
Subject: Development Charges Complaint – 12 Iroquois Trail, Grimsby (Vermeer Canada Inc.)

Report to: Regional Council

Report date: Thursday, January 16, 2025

Recommendations

1. That the Complaint filed with respect to Regional Development Charges payable pursuant to Section 20 of the *Development Charges Act, 1997*, for the property located at 12 Iroquois Trail, Grimsby (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 November 20, 2024, that was filed with the Region by legal counsel on behalf of Vermeer Canada Inc. (the “Complainant”) for a proposed development on the Subject Lands.
- Should a property owner feel that RDCs have been incorrectly applied there is a procedure for issuing a complaint under Section 20 of the *Development Charges Act, 1997* (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.
- In accordance with the DCA, in order to be successful in this process the Complainant must be able to demonstrate:
 - the amount of the development charge was incorrectly determined;
 - 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
 - there was an error in the application of the development charge by-law
- The Complainant was assessed RDCs on the basis that the Subject Lands are “Commercial” as opposed to “Industrial” under the RDC By-law 2022-71. Consequently, the Complainant has asserted that the Region erred in its interpretation and application of the definition of “Industrial Use” in RDC By-law 2022-71.

- Region Staff have reviewed the Complaint and have obtained additional details of this proposed development from the Complainant and Town of Grimsby staff and have confirmed that the Subject Lands are used for a Commercial Purpose.
- Vermeer Canada Inc.'s operations are based in preparing new and preowned equipment for customers and servicing of machinery including housing administrative offices. This machinery and equipment was manufactured, produced and processed in other facilities before being shipped to the proposed Grimsby location. The activities proposed to take place on the Subject Lands primarily involve handling, sales, and servicing of these post-manufactured goods rather than engaging in the manufacturing, producing and processing of new goods on site. Therefore, the development on the Subject Lands does not meet the definition of "Industrial Use".
- Region Staff believe there has been no error in the RDC payable or application of the RDC By-law 2022-71, and therefore the Complainant is not eligible for the requested relief under the DCA and the complaint should be dismissed. Should Council accept this complaint, the financial impact of determining that this property does in fact meet the definition of "Industrial Use" is \$100,777.26.
- External legal counsel of Kagan Shastri DeMelo Winer Park LLP with expertise in the DCA have been retained to attend the RDC Complaint hearing and provide legal support with this matter.

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 DC 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 based on proposed use of the development.

The Region has several incentive programs specific to RDCs, including the Industrial Use Development Charges Grant. This program provides financial reductions for industrial developments in Niagara that have obtained (or plan to obtain) a building permit to build or expand existing facilities to support industrial investment in the region. Developers can apply for funding before receiving a building permit or within 90 days of receiving a building permit and receive a grant for up to 100 per cent of the RDCs payable.

To qualify for Niagara Region's Industrial Development Charge Grant, the applicant's development must meet the following criteria:

- The proposed development must meet Niagara Region's definition of Industrial Use as per By-Law 2022-71.
- Apply for funding before receiving a building permit or within 90 days of receiving a building permit.
- Demonstrate the positive economic impact that the development will have in Niagara.

The Complainant has asserted that the Region erred in its interpretation and application of the definition of "Industrial Use" in the RDC By-law 2022-71. In October 2023, the Complainant applied for the Niagara Region's Industrial Development Charge Grant Program, this application was denied on the basis that after review of the application the proposed development did not meet the definition of Industrial Use per the RDC By-law 2022-71. As a result of this denial, RDCs for the project have been calculated at the Commercial Rate totalling \$269,717.79.

It is important for Council to note that the definition of Industrial Use for determination of the Industrial Rate per By-law 2022-71 is identical to the definition of Industrial Use per the Niagara Region's Industrial Development Charge Grant Program. If Council determines that the Industrial Rate applies to this development, it is important to note that it would also 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, therefore this would result in this property being eligible for a grant equal to \$100,777.26. It is Staff's position that this treatment is inconsistent with the RDC By-law.

Analysis

The Complainant's position is that RDCs should be calculated at the Industrial Use Rate. It is Staff's position that RDCs have been calculated appropriately and that the denial under the Niagara Region Industrial Development Charge Grant Program is warranted. Regional Staff do not believe that the proposed development meets the definition of Industrial Use By-law 2022-71 which is 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.

