
Report of the Commissioner of Finance

**Auto World Import Network & 480 Steeles West Ltd. –
Development Charge Complaint**

1. Recommendation

1. Council dismiss the Development Charge Complaint lodged by Auto World Import Network and 480 Steeles West Limited (AWIN), included as Attachment 1.
2. Council authorize staff to defend the dismissal of the Development Charge Complaint at the Ontario Land Tribunal, if necessary.
3. Council authorize the Regional solicitor to settle the Development Charge Complaint and execute Minutes of Settlement, where appropriate.

2. Purpose

This report addresses a Development Charge Complaint by AWIN (“the Complainant”) for development charges imposed by the Region, on lands known as 434-480 Steeles Avenue West (“Proposed Development”) located in the City of Vaughan.

Key Points:

- Development charges were levied at the rate in effect as of July 2021 for a Gross Floor Area (GFA) of 4,553.06 square meters, including the below grade component, for a total development charge of \$3,139,310.53 (including interest of \$272,385.24)
- The Complainant filed a Development Charge Complaint (“DC Complaint”) under section 20 of the Development Charges Act, 1997, (“Act”), alleging that the amount of development charges under the Region’s 2017 and as amended by the 2018 Development Charge Bylaw (“DC Bylaw”) for the below grade component were incorrectly calculated

3. Background

The Complainant received a building permit from the City of Vaughan in May 2023

On July 13, 2021, the Complainant submitted a complete application for a development located at 434 Steeles Avenue West, in the City of Vaughan. The development is a car dealership called Jaguar Thornhill Land Rover Dealership, owned and operated by Transatlantic Fine Cars Ltd. with a proposed structure comprising of a ground floor, second floor, roof top and below grade. The total GFA of the development is 8,300.86 square meters, from which the GFA for rooftop open air, amounting to 1,502.80 square meters and GFA for the demolition of the existing building area, amounting to 2,245.00 square meters was removed. Development charges were levied on a total GFA of 4,553.06 square meters. The building permit was issued on May 1, 2023, which resulted in an overall payment of Regional development charges, plus applicable interest, of \$3,139,310.53.

The 434 Steeles Avenue West property merged with an adjacent lot in 2022

In January 2022, prior to site plan approval, the Complainant merged the 434 Steeles Avenue property with an adjacent parcel municipally known as 480 Steeles Avenue West, which contained a BMW car dealership. The registered owner of the merged parcel is 480 Steeles West Limited. City of Vaughan staff advised Regional staff the merger was done to accommodate the proposed car dealership building which straddled the boundary of both lots and to address the parking deficiencies for the proposed car dealership under the City's zoning bylaw.

Based on the Region's DC Bylaw, the retail rate was applied to the total GFA of the development, including the below grade component

When determining the development charge rate payable for any application, staff refer to the DC Bylaw to determine the appropriate rate. The proposed structure is an automobile dealership and includes a show room, service centre and storage areas. An automobile dealership is considered to be a "retail motor vehicle establishment" based on the definitions found in the Region's DC Bylaw.

Based on the definition of "retail" and "retail motor vehicle establishment" found in the Region's DC Bylaw, the City of Vaughan ("City"), imposed and collected development charges on behalf of the Region, and applied the retail rate on the total GFA, including the below grade component, in the amount of \$3,139,310.53.

The Complainant argues the below grade component should have been exempt from development charges

The Complainant disputes the Region’s DCs levied for the below grade component of the structure. They are of the opinion the below grade parking component used for parking customer and employee motor vehicles is needed to meet the City’s zoning requirements. The Complainant states the below grade GFA is part of the required parking area, as per the City’s zoning bylaw and should be excluded from the total GFA calculation.

The Complainant further asserts that development charges are not applicable to the below grade component, as the below grade parking spaces are to be used for customer and employee parking only. Accordingly, as noted above, the City has confirmed they are of the opinion that the GFA of the below grade component should be subject to Regional development charges. However, the City has confirmed that all zoning requirements for parking were met without the need for the below grade component.

To proceed with the development, the Complainant has paid the applicable development charges and is now seeking a refund for the Regional development charges imposed on the below grade component of the structure in the amount of \$1,839,409.63.

On August 2, 2023, the Complainant filed its development charge complaint with the Region, which is within 90 days of the development charge becoming payable.

Table 1 shows the development charge calculation excluding the gross floor area for below grade component.

Table 1
Regional Development Charges for the Proposed Development Excluding the Below Grade GFA

DC Category	Gross Floor Area (GFA) (m2)	Development Charge Rate	Applicable DCs
Retail (Total GFA excluding below grade)	1,890.74	\$629.67	\$1,190,542.26
Interest Charge			\$109,542.26
Total			\$1,299,900.90

The City also applied the retail rate for the GFA, including the below grade component, under its own Development Charge Bylaw

The definition of “retail” in the City’s DC Bylaw and the Region’s DC Bylaw are similar., The City also applied the retail rate to the total GFA of the proposed development, including GFA for the below grade component, under the City’s Development Charge Bylaw.

The Complainant has also filed a development charge complaint with City in respect of their inclusion of the below grade component in the total GFA for the proposed development.

The Act provides for a complaint process for disputed development charges

When there is a disagreement with the amount of development charges payable for a particular development, the Complainant may pay the development charges under protest and file a complaint to be heard by Council. The Act prescribes that a complaint may only be made on three grounds:

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

For a complaint to be heard by Committee, an applicant must bring a written complaint forward within ninety (90) days of the development charges becoming payable. Council has delegated the hearing of such complaints to the Finance and Administration Committee under Bylaw A-151-92-114 and subsequently Committee of the Whole. After hearing the complaint, Council has the authority to dismiss the complaint, or rectify any incorrect determination or error that was the subject of the complaint. After Council renders its decision, an applicant may further appeal any decision of Council to the Tribunal.

