

Development Charges Complaint – 100 Thorncliffe Park Drive

Date: June 24, 2024

To: Executive Committee

From: Chief Financial Officer and Treasurer

Wards: Ward 15 – Don Valley West

SUMMARY

This report responds to a complaint filed pursuant to Section 20 of the *Development Charges Act, 1997* (the "DC Act"), relating to a development project located at 100 Thorncliffe Park Drive in Don Valley West.

The development project is an expansion of the current building, which consists of a two-storey addition totalling 1,502.95 square meters of gross floor area (GFA). The complainant, 2613815 Ontario Inc., objects to the amount of development charges calculated. The complainant asserts that development charges in the amount of \$400,147.13 should be refunded as all new GFA as contained within the first level of the expansion is for industrial uses.

City staff have reviewed the complaint and are of the opinion that the Development Charges By-law (the "DC By-law") was applied properly, and no error was made in the determination of the applicable development charges. Staff have reviewed the building permit application along with the documentation submitted by the complainant, and believe the expansion was correctly categorized as commercial retail use. The development does not meet the definition of industrial uses; therefore, development charges are not exempt.

This report recommends that the complaint be dismissed. A decision or a non-decision of Council to dismiss the complaint may be appealed to the Ontario Land Tribunal (OLT). This report was prepared in consultation with the (Acting) Chief Building Official and Executive Director, Toronto Building, and the City Solicitor.

RECOMMENDATIONS

The Chief Financial Officer and Treasurer recommends that:

1. City Council determine that the Development Charges By-law have been properly applied to the development project located at 100 Thorncliffe Park Drive.
2. City Council dismiss the complaint dated April 2, 2024, with respect to 100 Thorncliffe Park Drive filed pursuant to Section 20 of the *Development Charges Act, 1997*.
3. Council authorize City Staff to defend any appeal of City Council's decision or non-decision to the Ontario Land Tribunal.

FINANCIAL IMPACT

There are no financial impacts resulting from the adoption of recommendations contained in this report. A total of \$441,618.61 in development charges was collected by the City from the complainant in relation to the expansion of the preexisting building.

The complainant is seeking a refund in the amount of \$400,147.13. If the complainant appeals Council's decision to the OLT, there may be financial impacts to the City if a decision by OLT results in an unfavourable outcome to the City. A decision in favour of the complainant may result in the City issuing a refund of up to \$400,147.13 for development charges.

COMMENTS

Development charges are applied in accordance with a by-law enacted by Council pursuant to provisions of the DC Act. Under Section 20 of the DC Act, a complaint may be brought to Council on one of three grounds:

- a. the amount of the development charge was incorrectly determined; or
- 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 charges by-law.

Under Section 20(4) of the DC Act, Council shall hold a hearing into the complaint and give the complainant an opportunity to make representations at that hearing. Executive Committee may recommend that Council "dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint."

The decision of Council may be appealed to OLT by the complainant. If the complainant appeals Council's decision to the OLT, the City's defence would be provided by the Legal Services Division.

Section 20 complaints deal with application of the DC By-law to specific development proposals and a hearing for Section 20 complaints is not a forum for challenging the validity of a development charges by-law. The DC By-law is subject to mandatory updating every 10 years, inclusive of stakeholder engagement and appeal opportunities.

Background

On March 8, 2024, a formal Section 20 complaint was received by the City from the property owner, 2613815 Ontario Inc., requesting a review of the development charges calculated (see Attachment 1). For the purposes of Section 20(2) of the DC Act, the complaint will be deemed to have been filed on April 2, 2024, as this is the date the building permit was issued. The development project is an expansion of the current building, which consists of a two-storey addition totalling 1,502.95 square meters of GFA.

The complainant's position is that the development charge payment of \$400,147.13 should be refunded as all new GFA as contained within the first level of the expansion is for industrial uses. They have noted that the expansion will contain butchering and food preparation facilities, as well as coolers and freezers to store meat and produce (see Attachment 2).

Section 415-1 of the DC By-law, provides the following definitions for industrial uses:

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.