On October 13, 2023, the Niagara Region received a formal application under the Niagara Region Industrial Development Charge Grant Program. Following receipt of this application Staff reached out to the applicant Chris Burelle (President, Vermeer Canada) and Town of Grimsby Staff for additional details regarding the proposed development. In these discussions, after providing the Region's definition of industrial use Town of Grimsby Staff confirmed that no manufacturing will occur at the facility and therefore agreed that the proposed development would not meet this definition and therefore, would not be eligible for the Industrial Development Charge Grant Program.

The Complainant has stated that the Subject Lands will be used by Vermeer as administration offices in addition to sales and servicing of machinery. It is Staff's position that that the activities described at Vermeer do not align with the Industrial Use definition as the proposed use at this site is to service, sell and repair machinery manufactured elsewhere.

It should also be noted that specifically to the definition of "industrial use" in the RDC By-law means land, building or structure used for or in connection with manufacturing by requiring that products be manufactured on site and that the uses listed in the subsequent sub-paragraphs have a direct relation to the manufacturing that is occurring on site. Without any manufacturing as a starting point the other types of uses listed, including "processing" as relied upon by the Complainant do not trigger an industrial use. The review by Staff has determined that there is no manufacturing occurring on the subject lands that would allow for the definition of industrial use to be applied.

The Complaint letter as submitted does not adequately address the requirement of the Industrial Use definition that the Subject Lands must be used for or in connection with

manufacturing that occurs on site of the Subject Lands. By simple definition manufacturing requires something to be made from raw materials by hand or by machinery. There is no manufacturing occurring by the Complainant at the Subject Lands, therefore any processing of goods for retail sale does not meet the RDC By-law definition of industrial use by virtue of not meeting this first requirement of the definition. Staff do note that although Vermeer does manufacture equipment and machinery, these activities take place outside of their proposed Grimsby location. As a result, the activities described at the Subject Lands do not meet the Region's definition of industrial use.

The Complainant has included commentary in their affidavit that the Proposed Development meets the Region's definition of industrial use due to the manufacturing and processing of custom fabrication or horizontal directional drill mud mixing railers and in-house and on-site rebuilding of directional drilling tools including machining and welding processes. It is the Region's interpretation that these activities more closely align with repair activities and do not represent manufacturing activities.

The Region's definition of Commercial Purpose per By-law 2022-71 specifically includes auto repair shops and car sales/dealers. Based on the description of the proposed development on the Subject Lands, Regional Staff believe that the activities described to occur at proposed development closely aligns with the activities performed at these types of auto repair shops and car sales/dealerships which do not meet the definition of industrial use.

As a result of this interpretation, Regional Staff recommended that Town of Grimsby Staff collect RDCs based on the applicable Commercial Rate. The Town of Grimsby and Region of Niagara have separate and distinct DC By-laws that they administer. The definitions of Industrial Use under these By-laws are not identical, and thus differences in interpretation can occur. At the time of drafting this report the Town of Grimsby has not made a formal determination on if Industrial or Commercial Development Charges will be charged for this property under their respective DC By-law.

Alternatives Reviewed

In accordance with the DCA 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 DC By-law 2022-71 relative to the information submitted on behalf of the complainant by their representative, and

applicable legislation, that the complaint should be dismissed as no error or miscalculation regarding DCs imposed has been established and the proper classification of the proposed use is Commercial.

Relationship to Council Strategic Priorities

This report provides details related to the collection of RDCs. This relates to Council's Strategic Priorities of Effective and Prosperous Region as RDCs are a major source of funding for growth projects in the capital budget.

Other Pertinent Reports

CSD 12-2018 - Regional Development Charges Terms of Reference and Complaint Process – REVISED

(If you require a copy of this report, please contact the Regional Clerks Office)

Prepared by:

Blair Hutchings, MBA, CPA
Manager, Revenue Planning & Strategy
Corporate Services

Recommended by:

Dan Carnegie
Acting Commissioner/Treasurer
Corporate Services

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Daniel Turner, Manager Strategic Growth Services and reviewed by Beth Brens, Associate Director, Budget Planning & Strategy and Donna Gibbs, Director of Legal and Court Services

Appendices

Appendix 1 Complaint Form as Submitted