

Attachment A - Letter of Complaint



October 27, 2022

Via E-mail & Hand Delivered

Attention: Regional Clerk
Region of Waterloo
150 Frederick Street
Kitchener, ON N2G 4J3
regionalclerk@regionofwaterloo.ca

Attention: City Clerk
City of Kitchener
PO Box 1118
Kitchener, ON N2G 4G7
clerks@kitchener.ca

John Doherty
Direct +1 519 575 7518
Direct Fax +1 519 571 5018
john.doherty@gowlingwlg.com
File no. K0569889

Dear Sir/Madame:

Re: Our Client: McLean-Peister Limited
Property: 375 New Dundee Road, Kitchener
Dispute of DC Invoice for Permit Application No. 22 110771

We write to you as counsel for McLean-Peister Limited, a Kitchener-based developer who owns the property municipally known as 375 New Dundee Road, Kitchener, Ontario, and legally described as Part Lot 7 Beasley's Old Survey Twp of Waterloo, being Parts 1 to 9 on 58R-15763; Kitchener (all of PIN 03771-0017 (LT)) (the "**Property**").

The purpose of this letter is to formally file a complaint pursuant to s.20(1) of the *Development Charges Act*. The basis of our client's complaint is that:

- (a) the amount of the development charge was incorrectly determined;
- (b) that a credit is available to be used against the development charge; and
- (c) there was an error in the application of the development charge by-law.

We ask that you please forward this complaint to your respective municipal Councils and advise us as to the hearing date for our client to make representations before Council.

Background

Our client is currently developing a multi-storey industrial facility on the Property whose primary use is for storage units of varying sizes. The facility will also include retail space and an adjacent parking area.

As part of its development of the Property, our client received Invoice dated July 29, 2022 for development charges totalling \$2,019,341.12. A copy of the Invoice is attached hereto as **Appendix "A"**.

Gowling WLG (Canada) LLP
345 King Street West, Suite 600,
Kitchener ON N2G 0C5 Canada

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gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal.

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Our client paid said invoice under protest on August 25, 2022. A copy of the Payment Transaction is attached hereto as “**Appendix B**”.

The development charges collected from our client are as follows:

Suburban Area D.C.	\$422,291.18
Interest on Suburban DC	\$17,916.72
Wat Region Dist School Bd EDC	\$161,111.09
Wat Catholic Dist School Bd EDC	\$52,035.88
Region of Waterloo D.C.	\$1,344,397.25
Damage Deposit (Engineering)	\$21,120.00
Damage Deposit Inspection	\$469.00
Total:	\$2,019,341.12

Following payment, our client was issued a Building Permit for a multi-storey “industrial self-storage facility”, which is marked as “Type: Warehouse”. Copy of Building Permit No. 22 110771 for footing and foundation is attached hereto as **Appendix “C”**.

Industrial Facility

It is our client’s position that the multi-storey industrial facility slated for the Property fits within the definition of an “Industrial Building” as prescribed by the Region’s Development Charge By-law 19-037 (the “**Regional By-law**”). Thus, it is eligible for the sixty percent discounted development charge rate pursuant to s.4(11), but was incorrectly charged the Region’s standard Non-Residential Rate.

The Regional By-law definition of Industrial Building captures Warehousing, which is defined as “a building in which the main use is the bulk storage of raw or semi-processed goods to be used in manufacturing and/or the wholesale distribution of manufactured goods or materials.” The primary use of the Property fits within this definition.

Further, the Property is designated as Business Park Employment in the City of Kitchener Official Plan, which permits construction uses and contractor/services trades, industrial uses with a commercial component that require large areas for the storage of goods, and warehousing, storage, distribution and wholesaling. Further, the Property is zoned General Business Park Employment (EMP-5) in the City of Kitchener Zoning By-law 2019-051, which permits industrial administrative offices, major equipment supply and service, manufacturing that does not include a noxious use and warehousing that does not include a noxious use. The City zoning by-law defines warehouse as “the use of a building for the storage

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and/or distribution of goods and can include self-storage warehouses, and facilities for the wholesaling of goods otherwise storage or manufactured in the building, but shall not include a transport truck terminal.” Ultimately, our client has been permitted to construct an industrial warehouse facility in a zoned-area that permits such industrial use — is it inconsistent and incorrect for the Region to characterize our client’s intended use of the Property as a non-Industrial Building.

