

Committee of the Whole (2) Report

DATE: Tuesday, December 5, 2023

WARD(S): ALL

TITLE: DEVELOPMENT CHARGE COMPLAINT – 434 STEELES AVE
WEST (REFERRED)

FROM:

Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer

ACTION: DECISION

Purpose

To respond to and provide information about the hearing of a complaint filed on August 2, 2023 by Auto World Import Network and 480 Steeles West Limited (collectively, the “**Complainant**”) pursuant to section 20 of the *Development Charges Act* for 434 and 480 Steeles Avenue West.

Report Highlights

- The Complainant submitted a Site Plan Application (DA.20.003) to permit the development of a new 2-storey car dealership with an underground level at 434 Steeles Avenue West.
- Staff assessed development charges pursuant to Development Charge By-law 083-2018 (the “**DCBL**”).
- On August 2, 2023, the Complainant filed a complaint with the City Clerk objecting to the development charges assessed.
- Council is required to hold a hearing regarding the complaint in accordance with the DC Act.

Recommendations

Council, at its meeting of October 17, 2023, adopted the following recommendations (Item 1, Report No. 41), without amendment:

Recommendations of the Committee of the Whole of October 11, 2023:

The Committee of the Whole recommends:

1. That this matter be adjourned until December 2023;
2. That the report of the Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer, dated October 11, 2023, be received;
3. That the comments of Alan Milliken Heisey, K.C., PHM Barristers and Solicitors, King Street, Toronto, on behalf of Auto World Import Network and 480 Steeles West Limited, and Communication C2., dated October 6, 2023, be received; and
4. That the presentation by Nelson Pereira, Manager, Development Finance, on behalf of the City of Vaughan, and Communication C1., presentation material, be received.

Recommendations and Report of the Deputy City Manager, Corporate Services, City Treasurer, and Chief Financial Officer, dated October 11, 2023:

1. THAT Council determine that Development Charge By-law 083-2018 has been properly applied to the non-residential development at 434 Steeles Avenue West; and
2. THAT Council dismiss the complaint filed on August 2, 2023 pursuant to section 20 of the *Development Charges Act* by Auto World Import Network and 480 Steeles West Limited.

Background

A Site Plan Application was submitted by the Complainant to permit the development of a new car dealership.

The Complainant submitted a Site Plan Application (DA.20.003) to permit the development of a new 2-storey car dealership with one level of underground parking (the “**Added Building**”) at 434 Steeles Avenue West (the “**434 Lands**”), as shown on **Attachment 1**.

On an adjacent parcel is an existing car dealership at 480 Steeles Avenue West (the “**480 Lands**”), as shown on **Attachment 1**, with its own underground parking garage (the “**Existing Building**”).

The Added Building was positioned to straddle the property line of the 480 Lands and the underground parking level of the Added Building was proposed to connect to the existing underground level of the Existing Building. To address this, prior to site plan approval, the Complainant merged the 434 Lands and the 480 Lands on title by consolidating the two lots into one lot under one ownership (the “**Merged Lot**”).

Site Plan Application File DA.20.003 was approved by the Ontario Land Tribunal (“**OLT**”) on May 5, 2022.

The Complainant applied for a building permit (Building Permit #22-110942) to construct the development on the 434 Lands.

Prior to Building Permit issuance, staff evaluated the parking requirements for zoning compliance based on the Merged Lot. In reviewing the parking requirements for the two buildings on the Merged Lot (the Existing Building and the Added Building) against the total surface and underground parking spaces proposed, staff determined that sufficient parking spaces were available within the underground parking in the Existing Building and the total surface parking to be available on the Merged Lot.

As a result, the underground parking spaces in the Added Building were not required in order to satisfy the parking requirements of the zoning by-law. As such, staff assessed development charges pursuant to the DCBL on the gross floor area (“**GFA**”) of the Added Building, including its underground level and the portion of that level which is for parking.

Building Permit #22-110942 was issued on May 25, 2023.

The Complainant filed a DC Act complaint objecting to the development charges assessed on the GFA of the underground parking.

On August 2, 2023, the Complainant filed a complaint with the City Clerk pursuant to section 20 of the DC Act objecting to the development charges assessed on the GFA of the underground parking (the “**Complaint**”). A copy of the Complaint is at **Attachment 2**.

As a result of discussions with staff and the Complainant, the issues of the Complaint have been scoped and can be summarized as relating to the following outstanding matters:

- whether the development charges were calculated incorrectly in calculating required parking;
- whether the development charges were calculated based on an incorrect GFA calculation; and
- whether the amounts of interest charged is too high and not explained.

The basis of the Complaint is that the underground parking is required parking (not excess) such that the GFA of the portion of the underground parking should be exempt from the development charge calculation. The Complainant is seeking a refund of the City development charges paid (and related interest) in respect of the underground parking in the amount of approximately \$475,000.

