
Subject: Development Charges Complaint – 399 Vansickle Road, St. Catharines (Rinaldi Holdings 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 399 Vansickle Road, 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 September 23, 2024, that was filed with the Region by legal counsel on behalf of Rinaldi Holdings 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 proposed use of the development on the Subject Lands is “Commercial” as opposed to “Industrial” under the RDC By-law 2022-71. The Complainant has asserted that the Region erred in its interpretation and application of the definition of “industrial use” in By-law 2022-71

and additionally, that Regional staff have erred in their denial of the Subject Lands for the Niagara Region Industrial Development Charge Grant.

- The development is to be leased by Goodwill Niagara (“Goodwill”); however it is the owner/developer that is seeking relief of RDCs. The owner/developer, Rinaldi Holdings Inc. is operating a business of leasing space, which is fundamentally a commercial use. Additionally, the tenant is engaged in a business that does not meet the definition of industrial use. The tenant will not be directly benefitting from the RDC relief or RDC Grant.
- Region Staff have reviewed the Complaint and have conducted a tour of Goodwill Niagara’s operations at a different location and have confirmed that the Subject Lands’ use will be Commercial.
- Goodwill’s operations are based in sorting, cleaning, and redistributing goods that were manufactured, produced and processed in other facilities before being donated. The organization’s activities primarily involve handling these pre-manufactured goods rather than engaging in the manufacturing, producing and processing of new goods on site. Therefore, the use of 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 \$141,213.44.
- 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 developers investing 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. Additionally, the Complainant has asserted that the Region incorrectly denied a grant application for the Industrial Use Development Charge Grant Program.

On July 19, 2024, the Complainant paid RDCs to the City of St. Catharines for the proposed development of 21,000 square feet at the RDC commercial rate totalling \$379,295.84. The Complainant seeks a refund of Development Charges paid at the Commercial Development Charge rate and a reduction of the RDCs payable to the Niagara Region for this development to the Industrial Rate. A change to the Industrial Rate would result in RDCs owing for this development to \$141,213.44.

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 to keep the RDC reserves whole, therefore this would result in this property being eligible for a grant equal to \$141,213.44. 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. Additionally, they dispute that their application for the Niagara Region Industrial Development Charge Grant Program should have been approved, therefore resulting in \$0 in RDCs payable for the Subject Lands. In order to release and issue a building permit, both City and Regional DCs are required to be paid. To not delay construction of their development, the Complainant paid both their City and Regional DCs in full at the Commercial Rate totalling \$379,295.84.

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.

The Complainant has stated that the Subject Lands will be leased by Goodwill Niagara ("Goodwill"). It is Regional Staff's position that the activities described of Goodwill do not align with the Industrial Use definition because they primarily involve warehousing, sorting, cleaning, and redistributing donated goods rather than manufacturing, producing, and processing goods on-site for commercial purposes. Additionally, they do not conduct research or development related to manufacturing, nor do they engage in retail sales of goods they have manufactured, produced, and processed on-site. The office or administrative activities carried out do not relate to manufacturing, producing

and processing of goods on-site. The developer/owner of the Subject Lands, Rinaldi Holdings Inc. is operating a business of leasing space, which is fundamentally a commercial use. Additionally, the tenant is engaged in a business that does not meet the definition of industrial use. The tenant will not be directly benefitting from the RDC relief or RDC Grant.

The goods that Goodwill sorts, cleans, and redistributes were manufactured, produced, and processed in other facilities before being donated. Goodwill's activities primarily involve handling these pre-manufactured goods rather than engaging in the manufacturing, producing, and processing of new goods on-site, which is a requirement under the RDC By-law. As such, the use of the Subject Lands does not meet the definition of "Industrial Use," which requires the on-site manufacturing, producing, and processing of goods for commercial purposes. Goodwill's role in warehousing and redistributing post-manufactured goods does not align with the industrial use definition.

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. By simple definition manufacturing requires something to be made from raw materials by hand or by machinery. There is no manufacturing that occurs on site of 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.

As a result of this interpretation, Regional staff asserted to City of St. Catharines Staff to collect RDCs based on the applicable Commercial Rate. The City of St. Catharines 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. However, this development was also determined to be Commercial Use per the City of St. Catharines DC By-law, therefore DCs were collected at the Commercial Use rate. The Complainant also filed a formal complaint with the City of St. Catharines under similar grounds. As of the time of drafting this report after reviewing the Complaint the City of St. Catharines has determined that this property meets their definition of Industrial Use, this making the Subject Lands eligible for a DC Grant for the City portion of their DCs owing.

On July 23, 2024, Region staff from Finance and Economic Development visited Goodwill's Niagara Falls location at 6777 Morrison Street, Niagara Falls. This visit was at the request of the Complainant as they indicated that a visit and tour of this facility would provide Regional staff with an overview of similar operations that will be occurring

at the Subject Lands. During this site visit and tour, Regional staff spoke with staff from Goodwill and walked through their process from donation intake to items being ready to be put on the floor for sale. During this tour Regional staff noted that this process did not include any activities that would constitute manufacturing or otherwise meet the required definition. Goodwill staff also noted that they do not have the capacity to repair donated goods for sale, they sell many items in 'as is' condition leaving repairs up to the end user. These 'as is' items are priced accordingly based on their condition. Goodwill staff did note that items are gently cleaned if required, and household items with an electrical component are checked for power. However, in the event an item is not deemed acceptable for sale it is sent for recycling or garbage as appropriate. This tour confirmed Regional staff's interpretation that no manufacturing is occurring on site and that Goodwill does not meet the definition of Industrial Use.

Following the tour on July 23, 2024, the complainant/property owner submitted a formal application to the Niagara Region Industrial Development Charge Grant Program. This application was formally denied by Regional staff via a letter dated August 7, 2024, based on the rationale described above for the proposed use of the Subject Lands and the Goodwill not meeting the Niagara Region's definition of Industrial Use. The Complainant has stated that in addition to the existing warehouse and retail space there is an additional 6,000 square feet at the Subject Lands which will be used to establish a construction training program focused on repurposing donated furniture. It is Regional staff's position that this space also does not meet the Region's definition of Industrial Space as no manufacturing of goods is occurring.

Legal Counsel for the Complainant has quoted case law issued January 11, 2024, by the Ontario Land Tribunal related to a DC Complaint filed by UniFirst Canada Ltd. in the County of Middlesex. The issue in this complaint is whether UniFirst is "Commercial" or "Industrial" per the DC By-law of the County of Middlesex. In this case, the Tribunal determined that this site was in Industrial in nature and subject to the Industrial Rate. It is important to note that this determination was based on the definitions of Industrial and Commercial per the County of Middlesex's DC By-law which differ from that of the RDC By-law 2022-71. Regional Council cannot conclude on this basis that a similar decision would be made for Goodwill. The nature of UniFirst's business also differs from that of Goodwill.

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.

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 RDCs 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)

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Appendices

Appendix 1 Complaint Form as Submitted