

## Report of the Commissioner of Finance

### **2868861 Ontario Inc. – 2 Stalwart Industrial Drive, Town of Whitchurch-Stouffville – Development Charge Complaint**

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#### **1. Recommendations**

1. Council dismiss the Development Charge Complaint lodged by 2868861 Ontario Inc., included as Appendix A.
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 2868861 Ontario Inc. (“the Complainant”) for development charges imposed by the Region, on lands known as 2 Stalwart Industrial Drive (“Proposed Development”) located in the Town of Whitchurch-Stouffville.

#### **Key Points:**

- Development charges were levied at the retail rate in effect as of July 2021 for a Gross Floor Area (GFA) of 678 square meters, for a total development charge of \$309,711.05 (including interest of \$19,170.9)
- The Complainant paid Development Charges on July 13, 2023, and 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”) was calculated incorrectly as the retail rate was applied, as opposed to the industrial/office/institutional

### **3. Background**

#### **The Complainant received a building permit from the Town of Whitchurch-Stouffville in July 2023**

On March 25, 2022, the Complainant submitted a complete application for a development located at 2 Stalwart Industrial Drive, in the Town of Whitchurch-Stouffville. The development is called Chapel Ridge Crematorium and is proposing to construct a crematorium (“Proposed Development”). The development consists of a total Gross Floor Area (GFA) of 678 square meters, of which 290 square meters will be used for the physical cremation of human remains, 250 square meters will be used as prayer space and associated witnessing rooms and the rest of the area will provide space for accessory uses, including office.

The building permit was issued on July 13, 2023, which resulted in an overall payment of Regional development charges, plus applicable interest, of \$309,711.05.

#### **Based on the Region’s DC Bylaw, the retail rate was applied to the total GFA of the Proposed Development**

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 a crematorium with a facility for cremating human remains, office space, prayer areas and accessory uses. In preparing the Regional Development Charges calculation, the definitions of “retail” and “funeral home” were reviewed.

Based on the definition of “retail” and “funeral home” found in the Region’s DC Bylaw, the Town of Whitchurch-Stouffville (“Town”), imposed and collected development charges on behalf of the Region, and applied the retail rate to the total GFA, in the amount of \$309,711.05.

#### **The Complainant argues that the facility does not fit the definition of a funeral home under the Region’s DC Bylaw**

The Complainant disputes the Region’s DCs levied at the retail rate for the total GFA of the proposed development. They are of the opinion that the proposed facility represents an industrial/office/institutional use under the Region’s DC Bylaw. The Complainant argues the Proposed Development does not constitute a retail use as once in operation, the facility will not sell any products or services on site or generally to the general public but will provide business to business services to funeral homes and cemeteries. The Complainant further asserts that the facility will not be co-located with a funeral home or cemetery and will be operated solely pursuant to a “Crematorium Operator License”, issued pursuant to the *Funeral, Burial and Cremation Services Act*, 2002, S.O. 2002, c.33 (“the “FBCSA”).

To proceed with the development, the Complainant paid the applicable development charges and is now seeking a refund for the difference between the applicable retail and non-retail Regional development charges (plus interest), in the amount of \$214,403.11.

On September 13, 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 total development charges paid by the Complainant.

**Table 1**  
**Regional Development Charges for the Proposed Development**

DC Category	Gross Floor Area (GFA) (m <sup>2</sup> )	Development Charge Rate	Applicable DCs
Retail	678	\$428.49	\$290,540.15
Interest Charge			\$19,170.90
Total			\$309,711.05

**As the Town only has one non-residential development charge rate, a development charge complaint was not lodged with the Town**

The Town’s DC Bylaw only has a non-residential development charge rate and does not collect different charges for retail and non-retail developments within its municipality. Accordingly, a definition of “retail” is not included in the Town’s DC Bylaw. The Proposed Development was charged the non-residential development charge rate for the total GFA of the Proposed Development. As a result, the Town did not receive a DC Complaint for the development charged applied to this 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:

- The amount of the development charge was incorrectly determined
- 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
- 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 "funeral home" is as follows:

"funeral home" means a building with facilities for the preparation of dead persons for burial or cremation, for the viewing of the body and for funeral services;

The DC Bylaw definition of "industrial/office/institutional" is as follows:

"industrial/office/institutional" means lands, buildings or structures used or designed or intended for use for any of an industrial use, office use or institutional use and shall include a convention centre and any other non-residential use which is not a retail use;

"institutional" means lands, buildings or structures used or designed or intended for use by an organized body, society or religious group for promoting a public or non-profit purpose and shall include, but without limiting the generality of the foregoing, places of worship, medical clinics and special care facilities;

The proposed development falls under the definition of "retail" as defined in the Region's DC Bylaw and as such the retail rate was applied.

