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**Subject:** Regional Development Charges Complaint

**Report to:** Regional Council

**Report date:** Thursday, April 22, 2021

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## Recommendations

1. That the complaint filed with respect to the Regional Development Charges payable pursuant to Section 20 of the Development Charges Act, 1997, for the property located at 260/270 Hunter Road, Grimsby, **BE DISMISSED** by Regional Council.

## Key Facts

- The purpose of this report is to provide background information for a Region Development Charge (RDC) complaint received March 9, 2020 that was filed with the Region by Owens Wright Lawyers on behalf of their client 34 West Avenue North (Hamilton) Incorporated (the complainant) for a proposed institutional development/re-development located at 260 & 270 Hunter Road, Grimsby.
- Section 20 of the Development Charges Act (DCA), 1997, allows for a person required to pay a RDC to complain to the council of the municipality imposing the DC that the amount of the RDC was incorrectly determined or that there was an error in the application of the By-law.
- Regional Council is required to hold a hearing for the consideration of this complaint, and will be acting as a tribunal and exercising quasi-judicial powers as per the process outlined in report CSD 12-2018.
- The complainant has asserted that a portion of an existing building on site should be retained as an industrial use after the re-development instead of an institutional use as was assessed for the purposes of RDC. This would result in a reduction in RDC payable from \$192,468.70 to \$82,347.36 (a difference of \$110,121.34).
- Region staff have reviewed the complaint and have confirmed that there has been no error in the DC calculation or application of the By-law, and therefore the complainant is not eligible for relief under the DCA.
- The original complaint was filed within the legislated timelines and a hearing was to be scheduled in accordance with the DCA. The complainant however, requested that the Council hearing be deferred until COVID-19 restrictions permitted in person meetings. The complainant has recently requested that the Council hearing proceed virtually as there is no definitive timeline for in person Council meetings to resume.

## Financial Considerations

Under the Region's current DC By-law, passed November 16, 2017, the amount payable for the development/re-development of land located at 260 & 270 Hunter Road, Grimsby is \$192,468.70 (2020 rates). The complainant is seeking relief in the amount of \$110,121.34 as they have alleged that a portion of their project should remain as an industrial use post conversion. The complainant has made payment of the RDC to the Town on March 6, 2020 and has been since issued the applicable permits. The development received a conversion credit for converting the existing industrial building to institutional use (i.e., 43,714 sq. ft.) in the amount of \$226,001 which was deducted from the gross RDC payable. The below table summarizes the RDCs as confirmed by the Region and charged by the Town and the amount as determined by the complainant.

**Table 1 – Summary of Regional Development Charges Payable**

	<b>Region</b>	<b>Complainant</b>	<b>Amount Disputed</b>
Building Area (square feet)			
Industrial to Institutional	43,714	14,111*	
New Institutional	3,358	3,358	
Total	47,072	17,469	
Institutional Regional DC Rate	\$8.89	\$8.89	
<b>Gross Regional DC</b>	<b>\$418,470</b>	<b>\$155,304</b>	<b>\$263,166</b>
Conversion Credit (square feet)			
Industrial to Institutional	43,714	14,111	
Industrial Regional DC Rate	\$5.17	\$5.17	
<b>Conversion Credit Total</b>	<b>\$226,001</b>	<b>\$72,956</b>	<b>\$153,045</b>
<b>Regional DC Payable</b>	<b>\$192,469</b>	<b>\$82,347</b>	<b>\$110,121</b>

\* Complainant alleges the difference of 29,603 sq. ft. is to be retained as industrial, therefore, not factored into calculation for complainant totals.

## Analysis

The purpose of this report is to respond to a complaint submitted under section 20 of the DCA, by 34 West Avenue North (Hamilton) Incorporated (the complainant) on March 9, 2020 for a proposed development located at 260 & 270 Hunter Road, Grimsby. A copy of which is attached as **Appendix 1**.

