
Subject: Regional Development Charges Complaint – West End Self-Storage (66 Commerce Place & 278 St. Paul St.), St. Catharines

Report to: Regional Council

Report date: Thursday, September 29, 2022

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 66 Commerce Place & 278 St. Paul St., St. Catharines (the “Subject Lands”), **BE DISMISSED** by Regional Council.

Key Facts

- The purpose of this report is to provide background information for a Regional Development Charge (“RDC”) complaint received on July 5, 2022, that was filed with the Region by Rocco “Rocky” Vacca on behalf of 1568223 Ontario Ltd (o/a West End Self-Storage) (the “Complainant”) for a proposed expansion at the Subject Lands.
- Should a project owner feel that Regional Development Charges have been incorrectly applied there is a procedure for issuing a complaint under Section 20 of the *Development Charges Act, 1997*, S.O. 1997, c.- 27 (the “DCA”). Regional Council is required to hold a hearing for the consideration of such a 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 the RDC payable for the expansion of the Subject Lands does not meet the definition of “Industrial Use” or “Commercial Purpose” under the Region’s Development Charges By-law No. 2017-98 (“DC By-law”), and therefore should not be subject to any RDCs - which is contrary to Region’s DC By-law and the Region’s calculation of RDCs based on the Commercial Purpose Class.
- Region Staff have reviewed the Complaint and have confirmed that the Subject Lands are used for a Commercial Purpose, specifically, the provision of services through the investigations noted below in the Analysis section.
- Region Staff refer Council to a related Tribunal decision referenced in the report and Appendix 2 discussing the importance of the contents of the background study. The

Region's 2017 and 2022 DC Background Studies have included self-storage in the rate calculations for the Commercial Purpose rate class.

- Region Staff believe there has been no error in the RDC payable or application of the By-law, and therefore the Complainant is not eligible for the requested relief under the DCA.

Financial Considerations

The Region's DC By-law includes both Residential and Non-Residential rate classes which form the basis for the calculation of applicable RDCs. The Region's RDC By-law includes three (3) Non-Residential rate classes, Industrial, Commercial and Institutional. Development Charges under the RDC By-law are calculated and payable as of the date of issuance of the first building permit with respect to the development based on the applicable rate as defined in the By-law. The Complainant has asserted that the RDC payable for the expansion of the aforementioned property does not meet the definition of Commercial Purpose or Industrial Use, and therefore should not be subject to any development charges. This is contrary to the Region's calculation of RDCs based on the Commercial Purpose Class. The Complainant's development on the Subject Lands is proposed at 38,600 square feet. Regional Staff note that the initial calculations provided for the development was based on the 2022 Commercial Rate of \$14.20 which results in RDCs payable of \$565,865.

Upon discussions with the City of St. Catharines (the "City"), it was determined that this development had submitted a site plan application to the City in 2021 and therefore under the provisions of the DCA Section 26.2 which establishes the DC rate at date of site plan approval, the 2021 DC rate of \$12.72 for Commercial Purposes should apply to the development as long as building permits are issued within two (2) years of site plan approval which took place in August 2021 by the City. This would result in RDCs payable of \$490,992 under the Commercial Purpose rate.

If Council determines that the Industrial Rate applies to this development, it is important to note that Industrial developments may be eligible for a RDC incentive program that could result in a grant of up to 100% of their RDCs payable. RDC incentives are funded from the existing tax base in order to keep the RDC reserves whole. Staff emphasize that this treatment is inconsistent with the RDC By-law.

Analysis

On April 13, 2022 an application for foundation permits was submitted to the City. The amount of the RDC payable at permit issuance was calculated to be charged based on the Commercial RDC rate in accordance with the DC By-law. Mr. Giancaterino (West End Self Storage), disputed the charge, stating that the RDCs should be calculated based on the Industrial Use Rate. These permits have not yet been issued by the City, as prior to the release and issuance of a building permit - both City and Regional DCs are required to be paid.