Development Charge Credit

Generally, our client’s development of the Property represents passive industrial use in that the Property will be based on a septic system, rather than connecting to any municipal or regional sanitary lines, and public storm water runoff will be conveyed through the Property and through our client’s infiltration gallery. Notably, our client has no ditches, sidewalks, sanitary, water, storm sewers, curbs, streetlights, as all contemplated in the DC Study, which is the purpose for which the DC charges are applied. No such services, however, are provided or planned for this property or adjacent to it.

As part of its development of the Property, however, our client completed a watermain extension at its own cost.

The Regional By-law at s.8 contemplates the provisioning of development charge credits as required under ss. 38 to 41 inclusive of the *Development Charges Act*, and that they shall be applied against the development charge payable under the by-law on a site to a maximum of the development charge otherwise payable for the services to which the work relates and in a manner set forth in an agreement authorized by Council.

Section 8.3.6 of the Development Charge Background Study, prepared for the Region by Watson & Associates Economists on April 23, 2019, provides the following:

Sections 38 to 41 of the D.C.A. set out a number of credit requirements, which apply where a Region agrees to allow a person to perform work in the future that relates to a service in the D.C. by-law. These credits would be used to reduce the amount of D.C.s to be paid. The value of the credit is limited to the reasonable cost of the work which does not exceed the average level of service. The credit applies only to the service to which the work relates, unless the Region agrees to expand the credit to other services for which a D.C. is payable.

The City of Kitchener’s Development Charge By-law 2022-071 provides that the “City may by agreement permit the owner of land to which development charges apply to provide services for development or redevelopment of that land in lieu of the payment of all or any portion of a development charge, including services additional to or of a greater size or capacity than is required under this by-law (“services in lieu”). And that “[u]pon proof of the installation or construction of services in lieu to the satisfaction of the City’s Engineer, a credit, without interest, shall be applied against development charges payable for an amount equal to the reasonable cost to the owner of providing services in lieu, as determined by the City’s Engineer, not to exceed the total amount of the development charges otherwise payable.” This language is found at Appendix H of the City’s Development Charges Background Study, prepared for the City by Hemson on July 22, 2022.

Notwithstanding that our client’s site plan agreement with the City of Kitchener, attached hereto as **Appendix “D”**, is silent on development charges and development charge credits, the Ontario Land

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Tribunal's predecessor recently held that s.38 of the *Development Charges Act* does not require a "written agreement" to provide a development charge credit. Rather, the municipality *shall* provide a credit if three pre-requisites are met:

- (a) The owner has performed certain work;
- (b) The municipality has agreed to allow the owner to perform the work; and
- (c) The work must relate to a service to which a DCBL relates.¹

Our client contends that each of these criteria are met with respect to the work it completed — particularly given that our client has incurred \$314,264.74 including HST to install the watermain and its own septic system, as set out in **Appendix "E"**, for which a credit ought to be granted.

We respectfully submit that the development charges for the Property be recalculated so as to reflect (1) the sixty percent discount from the Region's Non-Residential Rate; (2) the credit owed to our client for the performance of certain work by our client that is external to the development and was acquiesced to by the municipality; and (3) a reduction in the DC rate charged, given there are no ditches, sidewalks, sanitary, water, storm sewers, curbs, streetlights provided, as all contemplated in the DC Study.

We reserve our client's right to set out such further and other grounds for this complaint as counsel may advise in its submissions at the hearing of this complaint before Council.

Yours very truly,

Gowling WLG (Canada) LLP

A handwritten signature in blue ink, appearing to read "John Doherty", written over a light blue circular stamp.

John Doherty

JSD:kd

Encl.

¹ *Phantom Developments Inc. v Toronto (City)*, 2020 CanLII 55391 (ON LPAT).

APPENDIX “A”

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Development Services Department
Building Division
200 King St. W., 5th Floor
Kitchener, ON N2G 4G7
Ph. 519-741-2312
TTY 1-866-969-9994
building@kitchener.ca
www.kitchener.ca

Invoice

July 29, 2022

Invoice for Permit Application: # 22 110771
Please remit invoice along with payment.

375 NEW DUNDEE RD
Foundation - Only - SURVEY BEASLEYS OLD PT LOT 7

Permit is for the footing and foundation, including site servicing, for a 3-storey industrial self-storage facility. See septic permit 22 116424. See balance of construction permit 2 112666.

