

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, Report No. 15, of the Finance, Administration and Audit Committee, which was adopted without amendment by the Council of the City of Vaughan on December 13, 2016.

1 DEVELOPMENT CHARGE COMPLAINT HEARING

The Finance, Administration and Audit Committee recommends:

- 1) That consideration of this hearing be deferred to the Council meeting of January 24, 2017, to allow parties to meet and address issues;**
- 2) That the deputation of Mr. Leo Longo, Aird & Berlis, Bay Street, Toronto, on behalf of the applicant, be received; and**
- 3) That Communication C1, memorandum from the Director of Financial Planning and Development Finance and Deputy City Treasurer, the Director of Legal Services and the Director of Building Standards, 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, the Director, Legal Services and the Director, Building Standards recommend:

1. That Council determine that the Development Charges By-law has been properly applied to the non-residential development at 105 and 131 Four Valley Drive; and
2. That Council dismiss the complaint filed pursuant to Section 20 of the Development Charges 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.

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 Playacor Holding Ltd. ("the Complainant") pursuant to section 20 of the DC Act, 1997 ("the DC Act").

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF DECEMBER 13, 2016

Item 1, Finance Report No. 15 – Page 2

Background - Analysis and Options

Playacor Holdings Ltd. is the owner of 105 and 131 Four Valley Drive and applied for a building permit, Building Permit #2016 000752, to construct a car dealership (Pfaff Porsche). Staff assessed DCs in the amount of \$486,663.66 for the City component of the charge based on 9,012.29 square metres of Gross Floor Area (GFA) at a rate of \$54/m² pursuant to DC By-law 045-2013 as amended. The Complainant paid the DC at issuance of the building permit. The GFA used to assess the DC included below grade GFA which is the subject of this complaint.

Provisions under the DC 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 the complainant may appeal the decision of Council to the OMB.

The basis of the complaint is related to the definition of a “commercial parking garage”

The letter received from the Complainant makes claim that there was an error in the application of the Development Charge By-law #045-2013. The basis of the complaint is that the underground parking spaces were included in the GFA. The Complainant states that the space was not designed or intended to be used as a “commercial parking garage” as defined in the DC By-law and that the parking spaces are exempted from the By-law's GFA definition. The Complainant is seeking a refund of the City DC's paid related to the underground parking spaces.

Staff has reviewed the complaint and believe DCs were assessed correctly

Staff is of the opinion that the DC By-law was appropriately applied.

The 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.

(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.**

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Item 1, Finance Report No. 15 – Page 3

The building permit application is for the construction of a car dealership that includes below grade floor space. The Site Statistical chart of the Building Permit drawings referenced “Basement” GFA of 2638.27 m² and “Basement Employee Parking” of 1391.66 m². The Building Standards Department’s review of the drawings determined that the space was not considered vehicle parking in accordance with the requirement of Subsection 3.8 Parking Requirements and the definitions in section 2.0 of zoning By-law 1-88. Even if this space was suitable for parking, the definition of “commercial parking garage” would be applied and DC’s would be charged for the space.

The underground parking space defined in the building drawing is 1391.66 m². The City DC for this space is \$75,149.64.

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

The DC By-law is used to recover costs of growth related capital and the defense of this By-law is consistent with the Service Excellence Strategic Initiative of Financial Sustainability.

Regional Implications

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

Conclusion

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

Attachments

Attachment 1 Complaint letter from Aird & Berlis LLP on behalf of Playacor Holdings Ltd.

Report prepared by:

Terry Liuni, Manager, Development Finance, Ext. 8354

(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.)



TO: MAYOR AND MEMBERS OF COUNCIL

**FROM: LLOYD NORONHA, DIRECTOR OF FINANCIAL PLANNING AND DEVELOPMENT
FINANCE AND DEPUTY CITY TREASURER
HEATHER WILSON, DIRECTOR OF LEGAL SERVICES
JASON SCHMIDT-SHOUKRI, DIRECTOR OF BUILDING STANDARDS**

**RE: FINANCE, ADMINISTRATION AND AUDIT COMMITTEE – December 5, 2016
DEVELOPMENT CHARGE COMPLAINT**

Purpose

The purpose of this Communication is to present Members of Council with additional information on the issue of the development charge complaint from Playacor Holdings Ltd.

Background

It is Staff's understanding that the complainant, Playacor, has advanced the argument that since the underground parking in question was established to comply with City zoning requirement, it should not be subject to development charges. City Staff reviewed the file in light of this argument, and Staff's recommendation remains the same. None of the underground parking spaces comply with By-Law 1-88 (the "Zoning By-Law"), and therefore Staff continue to be of the opinion that By-Law 045-2013 (the "Development Charge By-law") was correctly applied, and all of the underground parking spaces are subject to development charges. Staff's position on this issue is set out as follows:

- Playacor wished to develop 2 dealerships in 2 phases.
- Playacor was aware that it did not have enough space for parking to fulfill zoning requirements for this first dealership in question
 - As a result, Playacor wanted to establish parking spaces on the adjacent (north) lands to satisfy parking requirement on the surface.
- Playacor chose to consolidate the lots to meet the zoning requirements for parking and expedite site plan approval.
- None of the underground parking as currently designed complies with the Zoning By-Law
 - None of the underground spaces can be directly accessed from an aisle of appropriate width as set out under Sections 3.8 (f) and (g) of the Zoning By-Law. As a result, tandem or stacked spaces cannot be counted as parking spaces for zoning purposes.

Conclusion

Staff have continued to discuss the file with the complainant. Staff cannot support the position of the complainant and believe the Development Charge By-Law was correctly applied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Lloyd Noronha'.

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

A handwritten signature in blue ink, appearing to read 'Heather Wilson'.

Heather Wilson
Director of Legal Services

A handwritten signature in blue ink, appearing to read 'Jason Schmidt-Shoukri'.

Jason Schmidt-Shoukri
Director of Building Standards

FINANCE ADMINISTRATION AND AUDIT COMMITTEE- DECEMBER 5, 2016

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, the Director, Legal Services and the Director, Building Standards recommend:

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Economic Impact

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Report prepared by:

Terry Liuni, Manager, Development Finance, Ext. 8354

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

September 15, 2016

File No. 133649

VIA EMAIL: jeffrey.abrams@vaughan.ca
AND BY COURIER

City of Vaughan
Vaughan City Hall
2141 Major Mackenzie Dr.
Vaughan, ON L6A 1T1

Attention: Jeffrey Abrams, City Clerk

Dear Mr. Abrams:

Re: Section 20 Complaint
Development Charges Act, 1997

Playacor Holdings Ltd. (Pfaff Porsche)
105-131 Four Valley Drive, Vaughan
Building Permit No. 16-000752

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*.

We submit that the amount of the City development charge assessed and paid in connection with the above building permit was incorrectly determined and that there was an error in the application of Development Charge By-law No. 045-2013 ("By-Law").

The City DC was calculated on the basis of 9,012.m² GFA, all of which was assessed at the DC rate (\$54.00).

Underground parking spaces were included in the GFA calculation. 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. These parking spaces are explicitly exempted from the By-Law's definition of GFA and ought not to have been included in the GFA calculation. A refund of the entire amount of City DCs paid related to this GFA ought to be refunded.

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.

September 15, 2016
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Yours truly,

AIRD & BERLIS LLP


Leo F. Longo
LFL/ly

c: Client
P. King
Office of the Chief Financial Officer and City Treasurer, City of Vaughan

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