The DC By-law (Section 4 (a)) and the DCA (Section 2) requires development charges to be imposed against all developments if the development requires the issuing of a permit under the *Building Code Act* along with several other criteria. The Complainant's development on the Subject Lands meets these criteria, and therefore, RDCs shall be imposed. Further the DC By-law re-states this in Section 8, "for development for non-residential purposes, development charges shall be imposed on all non-residential development". Therefore the Complainant's claim that RDCs should not apply to the Subject Lands is contrary to the DC By-law and DCA.

The City has confirmed self-storage facilities are considered Commercial under their DC By-law, therefore the Subject Lands would be charged their Commercial DC Rate. This has also been confirmed through the Region's review of the City's DC By-law. However, a Site Plan Agreement was submitted to the City for the expansion in 2021. Under Section 26.2 of the DCA, guidelines are established for determining the calculation date for development charges payable. The calculation is the earlier of the date of a Site Plan/Zoning Application or time of building permit issuance. Therefore, since a Site Plan Agreement was submitted to the City in 2021, 2021 DC Rates should apply. The City did not charge DCs in 2021, therefore the applicable local municipal DCs are \$0.

The Region's DC By-law No. 2017-98 defines "Industrial Use" and "Commercial Purpose" as follows:

"industrial use" means land, buildings or structures used for or in connection with manufacturing by:

- a) manufacturing, producing, and processing goods for a commercial purpose, as well as storing and/or distribution of goods manufactured, produced or processed on site;

- b) research or development in connection with manufacturing, producing or processing good for a commercial purpose;
- c) retail sales by a manufacturer, producer or processor of goods they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place;
- d) office or administrative purposes, if it is:
 - i. carried out with respect to manufacturing, producing, processing, storage or distributing of something; and
 - ii. in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution.

“commercial purpose” means used, designed or intended for use for or in connection with the purchase and/or sale and/or rental of commodities; the provision of services for a fee; or the operation of a business office.

Staff note that the Region’s 2012 DC By-law (No. 62-2012) included “self-storage facilities” under the “Industrial Use” definition. Therefore, at that time self-storage developments and expansions were charged the Industrial DC Rate. As part of the 2017 DC By-law update, the definition of Industrial Use was revised to remove the inclusion of “self-storage facilities” in DC By-law No. 2017-98, as “self-storage facilities” were deemed to not support a manufacturing process and were not deserving of the rebates available to the industrial class.

Staff refer Council to CSD 11-2017 Regional Development Charges and Proposed By-law recommends that the Industrial Grant Program should be extended and in Appendix 14 wherein as a response to comments by delegations staff stated that: “Staff does not support a “0” Industrial DC rate because not all industrial uses meet the Council’s objective of creating jobs, such as wind turbines, self-storage.”

As noted in the Complainant’s materials the Complainant was a recipient of a grant for its expansion in 2016. In the same report, a by-law comparison is provided to Council members and indicates the intended deletion of self-storage from the Industrial use category. Staff consider removal of self-storage from the category of Industrial use was a method of achieving the goal of avoiding a “\$0” DC rate applying to self-storage for the reasons stated in the report.

In the Complainant’s letter dated August 3rd, it is asserted that inclusion of self-storage facilities in the new 2022 DC By-law commencing September 1, 2022 implies that it is an admission that the provisions of the existing DC By-law No. 2017-98 have been

misinterpreted by Regional Staff. Regional Staff do not consider the inclusion in the new by-law an admission of misinterpretation, but rather recognizes that this Complaint exists, takes time, and requires resources to deal with, and might not have been raised by the Complainant had the reference now added to the new by-law existed in the existing DC By-law No. 2017-98. As such, Regional Staff were proactive in attempting to avoid a similar objection in the future.

Staff note that the growth forecasts included in the 2017 and 2022 DC Background Studies were created with all NAICS Codes beginning in 53 (Real estate and rental and leasing) included in the Commercial Growth Forecast. The NAICS code for self-storage/mini-warehouse is 531130, therefore the growth related to this sector has been included in the Commercial Growth Forecast and therefore the Commercial Purpose rate calculations included in the 2017 and 2022 DC Background Studies further supporting Staff's classification of the development as Commercial Purpose.

The Complainant states that deleting "self-storage facilities" from the definition of Industrial Use in DC By-law No. 2017-98 does not make the development in question subject to Commercial RDCs. Regional Staff response is that changes to the prior definition of Industrial Use combined with the existence of a definition of Commercial Purpose that properly includes the type of development as well as the taking in consideration the requirements of DC By-law and the DCA previously described in this Report does make the development subject to development charges.