The following fees are now due for this project:

Damage Deposit Inspection	\$469.00
Damage Deposit (Engineering)	\$21,120.00
Region of Waterloo D.C.	\$1,344,397.25
Wat Catholic Dist School Bd EDC	\$52,035.88
Wat Region Dist School Bd EDC	\$161,111.09
Suburban Area D.C.	\$422,291.18
Interest on Suburban DC	\$17,916.72
TOTAL:	\$2,019,341.12

The Interest on Suburban or Central DCs shown on this Invoice is only valid 30 days from the date of this invoice.

**Once Site Plan Approval has been granted and the fees have been paid,
the building permit can be issued.**

Note: The refund of the permit fee (Rebate Program) amount is eligible upon confirmation of the final building inspection and grading certification (if applicable) within one year of occupancy except for low-rise residential which must be within 270 'seasonal days' of occupancy.

We accept payments in the form of cash, debit or cheque to:
City Hall, P.O. Box 1118, 200 King St W, 5th floor, Building Division, N2G 4G7.
Cheques payable to the "City of Kitchener", and include your permit application number on the cheque, or copy of invoice.

APPENDIX “B”

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PAYMENT TRANSACTION

Corporation of the City of Kitchener
200 King St. W, P.O.Box 1118
Kitchener, ON N2G 4G7



For faster service in person or by phone please refer to Project File#:

22 110771 IB

PROPERTY TAX ROLL #: 301206001015301

PAID BY:

PROJECT LOCATION: 375 NEW DUNDEE RD

MCLEAN-PEISTER LIMITED

SURVEY BEASLEYS OLD PT LOT 7

3328 KING ST E

KITCHENER ON N2A 1B3

TYPE: Warehouse

WORK: Foundation - Only

PROJECT DESCRIPTION: Permit is for the footing and foundation, including site servicing, for a 3-storey industrial self

APPLICANT: MAPLE REINDERS (KORY MAXFIELD)

Fees collected August 25, 2022

Suburban Area D.C.	\$422,291.18
Interest on Suburban DC	\$17,916.72
Wat Region Dist School Bd EDC	\$161,111.09
Wat Catholic Dist School Bd EDC	\$52,035.88
Region of Waterloo D.C.	\$1,344,397.25
Damage Deposit (Engineering)	\$21,120.00
Damage Deposit Inspection	\$469.00

TOTAL \$2,019,341.12

Estimate (There may be additional fees due)

ADDITIONAL FEE TOTAL

Note: Permit Fee (Rebate Program) is eligible to be refunded provided the final building inspection and grading certification (if applicable) is completed within one year of occupancy. For new construction of single detached, duplex, semi-detached, townhouse and triplex dwelling units that are occupied after January 1, 2005 the final building inspection and grading certification (if applicable) will need to be completed within 270 'seasonal days' of occupancy.

APPENDIX “C”



BUILDING PERMIT

Permit #: 22 110771

Issue Date: Aug-25-2022

Site Address:
375 NEW DUNDEE RD

Description:
Permit Is For The Footing And Foundation, Including Site Servicing, For A 3-Storey Industrial Self-Storage Facility. See Septic Permit 22 116424. See Balance Of Construction Permit 2 112666.

Legal Description:
SURVEY BEASLEYS OLD PT LOT 7

Type:
Warehouse

Construction Value\$10,000,000
Total New Floor Area, incl. whole basement (Sq Ft).....0

Work:
Foundation - Only

Project People

ApplicantMAPLE REINDERS KORY MAXFIELD

Special Conditions and notes (Conditions also printed on back of permit)

All work shall comply with the 2012 Building Code
Applicant's responsibility to provide set of approved permit drawings, in colour, on site at all times

Permission is hereby granted for the above noted project in accordance with the plans reviewed and approved by the City of Kitchener and subject to any provisions thereon.

The following are the inspections applicable for this project. Depending on the scope of work, other inspections may apply. Call 519-741-2761 to request the applicable inspection or online at www.kitchener.ca/onlinepermits
Inspections requested for AM are prioritized by inspection type, if AM cannot be accommodated inspection will transfer to the PM.

<u>Code</u>	<u>Inspection Code Description</u>	<u>Code</u>	<u>Inspection Code Description</u>	<u>Code</u>	<u>Inspection Code Description</u>
01	Pre-Construction	11	Storm Sewer	47	Occupancy Only
02	Excavation Footing	13	On-Site Fire Hydrant	49	Final Building
03	Foundation Pre-Backfill	14	Backflow Preventor		
04	Steel Reinforcing	16	Underground Rough-in		
08	Erosion Control	17	Above Ground Rough-in		
09	Water Service Main	19	Final Plumbing		

The following reports are required prior to occupancy.

