



**Daniel & Partners LLP**  
LAWYERS

September 23, 2024

Regional Municipality of Niagara  
Attn: Regional Council  
P.O. Box 1042  
Thorold, ON L2V 4T7

Re: Appeal of Development Charges Paid at Commercial Rate and Appeal of Denial of Application for Niagara Region Industrial Development Charge Grant Program

Owner: Rinaldi Holdings Inc.  
Property: 399 Vansickle Road, St. Catharines, ON

---

Rinaldi Holdings Inc. hereby appeals to the Council for the Regional Municipality of Niagara (the "Region") with respect to the decisions of Region's staff to:

1. Charge Development Charges for the development at 399 Vansickle Road, St. Catharines, ON at the Commercial Rate rather than the Industrial Rate;
2. Deny Rinaldi Holdings Inc.'s application to the Region's Industrial Development Charges Grant Program for the development of a Goodwill at 399 Vansickle Road in St. Catharines, ON.

Rinaldi Holdings Inc. appeals pursuant to section 20 of the *Development Charges Act*:

20 (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

- (a) the amount of the development charge was incorrectly determined;
- (b) 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
- (c) there was an error in the application of the development charge by-law. 1997, c. 27, s. 20 (1).

**Reasons for Appeal**

The Region erred in its interpretation and application of the definition of "industrial use" in Regional DC By-law 2022-71.

The definition of “industrial use” in Regional Development Charge By-law 2022-71 is set out below:

“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 goods 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 carried out with respect to the manufacturing, producing, processing, storage, or distributing of something, and in or attached to the building or structure used for that manufacturing, producing, processing, storage, or distribution.

In its denial letter dated August 7, 2024, the Region incorrectly asserted that Goodwill Niagara (“Goodwill”) must exclusively engage in manufacturing, producing, and processing goods on-site for commercial purposes to meet the definition of industrial use. This assertion overlooks the second part of provision (a), which provides that the storing and/or distribution of goods manufactured, produced, or processed on-site also qualifies as industrial use.

The Region also incorrectly asserted that Goodwill must and does not engage in retail sales of goods they have manufactured, produced, and processed on-site. This assertion incorrectly narrows the scope of provision (c) by ignoring the word “or”, which, if interpreted in its ordinary meaning, allows for retail sales by a processor of goods they have processed on-site to qualify as industrial use.

Goodwill’s operations at 399 Vansickle Road will engage in extensive processing and storage of donated goods, which is essential to the ultimate on-site retail sale of same. Accordingly, Goodwill’s operations qualify as “industrial use” under provisions (a) and (c) in DC By-law 2022-71.

#### Goodwill’s Processing Operations

The Ontario Land Tribunal decision in *UniFirst Canada Ltd. v Middlesex (County)* 2024 LNONLT 329 is informative in defining “processing” in a DC By-law context. In *UniFirst*, the operation processed uniforms on site which were then sold on site or delivered directly to end users. The Tribunal characterized the use (at paragraph 6) as being “closed circuit processing”:

No individual step in UniFirst's processing cycle, including the cleaning/decontamination stage, can be isolated from any of the other steps (i.e., a corporate end-user cannot contract UniFirst to only clean uniforms, for example, without the inclusion of the other vital processing steps); the UniFirst-owned and manufactured good enters and stays within a closed-circuit of processing.

The processing of donated items received at Goodwill are similarly interconnected and cannot be isolated from one another. Goodwill Industries Niagara does not sell unprocessed used items, nor do they offer cleaning-only services. The items are processed and retailed at the same site.

The closed circuited nature of Goodwill's processing can be described as follows:

100% of donated items received at Goodwill are processed on site. All non-textile items are inspected, tested, cleaned, priced, and processed into totes prior to going to the sales floor for retail. These include furniture, household items, toys, appliances, books, plastic, metal, shoes, purses, and electronics. All textile items are inspected for salability, hung, priced, then sent to the sales floor for retail. If products are not sold after four weeks, they are reprocessed on-site into recycling streams. All unsalable or defective items are processed on-site into recycling streams or waste.