The Complainant disputes that they provide a "service", and as such, is not included in the definition of Commercial Purpose. Regional Staff respectfully bring attention to the "non-residential rates" in the DC By-law which references "commercial, institutional, industrial and wind turbines". Self-storage facilities offer their customers a "service for a fee" such as the storage of their items at the storage facility, therefore being classified under the Region's definition of commercial. Regional Staff note the Complainant's website promotes the service element of the business including a page identified as "Services; testimonials as to the quality of the services provided and ancillary services provided including but not restricted to insurance and security". Since the inception of DC By-law No. 2017-98, the Region has seen several self-storage facility developments/expansions that have paid the Commercial rate.

The Complainant additionally notes that their operation is self-serve and does not use a lot of municipal services. Regional Staff note that many businesses are self-serve or have limited direct in-person dealings with customers, and which are in fact categorized as "Commercial Uses" ranging from laundry-mats to self-serve gas stations. Insurance

is a category of service included by the Complainant in the arguments, and insurance frequently can be obtained through on-line applications. Without acknowledging that the proposed expansion of the Subject Lands will require an increase in as few Regional resources as the Complainant suggests, Regional Staff note that not all developments within a category used in the DC background study will have identical levels of resource use or employment.

The Complainant has also noted that case law looks to how similar uses are treated under development charge by-laws. The Complainant asserts that case law supports warehousing and storage uses being treated as industrial. However, in the Region's case only warehousing and storage that is directly associated with an industrial manufacturing facility is charged the industrial rate. All other warehousing and storage is charged Commercial rates. Further, the Complainant states that the zoning of the Subject Lands prohibits Commercial Purposes. It is important to note that the rate classification for payment of DCs is determined separately than the zoning allowances for a property, and despite the applicable zoning, the City has also indicated the project would have been charged at the Commercial rate. DC rates are determined based on intended use and are categorized based on definitions as provided in an approved development charges by-law. Differences between the permitted zoning and DC rate classes are permitted.

Staff refer Council to the recent decision, issued August 10, 2022 by the Ontario Land Tribunal wherein Alphabet Self Storage Victoria Inc appealed a decision by the City of Hamilton's Audit, Financial Administration Committee regarding DC's charged by the City of Hamilton. The sole issue to be determined was whether a self-storage facility was an Industrial Development and the conclusion of the Tribunal was that self-storage was not an Industrial Development as that term was used in the Hamilton DC by-law. The case goes in depth in consideration of the value of evidence of intent of the Council and the categorization of the type of activity within the DC Background Study. As noted previously the Niagara Region's 2017 and 2022 DC Background Studies included NAICS Code 53 which includes self-storage/mini-storage in the growth forecast for the Commercial Purpose category, highlighting the fact that self-storage is a commercial use. Relevant excerpts of the case are included in Appendix 2.

Alternatives Reviewed

Regional Council is required to hold a hearing upon receipt of an RDC complaint, and provide the complainant with an opportunity to make representations, following which Council is required to render a decision. It is Staff's position based on the language in

the Region's by-law relative to the information submitted on behalf of the complainant by their representative, and applicable legislation, that the complaint should be dismissed.

Relationship to Council Strategic Priorities

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

Other Pertinent Reports

- CSD-11-2017 Regional Development Charges and Proposed By-law
- CSD 12-2018 – Regional Development Charges Terms of Reference and Complaint Process - REVISED

Prepared by:

Blair Hutchings, MBA, CPA
Senior Tax & Revenue Analyst
Corporate Services

Recommended by:

Todd Harrison, CPA, CMA
Commissioner/Treasurer
Corporate Services

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Sterling Wood, Legal Counsel, Ken Scholtens, Manager Business Development and Expedited Services and Margaret Murphy, Associate Director, Budget Planning & Strategy, and reviewed by Helen Chamberlain, Director, Financial Management & Planning/Deputy Treasurer.

Appendices

Appendix 1	Complaint Form as Submitted
Appendix 2	"Alphabet Case" Ontario Land Tribunal Excerpts