- Water Quality Test Report
- Architect's Final Review Report
- Mechanical Engineer's Final Report
- Structural Engineer's Final Report
- Soils Engineer Report
- Site Servicing Consultant's Review

Authorized by Michael Seiling, CET, CBCO,
Chief Building Official

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PLEASE READ CAREFULLY

This permit does not authorize work upon, under or over a street allowance or easement.

It is the owner's responsibility to determine the limits of his/her property and the existence of any easements or registered restrictions on this property.

The work authorized by this permit must commence within 6 months from the date of issuance.

This permit is transferable for change of ownership only. Separate application is required.

Any work covered before a mandatory inspection has been completed may be ordered to be uncovered by the building inspector.

Section 10.2-(1) of the Building Code Act requires notification for each stage of construction as specified in the Building Code when construction is ready to be inspected. The inspection will be performed within the prescribed period. Book your inspection(s) by 3 p.m. on the day before your inspection.

Applicable inspections are listed on front of permit. To schedule an inspection online go to www.kitchener.ca/onlinepermits

OR call 519-741-2761 to request inspections. You will need to enter the following:

1. 8-digit permit number
2. 2-digit inspection code
3. 1-digit number of business days
4. 1-digit preferred time of day, 1 = AM (9-1PM) 2 = PM (12-3PM) 3 = Anytime

All proposed construction must be completed in accordance with the approved plans and specifications. Construction must comply with the Building Code Act & the Building Code Regulations and all other applicable statutes and by-laws.

Section 11 of the Building Code Act states that any building or part thereof erected or installed is not to be used or occupied until a final inspection has been made and any order made by an inspector has been complied with.

When paid fees include a 'Permit Fee (Rebate Programs)', it is eligible to be refunded provided the final building inspection and grading certification (if applicable) is completed within one year of occupancy. For new construction of single family, duplex, semi-detached, townhouse and triplex dwelling units that are occupied after January 1, 2005, the final building inspection and grading certification (if applicable) will need to be completed within 270 'seasonal days' from occupancy date. Refunds are processed automatically and mailed to the payor. If you have not received your refund and think you are eligible please call 519-741-2530.

APPENDIX “D”

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City of Kitchener
Standard Development Agreement
Amended February, 1973.

785809

AGREEMENT made this 7th day of February, A.D. 1984.

BETWEEN:

MACAFEE HOLDINGS LIMITED,

hereinafter called the OWNER,

of the FIRST PART,

- and -

THE CORPORATION OF THE CITY OF KITCHENER,

hereinafter called the CITY,

of the SECOND PART,

~~and~~

~~hereinafter called the PARTY,~~

~~of the THIRD PART.~~

WHEREAS the Owner represents it is the owner of the lands described in Schedule "A" to this agreement ~~subject to a mortgage in favour of the Party(ies) of the Third Part.~~

AND WHEREAS the Owner has agreed to perform the covenants herein contained in consideration of conditions imposed under (Zone Change Application Number 42/81/N /Committee of Adjustment Application Number -----) and of the rights and privileges conferred thereby.

NOW THEREFORE IN CONSIDERATION of the premises and the sum of ONE (\$1.00) DOLLAR paid by the City to the Owner and the Party(ies) of the Third Part and other consideration, the parties hereto covenant and agree as follows:

1. (a) In respect of all lands that are to be used for any purpose other than detached or semi-detached single family dwellings or multiple dwellings containing not more than six (6) units per building, the Owner agrees that no building will be

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erected and no building permit will be available therefore until site and elevation plans have been approved by the Kitchener Planning Committee;

(b) Said site and elevation plans shall be in such detail as the Planning Committee requires and shall include:

- (i) location of proposed buildings
- (ii) height of proposed buildings
- (iii) location of entrance and exits
- (iv) area and location of lands to be used for off-street parking and driveways
- (v) use of lands not covered or to be covered by buildings
- (vi) architectural elevations of the proposed buildings specifying building material and colours
- (vii) in the case of residential buildings, the number and dimensions of each dwelling unit and the location of same in the buildings.

2. The Owner agrees that such building or buildings will be erected in accordance with the plans as approved, subject only to such changes as are approved.

3. Without limiting the powers of the Planning Committee, it is agreed that the Committee may refuse to approve any such plan upon aesthetic grounds or may approve it subject to conditions.