The critical importance of processing to Goodwill's operations is evidenced by employee distribution: at 399 Vansickle, 60% of employees will be working in processing and retail, while 40% of employees will be working in administration. Of the former 60%, 75% of employees will be working in processing, while the remaining 25% will be working in retail. Without a robust processing operation, Goodwill's retail operation would not exist.

#### Recycling and Reduction of Landfill Waste:

Between April 1, 2023, and March 31, 2024, Goodwill's Niagara Falls location diverted 15.4 million pounds of donations from landfills, with less than 10% of donations going to waste. 90% of donated items are either sold, recycled, or repurposed through Goodwill's closed circuit processing operation.

The new Goodwill location at 399 Vansickle will further expand these processes with the addition of wire stripping and rag ripping to repurpose cloth into cleaning materials. These additional processes require specialty equipment and will further reduce landfill consumption, making Goodwill a more advanced, efficient, and environmentally sustainable processor.

#### Expansion of Industrial Activities at 399 Vansickle:

In addition to its existing processing and retail space, there is an additional 6,000 square foot space at 399 Vansickle that Goodwill will use to establish a construction training program focused on processing and repurposing donated furniture. The site will also feature a furniture bank for repurposed furniture and kitchen items that will be given to people in need through the Goodwill Assistance Program.

## Conclusion

Goodwill's operations, including the processing and retailing of donated goods, meets the definition of industrial use as set out in the Regional Development Charge By-law 2022-71. By processing and storing donated items on-site and preparing them for sale or recycling, Goodwill is engaging in the very type of industrial activity contemplated by the Regional Development Charge By-law 2022-71. The industrial nature of Goodwill's operations is fundamental to its model and qualifies it for the Industrial Use Development Charges Grant.

## **Relief Sought**

Rinaldi Holdings Inc. seeks a finding by Regional Council that the proposed development at 399 Vansickle Road is an Industrial Use as defined in the Regional Municipality of Niagara Development Charges By-law 2022-71.

Rinaldi Holdings Inc. seeks a finding by Regional Council that the proposed development at 399 Vansickle Road is eligible for the Niagara Region's Industrial Development Charges Grant for the development at 399 Vansickle Road.

Rinaldi Holdings Inc. seeks a refund of Development Charges paid at the Commercial Development Charge rate and a reduction of the Development Charges payable to the Niagara Region for this development to the Industrial Rate.

Please send notice of hearing date to me at my office and to the property owner:

Rinaldi Holdings Inc.  
P.O. Box 1655  
St. Catharines, ON L2R 7K1

Attn: Mr. Jerry Rinaldi

Rinaldi Holdings Inc. seeks to present its evidence via hearing pursuant to section 20(4) of the *Development Charges Act*.

Sincerely



Callum Shedden  
Partner  
Daniel & Partners LLP  
300B Fourth Avenue, First Floor  
St. Catharines, ON L2S 0E6  
Tel: 905-688-9411  
Email: sheddenc@niagaralaw.ca

**RECEIPT**

H.S.T. # 11936 6813

Receipt No: 123914

Project Number: 24 105285 ME  
Project Type: Mercantile  
Project Address: 399 Vansickle Road  
Fees Paid By: Rinaldi Holdings Inc  
Payment Memo: CM - Regional Fees - 399 Vansickle Rd

Payment Details:

<u>Fee Description</u>	<u>G/L Account #</u>	<u>Paid</u>
Regional Development Charges	23550.D1000.1C	379,295.84
	<b>Paid:</b>	<b>379,295.84 (Cheque)</b>

Received by: \_\_\_\_\_ Payment Date: July 19, 2024

All information collected on this form is subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

**Via Email Only**

Wednesday, August 7, 2024

Mr. Jerry Rinaldi - Rinaldi Holdings Inc  
399 Vansickle Road,  
St. Catharines, ON L2S 3T4

Dear Mr. Rinaldi,

**Re: Niagara Region Industrial Development Charge Grant Program – 399  
Vansickle Road, St. Catharines)**

Your application to the Niagara Region's Industrial Use Regional Development Charges Grant Program for 399 Vansickle Road, St. Catharines is being denied based on the following rationale:

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 goods that Goodwill sorts, cleans, and redistributes 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. As such, the organization does not meet the definition of "Industrial use," which requires the on-site manufacturing, producing, and processing of goods for commercial purposes. Their role in warehousing and redistributing pre-manufactured goods does not align with the industrial use definition.