City staff have reviewed the floor plans submitted with the building permit application and are of the opinion that the principal use of the building is for commercial retail use (see Attachment 3). The floor plans reflect that the alterations to the existing building

are consistent with a typical grocery store layout where the majority of the space is occupied by shelving and products on display that are accessible to the public. The floor area within the new addition of the development includes typical back-of-house uses which are commonly proposed within most grocery stores throughout the City of Toronto. These uses include accessory storage, loading bays, refrigeration (walk-in freezers, produce coolers and meat freezers) as well as a butchering area. The butchering area is located adjacent to the meat counter where it can be displayed in cases for the public for purchase. As per Section 415-1, Industrial Uses of the DC By-law, "warehouse clubs and retail warehouses, including commercial establishments which have as their principal use the sale of goods and merchandise in a warehouse format", are not included as industrial uses.

Therefore, it is the City's position that the development charges were correctly applied (see Attachment 4). The development does not meet the definition of industrial uses; therefore, the expansion is not exempt from development charges.

CONCLUSION

For reasons discussed above, staff are of the opinion that the City's DC By-law was applied correctly and there was no error in the determination of applicable development charges. Staff recommend that the complaint be dismissed.

CONTACT

John Longarini, Interim Director, Revenue Services Division, Telephone: 416-395-0125, Email: john.longarini@toronto.ca

David McIsaac, Interim Controller, Telephone: 416-397-5467, Email: david.mcisaac@toronto.ca

SIGNATURE

Stephen Conforti
Chief Financial Officer and Treasurer

ATTACHMENTS

Attachment 1: Section 20 complaint letter from Jamie Cole on behalf of 2613815 Ontario Inc. dated March 8, 2024

Attachment 2: Section 20 complaint letter from Jamie Cole on behalf of 2613815 Ontario Inc. dated April 17, 2024

Attachment 3: Proposed Ground Floor Plan

Attachment 4: Revenue Services' response letter dated May 15, 2024

Attachment 1: Section 20 complaint letter from Jamie Cole on behalf of 2613815 Ontario Inc. dated March 8, 2024



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Jamie Cole
Direct Line: 416-601-7811
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March 8, 2024

Via Email (clerk@toronto.ca)

Toronto City Council
c/o John Elvidge, City Clerk
Toronto City Hall
13th Floor West - 100 Queen Street West
Toronto ON M5H 2N2

To Whom it May Concern:

**Re: Complaint Under Section 20 of the *Development Charges Act, 1997*
100 Thorncliffe Park Drive**

We are counsel to 2613815 Ontario Inc., the owner of the lands municipally known as 100 Thorncliffe Park Drive (the "Property") within the City of Toronto (the "City").

Pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27 (the "DC Act"), we are writing to request a refund of the development charges erroneously charged to our client for an expansion to the pre-existing building on the Property. In addition, pursuant to subsection 20(3) of the DC Act, any and all notices relating to this complaint can be addressed to the undersigned's attention.

Background

On January 9, 2024, the Minister of Municipal Affairs and Housing issued O. Reg. 9/24, being a Minister's Zoning Order under Section 47 of the *Planning Act* (the "MZO"). The MZO permits industrial, retail, warehousing, and wholesaling uses on the Property, along with uses ancillary to same. The ultimate purpose of the MZO is to facilitate the relocation of the Iqbal Foods grocery store from its current location to the Property, as its current location has been expropriated to facilitate the Ontario Line subway.

To accommodate the permitted uses as contemplated by the MZO, our client will be constructing an expansion of the current building consisting of a two-storey addition totalling 1,437 square metres of gross floor area (GFA) (the "Addition"). The ground floor of the Addition will consist of industrial uses, containing coolers and other storage for meat and produce, butchery facilities, and relates uses. The second floor of the Addition will contain ancillary office uses, supporting both the future grocery store and the "back-of-house" operations.

Please see **Schedule "A"** of this letter for the site plan showing the location of the Addition and the proposed uses contained therein.

On December 14, 2023, our client was issued the development charges calculation statement (the "Calculation Statement") summarizing the payable development charges as \$400,147.13.

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The Calculation Statement is attached to this letter as **Schedule "B"**.

Basis of Complaint

Our client paid the development charges in question in order not to delay the issuance of a building permit necessary to begin construction immediately. However, it is our position that no development charges should have been levied against our client. The Calculation Statement makes clear that the development charges are only to be applied to the new GFA, and as noted previously all new GFA is for industrial uses.