4. The Owner further agrees that:

- (a) final grades and elevations will be established to the satisfaction of the Commissioner of Planning and Development;
- (b) all surface and roof drainage will be controlled on site and taken to an outlet approved by the Commissioner of Public Works;
- (c) all necessary provisions for service connections on site will be made to the satisfaction of the City or the Hydro-Electric Commission of Kitchener-Wilmot, as the case

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- may be, at the Owner's expense;
- (d) construction work will be carried forward expeditiously, in a good and workmanlike manner, in accordance with good trade practise and so as to cause a minimum of nuisance;
 - (e) all necessary precautions to avoid dust, noise and other nuisances and to provide for the public safety will, so far as possible, be taken;
 - (f) all necessary care will be taken to see that mud and soil is not tracked or spilled onto any public highway;
 - (g) garbage disposal facilities will be located and designed in a manner satisfactory to the Planning Committee;
 - (h) all parking lots and drives will be paved with hot mix asphalt or concrete and, where necessary in the opinion of the Commissioner of Public Works, curbed with concrete curbs;
 - (i) upon failure by it to do any act that the public safety or convenience requires, in accordance with this agreement, on reasonable notice, the City, in addition to any other remedy, may go in and do same at the owner's expense and collect the cost in like manner as municipal taxes;
 - (j) the City may treat any breach of this agreement as breach of the Building By-law and stop work until the breach is rectified;
 - (k) nothing in this agreement constitutes waiver of the owner's duty to comply with any By-law of the City or any other law;
 - (l) it will convey to the City without charge the easement described in Schedule "B" to this agreement;
 - (m) it will pay to the City for its capital purposes the lot levy as set out in Schedule "C";

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- (n) it will pay to the City Park Density Trust Fund
 - (i) in the case of a rezoning which permits residential development to a higher density than permitted by the former zoning, the sum of Fifty (\$50.00) Dollars for each additional dwelling unit so permitted; or
 - (ii) in the case of a Committee of Adjustment variance which has the effect of permitting a higher density than would otherwise be allowed, the sum of Fifty (\$50.00) Dollars for each additional dwelling unit so permitted.
- (o) it will do all landscaping provided for in the approved plans or the amending By-law;
- (p) the City may require that any money payable under this agreement and any money payable for services or service connections be paid before issuance of a building permit.

5. The sums payable pursuant to clause (n) of paragraph 4 above, shall be payable to the City of Kitchener, whether or not the City hereafter is a part of a regional government and whether or not the responsibility for some or all of the works referred to in the lot levy resolution of October 11th, 1966, as amended, is transferred to another level of government.

6. The Owner agrees that he will not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this agreement may be pleaded as our estoppel against the Developer in any such case.

7. The Owner charges the lands with the performance of this agreement.

8. So far as may be, the covenants of the owner herein shall be restrictive covenants running with the land for the benefit of the adjoining lands of the City or such of them as may be benefitted thereby and shall be binding on the owner, his heirs, executors, administrators, successors and assigns as owner and occupiers of the said land from time to time.

9. The Party(ies) of the Third Part join herein to consent hereto and to bind their interest in the lands hereto.

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10. The Owner agrees to develop and maintain the site in compliance with the site plan, prepared by the City's Department of Planning and Development, dated Revised October 13, 1983 and attached hereto as Schedule "B". Minor changes to said plan, acceptable to the City's Commissioner of Planning and Development, may be permitted.
11. The Owner agrees to prepare a detailed Grading and Drainage Control Plan showing drainage details for the subject lands, abutting properties and public rights-of-way so as to ensure compatible drainage, to obtain approval thereof from the City's Commissioner of Public Works, the Ministry of Transportation and Communications and Commissioner of Engineering for the Regional Municipality of Waterloo, prior to applying for or being issued any building permits for the proposed development and to complete the site grading and drainage in accordance with the approved plan prior to occupancy of the proposed development.
12. The Owner agrees to prepare a Storm Water Management Plan and/or Storm Drainage Outlet Scheme in accordance with the Urban Drainage Policy and to obtain approval thereof from the City's Commissioner of Public Works prior to registration of the Section 40 Development Agreement.
13. The Owner agrees to show all required and approved storm water management facilities on an approved site plan to be attached to and form part of a Section 40 Development Agreement which shall be registered against title, prior to applying for or being issued any building permits for the proposed development. Further, the Owner agrees to maintain any required storm water management facilities for the life of the proposed development.
14. The Owner agrees to amend the site plan attached to and forming part of this Agreement should the approved storm water management plan necessitate a change thereto.
15. The Owner agrees to implement the storm water management plan as approved by the City's Department of Public Works, including the storm detention area as shown on the site plan attached hereto as Schedule "B" and to maintain the plan and the area in perpetuity.
16. The Owner agrees that the Regional Municipality of Waterloo shall notify the City by letter that all Regional requirements have been satisfied with respect to the proposed development prior to the third reading of the amending Zoning By-law at City Council.