Regards,

Daniel Turner, Manager, Strategic Growth Services

cc – Alex Rotundo, Senior Tax & Revenue Analyst, Niagara Region  
cc – Blair Hutchings, Manager, Revenue Planning and Strategy, Niagara Region

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** January 11, 2024

**CASE NO(S):** OLT-23-000084

**PROCEEDING COMMENCED UNDER** subsection 22(1) of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

Appellant:	UniFirst Canada Ltd.
Description:	Development Charges By-law No. C.P 1551-227
Reference Number:	Building Permit No. 21-030285
Property Address:	2365 Innovation Drive, London; Block 1, Plan 33M-544
Municipality:	County of Middlesex (Middlesex)
OLT Case No.:	OLT-23-000084
OLT Lead Case No.:	OLT-23-000084
OLT Case Name:	UniFirst Canada Ltd. v. Middlesex (County)

**Heard:** October 3, 4 and 5, 2023; written final argument completed on October 25, 2023

**APPEARANCES:**

**Parties**

**Counsel**

County of Middlesex / Corporation of the City of London ("City")

C. McCreery

UniFirst Canada Ltd. ("UniFirst")

N. Smiley

## DECISION DELIVERED BY WILLIAM R. MIDDLETON AND ORDER OF THE TRIBUNAL

---

[Link to Order](#)

### **PART ONE: INTRODUCTION: SOLE ISSUE IS WHETHER THE UNIFIRST SITE IS “COMMERCIAL” OR “INDUSTRIAL”**

[1] This proceeding involved an appeal by UniFirst of the amount of the development charges levied by the City in respect of the site owned by UniFirst located at the address known as 2365 Innovation Drive, London; Block 1, Plan 33M-544 (“Site”). The City’s development charges were assessed against UniFirst under Development Charges By-law No. C.P 1551-227 (“DC By-law”) enacted by the City pursuant to the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended (“DC Act”).

[2] UniFirst’s appeal was heard by the Tribunal on October 3, 4 and 5, 2023 in a video hearing (“VH”), and written final arguments were delivered subsequently on October 25, 2023.

[3] The dispute between the Parties is as to whether the Site is properly classified as “Commercial” under the DC By-law or whether it should instead be categorized as “Industrial”. The City’s development charges were levied on the basis that the Site is “Commercial”. UniFirst contends that this is incorrect and that the Site is clearly “Industrial”. If UniFirst is correct, then it is owed a refund of the amounts it paid to the City “under protest” pursuant to the “Commercial” classification.

[4] The materials before the Tribunal were:

- (a) Joint Document Book;
- (b) Visual Evidence of UniFirst;
- (c) Witness Statement of Kurt Wagner (UniFirst Canada Ltd.)



- (d) Witness Statement of Rowan Faludi (UniFirst Canada Ltd.)
- (e) Witness Statement of Kyle Wilding (City of London)
- (f) Witness Statement of Paul Yeoman (City of London)
- (g) Reply Witness Statement of Rowan Faludi (UniFirst Canada Ltd.)
- (h) Home Depot Laundry Machine Advertisement
- (i) City of Mississauga Development Charges Webpage (accurate as of October 3, 2023)
- (j) City of London's Wastewater and Stormwater Drainage By-law WM-28, Bill No. 185
- (k) City of Mississauga's Development Charges By-law 0133-2022
- (l) Email Correspondence Between City of London Staff and UniFirst re: Development Charges
- (m) Britannica Online Dictionary Definition of "Public"
- (n) Cambridge Online Dictionary Definition of "Public"
- (o) Wikipedia Definition of "Public"
- (p) Merriam-Webster Online Dictionary Definition of "Retail"
- (q) Closing Submissions of UniFirst;
- (r) UniFirst Book of Authorities;

- (s) Closing Submissions / Compendium of the City; and Reply Submissions of UniFirst.

