

**Date:** 2020-09-16

**Subject:** **Complaint Pursuant to Section 20 of the Development Charges Act, 1997 – Dancor Construction Limited**

**Secondary Title:**

**Contact:** Janet Lee, Manager, Capital and Development Finance, 905-874-2802

**Report Number:** Corporate Support Services-2020-167

**Recommendations:**

1. That the staff report titled: Complaint Pursuant to Section 20 of the Development Charges Act, 1997 – Dancor Construction Limited, to the City Council meeting on September 30, 2020, be received; and
2. That the complaint of Dancor Construction Limited be dismissed, as the development charges have been calculated and collected in accordance with the City's development charges by-laws and the Development Charges Act, 1997, hence there is no basis for this complaint under the provisions of the legislation.

**Overview:**

- On May 16, 2018, Dancor Construction Limited paid development charges to convert a former office building to a private school. Additional square footage was also constructed to accommodate a gymnasium. The total development charges paid under the City's by-laws amounted to \$204,100.11.
- On August 13, 2018, the City received a complaint from Dancor Construction Limited under Section 20 of the Development Charges Act, 1997.
- Dancor Construction Limited submits that they were under the impression that their project would not trigger the payment of development charges. In addition, they submit that the development charges were incorrectly calculated for the gymnasium addition.
- City staff submit that the development charges were calculated in accordance with the City's by-laws and the legislation for the change of use.

- **City staff welcomed the submission of revised architectural drawings to ensure accuracy of the gross floor area and ensuing development charges payable. To date, City staff have not received revised drawings of the gymnasium to suggest a smaller footprint than what was originally submitted.**
- **The legislation limits development charges complaints to three reasons; this complaint does not conform to the legislation and therefore should be dismissed.**

### **Background:**

Development charges (DC) are the primary revenue tool used by municipalities to fund growth-related infrastructure. The principal behind DCs is that “growth pays for growth” so that the burden of costs related to new development does not fall on the existing community in the form of increased property taxes and/or user fees. DCs help to ensure that municipalities have funding to invest in the necessary infrastructure in order to maintain service levels as the City grows.

Dancor Construction Limited (Dancor) is the owner of the property municipally known as 21 Coventry Road. This area of the City is largely industrial in nature. Dancor is a construction firm that specializes in the design and build of industrial, commercial/retail facilities and land development. The company has been involved in numerous large and complex developments in Greater Toronto Area and southwestern Ontario.

In 2018, Dancor submitted a building permit application to the City to convert a former Region of Peel office building to a private school. The application also included an addition to the building to accommodate a gymnasium space for the school.

Development charges were calculated based on the information provided by Dancor in accordance with the DC by-laws in effect at the time and the DC Act. The total DCs payable for the change of use and the addition for the City’s portion was calculated to be \$204,100.11. Dancor paid the DCs in full on May 16, 2018, and filed a letter indicating that the payment had been under protest on August 18, 2018. Appendix 1 to this staff report provides for a detailed chronology of pertinent events from the date of the DC application to present day.

### Legislative Context

The DC Act provides that a person required to pay DCs may complain to the council of the municipality based on solely the following three reasons:

1. The amount of the development charge was incorrectly determined;
2. 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

3. There was an error in the application of the development charge by-law.

After hearing the evidence and submissions of the complainant, council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.

It is also noted that the DC Act allows for the complainant to also appeal to the Local Planning Appeal Tribunal (LPAT) if the council of the municipality does not deal with the complaint within 60 days after the complaint is made by filing with the clerk of the municipality a notice of appeal.

Appendix 2 to this staff report sets out the complaint provisions under the DC Act.

### **Current Situation:**

#### Issues Raised by the Complaint

Dancor retained Aird & Berlis as their legal counsel to submit a formal DC complaint letter to the City, dated August 13, 2018 (included as Appendix 3 to this report).

In their letter, Aird & Berlis submits the following issues were experienced by their client:

- Between 2013 and 2016, Dancor approached the City with a number of users who wished to lease or purchase the building. The end users included fertility clinics, religious uses and other medical users. These uses were not permitted under the Zoning By-law and/or the Greater Toronto Airports Authority (GTAA) restricted uses on this property;
- After finding an end user in the form of a private school, Dancor experienced delays throughout the Zoning By-law and Official Plan Amendment process;
- Dancor believes the imposition of DCs places an inappropriate and unfair economic burden on their project;
- Dancor submits that City staff made representation that this project would not trigger the payment of DCs; and
- Dancor believes the gross floor area of the gymnasium addition was less than what was submitted in their application and they should be provided a refund.

