

August 13, 2018

Our File No.: 145272

BY EMAIL
cityclerksoffice@brampton.ca

City Clerk's Office
City of Brampton
2 Wellington Street West
Brampton, ON L6Y 4R2

Attention: Peter Fay, City Clerk

Dear Mr. Fay:

**Re: Section 20 Complaint - *Development Charges Act, 1997*, S.O. 1997, c. 27
City of Brampton Development Charges By-law 167-2014**

**Section 257.85 Complaint - *Education Act*, R.S.O. 1990, c. E.2
Peel District School Board 2014 Education Development Charges By-law
Dufferin-Peel Catholic District School Board Education Development
Charges By-law, 2014 (Region of Peel)**

21 Coventry Road, City of Brampton

We are counsel to Dancor Construction Limited ("Dancor"), owner of the property known municipally as 21 Coventry Road in the City of Brampton (the "Property").

Please accept this letter as a formal complaint under section 20 of the *Development Charges Act, 1997* and section 257.85 of the *Education Act*.

On May 16, 2018 Dancor paid the City of Brampton (the "City"), under protest, a total of \$343,603.91, in satisfaction of City and Region of Peel (the "Region") development charges ("DCs") and Peel District School Board and the Dufferin-Peel Catholic District School Board (the "School Boards") education development charges ("EDCs") arising from the issuance of a building permit for the Property.¹ The building permit was required for a 623.23 m² gymnasium addition to an existing 2,464.57 m² office building which is to be converted into a private school (the "Project"). The issuance of the building permit was the final stage in a very lengthy and expensive process, in which the City required Dancor to obtain an Official Plan and Zoning By-law Amendment in order to permit the private school use.

¹ The \$343,603.91 paid under protest consists of DCs levied by the City (\$204,100.11), the Region (\$132,729.30) and the and EDCs levied by the Peel District School Board (\$3,016.43) and the Dufferin-Peel Catholic District School Board (\$3,758.07).

For the reasons set out below, Dancor submits that DCs and EDCs should not be applied to the Project. In the alternative, in accordance with section 20 of the *Development Charges Act, 1997*, and section 257.85 of the *Education Act*, Dancor submits that there was an error in the application of the DC and EDC by-laws imposing the charges and that the amount assessed and paid in connection with the building permit was incorrectly determined.

Accordingly, Dancor requests that the City provide it with a full refund of the City's portion of the DCs (\$204,100.11) as well as the EDCs (\$3,016.43 + \$3,758.07 = \$6,774.50) for a total repayment of \$210,874.61. In the alternative, Dancor requests that the City rectify the incorrect determination by correctly applying the Region's DC By-law, thereby providing a refund of \$41,732.69.

A separate complaint will be made to the Region.

For your records, we enclose a copy of our client's payment under protest of the DCs and EDCs as well as the City's acknowledgment of payment.

Background

As outlined below, Dancor has experienced substantial delays throughout the Zoning By-law and Official Plan Amendment application process. These delays have impacted the site plan application process and have significantly undermined the economic viability of the Project.

The Region occupied the Property as a tenant from the 1980s until it vacated in 2012. From 2013 to 2016, Dancor was approached by a number of parties seeking to lease or purchase the Property. However, when these parties approached the City to determine the Property's land use permissions, they were consistently told that their proposed use would not be permitted under the City's Zoning By-law and/or that the Greater Toronto Airport Authority (GTAA) restrictions on the property, enforced by the City, would not permit the use. The Property remained vacant until 2016 when Dancor was approached by a private school seeking to occupy the premises. The school was made aware that certain land use permissions would need to be obtained from the City in order to permit the school use on the Property.

Despite submitting a pre-consultation application to the City on May 20, 2016, Dancor did not receive comments from the City until July 22, 2016, nearly two months later.

After that two-month review, City staff advised that the proposed school use could not be sought via a minor variance application and instead required Dancor to apply for a Zoning By-law and Official Plan Amendment. This was despite the fact that other school uses exist in the vicinity of the Property.

Dancor submitted the Official Plan Amendment and Zoning By-law Amendment applications to the City on September 30, 2016.

Following submission of the applications, Dancor and its consultant team attempted to work with City staff towards the resolution of any outstanding issues as expeditiously as possible. Dancor respectfully submits that this process was frustrated by a series of staff turnovers, lack of timely responses, and inconsistent communication.

Additionally, staff would not support the Project until Dancor addressed the GTAA land use compatibility concerns. Dancor engaged its consultants to prepare reports and supplementary reports responding to the GTAA concerns to the satisfaction of the City. Dancor submits that the City's requirements in this regard were overly onerous and unnecessarily delayed the processing of its applications.