## **PART TWO: THE OPINION EVIDENCE DOES NOT DETERMINE THE ISSUE IN DISPUTE**

[5] UniFirst called two witnesses in support of its appeal: Mr. Kurt Wagner and Mr. Rowan Faludi. Mr. Wagner is the Engineering Manager at UniFirst Corporation, which is a parent or related entity of UniFirst Canada Ltd. Mr. Wagner has been employed at UniFirst since December 2020 and has worked in the industrial laundering and uniform industry for over 30 years. Mr. Rowan Faludi is a consultant retained by UniFirst and qualified by the Tribunal as a professional land use economist with expertise in development charges and land use planning.

[6] The Tribunal concurs with the summary of evidence set out in the final argument made by UniFirst's counsel:

Both the factual evidence of Mr. Wagner and the expert testimony of Mr. Faludi (who conducted a site visit of the Mississauga facility) confirmed that UniFirst's core business is to manufacture, lease, supply and process its own uniforms – a salient fact that the City's expert and factual witnesses misunderstood – safety equipment, and other goods for a variety of business end-users, including in the industrial, medical, and food service industries. UniFirst manufactures these goods in facilities located in the United States and other countries. The goods will then be shipped to the Development, where they are put through the critical final stages of manufacturing, in order to be customized to each corporate end-user, including barcoding detailed information about the garment's history and wearer, repairing, replacing, hemming and customizing the garments to fit the individual wearers, embroidering employee names and company logos, and cleaning/decontaminating the garment in accordance with industry-specific standards. The finished uniforms are then stored onsite, and then either distributed by UniFirst transport trucks directly to the corporate/industrial client, or to one of UniFirst's distribution centres for delivery by smaller UniFirst trucks to the corporate/industrial client. Newly manufactured uniforms and garments for certain industries, such as food services, undergo further decontamination in accordance with Hazard Analysis Critical Control Point (HACCP) standards, before storage and distribution. Once in UniFirst's processing cycle, the uniforms and other safety equipment are decontaminated and/or refinished (as needed) weekly, according to the specifications of each corporate client's industry. Spare uniforms will also be stored at the Development to allow for employee changeover and/or the replacement of damaged items. No individual step in UniFirst's processing

cycle, including the cleaning/decontamination stage, can be isolated from any of the other steps (i.e., a corporate end-user cannot contract UniFirst to only clean uniforms, for example, without the inclusion of the other vital processing steps); the UniFirst-owned and manufactured good enters and stays within a closed-circuit of processing.

The nature and magnitude of UniFirst's operations are clearly "Industrial". The Development will employ approximately 75-125 persons at a facility of 63,000 square feet in area and apply final-stages manufacturing, processing, and store and distribute, millions of pounds of uniforms and other goods, using millions of gallons of water and drying the garments at extremely high temperatures (including to reach certain sanitization standards) in the process, and will utilize specialized equipment such as vertical drying tunnels and wastewater treatment infrastructure.

It is important to note that, before imposing the costlier "Commercial Development" charge at the building permit stage, and even upon receiving the objection made before City council, the City failed to make any inquiries regarding the operations of UniFirst to ensure that its determination was accurate – a standard that both City witnesses acknowledged under cross-examination, would be required of the City... As Mr. Wilding admitted, the City did not, to his knowledge, conduct any site visits, or make any further inquiries to confirm its determination that the Development was "Commercial Development", even after objection from UniFirst regarding this categorization. Mr. Wilding also admitted that the City does not have any memos, notes or other records that indicate how its determination was made, and that the City's plan/building inspector, Mr. Miguel Mendoza, reached the conclusion that "The building is not considered industrial", without requesting any further evidence from UniFirst, or attempting to seek out any further information whatsoever. In fact, Mr. Wilding admitted that he "needs to do [his own] due diligence" regarding the Development, suggesting that he failed to adequately undertake such diligence in the first instance...

[above emphasis added]

[7] In the Tribunal's view, the evidence of Mr. Wagner and Mr. Faludi's opinions, as summarized accurately above in paragraph [6], were not successfully challenged on cross-examination.

