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February 23, 2016

City of Toronto, City Clerk
Toronto City Hall
13th Floor West Tower
100 Queen Street West
Toronto, Ontario
M2H 2N2

Attention: Ulli S. Watkiss, City Clerk

Re: Development charges complaint as per Section 20 of the Development Charges Act

Please accept this letter as a submission of a formal complaint to the City Council of Toronto about the payment of development charges pertaining to the Porsche Dealership, Head Office, and Training Centre development (building permit # **15 226338 PLB 00 PS**) at the address of **165 YORKLAND BLVD**. This complaint is being submitted as per my right outlined in Section 20.1.(a) of the Development Charges Act, 1997, S.O. 1997, c. 27, wherein "*a person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that, (a) the amount of the development charge was incorrectly determined*".

The fees under formal complaint for the above-noted address and building permit are as follows:

1. Development Charges Non-Residential of \$676,565.46 and Initial Building Permit Fee (N) of \$5,816.93 (Totaling: \$682,382.39)
Receipt # 1181735 (Paid on January 29th, 2016)
2. Park Levy Fee of \$141,553.09
Receipt # 1181724 (Paid on January 29th, 2016)

These development fees were calculated based on the classification of the Porsche dealership workshop and storage area as retail space. I am of the firm belief that the workshop and storage areas should have been treated as **Industrial use** for the purpose of calculating the development fees. I argue that the above development fees have been calculated incorrectly for that reason.



City of Toronto By-Law No. 1347-2013 (Article I, Section 415-1.) describes Industrial uses as follows:

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.*

As per City of Toronto By-Law No. 1347-2013, Article I, Section 415-6., Item B.(5), development charges shall not be imposed with respect to certain non-residential uses, including those classified as Industrial uses.

To restate, the Porsche Centre North Toronto workshop and storage areas should be treated as **Industrial uses** for the purpose of calculating the development fees (therefore, exempt) as supported by the following paragraphs.

There are Ontario Health and Safety requirements for the operation of a dealership workshop and parts storage facility that support the position that these areas should be treated as industrial space, the first of which pertains to Personal Protective Equipment. The Ontario Ministry of Labour website states that “*Personal Protective Equipment (PPE) reduces or prevents a worker’s exposure to occupational health and safety hazards. The equipment acts as a barrier to protect workers from blows to the body, loud noises, heat, chemicals, infections, and electrical and other hazards. PPE can refer to protective clothing, helmets, shoes, goggles, respirators and other safety gear worn or used by workers.*” The obligation is enforced through facilities inspections, undertaken by inspectors. In industrial space, inspectors will focus on PPE that protects the eye, head and foot, and address any other hazards they may find.



Industrial sectors where inspectors will focus are specifically identified on the Ministry's website and include:

- Wood and metal fabrication
- **Vehicle sales and service**
- Food and beverage
- Wholesalers
- Education

You will note that the vehicle sales and services sector has been *specifically* included in this list. In order to comply with this obligation employees working in the Porsche dealership workshop and parts storage area are required to wear proper foot protection and in some cases eye protection in order to meet this very important safety directive, and public access to these spaces is restricted. Similar obligations are mandated in insurance policies for dealerships. In light of this, it is clear that these areas should be considered industrial and not retail in nature.

The second requirement relates to the lifting devices that are in the workshop. The Ontario Ministry of Labour points out on their website in the article "Forklift and Lifting Devices Safety in Industrial Workplaces" that "*workplaces that operate lifting devices, including forklifts and personnel lifts, may expose workers to potentially serious physical hazards.*"

The Porsche Centre North Toronto workshop will contain fifteen vehicle lifting devices in the workshop and a forklift in the parts storage area. It is clear that the Ministry of Labour guideline applies to the workshop and parts storage area, and important to note that they have classified such a space as industrial.

Employers have an obligation to ensure that they are taking the following specific reasonable precautions to protect workers who are working in the area of forklifts and lifting devices:

- Establishing pedestrian traffic policies and programs;
- Conducting a comprehensive workplace assessment of vehicular and pedestrian traffic, and;
- Assessing offsite working environments for risks such as the potential for contacting power lines and the condition of work surfaces. In making such assessments, employers, contractors and constructors should consider safeguards such as:
 - Protective barriers, walkways or sidewalks to channel pedestrian movement

As a result of this directive it is common to restrict access to the workshop and parts storage area to only those authorized to be there. Customers (pedestrians) are not to enter such spaces as a



precaution, given the lifting devices present. This further supports the position that these areas should be considered industrial (rather than retail) in nature.

One final, and more general, point further supporting the classification of these spaces as industrial relates to the marketing of such spaces. Descriptions of uses for properties for lease or sale being marketed as industrial commonly make reference to mechanic shops as a potential use. This indicates that not only are such spaces considered industrial from a safety compliance perspective, they are commonly understood in the market as such. Furthermore, Industry Canada, following the North American Industry Classification System clearly differentiates Maintenance Services for Motor Vehicles as an entirely different industry (NAICS 8111) from Retail activities (NAICS 4411).

The City of Toronto By-law No. 1347-2013 states that "Industrial Uses" are to be excluded from the ground floor calculation of the development fee calculation. The Ontario Ministry of Labour Personal Protective Equipment and Lifting Safety Directives and common usage clearly clarify that the workshop and parts storage area should indeed be considered industrial in nature for the purpose of calculating development fees.

I hope you will consider the above arguments when reviewing and assessing the miscalculation of development fees related to this project.

Sincerely,

AGELLAN CAPITAL PARTNERS INC.

PARKWAY PLACE HOLDINGS LD.

Terra Attard
Chief Operating Officer

Terra Attard
Vice President



References:

Personal Protective Equipment

Website: http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_ppe.php

The Forklift and Lifting Devices Safety in Industrial Workplaces

Website: http://www.labour.gov.on.ca/english/hs/sawo/pubs/fs_forklift.php

NAICS 8111

<http://stds.statcan.gc.ca/naics-scian/2007/cs-rc-eng.asp?criteria=8111>

NAICS 4411

<http://stds.statcan.gc.ca/naics-scian/2007/cs-rc-eng.asp?criteria=4411>