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17. The Owner agrees to obtain approval for the private water system, septic tank and tile bed from the Regional Health Unit and to provide a written copy of such approval to the City's Commissioner of Planning and Development, prior to the third reading of the amending Zoning By-law.

18. The Owner agrees to prepare landscaping plans showing planting and surfacing details for all areas not covered by structures or a parking lot, to obtain approval thereof from the City's Chief Building Official prior to applying for or being issued any building permits and to complete the landscaping in accordance with the approved plan prior to occupancy of the proposed development.

19. The Owner agrees to maintain the required and approved landscaping in an acceptable state for the life of the proposed development.

20. The Owner agrees to show on the required landscaping plan the location of existing trees and the methods to be employed in retaining those trees required to be protected and to implement all approved tree saving measures, prior to applying for or being issued any building permits for the proposed development and prior to conducting any on-site grading.

21. The Owner agrees to show on the required landscaping plan, planting and surfacing details for the portion of all, adjacent, City-owned property located between the roads or boulevards and the Owner's property line so as to ensure a contiguous landscaped area between the public road and the Owner's proposed development and to complete the landscaping on the said public lands in accordance with the approved landscaping plan prior to occupancy of the proposed development.

22. That, in the event that garbage containers are not provided within the buildings, the Owner agrees to show on the required landscaping plan the location and details of all garbage containers on site, which shall be located on a concrete pad and fully enclosed on all sides, save and except for the purposes of ventilation and access, by a structure having a height of 1.8 metres and to locate and construct the garbage containers in accordance with the approved plan and details prior to occupancy of the proposed development.

23. The Owner agrees to install 0.15 metre, raised curbing as indicated and in the locations shown on the site plan attached hereto as Schedule "B" prior to occupancy of the proposed development.

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24. The Owner agrees that all outdoor lighting and signage shall be approved by the Ministry of Transportation and Communications prior to applying for or being issued any building permits for the proposed development. The Owner further acknowledges that, notwithstanding the Ministry's approval of signs, all signs shall comply with the City's Sign By-law.

25. The Owner agrees to pave all areas intended to facilitate on-site vehicular movement, parking and loading areas, as shown on the site plan attached hereto as Schedule "B", with hot-mixed asphalt or equivalent and to demarcate the parking on said pavement, prior to occupancy of the proposed development.

26. The Owner agrees to make arrangements, financial and otherwise, to the satisfaction of the City's Director of Utilities for the payment of the Owner's share of watermain charges prior to applying for or being issued any building permits.

27. The Owner agrees that "No Parking-Fire Route" signs shall be installed on the site at the Owner's expense as required by the City's Chief Fire Prevention Officer and further that By-law 77-92-P shall be amended so as to include said Fire Route by adding it to Appendix "B" of said By-law, prior to occupancy of the proposed development.

28. The Owner agrees that, as part of the Storm Water Management Plan and/or Storm Drainage Outlet Scheme, to include details relative to the provision and maintenance of an on-site emergency water supply for firefighting purposes, to obtain approval of the details thereof from the City's Commissioner of Public Works and the City's Chief Fire Prevention Officer, prior to the registration of the Section 40 Development Agreement and to implement the approved details, prior to occupancy of the proposed development. Further, the Owner agrees to maintain the required facilities until such time as a watermain is available to service the subject lands.

29. The Owner agrees to make arrangements to the satisfaction of the Kitchener-Wilmot Hydro Commission for the provision of permanent electrical services to the proposed development prior to applying for or being issued any building permits for the proposed development. The Owner further agrees, that should permanent installations be impractical at the time, to pay all costs incurred through the provision of temporary electrical services and the removal of such services when permanent installations are possible.

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30. The Owner agrees that, in the event that the facilities or improvements required by Sections 11., 15., 18., 22., 23. and 25. are not completed prior to occupancy and specified in this Agreement due to adverse weather conditions or other extenuating circumstances as acknowledged by the City's Commissioner of Planning and Development, occupancy may be approved, if requested, based on a Letter of Credit for 100% of the estimated cost of the outstanding work which shall be submitted in a form and amount satisfactory to the City's Chief Building Official.