[8] As noted in Unifirst's final argument the City also called two witnesses: Mr. Kyle Wilding and Mr. Paul Yeoman. Mr. Wilding is employed currently by the City as Manager, Plans Examination and has worked for the City since March 21, 2022 and as such had ultimate oversight of the determination of development charges assessed against UniFirst. Mr. Yeoman is now employed by the City as Director, Parks and Forestry since May 1, 2023. However, prior to this role, he was Director, Capital Assets

and Projects from May 2021 to April 2023, and then Director, Development Finance from May 2017 to April 2021. For over 10 years, he worked on a wide variety of Development Charges matters on a day-to-day basis. He was the drafter of the City's DC By-law.

[9] The Tribunal did not find the City's counter arguments in its final submissions based on its witnesses' testimony to be persuasive:

The subject property was properly categorized as "commercial development" under the DC By-law as "laundries" are expressly listed as a "retail purpose" under paragraph (b) of the "commercial development" definition...Mr. Wilding explained that the commercial development DC rate was applied to the subject property on the basis of the inclusion of "laundries" in the second sentence of paragraph (b)... The word "laundries" is found in a list of examples of "retail purposes." Mr. Yeoman opined that the use of "laundries" was purposefully broad to include any type of facility that launders, regardless of scale, type of customer, inclusion of truck fleet, et cetera. His expert planning opinion was that there is no difference between "industrial laundries," "laundromats," or any other type of launderer for the purposes of this by-law...

...Council's approval of the by-law, resolution to dismiss UniFirst's complaint, and therefore direction to these City witnesses, justifies and provides critical context for the definition. Council's intended treatment of "laundries" was provided through their adoption of the By-law in its current form, which includes "laundries" as an example of "retail," and therefore "commercial development."... The Appellant witnesses described many activities to be undertaken at the proposed facility beyond "laundering", including embroidering names and logos, mending altering, stocking, storing, tagging and distributing. Mr. Yeoman explained that these activities function as a support service and he categorized them as customization and detailing. The primary function is "laundering" and not the alleged "manufacturing" or "processing" that the Appellant states that represents the functions "as a whole.

[above emphasis added]

[10] The Tribunal notes that although the evidence of Mr. Wagner and Mr. Faludi (for UniFirst) and that of Mr. Wilding and Mr. Yeoman (for the City) assisted the Tribunal to gain an understanding of the relevant factual background, the opinion elements of their evidence were not determinative of the actual issue in dispute. This is so because ultimately this dispute requires the Tribunal to (a) determine the meaning of the terms "Commercial" and "Industrial" in the DC By-law; and (b) decide which term should be

applied in order to calculate the development charges properly payable to the City by UniFirst. Therefore, the Tribunal cannot simply accept the opinions or views of one set of witnesses over the other in order to determine this legal issue.

### **PART THREE: LEGAL ISSUES: THE UNIFIRST SITE IS BEST CLASSIFIED AS “INDUSTRIAL”**

[11] In the DC By-law, the term “Commercial Development” is defined as follows:

**"Commercial Development"** is a building used for:

- (a) Office or administrative uses, including the practice of a profession, or the carrying on of a business or occupation or where most of the activities in the building provide support functions to an enterprise in the nature of trade, and for greater certainty shall include, but not be limited to, the office of a physician, lawyer, dentist, architect, engineer, accountant, real estate or insurance agency, veterinarian, surveyor, appraiser, contractor, builder, land Owner, employment agency, security broker, mortgage company, medical clinic; or
- (b) Retail purposes including activities of offering foods, wares, merchandise, substances, articles or things for sale or rental directly to the public and includes offices and storage within the same building, which support, are in connection with, related or ancillary to such uses, or activities providing entertainment and recreation. Retail purposes shall include but not be limited to: conventional restaurants; fast food restaurants; night clubs, concert halls, theatres, cinemas, movie houses, and other entertainment related businesses; automotive fuel stations with or without service facilities; special automotive shops/vehicle repairs/collision services/car or truck washes; vehicle dealerships; commercial truck service establishments, regional shopping centres; community shopping centres; neighbourhood shopping centres, including more than two stores attached and under one ownership; department/discount stores; banks and similar financial institutions, including credit unions (excluding freestanding bank kiosks), money handling and cheque cashing facilities; warehouse clubs or retail warehouses; food stores, pharmacies, clothing stores, furniture stores, department stores, sporting goods stores, appliance stores, garden centres (but not a garden centre defined as exempt under section 35 of this By-law), government owned retail facilities, private daycare, private schools, private lodging and retirement homes, private recreational facilities, sports clubs, golf courses, skiing facilities, race tracks, gambling operations, funeral homes, motels, hotels, restaurants, theatres, facilities for motion picture, audio and video production and distribution, sound recording services,

passenger stations and depots, dry cleaning establishments, laundries, establishments for commercial self-service uses, automotive recycling/wrecking yards, kennel..