#### City Staff Advice

It is important that development occurs in conformity with the City's Official Plan and Zoning By-law to ensure compatible uses within each of the zones and corridors of the City. Many development applications require Official Plan amendments and re-zoning, and as such, this is not uncommon.

As for the DCs relating to the change of use (\$138,287.02), Finance staff can confirm they were not contacted by Dancor to assess whether or not DCs would be applicable to this change of use. It is expected that an applicant undertake their due diligence and

contact the Finance department when applying for a building permit. The DCs relating to the change of use were correctly determined, the change of use credit was correctly applied, and there was no error in the application of the DC by-laws.

For the DCs relating to the gymnasium addition (\$65,813.09), Finance staff based their calculation on the information provided to the City by the client in the form of:

- Signed financial contribution form (Appendix 4 to this staff report);
- Signed building permit application form; and
- Stamped architectural drawings.

In each of the above three documents, the information regarding the size of the gymnasium was consistent with the calculated DCs payable; that being 623.23 m<sup>2</sup>. No documentation was submitted at the time of permit issuance, nor at the time when the complaint letter was submitted, to indicate the gymnasium size was 405.00 m<sup>2</sup> as indicated in their complaint letter.

With respect to the gymnasium size, throughout the fall of 2018 and the summer of 2019, staff attempted to work with the applicant to resolve the complaint as it related to this issue. Staff were (and continue to be) willing to refund the amount relating to the size of the gymnasium that was over-charged, provided that Dancor furnish revised architectural drawings to substantiate the claim. Such revised drawings were never submitted and in the winter of 2020, Dancor requested that the City refund the full amount of DCs paid. Staff proceed to schedule a hearing for April 15, 2020, as Dancor's position did not comply with the requirements of the DC Act.

The City does not have the authority to refund the DCs collected in connection with the Dancor application at 21 Coventry Road, as the complaint does not satisfy any of the grounds set out in Section 20 of the DC Act

### **Corporate Implications:**

#### Financial Implications:

Development charges are a critical revenue tool for the City, as Brampton continues to be one of the fastest growing municipalities in the Province. The integrity of the City's DC regime is dependant on the appropriate and consistent application of the DC by-laws. If in the event Council provides direction to refund any amount of the DCs paid, it would create a dangerous precedent for all future development applications and have lasting financial implications for the municipality.

It should be noted that any refund provided would no longer be available to fund growth related projects from the DC reserve and would eventually need to be borne by the existing tax base.

### Legal Implications:

A complaint under Section 20 of the DC Act does not confer on Council the discretion to waive or reduce DCs correctly determined in accordance with the DC Act and by-laws. Council's authority under section 20 of the DC Act is limited to correcting errors in:

1. The calculation of the charge;
2. The applicability of credits; and
3. The application of the by-law.

Dancor has provided no evidence upon which Council could determine that any of the criteria above were met. The August 2018 letter does not include any grounds upon which Council would be authorized to issue a refund, unless revised architectural drawings were to be submitted to substantiate Dancor's claim that the gymnasium area was less than what was shown on the most current plans. Dancor did not submit any such architectural drawings.

As described in this report, staff have confirmed that the DC charge was correctly calculated, credits were appropriately applied, and the by-laws were applied correctly. Therefore Legal staff support the recommendations of this report.

### Other Implications:

DCs were paid in accordance the Region of Peel DC By-law, as well as the two education school board DC by-laws. Should Dancor wish to seek a refund of those DCs, it will be required to separately appeal them to the appropriate bodies.

### **Term of Council Priorities:**

This report achieves the Term of Council Priority of Brampton as a Well-run City through strict adherence to effective financial management policies and supports Brampton's 2040 Vision by ensuring sustainable financial revenues.

### **Conclusion:**

After careful consideration, City staff have correctly applied the DC by-laws and DC Act in this case. For the reasons set out in this staff report, staff recommend that the complaint be dismissed. To allow the complaint and issue a refund would establish a dangerous precedent and potentially impair the City's ability to fund future growth-related capital projects.

Authored by:

Reviewed by:

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**Attachments:**

Appendix 1 – Detailed chronology of pertinent events

Appendix 2 – Complaint provisions under the DC Act

Appendix 3 – Complaint letter submitted by Aird & Berlis on behalf of Dancor

Appendix 4 – Signed Financial Contribution Form

Appendix 5 – DC Invoice