A meeting was held between City staff and Dancor's consultants on February 7, 2017. Dancor had understood that all outstanding City issues would be identified by staff at that time. Despite this understanding, in March and April, 2017, staff identified new issues concerning site circulation, requiring Dancor to make significant modifications to its site plan. The City and Region also modified the scope of the required transportation analysis necessitating additional analysis by Dancor's consultants. The late identification of these issues further delayed approval of Dancor's applications.

The applications were approved by the Planning and Development Committee on May 15, 2017 and by Council on August 9, 2017, nearly one and a half years following the initial pre-application request.

As a result of this delay, the Property sat empty for a year at cost to Dancor of \$425,000.

Dancor paid \$73,000 in connection with its Zoning By-law and Official Plan Amendment applications. In addition, City staff required Dancor to install a second driveway, after the staff and Council approvals, which required hydro pole relocations and a payment for upgrades to the street at a cost of \$103,000. City staff also required Dancor to provide a new sidewalk at a cost of \$98,000.

To date, the delay in approvals as well as additional City staff requests have cost Dancor in excess of \$633,000. The imposition of DCs and EDCs in addition to this amount for a mere 623.23 m² addition places an inappropriate and unfair economic burden on Dancor.

It must also be noted that Dancor's tenant had planned to open the school in September, 2017. The City would not permit Dancor to submit a Site Plan application prior to the approval of the Zoning By-law and Official Plan Amendments. As a result, Dancor remains in the process of working with the City to process its Site Plan Application and there is a substantial risk that the Property will not be ready in time for this coming school year.

DCs and EDCs Not Payable

Dancor submits that the Project should not be subject to DCs or EDCs.

Dancor submits that City staff made representations that the Project would not trigger the requirement to pay DCs or EDCs. Had City staff advised Dancor that DCs and EDCs would be levied to the extent they have been, Dancor would not have proceeded with the applications which, when combined with the DCs and EDCs, payments levied for street, driveway and sidewalk improvements as well as the cost of delay, have rendered the Project economically unviable.

DCs and EDCs Incorrectly Calculated

In the alternative, Dancor submits that the City's calculation of DCs and EDCs owing is incorrect.

The City's calculation of the DCs and EDCs is based on a total floor area of 623.23 m² for the gymnasium addition. Pursuant to the City's DC By-law and the School Boards' EDC By-law however, "total floor area" or "gross floor area", "excludes any parts of the building or structure used for mechanical equipment related to the operation or maintenance of the building or structure, stairwells, elevators and washrooms".

Dancor has confirmed with its architect that the total floor area of the gymnasium addition is 405 m², excluding the associated mechanical equipment and washrooms. As a result, if there are any DCs or EDCs payable by Dancor, Dancor submits that the amount to be paid should be based on a floor area of 405 m². This floor area would produce a total charge (DCs + EDCs) of \$169,141.92 rather than \$210,874.61 as was previously calculated.² As a result of the error in its calculation, Dancor submits that it is owed a refund of \$41,732.69.

Conclusion

We respectfully request that in accordance with subsection 20(4) of the *Development Charges Act, 1997* and subsection 257.85(4) of the *Education Act*, City Council hold a hearing into these complaints. We request that the within DC and EDC complaints be consolidated and be heard by City Council at the same time. We respectfully request notice of the hearing(s) and that we be given an opportunity to appear as legal counsel to make representations before City Council on the complaints. We ask that notice be provided directly to the undersigned.

Yours truly,

AIRD & BERLIS LLP



Tom Halinski

TH/LD/ly
33040733.3

² This calculation is as follows: $((\$105.60 + \$4.84 + \$6.03) \times 405 \text{ m}^2 + (2,464.57 \text{ m}^2 \times \$49.49)) = \$169,141.92$. This calculation represents the City's commercial DC rate plus the Peel District School Board EDC non-residential rate plus the Dufferin-Peel Catholic District School Board's non-residential rate multiplied by the correctly calculated floor space area of the gymnasium addition plus the existing office floor space multiplied by the City's DC office rate (with credit applied).

Laura Dean

To: Sean Ford; Development Admin
Cc: Parsons, Allan; Mahmood, Nasir; Ryan Guetter; Kelly Graham; Janet Pfeil
Subject: RE: 21 Coventry - Site Plan 17-104.000 - Development Charge Issue

From: Sean Ford [mailto:SFord@dancor.ca]
Sent: May-11-18 3:32 PM
To: Development Admin <Admin.Development@brampton.ca>
Cc: Parsons, Allan <Allan.Parsons@brampton.ca>; Mahmood, Nasir <Nasir.Mahmood@brampton.ca>; Ryan Guetter <rguetter@westonconsulting.com>; Kelly Graham <kgraham@westonconsulting.com>; Janet Pfeil <Janet@dancor.ca>
Subject: 21 Coventry - Site Plan 17-104.000 - Development Charge Issue

Good afternoon Colleen,

You may be aware that our efforts to get this project completed have been very difficult and drawn out far, far, far more than ever expected by anyone.