[above emphasis added]

[12] The DC By-law defines "Industrial Development" as:

"Industrial Development" is a building used for:

- (a) manufacturing, producing, fabricating, assembling, compounding or processing of raw materials, goods, component parts or ingredients where the physical condition of such materials, goods, parts or components is altered to produce a finished or semi-finished tangible product, or the packaging, crating, bottling, of semi-processed goods or materials, but not including any of these activities where they primarily serve retail purposes to the general public;
- (b) storing or distributing something derived from the activities mentioned in (a) above and for greater certainty, shall include the operation of a truck terminal, warehouse or depot and does not include self-storage warehousing for use by the general public or retail sales associated with the goods stored or distributed, or accessory storage of a Commercial Development;
- (c) research or development in connection with activities mentioned in (a) above;
- (d) retail sales *of* goods produced by activities mentioned in section (a) at the site where the manufacturing, producing or processing from raw materials or semi- processed goods takes place and for greater certainty, includes the sale of goods or commodities to the general public where such sales are accessory or secondary to the Industrial use, and does not include the sale of goods or commodities to the general public through a warehouse club;
- (e) office or administrative purposes, if they are carried out:
  - with respect to the activity mentioned in section (a), and
  - in or attached to the building or structure used for activities mentioned in section (a) and
  - for greater certainty, shall include an office building located on the same property as, and used solely to support, the activities mentioned in section (a);

- (f) a business that stores and processes data for retrieval, license or sale to end users and are on lands zoned for Industrial uses; or
- (g) businesses that develop computer software or hardware for license or sale to end users that are on lands zoned for Industrial uses; and
- (h) Industrial Use shall have the corresponding meaning...

[above emphasis added]

[13] The Tribunal also noted that the City, as part of its efforts to attract industrial activity and employment, advertised and marketed the Site property purchased by UniFirst as “Industrial” and zoned those lands accordingly. Certainly, this is not determinative of the issue in dispute. However, from a common-sense perspective, it does indicate that the City anticipated that UniFirst would be conducting “Industrial” operations at the Site. It also helps to explain why UniFirst was surprised by the later position of the City that the Site operations were better classified as “Commercial”.

[14] The Tribunal found the testimony of Mr. Wagner as summarized above in Part Two to be credible and forthright in his assertions that the activities of UniFirst were not public-facing in the sense that retail operations are and that the uniform assembly, partial fabrication, cleaning/decontamination operations and other related activities to be carried on by UniFirst at its City location were nothing like the consumer laundry and other retail laundry services pointed to by Mr. Wilding as allegedly useful comparators. Moreover, he was not shaken in his conclusions by the attempts of the City’s counsel to persuade him that UniFirst’s operations were akin to a coin laundry.

[15] Notwithstanding the realities of the UniFirst operation as described in Part Two above, the City characterized the clearly non-retail operations of UniFirst as “Commercial” presumably in order to collect higher development charges than would have been payable if UniFirst’s operations were classified as “Industrial”. The Tribunal disagrees with the City’s characterization and agrees with UniFirst that its operations instead bear the hallmarks of “Industrial” activity.

[16] In the Tribunal’s view, the City’s final arguments seem to be primarily based on

the notion that its witnesses' "opinions" and "explanations" ought to dictate the Tribunal's determinations of the relevant terms in the DC By-law. As also noted above in Part Two, the Tribunal does not agree that it is bound by such opinion evidence. Moreover, it struck the Tribunal as odd that the City's views of UniFirst's operations at the Site were not grounded in a sound, factual assessment based on a detailed examination of UniFirst's operations. Throughout the process, the City instead took a theoretical approach based on its strong views as to the meaning of certain provisions in the DC By-law. The Tribunal was of the impression that the City's efforts were focussed on how to "fit" the UniFirst Site operation into its preferred DC By-law classification.

