

Attachment 1

WeirFoulds LLP

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2011 OCT 13 A 10: 33

October 13, 2011

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VIA COURIER

File 99999.99904

Ulli Watkiss
City Clerk
City of Toronto
Toronto City Hall, 10th Floor W
100 Queen Street West
Toronto, Ontario M5H 2N2

Dear Ms. Watkiss:

Re: 1675 and 1681 Lakeshore Boulevard East, City of Toronto
Complaints Under Section 20 of the *Development Charges Act, 1997*
and Section 257.85 of the *Education Act, Part IX, Division E*

We are counsel for Metro1 Development Corporation Ltd. ("**Metro1**"), whose principal is the operator of an existing restaurant located in the Eastern Beaches within the City of Toronto (the "**City**") known as the Boardwalk Restaurant ("**Boardwalk**"). The property is located on the south side of Lakeshore Boulevard East and Northerndancer Boulevard.

Boardwalk is under contract with the City as the exclusive licensee to sell food and beverages within Woodbine Beach Park, a City owned park and public recreation area. Its facilities include The Boardwalk, a full-service restaurant, as well as take-out food and beverage services. For that purpose Tuggs Incorporated, a related company with the same principal as Metro1, has entered into a lease agreement with the City, which administers the lands under a long-term Memorandum of Agreement with the Toronto Region Conservation Authority ("**TRCA**") by which the City effectively stands in the shoes of owner/landlord.

In August 2011, Boardwalk applied for a Building Permit to permit a building addition and renovation to the existing food and beverage facilities, including of a new shell addition to the existing refreshment stand and a 2 storey addition to the south and east sides of the building. The improvements were contemplated as part of the Business Plan presented to the City at the time of lease approval. These improvements do not constitute development for which development fees should apply.

On September 15, 2011, Building Permit application No. 11 250372 BLD 00BA was issued by the City upon payment of all applicable charges. One of the charges required by the City and paid by our client (under protest at the time of payment) relates to the development charge and education development charge as determined by the City. These determinations were purportedly made in accordance with the City's By-law 275-2009 passed under the *Development Charges Act* and the education development charge calculated pursuant to By-law No. 163 (2008) of the Toronto Catholic District School Board ("TCDSB"), respectively.

The cumulative amount of the two charges is \$55,861.10. This amount is comprised of the following:

1. development charge of \$52,312.61; and
2. education development charge of \$3,548.49.

By e-mail correspondence dated September 9, 2011 (copy attached), the City was informed that the required fees would be paid under protest and subsequently contested on that basis.

Accordingly, kindly accept this correspondence as our client's complaints under Section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended and section 257.85 of the *Education Act*, R.S.O. 1990, c. E.2, as amended, Part IX, Division E. Metro1 is the formal complainant.

The grounds in support of both complaints are as follows:

1. The existing and proposed improved food services facilities are operated by our client on behalf of the City by way of lease and licensing agreement. In effect, they are a City concession by which a private operator provides an amenity to the public, no more and no less than food and refreshment facilities available to users of City recreational facilities in other City parks or community areas such as Nathan Phillips Square. The expansion to the existing facilities constitutes an improvement to the amenity available to the public users of the park and recreational areas.
2. Under the provisions of the City of Toronto's Development Charge By-law No. 275-2009 [now part of the City's Municipal Code Section 415-4(B)(1)] and section 4 of TCDSB By-

law No. 163 (2008), any buildings or structures owned by and used for the purposes of the City are exempt from the application of any development fees. In this instance, the subject property remains under public ownership pursuant to a perpetual Memorandum of Agreement between the City and TRCA, and the City effectively stands in the shoes of owner/landlord. Likewise, the facilities (both existing and proposed) are used for the purposes of providing food services and amenities to the users of the City park and recreational areas.

3. As a matter of the agreements with the TRCA to which the City is bound, and as a matter of municipal law generally, the land on which the establishment is situated are to be used "*for park, recreation and conservation purposes . . . and for no other purpose except with the approval in writing of the [TRCA]*". Accordingly, by entering into the ongoing arrangements with our client for the provision of restaurant facilities for the benefit of park users, the City is deemed to have acknowledged that our client's facilities constitute a public park and recreational purpose, since the lands cannot be used for any other purpose.
4. The question of eligibility for exemption from payment of development fees must be determined on a purpose basis consistent with its statutory objectives. The overriding objective is to ensure that new development which increases the overall demand for services contributes its "fair share" toward that demand. In this instance, however, the establishment is already situated within a City park and the improvements simply amplify existing offerings. It is therefore our position that, in these circumstances, it would be illogical and contrary to common sense to not apply the exemptions in question. In effect, the improved restaurant facility will contribute toward the public recreational purposes served by the park and recreational areas of which they comprise an inherent part. The facility serves the users of the park that attend this location for recreational purposes. Accordingly, no increase in demand of any City services arises as a result of the improvement.
5. Such further and other grounds as counsel may advise.

Please acknowledge receipt of this letter and let us know the timing and process associated with the statutory hearing before Council, at your earliest convenience. We confirm that notice to

the complainant can be provided to us as counsel at the address provided above. Under the circumstances, a single hearing in respect of both complaints would be sufficient.

Thank you for your attention to this matter.

Yours truly,

WeirFoulds LLP



for Barnet H. Kussner

BHK:PC:cl
Encl.

cc: T. Webber and S. Fitzpatrick, City of Toronto
J. Ruscitti, Supervisor, Planning Services, Toronto Catholic District School Board
G. Fouldis, Metro 1 Development Corporation Ltd.

3953293.1

Fw: Development Fees - 1675 Lakeshore Blvd. East

Subject: Fw: Development Fees - 1675 Lakeshore Blvd. East
From: "GEORGE" <georgef1@telus.blackberry.net>
Date: Sun, 18 Sep 2011 19:50:57 +0000
To: "GEORGE BELLNET EMAIL" <Georgef@bellnet.ca>

George
416-989-0999 (cell)

-----Original Message-----

From: "GEORGE" <georgef1@telus.blackberry.net>
Date: Fri, 9 Sep 2011 17:38:10
To: Armando Barbini Manager Plan Reviews <abarbini@toronto.ca>; Sean Fitzpatrick City zoning & building code examiner <stfzpat@toronto.ca>; Terry Webber parks & Rec <twebber@toronto.ca>; GEORGE BELLNET EMAIL <Georgef@bellnet.ca>; Dinc Fouldis <dfouldis@gmail.com>
Reply-To: georgef1@telus.blackberry.net
Subject: Development Fees - 1675 Lakeshore Blvd. East

Hi Armando and Sean.

As you're aware it is our position that some or all of the development fees for building permit application # 11 250372 BLD 00 BA for above noted address are not applicable pursuant to the existing "by-law".

Accordingly, in order not to delay the timely issuance of the building permit, payment on account of development fees, is made today Friday September 9 "under protest" and we reserve the right to claim reimbursement of such fees in due course.

I thank you for the time you spent to look into this matter and your prompt, professional and kind attention throughout.

Sincerely,

George
416-989-0999 (cell)