31. The City may give a Release of this Agreement as it applies to the lands or portions thereof. The Release shall not, however, release any of the conditions imposed by Sections 10., 15. and 19. hereof. The facilities or requirements provided for by the said Sections shall be maintained for the life of the proposed development and at the Owner's cost.

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SCHEDULE "A"

All and singular that certain parcel or tract of land and premises situate, lying and being in the City of Kitchener, in the Regional Municipality of Waterloo, formerly in the Township of Waterloo, and being composed of Part of Lot 7 in Beasley's Old Survey for the City of Kitchener, which may be more particularly described as follows: PREMISING that the westerly limit of Lot 7 of Beasley's Old Survey is on a bearing of North 13 degrees 41 minutes West and relating all bearings herein thereto.

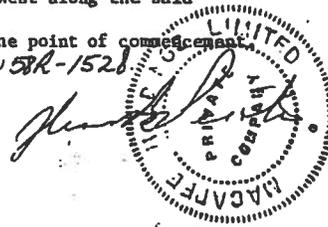
COMMENCING at a point in the westerly limit of said Lot 7 where it is intersected by the westerly limit of the lands shown in Deposited Highway Plan 401;

THENCE North 34 degrees 41 minutes West along the westerly limit of said Lot 7 a distance of 811.80 feet to a point where the said westerly limit is intersected by the southerly limit of the lands as shown in Deposited Highway Plan 675;

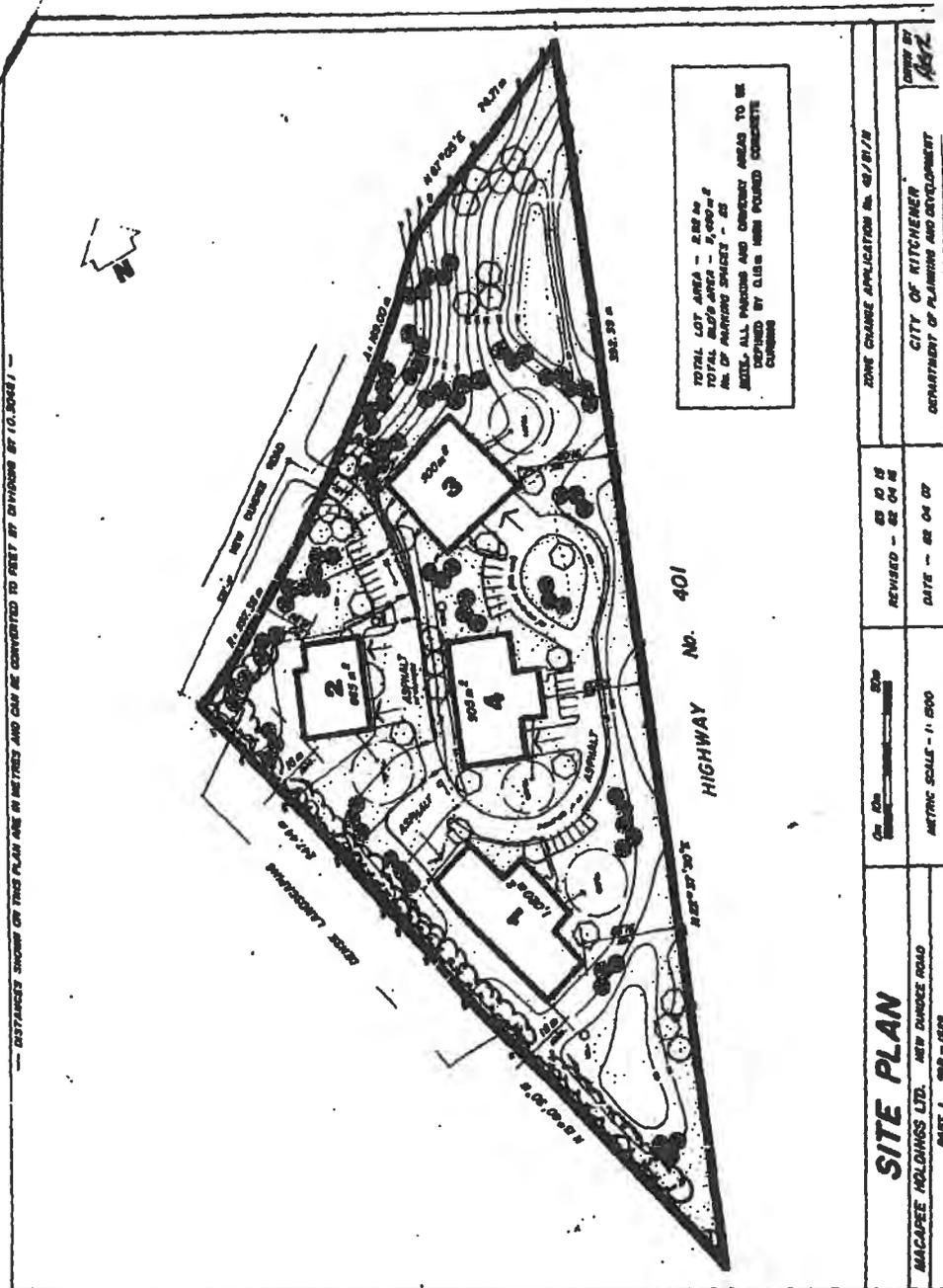
THENCE along the curve to the right having a radius of 1959.9 feet with an arc distance of 554.6 feet and a cord distance of 552.7 feet and said cord being on a bearing of north 56 degrees 20 minutes and 30 seconds east to a point in the southerly limit of County Road #6;