4. Analysis

The Development Charge Bylaw governs the determination of Regional development charges for this development

Definitions in the Region’s DC Bylaw determine the rate applied to a particular development.

The DC Bylaw definition of “retail” is as follows:

“retail” means lands, buildings or structures used or designed or intended for use for the sale or rental or offer for sale or rental of goods or services to the general public for consumption or use and shall include, but not be limited to, a banquet hall, a funeral home, but shall exclude office;

The DC Bylaw definition of “gross floor area” is as follows:

“gross floor area” means, in the case of a non-residential building or structure or the non-residential portion of a mixed-use building or structure, the aggregate of the areas of each floor, whether above or below grade, measured between the exterior faces of the exterior walls of the building or structure or from the centre line of a common wall separating a non-residential and a residential use, excluding, in the case of a building or structure containing an atrium, the sum of the areas of the atrium at the level of each floor surrounding the atrium above the floor level of the atrium, and excluding the sum of the areas of each floor used, or designed or intended for use for the parking of motor vehicles unless the building or structure, or any part thereof, is a retail motor vehicle establishment or a standalone motor vehicle storage facility or a commercial public parking structure, and, for the purposes of this definition, notwithstanding any other section of this bylaw, the non-residential portion of a mixed-use building is deemed to include one-half of any area common to the residential and non-residential portions of such mixed-use building or structure, and gross floor area shall not include the surface area of swimming pools or the playing surfaces of indoor sport fields including but not limited to hockey arenas, and basketball courts;

The DC Bylaw definition of “retail motor vehicle establishment” is as follows:

“retail motor vehicle establishment” means a building or structure used or designed or intended to be used for the sale, rental or servicing of motor vehicles, or any other function associated with the sale, rental or servicing of motor vehicles including but not limited to detailing, leasing and brokerage of motor vehicles, and short or long-term storage of customer motor vehicles. For a retail motor vehicle establishment, gross floor area includes the sum of the areas of each floor used or designed or intended for use for the parking or storage of motor vehicles, including customer and employee motor vehicles. An exemption may be granted to exclude the sum of the areas for customer and employee motor vehicles on terms and conditions to the satisfaction of the Region;”

The proposed development is a retail motor vehicle establishment as defined in the Region’s DC Bylaw and as such the retail rate was applied.

An exemption for the below grade component needed to meet zoning requirements is not applicable in this situation

As outlined above, the GFA of a building is subject to development charges. In the case where a retail motor vehicle establishment contains parking spaces but demonstrates that the parking spaces are designed and intended to meet zoning parking requirements, an exemption may be granted. Under the Region’s DC Bylaw, the sum of the areas required for the customer and employee parking may be excluded from development charges. At the time of site plan approval, the Complainant had merged the 434 and 480 Steeles West properties and designed the proposed car dealership to connect to the existing BMW car dealership on the 480 Steeles West property. As a result of the merger, City staff assessed parking requirements for the car dealership based on parking available on the merged lot and determined the Complainant had enough parking spaces, such that the below grade area was determined to be excess parking.

Therefore, the entire basement GFA was included in the development charge calculation as the parking areas exceeded the zoning requirements and should not be exempt from Regional DCs.

The applicable DCs plus interest for the total gross floor area including the below grade GFA are shown in Table 2.

Table 2
Regional Development Charges for the Proposed Development Excluding the Below Grade Component

DC Category	Gross Floor Area (GFA) (m2)	Development Charge Rate	Applicable DCs
Retail (Total GFA)	4,553.06	\$629.67	\$2,866,925.29
Interest Charge			\$272,385.24
Total	4,553.06	\$629.67	\$3,139,310.53

The Region has treated all below grade component in retail motor vehicle establishments consistently

The Region has several motor vehicles establishments with below grade components that Regional development charges have been assessed and paid. Currently, there are four developments that have been exempt from paying DCs for a portion of their below grade components. In these cases, the area municipality confirmed that the portion of the basement area was needed to meet the parking requirements. As a result, the Region exempted the DCs for these areas only and assessed DCs for the balance below grade components.

5. Financial Considerations

If the Complainant is successful, the Region would forego the collection of \$1,839,409.63 in development charges, representing the difference between what was paid at the 2021 DC rate for the total GFA including below grade, of \$3,139,310.53, and what would have been paid if development charges were applied for the portion of the GFA excluding below grade component, of \$1,299,900.90, at the 2021 DC rate.

6. Local Impact

Local municipalities collect development charges on the Region’s behalf. The City received a similar Development Charge Complaint, which is anticipated to be addressed by its Council.

7. Conclusion

The Complainant's automobile dealership structure is used for retail purposes and meets the definition of a "retail motor vehicle establishment" under the Region's DC Bylaw. Accordingly, the proposed Development has been treated as a retail use and is subject to the retail development charge rate for the total GFA of the development, including the below grade component.

It is recommended that the Complaint filed by AWIN be dismissed, and staff be authorized to defend any challenge of this decision at the Ontario Land Tribunal.

For more information on this report, please contact Edward Hankins, Director, Treasury Office and Deputy Treasurer at 1-877-464-9675 ext. 71644. Accessible formats or communication supports are available upon request.



Recommended by:

Laura Mirabella
Commissioner of Finance and Regional Treasurer



Approved for Submission: **Erin Mahoney**
Chief Administrative Officer

September 27, 2023

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Attachment 1 – Development Charge Complaint Letter