As noted in Appendix 1, the complainant has alleged that the amount of development charges was incorrectly determined. The Town of Grimsby Building staff indicated that the complainant was issued a building permit on March 6, 2020 for a conversion and expansion of a former industrial use property to an institutional use and made payment of RDC at that time of \$192,469.70. At the time of building permit application the complainant indicated that the facility would be used for training and that no manufacturing (as defined in the industrial use definition from RDC bylaw) would be occurring on site in either the converted or to be constructed building.

Region staff have reviewed the RDC calculation and information submitted by both Town and complainant and has determined that the DC By-law has been administered correctly resulting in correct RDC payable of \$192,469.70 upon building permit issuance.

The definition of an institutional and industrial use from the RDC bylaw can be summarized as follows:

- “‘institutional’ means lands, buildings or structures used or designed or intended for use by an organized body, society or religious group for promoting a public or non-profit purpose and offices where such uses are accessory to an institutional use”.
- “Industrial” means land, buildings or structures used for or in connection with manufacturing by, inter alia, manufacturing, producing, and processing goods for a commercial purpose on site.

Based on the information obtained from the complainant and the Town, Region staff conclude that the RDC payable for the development/re-development were accurately calculated and classified by Town building staff at time of permit issuance. The proposed re-development does not constitute an industrial use under the current RDC bylaw as there is no manufacturing to occur on site. Since the structure was converted from industrial use, the complainant was eligible and received a conversion credit of \$226,001 which was deducted from the gross RDC payable. Preliminary discussion

between staff and the complainant's planning consultant from the time of complaint submission did not result in any clarification as to why the property should remain industrial for the purpose of RDC administration.

The original complaint was filed within the legislated timelines and a hearing was to be scheduled in accordance with the DCA. The complainant however, requested that the Council hearing be deferred until COVID-19 restrictions permitted in person meetings. The complainant has recently requested that the Council hearing proceed virtually as there is no definitive timeline for in person Council meetings to resume.

Under the DCA, the complaint must contain and allege, as a reason for the complaint, one or more of the following:

1. The amount of the development charge was incorrectly determined;
2. 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
3. There was an error in the application of the development charge by-law.

Notwithstanding that the complaint does not fall within the three items noted above, staff have prepared the following information as provided by the complainant and the Town:

- The complainant applied for the necessary permit to convert the existing building from its industrial use into an institutional use (area of 43,714 sq. ft.) as well as to construct a new institutional building on site (area of 3,358 sq. ft.).
- The complainant has stated that the intended use of the facility is for training of trades and will be occupied by a labour union for that purpose.
- The complainant believed that a portion of the existing facility (approximately 29,602 sq. ft. of the 43,714 sq. ft.) should remain as an industrial use after the conversion as a result of the training activities to take place onsite (i.e., forklift operators training, etc.).
- If the 29,602 sq. ft. area were to remain as industrial, the development charges payable would be reduced by \$110,121 as per Table 1.
- The Town has indicated that the former use of the existing building, prior to any modifications or change of use by the current owner, is industrial as defined in the RDC bylaw. The full definition of industrial use from the RDC bylaw can be found in **Appendix 2**.

## **Alternatives Reviewed**

There are no alternatives available under existing legislation.

## **Relationship to Council Strategic Priorities**

Regional Development Charges are a major source of funding for growth projects in the capital budget. As such, Regional Development Charges assist in achieving the strategic priorities of a fiscally sustainable government.

## **Other Pertinent Reports**

None.

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### **Recommended by:**

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### **Submitted by:**

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*This report was prepared in consultation with Margaret Murphy, Associate Director, Budget Planning & Strategy and reviewed by Donna Gibbs, Director Legal & Court Services, and Helen Chamberlain, Director Financial Management & Planning/Deputy Treasurer.*

## **Appendices**

Appendix 1	Regional Development Charges Complaint Form
Appendix 2	Regional Development Charge By-law Definitions