

Appendix 2 – “Alphabet Case” Ontario Land Tribunal Excerpts

As noted in the Ontario Land Tribunal Decision from *Alphabet Self Storage Victoria Inc. v. City of Hamilton* - OLT-22-002571 (the “*Alphabet Case*”), the North American Industry Classification System (“NAICS”) Code 53 – Real Estate and Rental and Leasing is referenced throughout, along with the fact that “self-storage” is found within Code 53, and that it is evident “that there is a clear distinction in the NAICS between the industrial use of warehousing and storage and the commercial use of self-storage”. NAICS Code 53 is similarly referenced in both of Niagara Region’s 2017 and 2022 DC Background Studies – highlighting the fact that “self-storage” falls within Code 53 – Real Estate and Rental and Leasing, and is a “commercial use.”

Relevant excerpts from the *Alphabet Case* can be found below, particularly paragraphs [96] through [109].

Case Name: *Alphabet Self Storage Victoria Inc. v. Hamilton (City)*

Issue Date: August 10, 2022

Case No.: OLT-22-002571

Appellant: Alphabet Self Storage Victoria Inc.

Subject: Development Charges By-law No. 19-142

Municipality: City of Hamilton

Summary: This case is an appeal pursuant to s. 22(1) of the *Development Charges Act* (“DCA”), by Alphabet Self-Storage Victoria Inc. (“Appellant”) against the City of Hamilton’s (“City”) Audit, Financial Administration Committee (“AFA”) decision, which upheld the City’s decision to impose a development charge (“DC”) in the amount of \$924,705.00 for the development of the property known municipally as 391 Victoria Avenue as a self-storage facility (“Development”). The City in its calculation of the DC owing for the Development, interpreted self-storage facilities as a non-industrial development under the in-force 2019 Development Charge By-law (“DCBL”) and was therefore ineligible for the City’s industrial DC rate.

Please note: The below excerpts are the relevant paragraphs of the case that Regional Staff wish to emphasize. Should one wish to review the entirety of the case, please visit the Ontario Land Tribunal E-Decisions website - <https://olt.gov.on.ca> and search “OLT-22-002571-AUG-10-2022”.

[96] In *Airport Self Storage*, the OMB recognized the relevance of Statistics Canada Industrial Classifications including NAICS in the interpretation of DC by-laws but did not consider, nor apply, zoning by-law definitions.

...

[98] Statistics Canada states that NAICS Sector 53 Real Estate and Rental and Leasing comprises:

establishments primarily engaged in renting, leasing or otherwise allowing the use of tangible or intangible assets. Establishments primarily engaged in managing real estate for others; selling, renting and/or buying of real estate for others; and appraising real estate, are also included.

[99] In the NAICS, self-storage is not listed within a general sector, it is found within subsector 531130 – Self-storage mini-warehouses which is part of Sector 53 - Real estate and rental and leasing.

...

[101] The NAICS describes subsector 531130 (Self-storage mini-warehouses) as follows:

This Canadian industry comprises establishments primarily engaged in renting or leasing space for self-storage. These establishments provide secure space (rooms, compartments, lockers, containers or outdoor space) where clients can store and retrieve their goods.

Illustrative example(s)

- mini-warehouse rental or leasing
- real estate investment trusts (REITs), operating self-storage and mini-warehouses

All examples

Exclusion(s)

- providing coin-operated locker services (See 812990 All other personal services)
- providing warehousing services that include the handling of client's goods (See 4931 Warehousing and storage)” (emphasis added)

[102] The Tribunal notes that warehousing uses are explicitly excluded and differentiated from self-storage.

[103] NAICS Sector 53 and therefore NAICS subsector 531130 - Self-storage mini-warehouses is captured within the commercial/population related major industry sector category, in accordance with Schedule 11 of Appendix A, and reflected in the commercial GFA forecast presented in Schedule 9 of the 2019 DC Background Study, and should be accordingly subject to full non-residential DC rate unless the 2019 DC By-law expressly provides otherwise, which it does not.

[104] Other types of storage, for example warehousing, are classified differently than self-storage in NAICS and treated differently in the 2019 DC By-law. Transportation and Warehousing Codes 48 to 49 describe the Transportation and Warehousing Sector.

[105] Nowhere within the NAICS Transportation and Warehousing Sector Codes 48 to 49 and the subsectors is self-storage identified. Under Code 4931, there is a list of storage and warehousing codes. Self-storage is not recognized by NAICS as within industrial warehouse and storage categories which makes sense when it is categorized in Code 53 - Real estate and rental and leasing.

[106] The Tribunal notes that all of the above reflects the nature of self-storage use. As a use, it is not related to an industry such as manufacturing, processing or production. Rather, self-storage leases space to others for storage of items not related to the industrial activities of the owner of the property or any industrial activity on the property. It is clear to the Tribunal that NAICS subsector 493110 - General Warehousing and Storage is the subsector which would apply to the reference in the 2019 DC By-law definition of "Industrial Development" to "storing or distributing something".

[107] Furthermore, the NAICS describes subsector 493110 - General warehousing and storage as:

This Canadian industry comprises establishments primarily engaged in operating public and contract general merchandise warehousing and storage facilities. These establishments handle goods in containers, such as boxes, barrels and drums, using equipment such as forklifts, pallets and racks. They are not specialized in the handling of a particular type of good.

Illustrative example(s) bonded warehouse, general merchandise public storage (except self-storage)

All examples

Exclusions

- cold storage service (See 493120 Refrigerated warehousing and storage)
- farm product storage (See 493130 Farm product warehousing and storage)
- household goods storage (See 493190 Other warehousing and storage)

- warehousing, self-storage (See 531130 Self-storage mini-warehouses)”

It is noted that self-storage is explicitly excluded from General Warehousing and Storage use. It is not even found within the same main industry sector.

[108] The same exclusion is found in the category 493120 - Refrigerated warehousing and storage.

[109] It is evident to the Tribunal that there is a clear distinction in the NAICS between the industrial use of warehousing and storage and the commercial use of self-storage.