

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.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 1, Finance Report No. 8 – Page 2

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.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 1, Finance Report No. 8 – Page 3

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.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF SEPTEMBER 26, 2017

Item 1, Finance Report No. 8 – Page 4

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.)

Bellisario, Adelina

C 3
COMMUNICATION
FAA - September 20/2017
ITEM - 1

Subject: FW: Development Charge Complaint: 6053971 Canada Inc. - 70 Whitmore Road, Vaughan - S. 20 Complaint and S. 257.85 Complaint (FAA Committee September 20, 2017)

From: Lina Calabrese [<mailto:LCalabrese@KeelCottrelle.ca>] **On Behalf Of** James A. Easto
Sent: Tuesday, September 19, 2017 12:03 PM
To: Clerks@vaughan.ca; Yang, Sean <Sean.Yang@vaughan.ca>; llongo@airdberlis.com
Cc: James A. Easto <JEasto@KeelCottrelle.ca>
Subject: Development Charge Complaint: 6053971 Canada Inc. - 70 Whitmore Road, Vaughan - S. 20 Complaint and S. 257.85 Complaint (FAA Committee September 20, 2017)

We are the solicitors for York Region District School Board and York Catholic District School Board.

This will confirm that both School Boards support the recommendations in the report to Council from 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.

The School Boards do not intend to appear before Council at the hearing of the complaints tomorrow but do support the position taken by the City in response to the complaints made by the landowner/applicant.



James A. Easto

Keel Cottrelle LLP
36 Toronto Street, Suite 920, Toronto, ON M5C 2C5
T 416.367.7703 | F 416.367.2791 | jeasto@keelcottrelle.ca

www.keelcottrelle.com

NOTE: This e-mail message is intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender and delete this e-mail message.

NOTE: Ce courriel et tout document y annexé sont confidentiels et font l'objet du privilège avocat-client. Si vous avez reçu ce message par erreur, veuillez nous en informer immédiatement par courriel ou par téléphone au 416.367.2900. Même si nous nous efforçons continuellement de maintenir l'intégrité de nos systèmes, nous n'assumons aucune responsabilité pour tout virus ou pourriel transmis.

FINANCE ADMINISTRATION AND AUDIT COMMITTEE- SEPTEMBER 20, 2017

DEVELOPMENT CHARGE COMPLAINT HEARING

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.

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.

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.

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

Respectfully submitted,

Laura Mirabella-Siddall, CPA, CA
Chief Financial Officer and City Treasurer

Lloyd Noronha, CPA, CMA
Director, Financial Planning & Development Finance
and Deputy City Treasurer

AIRD & BERLIS LLP

Barristers and Solicitors

Leo F. Longo
Direct: 416.865.7778
E-mail: llongo@airdberlis.com

May 16, 2017

File No. 135864

VIA EMAIL: barbara.mcewan@vaughan.ca
BY REGULAR MAIL

Mayor and Council Members
City of Vaughan
Vaughan City Hall
2141 Major Mackenzie Dr.
Vaughan, ON L6A 1T1

Attention: Barbara McEwan, City Clerk

Dear Ms. McEwan:

Re: Section 20 Complaint
Development Charges Act, 1997

Section 257.85 Complaint
Education Act

6053971 Canada Inc.
70 Whitmore Road, Vaughan
Building Permit No. 16-0984

We are counsel to the landowner/applicant in this matter.

Please accept this letter as a formal complaint under section 20 of the *Development Charges Act, 1997* and 257.85 of the *Education Act*.

We submit that the amounts of the City's development charge and the educational development charges assessed and paid in connection with the above building permit were incorrectly determined and that there was an error in the application of Vaughan Development Charge By-law No. 045-2013 and the relevant District School Board by-laws imposing the educational development charges.

For your records, I enclose a copy of our client's payment under protest to the City and the City's receipt indicating the levies that were imposed and paid in this matter.

The proposed development is that of a highly specialized automobile mechanic service shop located within an existing industrial building in an employment use zone. This

May 16, 2017
Page 2

addition should be exempt from paying any development charges by operation of s. 4 of the *Development Charges Act, 1997* and 3(7) of By-law No. 045-2013.

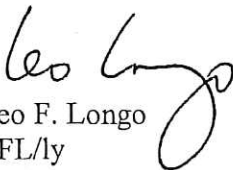
In the alternative, the parking spaces on the second floor of the building should not be assessed as GFA upon which DCs are calculated. The subject spaces were not designed or intended to be used as a "commercial parking garage" as that term is defined in the By-Law.

We reserve the right to augment this complaint with other information and reasons.

We look forward to discussing this with you and hope that this matter will be resolved to our mutual satisfaction.

Yours truly,

AIRD & BERLIS LLP


Leo F. Longo
LFL/ly
Encl.

c. Client
Vaughan CFO and City Treasurer
Wes Surdyka Architect Inc.
York Region District School Board
York Catholic District School Board

29302988.3