

September 10, 2024

CSD 2-2025
Appendix 2

Sullivan Mahoney
Attention: Thomas A. Richardson, C.S. (tarichardson@sullivanmahoney.com)
40 Queen Street, P.O. Box 1360
St. Catharines, ON L2R 6Z1

Re: Gorge Holdings Inc. Application for Building Permit to Construct a Multi-Tenanted Building, City of Thorold: Regional Development Charges

Dear Mr. Richardson

This letter is in response to your correspondence on behalf of your client, Gorge Holdings Inc., dated July 11, 2024 and addressed to Mr. Rotundo, with respect to Gorge Holdings Inc.'s 86,218 square foot building (the "**Building**") to be constructed on the property municipally known as 1520 McCleary Drive in the City of Thorold (the "**Property**"). Respectfully, we disagree with your characterization of the use proposed by United Parcel Service Canada Ltd. ("**UPS**") within a portion of the Building comprising approximately 61,978 square feet as "processing of goods" within the meaning of Niagara Region's By-law 2022-71 (the "**DC By-law**").

On December 19, 2023 the Regional Municipality of Niagara ("**Niagara Region**") and Gorge Holdings Inc. entered into an agreement (the "**Agreement**") (i) deferring the payment of Regional Development Charges in the amount of \$1,426,045.72 ("**RDCs**") to a later date than they would otherwise be payable and (ii) contemplating a grant to Gorge Holdings Inc. at the end of the deferral period with respect to that portion of the Building actually occupied by tenants undertaking activities that meet Niagara Region's definition of "industrial use", as provided in the DC By-law.

The DC By-law defines "industrial use" 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;

In your opinion, the proposed use meets the definition contained in paragraphs (a) and (d) above because UPS will be “processing” goods for commercial purpose and storing goods “processed” on the site. Furthermore, you state that the associated office area meets the definition because it is carried out with respect to “processing” and is attached to the building used for “processing”. This interpretation of the term “processing” is inconsistent with the intent of the DC By-law and the RDC Industrial Grant Program.

The term “processing”, as it relates to the broader definition of “industrial use”, is to be understood in its ordinary sense and harmoniously with the intent of the DC By-law and the RDC Industrial Grant Program. As such, the term cannot be construed in isolation to refer merely to handling, sorting, warehousing, packaging and/or redistributing goods originally made or produced elsewhere. Rather, the term, read within its proper context, refers to preparation, handling, or other activity designed to effect form appearance, or other characteristics of the goods brought onto the site, so that the final product becomes more marketable or acquires added value. Based on your correspondence, no such activity is contemplated by UPS within the portion of the Building that it intends to occupy.

A letter by Mark Publow, Real Estate Manager Canada for UPS, dated October 27, 2023 and attached to your correspondence as Appendix “B”, describes the proposed use as follows:

“This location will be primarily responsible for receiving local and non-local packages by way of Transport Trucks and Delivery Vans. Goods will be received at the facility in palletized and non-palletized formats and will be unloaded at the facility. After all goods and materials are received they will be processed by staff and sorted via network of conveyor belts and specialized sorting equipment for end-user distribution. The site will include short-term warehousing, distribution and administrative offices related to the processing and distribution of goods on site. The new location will serve as distribution facility to meet the business needs of UPS’ customers and clients.”

This description of the proposed use speaks for itself. The proposed use is a logistics centre or a distribution hub. Its purpose is to facilitate delivery of goods produced by third parties elsewhere to their final destination. The act of “processing” goods at the proposed logistics centre or distribution hub does not confer on them any added value or make them any more marketable than they were prior to reaching the facility.

Therefore, it is our position that George Holdings Inc. will be required to pay RDCs at the commercial rate for the portion of the Building to be occupied by UPS in accordance with section 4.b. of the Agreement.

We are happy to answer any further questions you may have.

Respectfully,

Dan Turner
Manager Strategic Growth Services
Growth Strategy and Economic Development