Provisions under the DC Act allow a complaint to be filed to the Council of a municipality in respect of development charges imposed.

A complaint to the Council of a municipality can be made pursuant to subsection 20(1) of the DC Act that: (i) the amount of a development charge was incorrectly determined; (ii) whether a credit is available to be used against the development charge; or (iii) there was an error in the application of the development charge by-law.

If a complaint is made, pursuant to subsection 20(4) of the DC Act, Council is required to hold a hearing into the complaint and give the Complainant an opportunity to make representations at the hearing.

Pursuant to subsection 20(6) of the DC Act, at the hearing, Council may dismiss the Complaint or rectify an incorrect determination or error that was the subject of the Complaint.

The Complainant may appeal the decision of Council to the OLT pursuant to subsection 22(1) of the DC Act.

Previous Reports/Authority

N/A

Analysis and Options

The area of buildings used to provide parking required to comply with the zoning by-law is exempt from development charges pursuant to the DCBL while the area

of buildings which provide parking that is in excess of what is required by the zoning by-law is not exempt.

The definition of GFA in subsection 1(25)(d) of the DCBL states the following:

“(25) **“gross floor area”** means, in the case of a non-residential building or structure, or the non-residential portion of a mixed-use building or structure, the aggregate of the areas of each floor, whether above or below grade, measured between the exterior faces of the exterior walls of the building or structure, or from the centre line of a common wall separating a non-residential and a residential use, and:

(d) includes any part of a building or structure above or below grade used as a commercial parking garage.” [emphasis added]

The definition of commercial parking garage in subsection 1(15) of the DCBL states the following:

“(15) **“commercial parking garage”** means a building or structure, or any part thereof, whose principal use is for the parking of motor vehicles for remuneration, or in the case where parking is provided as an accessory to a principal use on the lands, where such parking is provided in a building or structure, or part thereof, whether or not there is remuneration paid by the owner or user for the motor vehicle, the portion of parking as required by the Zoning By-law shall not attract development charges for the purpose of this By-law.” [emphasis added]

For the purpose of calculating development charges pursuant to the DCBL, GFA includes an underground level used for parking except where that area is exempt because it provides required parking to comply with zoning requirements.

Staff assessed development charges pursuant to the DCBL on the GFA of the underground parking.

If the Complainant had not merged the properties to create one lot, then the calculation of required parking for zoning compliance would have been determined based on only the 434 Lands. However, the Complainant chose to create the Merged Lot meaning that zoning compliance had to be determined based on the Merged Lot. The determination of the required parking on the Merged Lot dictated the conclusion that the parking in the underground of the Added Building is in excess of what is required under the zoning by-law.

Development charges for the Added Building were calculated in accordance with the DCBL based on the total GFA of the proposed new car dealership (including the underground level) less the demolition of the previous car dealership and exempting the rooftop parking area resulting in a net GFA of 4,553.06 m².

The Complaint asserts that the GFA of the underground parking (2,662.32 m²) should be exempt from development charges as being required parking. However, as described above, the calculation of required parking to satisfy the zoning standard is required to be based on the Merged Lot. The result is that the exemption for required parking is not available for the parking areas within the Added Building.

Financial Impact

There are no immediate financial impacts that would result from the recommendations in this Report. Development charges have already been collected by the City prior to building permit issuance.

The following is a breakdown of the development charges payable (without interest) in respect of the development on the 434 Lands:

- | | |
|------------------------------------|--------------------------------------|
| 1. City Development Charges | 4,553.06 x \$163.04 = \$742,330.90 |
| 2. Regional Development Charges | 4,553.06 x \$629.67 = \$2,866,925.29 |
| 3. Educational Development Charges | 4,553.06 x \$14.10 = \$64,198.15 |

The total of the three development charges payable was \$3,673,454.34 (without interest) and \$4,016,368.09 (with interest).

If Council upholds the Complaint, the City will be required to refund to the Complainant, pursuant to the DC Act, the development charges paid under protest (with interest) being approximately \$475,000.

Operational Impact

N/A

Broader Regional Impacts/Considerations

The Region has received a complaint from the Complainant under the DC Act regarding the development charges payable to the Region. The Region will be proceeding with their own hearing pursuant to the DC Act and assessing against their own development charge by-law.

Conclusion

Staff is of the opinion that the DCBL was properly applied to the non-residential development of the Added Building and no error was made in the calculation of the development charges or required parking. Staff recommend that Council dismiss the Complaint.

For more information, please contact: Nelson Pereira, Manager, Development Finance, extension 8393.

Attachments

1. Location Map
2. Complaint letter from Auto World Import Network and 480 Steeles West Limited dated August 2, 2023.
3. Communications from the Committee of the Whole meeting of October 11, 2023.

Prepared by

Nelson Pereira, Manager, Development Finance, 8393