

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 1, Report No. 8, of the Finance, Administration and Audit Committee, which was adopted without amendment by the Council of the City of Vaughan on September 26, 2017.

1 DEVELOPMENT CHARGE COMPLAINT HEARING

The Finance, Administration and Audit Committee recommends:

- 1) That the recommendation contained in the following report of the Chief Financial Officer and City Treasurer and Director, Financial Planning & Development Finance and Deputy City Treasurer, dated September 20, 2017, be approved;**
- 2) That the deputation of Mr. Leo Longo, Aird & Berlis LLP, Brookfield Place, Bay, Bay Street, Toronto, on behalf of the applicant, be received;**
- 3) That Communication C3 from Mr. James A. Easto, Keel Cottrelle LLP, Toronto Street, Toronto, on behalf of the York Region District School Board and the York Catholic District School Board, be received.**

Recommendation

The Chief Financial Officer and City Treasurer and Director, Financial Planning & Development Finance and Deputy City Treasurer, in consultation with the Deputy City Manager, Legal and Human Resources, the Deputy City Manager, Planning and Growth Management and the Director, Building Standards recommend:

1. That Council determine that the Development Charges By-laws of the City, York Region District School Board and York Catholic District School Board (collectively, the "School Boards") have been properly applied to the non-residential development at 70 Whitmore Road; and
2. That Council dismiss the complaint filed pursuant to Section 20 of the Development Charges Act (the "DC Act") and Section 257.85 of the Education Act.

Contribution to Sustainability

It is important that the City defend the application of its Development Charge (DC) By-laws as the funds collected fund growth-related capital costs such as roads, water mains and fire stations that help service these developments and redevelopments. Education development charges are collected by the City on behalf of the School Boards and remitted to them monthly. The funds are used by the School Boards to purchase and develop land for growth-related schools.

Economic Impact

There are no immediate financial impacts that would result from the recommendations in this report. DCs have already been collected by the City prior to building permit issuance.

Should the applicant appeal Council's decision to the Ontario Municipal Board (OMB) then external legal costs may be incurred in the future.

Communications Plan

Notice of the hearing has been sent to the Complainant.

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Purpose

The purpose is to respond to a complaint filed by Aird & Berlis LLP on behalf of 6053971 Canada Inc. ("the Complainant") pursuant to Section 20 of the DC Act and Section 257.85 of the Education Act.

Background - Analysis and Options

6053971 Canada Inc. is the owner of 70 Whitmore Road and applied for a building permit, Building Permit #2016 003215, to construct a 2nd floor addition in the existing building on site. Staff assessed DCs in the amount of \$86,640.03 for the City component of the charge, \$12,543.69 for the School Boards component and \$665,048.47 for the Region's component based on 1,554.36 square metres of added Gross Floor Area (GFA) pursuant to City DC By-law 045-2013 as amended and the relevant Region and School Boards' By-laws. The Complainant paid the DC at issuance of the building permit.

Provisions under the DC Act and Education Act allow a complaint under limited circumstances

Under Section 20 of the DC Act, a person required to pay a DC may complain to the municipality imposing the charge that,

- a) The amount of the DC was incorrectly determined;
- b) Whether a credit is available to be used against the DC, or the amount of the credit or the service with respect to which a credit was given, was incorrectly determined, or
- c) There was an error in the application of the DC by-law.

Section 20 further requires that Council hold a hearing into the complaint and give the complainant an opportunity to make representations at the hearing. After hearing the evidence and submissions of the complainant, the Council may dismiss the complaint or rectify any incorrect determination or error that was subject of the complaint. Under Section 22 of the DC Act, the complainant may appeal the decision of Council to the OMB.

Section 257.85 of the Education Act contains substantially similar provisions with respect to complaints as those in the DC Act and requires that the local Council hold a hearing on behalf of the School Boards.

The basis of the complaint relates to expansion exemptions for industrial buildings and to the definition of a "commercial parking garage"

The letter received from the Complainant claims that there was an error in the application of the Development Charge By-law #045-2013. The basis of the complaint is that:

- a) the addition should be exempt from paying DCs pursuant to s. 4 of the DC Act, exemptions for industrial developments, and
- b) the second floor of the building used for car storage should not be charged because it is not designed or intended to be used as a "commercial parking garage" as defined in the City's DC By-law and GFA definition.

The Complainant is seeking a refund of the City and School Boards' DCs paid related to the addition.

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Staff has reviewed the complaint and believe DCs were assessed correctly

Staff is of the opinion that the DC By-laws were appropriately applied.

The City DC By-law definitions relevant to this file are as follows:

(k) “commercial parking garage” means a building or structure, or any part thereof, where motor vehicles are stored prior to being sold or rented to the general public, or whose principal use is the parking of motor vehicles for remuneration.

(q) “existing industrial building” means an existing building or structure to be used or designed or intended for,

- (i) manufacturing, producing, processing, storing or distributing something,
- (ii) research or development in connection with manufacturing, producing or processing something,
- (iii) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place,
- (iv) office or administrative purposes, if they are,
 - (A) carried out with respect to manufacturing, producing, processing, storage or distributing of something, and
 - (B) in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution;

(s) “gross floor area” means, in the case of a non-residential building or structure or the non-residential portion of a mixed-use building or structure, the aggregate of the areas of each floor, whether above or below grade, measured between the exterior faces of the exterior walls of the building or structure or from the centre line of a common wall separating a non-residential and residential use, and:

- (iv) excludes in the case of a building containing non-commercial parking garage spaces, the sum of the areas of each floor used, or designed or intended for use for the non-commercial parking of motor vehicles, but includes any part of a building or structure above or below grade used as a commercial parking garage.

With respect to the industrial exemption, the original building was constructed in 1987 with a GFA of 3,057 square metres. In 2004 building permit #04-2818 was issued for a 1,987.7 square metres expansion to the building and an industrial expansion exemption equating to 1,528.5 square metres (50% of 3,057) was applied based on the use of the building at the time, exhausting the maximum exemption that can be applied under the by-law.

With respect to the use of the second-floor addition which is the subject of this complaint, the Complainant has indicated that the space will be used to temporarily store vehicles prior to and after servicing. The space is being used for commercial purposes as part of the Complainant's repair and maintenance operations, and is not being used for employee or customer parking; the exemption for non-commercial parking garage spaces therefore should not apply.

In addition, accepting the complainant's position that the space ought to be exempted from DCs because it is being used for vehicle storage will potentially set a precedent for all automotive repair businesses to ask for similar exemptions; this position is not consistent with the purpose and intent of the by-law, as DCs have always been payable for storage space.

Finally, the DC charges under the School Boards' DC By-laws are applied to gross floor area of the building, and there are no applicable exemptions.

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Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

The City DC By-laws are used to recover costs of growth-related capital, and supporting the proper interpretation and application of the By-laws is consistent with the Service Excellence Strategic Initiative of Financial Sustainability.

Regional Implications

The Region has also received a DC complaint from the Complainant. City staff expect the Region will deal with the complaint shortly.

Conclusion

Staff is of the opinion that the DC By-laws have been applied properly and no error was made in the calculation of the DCs, and therefore the complaint should be dismissed.

Attachments

Attachment 1 Complaint letter from Aird & Berlis LLP on behalf of 6053971 Canada Inc.

Report prepared by:

Terry Liuni, Manager, Development Finance, Ext. 8354
Sean Yang, Legal Counsel, Ext. 8475

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)