[17] Neither of the so-called "planning opinions" offered by either UniFirst or City witnesses, nor the partisan views of City witnesses as to "the meaning and intent of" the key terms in the DC By-law bind the Tribunal's determinations. This long standing, well-known principle was made clear by the late Vice-Chair Makuch in the *Alphabet Self Storage* case discussed in paragraph [22] below where he stated:

...Moreover, legislative interpretation is not a factual matter to be decided by the opinions of municipal staff or council. Statutory interpretation is a question of law to be decided by the administrative adjudicator alone. The Ontario Court of Appeal in *Niagara River Coalition v. Niagara-on-the-Lake (Town)*, 2010 ONCA 173 (" at paras. 43 and 44 was clear that where the interpretation of a document is a question of law, the factual opinions of witnesses on the interpretation of that document are irrelevant to the adjudicator's determination. The Court in *Niagara River Coalition* emphasized that when the drafters of a legal document fail in their purpose, others cannot subsequently fill in the gaps with factual opinions...

[above emphasis added]

[18] Both counsel for UniFirst and for the City made reference to various jurisprudence in their final written submissions.

[19] UniFirst relied on the Supreme Court of Canada ("SCC") decision in *Rizzo & Rizzo Shoes Ltd.* 1998 CanLII 837 (SCC), [1998] 1 SCR 27 citing to *Construction of Statutes*, 2nd Ed., Elmer Driedger at para. 21 for the proposition that:



One must read the words of the DC by-law in their entire context, and harmoniously with the scheme of the Act and its regulations. It makes eminent sense that the definition of “Industrial Development” *excludes uses* that are **open for sale/rental directly to the public**, as the home for such activities is in the definition of “Commercial Development”, which captures sales or rental directly to the public through its definition of “Retail purposes”.

[emphasis added]

[20] Counsel for UniFirst also referred to the further SCC decisions in *Winters v. Legal Services Society*, [1999] 3 SCR 160 at para. 48 and *Morguard Properties Ltd. v. Winnipeg (City)*, [1983] 3 SCR 493 at pg. 504 arguing that:

...According to modern principles of statutory interpretation, a textual analysis of statutes includes the presumption against tautology. This means that each word and provision found in a statute is presumed to have a meaning and function. A key distinction between the definitions of “Industrial Development” and “Commercial Development” is whether the respective development type offers goods or services directly to the public. A textual analysis requires the adjudicator to choose an interpretation that would not render this defining feature, i.e., the provision of things directly to the public, “meaningless, pointless, or redundant”. As such, the “laundries” referred to in the “Commercial Development” definition must have a nexus to a “Retail purpose”, which is plainly not the case in respect of the Development.

[above emphasis added]

[21] In the Tribunal’s view, the arguments made by counsel for UniFirst in paragraphs [19] and [20] constitute the correct interpretative approach to be taken by the Tribunal in this proceeding and also represent the best means of distinguishing between the two definitions at issue in this dispute.

[22] Counsel for the City contests the notion the zoning of the property can be used to assist the Tribunal and relies on the Tribunal’s Decision in *Alphabet Self Storage Victoria Inc v. Hamilton City* 2022 CarswellOnt 11957 (OLT) (“*Alphabet Self Storage*”) affirmed by 2023 ONSC 2818 (Ont SCJ) refusing leave to appeal, for the principle that the Act does not require a municipal DC By-law have regard to, conform to, or be consistent with language in a municipality’s zoning by-law, or any other planning instruments: “In fact, extraneous sources for interpretation are not relevant to the categorization of uses. The Act does not require that the Zoning of a property or Official

Plan designation of a property be consistent with the DC category applicable to the same property...”

[23] The Tribunal does agree with the argument made by the City’s counsel as outlined in paragraph [22] above. In any event, in *Alphabet Self Storage*, the situation was quite different than is the circumstances of this case: there, Vice Chair Makuch found that the intent to exclude the Appellant’s self storage facility from the definition of Industrial Development was clear, as gleaned from the DC Background Study and the DC By-law at issue there.

