONCERNS WITH THE LEGISLATION

Over the last seven years, since the proclamation of the Development Charges Act, school boards, builders, developers, consultants and solicitors have been involved in extensive negotiations leading up to the passing of some 16 EDC by-laws. Over this period, UDI and its members have encountered a number of problems with the current legislation and its associated regulations. Some of these issues have been addressed through Bill 160 while others remain unresolved. In addition, while there has been some move to ensure consistency between the municipal and education development charge calculations as a result of the timing of Bill 98 and Bill 160, further improvements can be made. The following represents UDI's technical and administrative concerns with the current EDC regime and that proposed under Bill 160:

a) Determination of Land Value

As discussed above, it is critical that developers who are impacted by a school site receive fair market value for their land and those who are not impacted be required to pay the same value-- the principle of fairness must apply.

Recommendation: The value of land for calculating an EDC and value of land for purchasing school sites under an option agreement should be the same and based on full market value of a building permit ready, fully serviced to the street line and pre-graded site.

b) Exemptions for Non-Residential Development

Currently, all non-residential development is subject to an EDC except those lands owned and used by municipalities and school boards. More specifically, Ontario Regulation 268 s.4(1) requires that a board establish the non-residential share as a percentage that is greater than zero and not exceeding 40 per cent. Bill 160 reflects the same principle.

Recommendation: As is the case with Bill 98, boards should be given the discretion to exempt non-residential development from the EDC, provided the residential share is not reciprocally burdened. If a board chooses to impose a non-residential EDC, the split should be based on the residential and non-residential activity projected in each sector over the next five years, unless a different ratio can be negotiated between the school board and the local development community.

As a vehicle to promote new industrial activity, Bill 160 exempts from EDCs, any expansion of an industrial building up to 50 per cent of the existing gross floor area. UDI fully supports this exemption and would suggest that the definition of an "existing industrial building," "gross floor area" and other relevant terms be crafted from the Bill 98 Regulation to ensure consistency.

c) **Demolition Credits**

Ontario Regulation 268 (s.9.1) provides an EDC exemption if a dwelling unit is destroyed and construction of a replacement dwelling on the same site commences within two years. Unfortunately, a similar exemption for non-residential development does not exist in the current Act nor has it been included in Bill 160. Most municipal development charge by-laws contain a non-residential demolition credit provision to reflect the notion that there is no additional demand placed on the service brought about by the replacement dwelling.

Recommendation: A provision should be included in the legislation or permitted by Regulation to allow a non-residential EDC credit to be given for the gross floor area demolished (i.e. the EDC would be paid only on additional floor area). In addition, UDI suggests that the exemption period for both residential and non-residential development be extended from two to ten years to provide some flexibility to the developer as to when the replacement building is constructed.

d) **Non-Residential EDC Based on GFA**

Ontario Regulation 268, s.4(3) requires the calculation of the non-residential EDC on the basis of declared building permit value (i.e. construction value). However, many municipalities in the GTA no longer use declared value as the basis for building permit fee calculation, requiring the boards to take on the responsibility of calculating the value for each project as the basis for their EDC. The only available cost index is the Toronto Real Estate Board (TREB) index which is problematic as it does not include some types of structures (e.g. farm buildings, sports plexes, cinemas, restaurants).

Recommendation: Similar to virtually all municipal development charges, the non-residential EDC should be calculated on a gross floor area (GFA) basis.

e) **Residential EDC by Unit Type**

Ontario Regulation 268, s.3, paragraph 21, seems to suggest that the residential EDC cannot be differentiated by unit type. However, a differentiated EDC acknowledges the unique occupancies and pupil generation ratios for each unit type and more closely reflects the cost of providing school services to new residential growth.

Recommendation: The residential EDC should be differentiated by unit type, consistent with most municipal development charge by-laws, the definitions of which must reflect occupancy characteristics.