



**STAFF REPORT  
ACTION REQUIRED**

**Development Charge Complaint – 165 Yorkland Boulevard**

<b>Date:</b>	May 5, 2016
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager & Chief Financial Officer
<b>Wards:</b>	33 – Don Valley East
<b>Reference Number:</b>	P:\2016\Internal Services\Cf\Ec16012Cf (AFS#23093)

**SUMMARY**

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This report responds to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* relating to a non-residential development project located at 165 Yorkland Boulevard.

The non-residential development that is the subject of this complaint includes a car dealership, workshop and storage area, as well as the head office of an automobile manufacturer. The City assessed the development as commercial space, and collected \$682,382 as development charges for the ground floor gross floor area. Under the City's Development Charges By-law industrial uses are exempt. The complainant asserts that the automobile workshop and storage area are industrial uses and should be exempt from the City's development charges.

After reviewing the complaint, staff concludes that development charges payable were properly calculated at the time of building permit issuance and that there was no error in the application of the City's Development Charges By-law. This report recommends that the complaint be dismissed. A decision of Council to dismiss the complaint may be appealed to the Ontario Municipal Board.

In a matter unrelated to development charges, the complaint letter also contests the collection by the City of a park levy in the amount of \$141,553.

## **RECOMMENDATIONS**

### **The Deputy City Manager & Chief Financial Officer recommends that:**

1. Council determine that the Development Charges By-law has been properly applied to the non-residential development project located at 165 Yorkland Boulevard.
2. Council dismiss the complaint filed pursuant to Section 20 of the *Development Charges Act, 1997*.

### **Financial Impact**

There is no financial impact on the City's capital or operating budget from the adoption of recommendations contained in this report. Development charges in the amount of \$682,382 were collected by the City prior to the issuance of a related building permit (January 2016).

Development charges are used to fund the City's eligible growth-related capital costs, as approved by Council through the City's annual capital budgeting process. Any loss in development charge revenue results in increased tax- and rate-supported costs, or reduced capacity to invest in capital infrastructure.

If the complainant appeals Council's decision to the Ontario Municipal Board, the City's defence would be provided by the Legal Services Division.

## **ISSUE BACKGROUND**

The City's Development Charges By-law No. 1347-2013, as amended, (the "DC By-law") levies development charges on all residential and non-residential development within the City and specifies types of development and uses that are exempt as determined by the Chief Building Official. The development that is the subject of this complaint does not qualify as a specified use or type of development that is exempt under the City's DC By-law.

The complaint (Attachment 1), however, asserts that some of the uses should be deemed exempt based on considerations and requirements that are unrelated to the City's development charge policies and regime. Staff understands that the assertion is based on safety requirements and compliance with the Ministry of Labour and the Ontario Health and Safety directives for industrial workspaces. The complaint further relies on Industry Canada's classification of these uses as distinct from retail uses.

### **Complaint Provisions under the *Development Charges Act***

Under Section 20 of the *Development Charges Act, 1997* (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."* 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**

All development in the City is subject to the payment of development charges unless it is exempt under the City's DC By-law. One such exemption relates to industrial uses which are defined as follows in the DC By-law:

*"INDUSTRIAL USES - Land, buildings or structures used or designed or intended for use for or in connection with manufacturing, producing or processing of goods, warehousing or bulk storage of goods, self storage facility, distribution centre, truck terminal, research and development in connection with manufacturing, producing or processing of goods, and:*

- A. *Includes office uses and the sale of commodities to the general public where such uses are accessory to and subordinate to an industrial use.*
- B. *Does not include:*
  - (1) *A building used exclusively for office or administrative purposes unless it is attached to an industrial building or structure as defined above; or*
  - (2) *Warehouse clubs and retail warehouses, including commercial establishments which have as their principal use the sale of goods and merchandise in a warehouse format."*

This complaint relates to a development comprising a car dealership, head office and training centre. In reviewing the building permit application, staff determined that all of the proposed uses were subject to the City's non-residential development charge as none met the definition of industrial uses as quoted above. Further, in accordance with the DC By-law, area on only the ground floor was utilized for the purpose of calculating the

amount payable as development charges. The chargeable non-residential gross floor area of the ground floor was determined to be 3,571 square metres with no reductions for excluded areas such as mechanical rooms, parking areas, or loading facilities. The non-ground floor area of approximately 2,863 square metres was determined to be exempt from development charges in accordance with the City's DC By-law.

## **CONCLUSION**

For the reasons discussed above, City staff is of the opinion that the DC by-law was applied properly and the amount of development charges correctly determined and collected. The complaint should therefore be dismissed.

Legal Services staff was consulted in the preparation of this report and concurs with its recommendations.

## **CONTACT**

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## **SIGNATURE**

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Roberto Rossini  
Deputy City Manager & Chief Financial Officer

## **ATTACHMENTS**

Attachment 1: Complaint letter from Agellan Capital Partners Inc. and Parkway Place Holdings Ltd., dated February 23, 2016.