[24] Unlike in *Alphabet Self Storage*, in the Tribunal’s view, it cannot be maintained in this proceeding that there is any evidence of a clear intent to exclude UniFirst’s unique operations from the classification of Industrial Development.

[25] Oddly, after making the argument described in paragraph [22], the City’s counsel in final submissions nonetheless proceeded to make arguments reliant on opinion evidence and extraneous evidence relating to the zoning of the Development property and the minor variance granted to permit laundering to take place there. The City argued that such evidence conclusively establishes that UniFirst’s operations are a “laundry plant” and therefore not properly classified as an Industrial Development for purposes of the DC By-law. The Tribunal rejects both that contradictory effort and the resultant conclusory contention.

[26] In a confusing argument, the City’s counsel also relied on the “doctrine of implied exclusion” as expressed by the Ontario Court of Appeal:

*In Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc*,... [ 2019 ONCA 508 ]... the Ontario Court of Appeal described the doctrine of “implied exclusion:

“An intention to exclude may legitimately be implied whenever a thing is not mentioned in a context where, if it were meant to be included, one would have expected it to be expressly mentioned. Given an expectation of express mention, the silence of the legislature becomes meaningful. An expectation

of express reference legitimately arises whenever a pattern or practice of express reference is discernible.”

If the Legislature had wanted to exempt all industrial developments, the Act would not have only provided an exemption for expansion of industrial developments, and the Regulation would not only have defined “expansion of industrial developments;” the Legislature would have applied the exemption to all industrial developments... Given that no exemption was provided for industrial development, generally, and given that no definition was set out by the Act or Regulations, the doctrine of implied exclusion must apply. The Legislature must have purposefully omitted a definition for “industrial development” at the first instance.

[27] The Tribunal was unable to discern how the arguments made on behalf of the City in paragraph [26] above would serve to assist the Tribunal in determining the issue in dispute.

#### **PART FOUR: CONCLUSIONS**

[28] As noted above, the Tribunal has concluded that the UniFirst Site and operations are properly classified as “Industrial” not “Commercial”.

[29] The evidence established that UniFirst paid the “Commercial Development” development charge under protest, in the amount of \$1,897,037.50, instead of the lower “Industrial Development” charge apparently constituting \$1,352,366.00. Subsequently, for reasons unrelated to this appeal, on December 14, 2022, the City issued UniFirst a refund in the amount of \$150,443.72. This resulted in a reduction of the amount owed by UniFirst to \$1,746,593.23 but that refund was also determined based on the “Commercial Development” rate.

[30] The Tribunal agrees with UniFirst’s counsel that the correct charge for UniFirst’s “Industrial Development” appears to be \$1,245,083.40 (instead of \$1,897,037.50). Thus, subject to further submissions from the Parties in accordance with the Orders made below, UniFirst is owed a refund of \$501,509.88, summarized as follows:

2021 Industrial Rate	\$206.26 x 5,875 (SM of building)
Total DC Based on 2021 Rate	\$1,211,777.50
Plus Interest (11/17/21 to 9/9/22 @ 3.4%)	\$33,305.90
Total Charge	\$1,245,083.40
Amount Paid by UniFirst	\$1,746,593.28
Difference/Refund Required	<b>\$501,509.88</b>

## ORDER

### [31] THE TRIBUNAL ORDERS THAT:

- (a) The appeal by UniFirst Canada Ltd. is allowed;
- (b) Subject to (c) below, The City of London shall pay to UniFirst Canada Ltd. the amount of \$501,509.88 together with interest thereon in accordance with section 25 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended;
- (c) In the event that the Parties disagree that the amount described in paragraph [31] (b) is correctly calculated, and/or as to the amount of interest that is payable thereon, they may seek further assistance from the Tribunal by filing a motion in writing pursuant to Rule 10 of the OLT Rules of Practice and Procedure; and

- (d) This Vice-Chair shall remain seized of this matter in the event that the Parties require assistance in implementing these Orders or that a written motion is filed pursuant to paragraph [31] (c) above.

*“William R. Middleton”*

WILLIAM R. MIDDLETON  
VICE-CHAIR

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.