



**STAFF REPORT  
ACTION REQUIRED**

**Complaint Pursuant to Section 20 of the *Development Charges Act, 1997* – 200 Lonsdale Road**

<b>Date:</b>	August 20, 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\Ec07009Sp (AFS #5673)

**SUMMARY**

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The purpose of this report is to provide staff recommendations in response to a complaint filed pursuant to 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.

**RECOMMENDATIONS**

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

1. Council dismiss the complaint filed pursuant to Section 20 of the *Development Charges Act, 1997*, and the request for a refund of the development charges paid in the amount of \$370,623.07 not be approved.

**Financial Impact**

Staff recommends that the complaint be dismissed for the reasons contained in this report. A decision to recognize the complaint would have consequential negative precedent-setting implications. Such a decision would lead to a loss of revenue of \$370,623.07 in the present case, and also development charges already collected from other private schools (over \$150,000). In addition, all future building permit applications of private schools and other similar institutions that provide a service to a paying public

would seek to be exempted from the City's Development Charges By-law (the "by-law"), leading to further loss of revenue.

## **ISSUE BACKGROUND**

The complaint (Attachment 1) relates to the assessment and collection of development charges for the replacement of an existing hockey rink with a new twin-pad arena. The complainant's stated position is that a private school is an institutional use and does not constitute a "Retail Use" as defined in the 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 (the "Board"). The complainant may also appeal to the Board if Council does not deal with the complaint within 60 days after the complaint has been made.

## **COMMENTS**

An initial proposal for the replacement of a single-pad arena (the Patrick Johnson Arena) located on a south-easterly portion of the lands municipally known as 200 Lonsdale Road (Upper Canada College) with a new two-pad arena facility was submitted to the City for review on November 21, 2006.

The plans submitted with this proposal indicate that the arena would be constructed to include two ice-hockey rinks complete with the necessary mechanical, service, and change-room facilities to support the building. The building would also contain a separate change-room facility for the Upper Canada College football programme in addition to a second floor area for circulation and ancillary office/boardroom space.

On March 28, 2007, a building permit application was submitted for the above development. Toronto Building staff determined that the project constituted a Retail Use,

as defined in the by-law. On July 12, 2007, the building permit was issued, and development charges in the amount of \$370,623.07 were collected for approximately 4,462 square metres of net new 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 development in the present case is a modernization of facilities at a private school which charges its students 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 as part of the operations of the private school, whose primary purpose is to provide educational services to the public.

A section of the by-law specifically provides that it 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.

At its meeting on July 16, 17, 18 and 19, 2007, in its decision relating to a complaint filed on behalf of Dibri Inc. (2454 Bayview Avenue), Council determined that private schools constituted Retail Use as defined in the by-law, and dismissed the complaint. (<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-07-16-cc11-dd.pdf>) The matter has, however, been appealed to the Board.

In another instance, Council dismissed a complaint filed by the Granite Club (2350 Bayview Avenue) against the imposition of development charges for an addition to and expansion of its existing aquatic facilities and a relocation of some of its auxiliary use areas. The Council decision dismissing the complaint was appealed to the Board. In its written Decision issued in December 2006, the Board dismissed the appeal and ruled that the intent of the City’s by-law was to apply the non-residential development charge to any and all classes of persons that provide a product or service to the public, unless specifically exempted under the provisions of the by-law.

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

## **CONTACT**

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Mario Angelucci, Acting Director, Toronto Building  
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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 July 17, 2007, from Fraser Milner Casgrain LLP, counsel to Upper Canada College