THENCE North 56 degrees 9 minutes 30 seconds East along the southerly limit of said County Road #6, 245.10 feet to a point where the said southerly limit of County Road #6, is intersected by the westerly limit of the lands in said Highway Plan 401;

THENCE South 22 degrees 37 minutes 30 seconds West along the said westerly limit a distance of 1287.38 feet to the point of commencement
DESIGNATED AS PART 1 ON O/M 58R-1528



SCHEDULE "B"



SITE PLAN

MACAPEE HOLDINGS LTD. NEW DUNGE ROAD
PART 1. SAR - 022

ZONE CHANGE APPLICATION NO. 02/01/01

CITY OF KITCHENER
COMMISSIONER OF PLANNING AND DEVELOPMENT

DRAWN BY
A.S.Z.

REVISED - 02 04 07

DATE - 02 04 07

1:500 METRIC SCALE

1:500 METRIC SCALE

Attachment A - Letter of Complaint

Revised March 1975
Revised March 1976.

SCHEDULE "C"

*
Lot Levy payable on lands
referred to in Schedule "A"
hereto

Class of Building

1.	Each Residential Dwelling Unit	\$1,000.00*
2.	Rooming or Lodging Houses, per bedroom unit	\$ 50.00
3.	Commercial Development, per acre	\$7,000.00*

Payments payable in accordance with this Schedule shall be by cash or certified cheque before issue of building permit for the building in respect of which it is payable.

Definitions, etc. are as set out in Lot Levy Resolution passed by Council October 11th, 1966, as amended.

*Per Council Resolution of March 8, 1976.

* DELETED PER COUNCIL RESOLUTION OF DECEMBER 19, 1983.

Attachment A - Letter of Complaint

785809

Co.

DATED: February 7th A.D. 1984

NO. Registry Division of Waterloo North (No. 59)
I CERTIFY that this instrument is registered on

'84 JUL -5 P2:53

MACAYZE HOLDINGS LIMITED

in the
Land Registry Office
at Kitchener,
Ontario.

- and -

James Wallace
LAND REGISTRAR
THE CORPORATION OF THE CITY OF KITCHENER

PROPERTY OF LAND REGISTRY
OFFICE, WATERLOO NO. 514 (#18)

ABSTR.	CHECKED
<i>W</i>	<i>W</i>
LOT	7
PLAN	
CON.	Barney Old

DEVELOPMENT AGREEMENT

JAMES WALLACE
City Solicitor
Kitchener, Ontario.

16.00

.....:2 L.A.....:609.8
.....: #:16.00.8

APPENDIX “E”

Attachment A - Letter of Complaint

375 New Dundee Road

Schedule of costs incurred in relation to providing private water and sanitary infrastructure

Item	Vendor	Amount
Offsite Works Watermain Extension	BEECH Infrastructure	\$ 110,038.14
Offsite Works Fee	City of Kitchener	\$ 9,730.65
Offsite Works Guarantee	City of Kitchener	\$ 25,149.00
Onsite Works Watermain Extension	Landworks	\$ 42,000.00
Soft Costs for Watermain Extension	MTE	\$ 30,914.40
Soft Costs for Design of Watermain	MTE	\$ 5,000.00
Septic System	Landworks	\$ 52,490.90
Soft Costs for Design & Inspection of Septic	MTE	\$ 6,800.00
Subtotal		\$ 282,123.09
Plus: 13% HST		\$ 32,141.65
Grand Total		\$ 314,264.74