Section 415-6.B. of City development charge by-law 1137-2022 (the "DC By-law") states, in part, the following:

B. Other Exemptions

Despite the provisions of this article, development charges shall not be imposed with respect to:

...

(6) Industrial Uses;

Importantly, "Industrial Uses" is defined within the DC By-law as follows:

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.

[emphasis added]

As indicated above and as shown in Schedule A, the uses contained within the Addition meet the definition of "Industrial Uses" as set out in the DC By-law. For example, and to provide absolute clarity, the Addition will contain butchering facilities (i.e. manufacturing, producing, or processing of goods) and the warehousing or storage of foods via the various coolers and freezers. Therefore, when evaluating the proposed uses within the Addition against the wording of the DC By-law, it is clear that no development charges should be levied against our client.

Conclusion

We would be happy to discuss this matter further at City Staff's and/or City Legal's convenience in order to confirm that no development charges should have been levied in this matter and that a refund is forthcoming.

Please do not hesitate contact the undersigned should you have any questions or require additional information.

Yours truly,



Jamie Cole
Associate | Sociétaire

Enclosures

c: Gabe Szobel, Solicitor, City of Toronto Legal Services

Attachment 2: Section 20 complaint letter from Jamie Cole on behalf of 2613815 Ontario Inc. dated April 17, 2024



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421-7th Avenue S.W.
Calgary AB T2P 4K9
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Jamie Cole
Direct Line: 416-501-7811
Email: jpc@mcCarthy.ca

April 17, 2024

Via Email (gabe.szobel@toronto.ca)

Gabe Szobel
Solicitor, Legal Services
City of Toronto
Metro Hall, 26th Floor
55 John Street
Toronto, ON M5V 3C6

Dear Sir:

**Re: Complaint Under Section 20 of the *Development Charges Act, 1997*
100 Thorncliffe Park Drive
Description of Future Uses**

As you know, we are counsel to 2613815 Ontario Inc., the owner of the lands municipally known as 100 Thorncliffe Park Drive (the "Property") within the City of Toronto (the "City").

Background

Our client will be constructing an expansion of the current building consisting of a two-storey addition totalling 1,437 square metres of gross floor area (GFA) (the "Addition").

On March 8, 2024, our client filed a complaint pursuant to Section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27 (the "Section 20 Complaint") as it relates to the payment of development charges in the amount of \$400,147.13 ("DC Payment"), levied as a result of the construction of the Addition. In the complaint letter, we noted that it was our position that the DC Payment should be refunded as all new GFA as contained within the first storey of the Addition are "industrial uses" as defined in City Development Charge By-law 1137-2022 (the "DC By-law").

Subsequent to our client submitting to the DC Payment to the City and in advance of pulling a building permit, they received notice that an additional \$41,471.48 was owing (the "Additional Charge"). Our client paid this amount as well, bringing the total amount of development charges paid to \$441,618.61. However, we confirm that our client is not seeking a refund of the Additional Charge, and the Section 20 Complaint continues to only relate to the DC Payment.

We understand that the City's preliminary position relating to the Section 20 Complaint is that the uses being implemented within the Addition are completely connected to the "front-of-house" Iqbal Foods retail grocery store that will operate out of the existing building on the Property. Therefore, the purpose of this letter is to provide additional factual information regarding the exact operations that will be occurring within the Addition.

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Description of Future Uses for the Addition

As noted in the Section 20 Complaint letter, the Addition will contain butchering and food preparation facilities (i.e. manufacturing, producing, or processing of goods) and the warehousing or storage of foods via the various coolers and freezers.

These butchering, warehousing, food preparation, and storage facilities will be serving the entirety of the Iqbal Foods national business, which includes:

- four retail stores, located in Toronto, Mississauga, and Ajax;
- an active e-commerce platform that allows Iqbal Foods to distribute its products directly to consumers Canada-wide through various shipping channels (including, but not limited to, Canada Post and courier companies); and
- an expansive wholesaling distribution network that sells products to entities such as sub-distributors, restaurants, banquet halls, and other stores/vendors.

In other words, the uses to be implemented in the Addition are much broader and comprehensive than simply providing "back-of-house" support to the particular retail store that operates on the Property; rather, the Addition will serve as the primary warehousing, wholesaling, and distribution centre for the entirety of Iqbal Foods' national business.