### **Application of a non-retail development charge rate is not warranted in this situation**

As outlined above, the Proposed Development does not fit into the definition of "industrial/office/institutional" under the Region's DC Bylaw. The Complainant is of the opinion that the Proposed Development shall not be considered a funeral home, as the facility will not contain facilities for the viewing of the body or conducting funeral services. The Proposed Development contains areas to be used for witnessing or viewing the cremation, prayer spaces and other

accessory uses, such spaces are similar to those found in funeral homes which are charged at the retail rate under the Region’s DC Bylaw.

The definition of “retail” in the Region’s DC Bylaw contains a non-exhaustive list of types of uses which meet the definition of retail. In this case, the services to be offered within the Proposed Development, is the sale of crematorium services which meets the definition of retail in the Region’s DC Bylaw. The fact the services may be purchased by or through funeral homes and cemeteries on behalf of their customers does not exclude this type of use from the definition of retail.

Therefore, the total GFA for the Proposed Development was charged the retail rate for Regional DCs.

The difference in Regional DCs (plus interest) for the non-retail and retail rate is shown in Table 2.

**Table 2**  
**Difference in Regional Development Charges at the Retail and Non-Retail Rate**

DC Category	Gross Floor Area (GFA) (m <sup>2</sup> )	Development Charge Rate	Interest	Total Development Charges
Retail	678	\$428.49	\$19,170.90	\$309,711.05
Industrial /Office/ Institutional	678	\$131.86	\$5,367.33	\$95,307.94
Difference				<b>\$214,403.11</b>

**Most municipalities would apply the retail development charge rate to standalone crematoriums**

In York Region, five out of the nine local municipalities would apply the retail rate to a stand-alone crematorium development in accordance with the definition of “retail” in their respective DC bylaws. The other four area municipalities charge only one non-residential development charge rate.

A scan was also done of other municipalities in Ontario for standalone crematoriums built in the last 10 years. Results showed that only two standalone crematoriums were built. Of these developments, one was charged the industrial rate. The second crematorium was charged the non-residential rate at the local level and the retail rate at the upper-tier level, similar to how the development charges were treated for this development.

## 5. Financial Considerations

If the Complainant is successful, the Region would forego collection of \$214,403.11 in development charges, representing the difference between what was paid at the 2021 DC rate for the total GFA at the retail rate of \$309,711.05, and what would have been paid if development charges were applied at the non-retail rate, of \$94,769.91, at the 2021 DC rate.

## 6. Local Impact

Local municipalities collect development charges on the Region's behalf. The Town charges a uniform rate for all types of non-residential developments and therefore does not distinguish between retail and non-retail. There is no local impact to the Town from his DC complaint.

## 7. Conclusion

The Complainant's crematorium structure is considered retail 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.

It is recommended that the Complaint filed by 2868861 Ontario Inc. be dismissed, and staff be authorized to defend any challenge of this decision at the Ontario Land Tribunal.

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For more information on this report, please contact Edward Hankins, Director, Treasury Office and Deputy Treasurer at 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

October 26, 2023

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Appendix A- Development Charge Complaint Letter



135 Queens  
Plate Drive Suite 600,  
Toronto, Ontario  
Canada M9W 6V7  
  
416.746.4710  
loopstranixon.com



**Quinto M. Annibale\***  
**\*Quinto M. Annibale Professional Corporation**  
Direct Line: (416) 748-4757 e-mail address: qannibale@loonix.com

VIA COURIER

October 10, 2023

The Regional Municipality of York 17250  
Yonge Street  
Newmarket, Ontario L3Y  
621

*Attention: Chris Raynor, Regional Clerk*

Dear Mr. Raynor,

**RE: Development Charge Complaint  
Pursuant to Section 20 of the *Development Charges Act* (the "Act")  
2 Stalwart Industrial Drive, Town of Whitchurch-Stouffville (the "Subject Lands")**

Further to my assistant's e-mails of September 13, 2023 and October 2, 2023, we have not received confirmation of receipt of the enclosed correspondence dated September 13, 2023. Therefore, we are filing the correspondence in hard copy out of an abundance of caution.

We would ask that a hearing in respect of my client's Complaint pursuant to section 20 of the *Act* be scheduled at the earliest available date.

Your truly,  
**LOOPSTRA NIXON LLP**

Per: Quinto M. Annibale  
QMA/rg



**Quinto M. Annibale\***  
**\*Quinto M. Annibale Professional Corporation**  
Direct Line: (416) 748-4757 e-mail address: qannibale@loopstranixon.com

VIA EMAIL

September 13, 2023

The Regional Municipality of York  
17250 Yonge Street  
Newmarket, Ontario L3Y  
6Z1

*Attention: Wayne Emmerson, Chair of Regional Council*

Dear Mr. Emmerson;

RE: Development Charge Complaint  
**Pursuant to Section 20 of the *Development Charges Act* (the "*Act*")**  
**2 Stalwart Industrial Drive, Town of Whitchurch-Stouffville (the "Subject Lands")**

We are counsel to 2868861 Ontario Inc. (the "**Complainant**"), the registered owner of the Subject Lands.

