

Staff Report



Financial Services Department

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REPORT TO: Finance and Corporate Services Committee

DATE OF MEETING: February 13, 2023

SUBMITTED BY: Ryan Hagey, Director, Financial Planning, 519-741-2200 ext. 7353

PREPARED BY: Ryan Hagey, Director, Financial Planning, 519-741-2200 ext. 7353

WARD(S) INVOLVED: Ward 4

DATE OF REPORT: January 26, 2023

REPORT NO.: FIN-2023-064

SUBJECT: McLean-Peister Limited, 375 New Dundee Road - Section 20
Development Charges Complaint

RECOMMENDATION:

That the complaint of McLean-Peister Limited in relation to the City of Kitchener's development charges imposed for its development at 375 New Dundee Road as set out in report FIN-2023-064 be dismissed.

REPORT HIGHLIGHTS:

- The purpose of this report is to address a complaint about development charges imposed for a development at 375 New Dundee Road.
- The key finding of this report is the complaint should be dismissed.
- This report supports the delivery of core services.

BACKGROUND:

A complaint was filed with the City of Kitchener and the Region of Waterloo regarding the development charges (DCs) imposed for a development at 375 New Dundee Road. A portion of the complaint applies only to the Region of Waterloo, with the remaining portions of the complaint also applying to the City of Kitchener.

Complaints of this nature are permitted under section 20 of the *Development Charges Act*. City of Kitchener Council has delegated authority to hear these complaints to the Finance and Corporate Services Committee as part of report COR-2022-498, Development Charges Section 20 Dispute and Hearing Process. This report is in compliance with the process outlined in the previous report, including providing at least 14 days notice of the hearing. The Region of Waterloo is following their own process to address the complaint and is scheduled to consider the matter on February 7, 2023.

The remainder of this report outlines the specific complaints and addresses why they should be dismissed by Committee.

REPORT:

Complaint #1 – Development should be considered an industrial building.

This complaint seeks a reduction in Regional development charges as they deem the building to be an industrial building. This complaint has nothing to do with the City and is therefore not addressed as part of the City's report.

Complaint #2 – A credit should be provided for work external to the development site.

A credit of \$314,264.74 is being sought for the construction of a water service and septic system with costs outlined in Appendix E of the complaint letter (Attachment A). Mapping showing the site and water service connections is attached for reference as Attachment B.

In order to construct their development, the developer installed a 200mm water service to their property. The City's DC bylaw provides clarity on what infrastructure will be funded by DCs and what is the responsibility of developers in Appendix H - Local Service Definitions. The portion relating to watermains is attached to this report as Attachment C, with the most relevant clauses being noted below:

- *10.1 Watermains 300 mm and under are deemed to be a local service and are a direct funding responsibility of the developer.*
- *10.3 Connections to trunk mains and pumping stations to service specific areas are to be a direct developer responsibility.*

It should also be noted that much of the amount being sought as credit appears to be related to the installation of on-site septic works and costs to extend water services through the complainant's private property, which costs would never be eligible for a credit.

The water service connection installed by the developer is less than 300mm and services only their property, so is solely their responsibility. Because of this, no credit should be provided.

Complaint #3 – A reduced DC rate should be used as not all services are provided.

A reduced DC rate is requested "given there are no ditches, sidewalks, sanitary, water, storm sewers, curbs, streetlights provided, as all contemplated in the DC Study."

The City has already provided a reduced DC rate for this property. The City's DC was calculated using non-residential, no sanitary, Suburban Area rate. The only other rates available in the Suburban area under the City's current bylaw would be the full DC rate, or the no sanitary/no water rate. The rates from the 2022 DC bylaw update are shown in the table below.

DC Rate Structure from the 2022 DC Bylaw Update

	Residential Charge by Unit Type				Non-Residential Charge per m2
	Singles & Semis	Townhouses	Multiples & Duplexes	Lodging Houses	
Total Suburban	\$24,733	\$17,370	\$12,505	\$7,027	\$75.75
Total Suburban Partial Services - No Sanitary Sewer	\$20,403	\$14,329	\$10,316	\$5,797	\$48.55
Total Suburban Partial Services - No Sanitary Sewer or Water	\$19,977	\$14,030	\$10,100	\$5,676	\$45.87
Total Central Neighbourhood	\$16,612	\$11,667	\$8,399	\$4,719	\$25.08

Note: 1 square metre = 10.761 square feet.

Further, the Ontario Court of Appeal has confirmed that a development charge is a type of tax and is distinct from a "lot levy" which is intended to pay for specific services for a specific development. The Court held that, "...a development charge is not even collected to defray the capital costs attributable to a particular development. A development charge bears no relationship to the value to a developer of the capital expenditure it is intended to offset"

Action for Committee

After hearing evidence and submissions from the complainant, Committee may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. The key to this provision of the DC Act is that Committee must find that there has been an incorrect determination or error in the application of the DC By-law before it grants the requested remedy. In order to do this Committee must find that the provisions in the existing DC by-law were not applied as prescribed; Committee may not amend existing provisions in the bylaw in order to grant the requested remedy. Decisions of this Committee are final and binding. Section 22 of the DC Act provides that a complainant can appeal any decision of this Committee to the Ontario Land Tribunal.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City's website with the agenda in advance of the council / committee meeting.

PREVIOUS REPORTS/AUTHORITIES:

- COR-2022-498 Development Charges Section 20 Dispute and Hearing Process

APPROVED BY: Jonathan Lautenbach, Chief Financial Officer, Financial Services

ATTACHMENTS:

Attachment A – Letter of Complaint and Appendices

Attachment B – Mapping of Subject Property and Water Service Connections

Attachment C – Local Service Definition for Water