Dancor is requesting that the City of Brampton demand for Development Charges be withdrawn as we do not believe that this project qualifies for development charges for the reasons set out below.

Background:

From 2013 to 2016 Dancor had a number of users who wanted to lease or purchase this building with each use refused by the City. These included fertility clinics, religious uses and other medical uses and users. The building was empty since the Region of Peel vacated in 2012. Dancor received a property tax reduction for 3 years for which we are grateful.

Given the tremendous difficulty in attracting office users to the area, we attempted to find new tenants or purchasers through Colliers International and participated with Mark Burns of the City of Brampton Economic Development Office. A new user, a private school, was found.

In 2016, Dancor approached the City of Brampton (COB) regarding the additional use of a private school in addition to the retail, office and industrial uses permitted by way of zoning at 21 Coventry. The COB demanded that an application be brought to add the private school use and advised that the other school uses permitted in the area were grandfathered into the current zoning. Dancor requested a variance which staff said they would not support.

While Dancor took exception to the grandfathered zoning for other schools in the very same area, we proceeded to have the use of school added per the requirements and dictates of the City of Brampton.

The COB position was that it would add the school use IF and only IF the GTAA would agree to the use given their controls in the area. The building is in GTAA Zone 3.

The City was helpful in securing the consent of the GTAA in 2016.

Unfortunately, given the workload of staff, they were unable to process our application or add the use in 2016. In order to accommodate the COB schedule, the building would have to sit empty another year at a cost to Dancor of \$425,000.00.

Further, the COB would insist on a re-zoning and official plan amendment process that would cost an additional \$73,000.00. City staff then requested upgrades to the street with a new sidewalk at a cost of \$103,000.00 and new

driveways to be added requiring the relocation of a hydro pole, which Allectra wants \$98,000.00 to re-locate, and a fire hydrant relocation.

The re-zoning and the Official Plan Amendment that COB staff insisted upon was completed in 2017 by Council.

Even though this file was reviewed by many of the same staff, the Site Plan process has been underway for the past 6 months and is, I hope, almost complete.

The school must open in September and be ready for this opening in June 2018. We cannot delay the opening, for COB issues or any reasons, this opening. The building permit is ready subject to a deposit and permit fees which will be dropped off on Monday. The remaining issue are the development charges.

Development Charges Not Applicable

It is our position that Development Charges are not applicable for the addition of the school use. Had staff even suggested that the COB would be charging Development Charges we would have raised this issue with Council during the re-zoning and OPA. It would have caused us to not move forward with the school as it would be viable economically.

But for the COB insistence on the re-zoning and official plan amendment there would have been no change of use. Further, the school use was added to the retail, office and industrial uses. That is outlined clearly in the re-zoning and OPA documents.

The addition of the gymnasium to the existing building is also exempt per the COB by-laws as it is an expansion, under 50%, of the existing facility.

In the alternative, if you conclude the Development Charges are payable, we feel that our use is exempt under the current by-law. Further, if we are not exempt, your change of use credit should be at the \$105.60 rate and not the \$49.49 rate just as you did for the Region and school boards. The addition, as noted above, is exempt and should not be charged.

The delay in approvals, following the COB process, and all of the hurdles placed in the way of this economic effort from 2016 to date have cost our firm in excess of \$633,000.00. It has been a terrible experience trying to get this project through this process in a City we have been and continue to be active in.

To ask us for an additional \$348,000.00 is hurtful and insulting. It gives us pause as to why we would ever want to do anything here again. The original developer paid the charges on the building and the Region was the primary tenant in this building from the late 1980's.

In addition, the private school will take 430 students which will be a relief to the two school boards in Brampton yet you are trying to charge development charges from each school board.

Decision and Assistance Needed

We did not follow up with you directly, or Maggie who wrote to us on March 20, 2018, as we left this issue with Planning as we felt there was an error made and that Planning needed to correct this error with you. I have pasted Maggie's email to us below.

In speaking to Allan Parsons last night, he has advised that planning has not taken any action at all regarding these charges and he is unable to assist and we are to deal with you directly. This is not a Planning Issue we are told. Given it came from the Planning efforts, we felt it was best managed between your departments. We have lost a lot of time waiting for this position to be clear to us.