Further, we would also note that the Property will be home to Iqbal Foods' headquarters, which will be operated out of the second storey of the Addition. As is noted on the plans submitted as part of the Section 20 Complaint (and attached to this letter for ease of reference), significant office space will be constructed on the second storey.

Iqbal Foods has decided to house these significant operations in the Addition, which so happens will be attached to one of their retail outlets. Iqbal Foods could have found another site to operate their nationwide office, butchering, warehousing, food preparation, and storage facilities, but it was given a unique opportunity to instead consolidate these important functions into the Property.

Conclusion

We do hope that the foregoing information will help to explain and demonstrate the separate industrial uses that will be operating out of the Addition, and it remains our position that the DC Payment should be refunded as all new GFA as contained within the first storey of the Addition are "industrial uses" as defined in City DC By-law.

We would be happy to discuss this matter with you and/or City Staff further.

Yours truly,



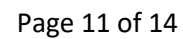
James Cole
Associate | Sociétaire

Enclosure

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Gabe Szobel - April 17, 2024

DC Complaint – 100 Thorncliffe Park Drive



Attachment 4: Revenue Services' response letter dated May 15, 2024



John Longarini
Interim Director

Revenue Services
North York Civic Centre, LL
5100 Yonge Street
Toronto, Ontario M2N 5V7

Tel: 416-395-0125
john.longarini@toronto.ca
www.toronto.ca

May 15, 2024

Jamie Cole
2613815 Ontario Inc.
50 Overlea Boulevard
Toronto ON M4H 1B6

Sent via email to: jpcole@mccarthy.ca

Dear Jamie,

**Re: Development Charges Complaint – 100 Thorncliffe Park Drive
Building Permit Application No.: 23 223186 BLD 00 BA**

I am writing in response to your Section 20 development charges complaint received April 2, 2024, where you filed a complaint objecting to the amount of development charges calculated in relation to permit issuance.

In your correspondence, you indicated that the development charge payment of \$400,147.13 should be refunded as all new gross floor area as contained within the first level of the expansion is for "industrial uses".

The City has reviewed your building permit application along with the documentation you have submitted, and the new development does not meet the definition for industrial uses. Section 415-1 of the Development Charges By-law ("DC By-law"), provides the following definition for industrial uses:

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:

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(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.

The principal use of the building is for commercial retail use, and the new development includes accessory storage, refrigeration and butchering in support of the retail store. As per B(2) of the industrial uses definition, 'warehouse clubs and retail warehouses, including commercial establishments which have as their principal use the sale of goods and merchandise in a warehouse format', are not included as industrial uses. Therefore, your new development does not meet the definition for industrial uses and is not exempt from development charges.

In consultation with Toronto Building and Legal Services, it has been determined that the development charge amounts were correctly calculated, and the DC By-law was correctly applied.

Under Section 20 of the Development Charges Act, if you are not satisfied with the outcome of the review, you have the option to request a hearing. A request for hearing should be provided in writing to the Office of the Controller. The hearing is conducted by the City's Executive Committee which will make a recommendation to City Council.

If you are not satisfied with either the City's decision, or the timeliness of the City's response, you may file with the City Clerk your intention to appeal the issue to the Ontario Local Planning Appeal Tribunal. You will be required to pay a fee to file this appeal.

Below for your reference are the links to:

- the City's DC website, including DC By-law, applicable rates, and complaint process
<https://www.toronto.ca/city-government/budget-finance/city-finance/development-charges/>
- City Clerk website for Executive Committee
<https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/staff-directory-divisions-and-customer-service/city-clerks-office/>
- the Province's Development Charges Act
<https://www.ontario.ca/laws/statute/97d27>
- the Province's Local Planning Appeals Tribunal Process
<https://olt.gov.on.ca/contact/local-planning-appeal-tribunal/>

If you have any questions regarding your options, please contact the Revenue Services Division, Planning & Policy Development Unit by email at rs_dc_cbcadmin@toronto.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Longarini', written in a cursive style.

John Longarini
Interim Director, Revenue Services

C: Gabe Szobel, Solicitor
Natasha Zappulla, Deputy Chief Building Official and Director, Toronto Building