



**STAFF REPORT
ACTION REQUIRED**

Development Charges Complaint – 1675 and 1681 Lake Shore Boulevard East

Date:	January 30, 2012
To:	Executive Committee
From:	Deputy City Manager and Chief Financial Officer
Wards:	32 Beaches East York
Reference Number:	P:\2012\Internal Services\SP\EC12002sp (AFS # 14895)

SUMMARY

This report responds to a complaint filed under Section 20 of the *Development Charges Act, 1997* ("DC Act") and *Section 257.85 of the Education Act, 1990* ("Education Act") relating to a proposed renovation and building addition to an existing restaurant located at 1675 and 1681 Lake Shore Boulevard East.

The lands are owned by the Toronto and Region Conservation Authority ("TRCA") and maintained by the City through a long term agreement with the TRCA. The City has also entered into a lease agreement with Tuggs Incorporated ("Tuggs"), whereby Tuggs operates a restaurant on the premises known as the Boardwalk Restaurant. Tuggs was required to pay development charges and education development charges, in the amounts of \$52,312.61 and \$3,548.49 respectively, for a proposed addition to the existing restaurant building. The complainant argues that the building is owned by and used for the purpose of the municipality and should be exempted from the charges.

After reviewing the complaint, staff conclude that the restaurant addition is not used for the purposes of the City and is therefore not exempted from the charges under the provisions of both the Development Charges and Education Development Charges By-laws. This report recommends that the complaint be dismissed.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer recommends that:

1. Council determine that the Development Charges and the Education Development Charges By-laws have been properly applied to the land development project located at 1675 and 1681 Lake Shore Boulevard East.
2. Council dismiss the complaint filed pursuant to Section 20 of the DC Act and *Section 257.85* of the Education Act.

Financial Impact

There are no direct financial impacts resulting from the adoption of the recommendations contained in this report. Development charges and education development charges, in the amounts of \$52,312.61 and \$3,548.49 respectively, were properly collected by the City at the time of building permit issuance (September 2011).

The development charges will be used to fund the City's eligible growth-related capital costs, as approved by Council through the City's annual budget process. Education development charges, collected by the City on behalf of the Toronto Catholic District School Board ("TCDSB"), are remitted to the School Board monthly as required by Education Development Charges By-law. The funds are used by the TCDSB for land acquisition for education purposes.

ISSUE BACKGROUND

The City received a development charges and education development charges complaint related to a land development project located at 1675 and 1681 Lake Shore Boulevard East (Attachment 1). This report discusses and responds to the issues raised in the complaint.

The complainant takes the position that an addition to the existing restaurant building on the subject lands is not required to pay development charges, or education development charges, on the basis that the restaurant is owned by and used for the purposes of the City of Toronto, and therefore is exempt from the payment of development charges under the provisions of both the City's and the School Board's development charge by-laws.

Project background

The City received a building permit application on August 3, 2011 to permit interior alterations and the construction of a building addition to an existing eating establishment on the subject lands. The proposed increase to the floor area totals approximately 568 square metres, of which 485 square metres is located on the ground floor and 83 square metres is located on the second floor. Development charges, applicable to the floor area located on the ground floor, and education development charges, applicable to the total

increase in floor area, were calculated in the amounts of \$52,312.61 and \$3,548.49 respectively based on the rates in effect at the time of building permit issuance. The applicant paid, under protest, the charges to the City on September 9, 2011 and the City issued a building permit on September 15, 2011.

Legislative provisions under the Development Charges and Education Act

Pursuant to Section 20 (1) of the DC 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) whether 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 submissions of the complainant, Council may "*dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.*" Section 257.85 of the Education Act contains virtually identical provisions with respect to complaints as those contained in the DC Act.

COMMENTS

Section 415-4B of the City's Development Charge By-law provides that the by-law does not apply to land that is "owned by and used for the purposes" of the City. TCDSB's Education Development Charge By-law (No. 163) has an identical exemption from education development charges.

In 1972, the TRCA's predecessor and the Municipality of Metropolitan Toronto entered into an agreement for the acquisition, creation and development of lands to implement the Toronto and Region Waterfront Plan. Under this agreement, the TRCA would acquire and take title to waterfront lands. Upon acquisition, vacant possession of the lands was turned over to Metro Toronto (now the City of Toronto) who would assume complete responsibility for the maintenance of the lands for park, recreation and conservation purposes, except as approved by TRCA. Under the terms of the Agreement, TRCA's approval is required for any buildings erected on the lands, or any leases with respect to the lands. The subject lands at 1675 and 1681 Lake Shore Boulevard East are governed by this agreement.

In 2010, the City entered into a Lease Agreement ("the Lease") with Tuggs, whereby Tuggs leased a number of premises in the Beach area, including an existing restaurant building at 1675 and 1681 Lake Shore Boulevard East, operating as the Boardwalk Restaurant. The Lease is for a term ending in 2028, and includes the right of Tuggs to make expansions to the existing restaurant building. As required by the Agreement, TRCA provided its written consent for the proposed restaurant expansion.

The Development Charge By-law does not define the word "owner". TRCA is the registered owner of the subject lands, but the City exercises daily responsibility for the maintenance and stewardship of other parklands. Given the degree of control and liability the City has over the lands, the City could arguably be considered a beneficial owner under the Development Charges By-law.

However, Section 415-4B continues to require that any exempt lands must also be "used for the purposes of the City". Upon review of the terms of the Lease, City Legal staff are of the opinion that the Boardwalk Restaurant is not used for the purposes of the City as required by the Development Charges By-law. The building is leased to Tuggs for the purpose of operating a restaurant business. The City does not have any control over the operation of the business, nor does it receive a share of any of the revenue from the business. Tuggs, as tenant, pays rent to the City, and is responsible for payment of all utilities, maintenance, repair and any improvements to the building, and must pay property taxes for its use of the building. The mere fact that patrons of the restaurant may also be users of the surrounding parkland does not change the fact that this is a commercial relationship in which the tenant operates a private business enterprise, for profit, and for the benefit of the tenant and not the City. Other than the fact that it is situated on lands controlled by the City, the Boardwalk Restaurant is no different from any other restaurant in the City of Toronto. Accordingly, it is the City solicitor's view that these lands are not "used for the purposes of the City", and thus are not exempt under the City's Development Charges By-law or the TCDSB Education Development Charges By-law.

For the reasons discussed above, staff conclude that the Development Charges and Education Development Charges By-laws were properly applied. It is recommended that the complaint be dismissed.

Legal Services, Toronto Building and Parks, Forestry and Recreation staff were consulted in the preparation of this report and concur with its recommendations.

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SIGNATURE

Cam Weldon
Deputy City Manager and
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ATTACHMENTS

Attachment 1: Complaint letter from WeirFoulds, LLP dated October 13, 2011