On July 13, 2023, the Complainant paid development charges in the amount of \$354,562.73 ("**Charge**") to the Regional Municipality of York. Although our client disagreed with the amount of the Charge that was assessed by Regional and Town staff, it elected to make the payment under protest in order to avoid a delay in the issuance of a building permit and to facilitate the timely development of the Subject Lands.

Please accept this correspondence as our client's complaint pursuant to section 20 of the *Act* in respect of the Charge. As is described in further detail, below, the reason for the complaint is that the amount of the development charge was incorrectly determined and there was an error in the application of the development charge by-law.

In particular, it is our client's position that the Region incorrectly determined that the proposal constitutes a "retail" as opposed to an "industrial/office/institutional use" under the Regional Municipality of York Development Charges By-law 2017-35 ("**By-law**").

#### *Background*

The Charge was assessed in relation to the Complainant's development of a crematorium on the Subject Lands. The proposed Crematorium consists of a 678 square metre building (the "**Facility**"), of which 290 square metres of space will be dedicated to the physical cremation of human remains. The balance of the building will provide space for accessory uses that are





necessarily incidental to the cremation such as office as well as prayer space and witnessing rooms. The prayer space and associated witnessing rooms will cover approximately 250 square metres of floor area in total.

*The Facility is Not a Retail Use Under the By-law*

The amount of the Charge was assessed by Regional staff on the basis that the Facility constitutes a "retail" use under the By-law and was therefore calculated using the "retail" rate of \$428.39 per square metre. For the reasons below, this conclusion is incorrect.

The proposed facility instead represents an "industrial/office/institutional" use pursuant to the By-law and development charges therefore should have been calculated based on a rate of \$131.86 per square metre.

Section 1.1 of the By-Law defines "retail" as follows:

"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"

Once in operation, the Facility will not sell any products or services on site or directly to the general public. Instead, the Facility will only provide business to business services to funeral homes and cemeteries.

The facility is also not a "funeral home" which the By-law defines as "a building with facilities for the preparation of dead persons for burial or cremation, for the viewing of the body and for funeral services."

The Facility will **not** contain facilities for the viewing of the body or for funeral services. The witness and prayer rooms will not be used for viewing the body or conducting funeral services and those spaces are entirely ancillary to the primary use of the facility as a crematorium. Certain religious faiths require that cremation be undertaken under specific circumstances and that the cremation be witnessed and/or initiated by family members and loved ones. The witnessing and prayer rooms will be provided in order to facilitate this.

The Facility will also not be co-located with a funeral home or cemetery and will be operated solely pursuant to a "Crematorium Operator License" issued pursuant to the *Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c. 33 (the "FBCSA")*.

The Facility does not fall within the definition of "funeral establishment" pursuant to section 1 of the *FBCSA* and accordingly will not be licensed as a "Class 1 Funeral Home" pursuant to the *FBCSA*. The Facility is therefore explicitly prohibited from providing "funeral services" pursuant to section 1 of the *FBCSA*.



Although the Property will provide for a refrigerated room for the storage of dead persons prior to cremation it will not contain facilities for the preparation of dead persons for cremation. All such preparation will be undertaken off site at the funeral home. Dead descendents will be delivered to the Facility in sealed caskets that meet the requirements for cremation under the *FBCSA*.

The 2022 Regional Official Plan does not allow the development of a funeral home.

Zoning and site plan approvals obtained for the Subject Lands do not allow the development of a funeral home. The land is designated and zoned as Industrial in the Official Plan and Zoning By-law, respectively, with only site specific allowance for a Crematorium, and not "retail" or "funeral home" uses.

Further, the Site Plan Agreement entered into in respect of the development of the Facility only allows a Crematorium, not a funeral home or retail establishment.

Plainly, the Facility represents a non-residential use which, for the reasons above, does not constitute a "retail" use under the By-law. As such, the Facility meets the definition of "industrial/office/institutional" which is as follows

lands, buildings or structures used or designed or intended for use for any of an industrial use, office use or institutional use and shall include a convention centre and **any other non-residential use which is not a retail use**

*emphasis added*

Based on the total gross floor area of the Facility and the "industrial/office/institutional" rate of \$131.86 per square metre, the quantum of development charges payable under the By-law should have been no more than \$89,402.58 plus applicable interest.

We ask that a hearing of the complaint be scheduled by the Region at the earliest opportunity with notice under section 20(3) of the *Act* sent to the attention of the undersigned at the above noted mailing address and [Qannibale@loopstra.com](mailto:Qannibale@loopstra.com)

Regards,  
**LOOPSTRA NIXON LLP**

Per: Quinto M. Annibale  
QMA/br