



## STAFF REPORT ACTION REQUIRED

### Complaint pursuant to Section 20 of the *Development Charges Act, 1997* – 2454 Bayview Avenue

<b>Date:</b>	June 4, 2007
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager and Chief Financial Officer Deputy City Manager Richard Butts
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2007\Internal Services\Sp\Ec07005Sp – tn (AFS #5140)

#### SUMMARY

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The purpose of this report is to provide staff recommendation in response to a complaint filed under section 20 of the *Development Charges Act, 1997* (the “Act”).

Staff is of the opinion that the development charges by-law was properly applied to this development and accordingly it is recommended that the complaint be dismissed and a refund not be issued.

#### RECOMMENDATION

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The Deputy City Manager and Chief Financial Officer and Deputy City Manager Richard Butts recommend to Council that:

1. Council dismiss the complaint, filed under section 20 of the *Development Charges Act, 1997*, and the request for a refund of the development charges paid in the amount of \$142,598.35 not be approved.

#### Financial Impact

There is no financial impact resulting from the adoption of the above recommendation.

#### ISSUE BACKGROUND

The complaint (Attachment 1) relates to the assessment and collection of development charges for the construction of a new private elementary school. The complainant’s stated

position is that a private elementary school does not constitute a “Retail Use” as defined in the City’s Development Charges By-law, and as such, the application of the by-law and the imposition of the development charge were incorrectly made. A full reimbursement of the development charges paid is being requested.

### **Provisions under the Act**

Under section 20 of the Act, a person required to pay a development charge may complain to Council that,

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

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

### **COMMENTS**

On January 25, 2007, Dibri Inc, the owner of lands municipally known as 2454 Bayview Avenue, applied for a building permit to construct a new two-storey building with basement, to be leased on a long-term basis to Junior Academy Inc. for use as a private elementary school. Building Division staff determined that the project constituted a Retail Use, as defined in the City’s Development Charges By-law (the “by-law”). On March 9, 2007, the building permit was issued, and development charges in the amount of \$142,598.35 were collected for approximately 1705 square metres of non-residential gross floor area.

The by-law defines Retail Use, in part, as “lands, buildings or structures ... used, designed or intended for use for the primary purpose of the sale or rental of services, goods ... to the public ....” The proposed use in the present case is for a private elementary school for students from kindergarten through to Grade 8. Junior Academy Inc. is a for-profit organization, and students are charged a fee for attending the school. Thus, the proposed building is properly characterized as a “Retail Use” for development charge purposes as being designed and used for the primary purpose of providing educational services to the public.

The by-law does not apply to lands owned by and used for the purposes of a board of education as defined in the Education Act. The by-law also provides that development charges are not imposed on colleges or universities as defined in and used for the purposes of the Education Act. A private school does not come within either of these two

exemptions, and accordingly is subject to the payment of development charges.

A survey of seven other municipalities/regions in the province has indicated that under similar circumstances a private school would be assessed and required to pay development charges within their respective jurisdictions.

The City Solicitor has been consulted in the preparation of this report and concurs with its recommendation.

## **CONTACT**

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Ann Borooah, Chief Building Official and Executive Director  
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## **SIGNATURE**

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Joseph P. Pennachetti  
Deputy City Manager and  
Chief Financial Officer

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Richard Butts  
Deputy City Manager

## **ATTACHMENTS**

Attachment 1: DC Complaint letter dated April 3, 2007 from Davies Howe Partners, counsel to Dibri Inc.