We also understand, and hope you do as well, that we are very much out of time. We only have a few options:

1. If you agree, and the development charges are not payable, you can issue a memo to buildings so they can proceed to issue the permit on Monday.
2. If you do not agree, and feel the charges are payable but the calculation is wrong, you can provide a new calculation for our review and discussion with you on Monday.
3. If you do not agree, and feel the charges are fully payable and you are not willing to adjust the calculation, we will have to pay the charges on Monday but put you on notice at this time that we wish to object as permitted under the by-law. We would be paying under protest.

We would be very grateful if you and your team can review the foregoing, review the actual zoning by-law amendment and OPA which will confirm the accuracy of our position.

One way or the other, we need to do something on Monday.

Respectfully yours,
Sean Ford
Partner

Sean Ford

Partner
CELL: (647) 321-2278
www.dancor.ca

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Suite 101
Brampton, ON L6T 4K9
(905) 790-2333

15825 Robin's Hill Rd
Unit 1
London, ON N5V 0A5
(519) 457-2339



DANCOR®



ANTI SPAM LAW - If you wish to no longer receive news and/or information from Dancor Construction Limited, please reply to this email stating "STOP" in the subject line

Flower City



brampton.ca

CORPORATION OF THE CITY OF BRAMPTON
2 WELLINGTON STREET WEST
BRAMPTON, ONTARIO, L6Y 4R2

CLERK ID: CDURSTON

OFFICIAL RECEIPT

460401

EXT: 42255

NAME OF PAYEE:	DANCOR CONSTRUCTION LIMITED	DATE OF PAYMENT:	5/16/2018 1
ADDRESS OF PAYEE:	16 Melanle Dr Suite 101 Brampton ON L6T 4K9		

211 Coventry Rd. Plan 977 PT. BLK E (RP 43R/12163 PTS 1-2) SP17-104/000 A2 School	Amount
City of Brampton [3087.8m2 x \$105.60]	\$326,071.68
Region of Peel [3087.8m2 x \$212.97]	\$657,608.77
Peel School Board [3087.8m2 x \$4.84]	\$14,944.95
Dufferin-Peel Catholic School Board [3087.8m2 x \$6.03]	\$18,619.43
Cash in lieu of Parkland	\$0.00
DC City of Brampton - Deduction - Credit @ Office Rate	\$-121,971.57
DC Region of Peel - Deduction - Credit @ Office Rate	\$-524,879.47
DC Peel School Board - Deduction - Credit @ Office Rate	\$-11,928.52
DC Dufferin-Peel CSB - Deduction - Credit @ Office Rate	\$-14,861.36

Total: \$343,603.91

Memo: Bank Draft #2901 9147 7

Number of Units: 1

City/Region	\$336,829.41
Res 2	\$0.00
Res 74	\$0.00
Res 75:	\$3,016.43
Res 76:	\$0.00
Res 77:	\$3,758.07
GTOTAL	\$343,603.91

Copy 1 Customer	Copy 2 Cashier	Copy 3 Department
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For Inquiries Call 905-874-2000

<p>BANK DRAFT / TRAITE DE BANQUE 03552 - 60 BRAMALEA RD. NORTH OF STEELES AVE BRAMPTON, ON</p>		<p>2018-05-16</p> <p>DATE Y/A M/M D/J</p>
<p>DANCOR CONSTRUCTION LIMITED</p> <p>NAME OF REMITTER / DONNEUR D'ORDRE</p>	<p>TRANSIT NO. / N° D'IDENTIFICATION</p>	<p>BRANCH / CENTRE BANCAIRE</p>
<p>PAY TO THE ORDER OF / PAYEZ À L'ORDRE DE</p> <p>THE SUM OF / LA SOMME DE</p>	<p>CITY OF BRAMPTON*****</p> <p>***THREE HUNDRED FORTY THREE THOUSAND SIX HUNDRED THREE 91/100</p>	<p>\$*****343,603.91</p> <p>CANADIAN DOLLARS / DOLLARS CANADIENS CAD</p>
<p>TO / TIRÉ:</p> <p>CANADIAN IMPERIAL BANK OF COMMERCE TORONTO CANADA</p>	<p>AUTHORIZED SIGNATURE / SIGNATURE AUTORISÉE</p> <p><i>[Signature]</i></p> <p>COUNTERSIGNED / CONTRESIGNÉ</p> <p><i>[Signature]</i></p>	<p>FOR CANADIAN IMPERIAL BANK OF COMMERCE POUR LA BANQUE CANADIENNE IMPERIALE DE COMMERCE</p>

