

Attachment 1

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BY FACSIMILE & COURIER

March 27, 2008
File No.: 121941.1001

Toronto City Council
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Ms. Ulli S. Watkiss, City Clerk

**RE: Development Charge Payment Compliant
File No.: 06 174721 BLD 00 NB
15 York Street, Toronto
York Bremner Developments Limited**

2008 MAR 27 P 3:39

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CITY CLERK'S OFFICE
SECRETARIAT SECTION

Dear Sirs/Mesdames:

We are the solicitors for York Bremner Developments Limited. Our client is constructing a landmark mixed-use development on lands located east of York Street, between Bremner Boulevard and Lakeshore Boulevard West, adjacent to the Air Canada Centre. The site is municipally known as 15 York Street and described as Block 5 in the Railway Lands East Area A Zoning By-law 198-93, as amended.

On December 28, 2007, the City acknowledged receipt of our client's payment of development charges which were calculated by the City in the amount of \$1,456,235.77. The payment was made by our client under protest in an effort to secure the timely release of an above-grade building permit which was required in order to facilitate the on-going construction activities on the site. The payment amount in dispute is \$481,247.32.

On behalf of our client, we are hereby submitting a complaint to Council, pursuant to section 20 of the *Development Charges Act, 1997*, S.O. 1997, c. 27, on the basis that the amount of the development charge paid by our client was incorrectly determined by City staff, that available development charge credits were incorrectly determined and that the

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application of the development charge by-law was undertaken by City staff in error.

Our client's lands receive the benefit of development charge credits which are secured under the Development Charges Credit Transfer Agreement, dated June 26, 2002, registered on title as Instrument No. E561022 ("DC Agreement"). Under Schedule C, the DC Agreement allocates a maximum development charge credit for Block 5 in the amount of \$5,424,375.00 for a Combined Maximum Gross Floor Area of 85,004 square metres. The DC Agreement also contemplates that development charge credits are not applicable to any increased density approved on Block 5 beyond the Combined Maximum Gross Floor Area.

The development currently under construction required an increase in the Combined Maximum Gross Floor Area of 19,023 square metres, which was approved by City Council in Zoning By-law Amendment 726-2006. The increased density accounts for 18.3% of the development.

The mixed-use development includes a total of 6 distinct uses (residential, office, hotel, retail, food store, and daycare center), of which 3 uses (residential, retail, and food store) have a specified development charge rate under the City's Development Charge By-law. Unfortunately, in attempting to calculate the applicable development charges, City staff arbitrarily and unfairly chose to apply the Combined Maximum Gross Floor Area of 85,004 square metres firstly to the non-residential uses, including non-residential uses for which no development charge rate exists (namely, office, daycare and hotel) and then, secondly, applied the available remaining credit to the development charges triggered by residential uses. The method employed by City's staff to calculate the applicable development charges unfairly resulted in a substantial windfall for the City at the expense of our client.

In our respectful submission, the DC Agreement does not support the City's staff interpretation of how available credits associated with the Combined Maximum Gross Floor Area are to be applied. Instead, section 2.04(2) of the DC Agreement provides that the development charge credit "shall be applied against the amount of any Development Charge under any Development Charge By-law of the City as of the date a building permit is issued in respect of the building or structure on the respective Block" (emphasis added). The DC Agreement does not limit the application of the credits to development charges associated with any particular use, nor does it require that the credits be applied firstly to development charges associated with permitted uses at the time when the DC Agreement was executed.

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The available development charge credits associated with the Combined Maximum Gross Floor Area represents 81.7% of the total proposed development on Block 5. Given the inherent ambiguity in the DC Agreement regarding how the available development charge credits ought to be apportioned among a particular mix of uses on Block 5, we respectfully submit that the fair and equitable approach is to apply the development credits proportionately to all 6 proposed uses up to the Combined Maximum Gross Floor Area of 85,004 square metres.

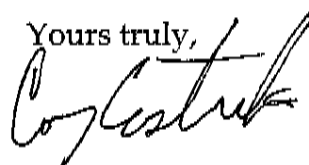
Any development charge is akin to taxation and, as with the court's interpretation of taxation statutes, any ambiguity in the interpretation and application of the development charges should be resolved in favour of the party required to make the payment.

It should also be noted that, as part of securing the current development approvals for Block 5, our client voluntarily agreed to make substantial contributions to the City in the form of 3.2 million dollars for public area improvements, TTC passes with an approximate value of \$440,000.00, a payment of \$400,000.00 to the school boards as well as providing other benefits such as daycare, streetscape improvements, public art, district heating and cooling and pathway connections. Such generous contributions were made trusting that the development charge credits available under the DC Agreement would be apportioned in a fair and equitable manner by prorating such amount between all the permitted uses on Block 5.

We respectfully submit that applicable development charges ought to be calculated as illustrated in the attached tables. Accordingly, our client is entitled to restitution in the amount of \$481,247.32. Enclosed with this letter is a step by step calculation of the development charges.

For the purpose of this complaint, we request that all notices required under the Act be delivered to the writer. Should you have any questions regarding the complaint as set out in this letter, please contact me.

Yours truly,



cc: Calvin W. Lantz

/ce

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cc: Robert Balfour - *City of Toronto, Legal Services*
Al Rezoski - *City of Toronto, Community Planning*
Mark Mandelbaum - *York Bremner Developments Limited*

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Calculation of Development Charges for Block 5

Development charges should be calculated as follows:

1. Calculate the proportion of each use that is subject to the development charge credit (which is the protected density for each use) and the proportion of each use for which the development charge credit is unavailable (which is the unprotected density for each use). The protected density is the proportion of the Combined Maximum Gross Floor Area of 85,004 square metres to the total gross floor area of the project (namely 104,027 square metres) which equals 81.7%. The unprotected density is the increased density of 19,023 square metres which represents 19.3% of the total floor area of the development.
2. Calculate the development charges payable for the protected density and subtract the development charge credit to determine if any development charges are payable in respect of the first 85,004 square metres.
3. Calculate the development charge for the additional unprotected density.
4. Calculate the amount of the overpayment by subtracting the total of the development charges payable for the protected density (step 2) and the unprotected density (step 3) from the \$1,456,235.77 received by the City on December 28, 2007.

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1. Calculation of the Protected and Unprotected Density

Proposed Use	<i>Protected Density</i>		Protected Density (m ²)	Unprotected Density (m ²)
	Project GFA (m ²)	Percentage of total GFA		
Residential	59,106	56.8%	48,298	10,808
Office	20,752	20.0%	16,957	3,795
Retail	5,051	4.9%	4,127	924
Hotel	13,908	13.4%	11,365	2,543
Foodstore	4,602	4.4%	3,760	842
Daycare	608	0.6%	497	111
Total	104,027	100.00%	85,004	19,023
Maximum GFA per DC Agreement	85,004	81.7%		

Toronto's Development Charges for residential units are calculated based on the number of units being constructed. The development's 59,106 m² of residential floor gross floor area is comprised of 872 residential apartment units consisting of 534 one bedroom units and 338 two bedroom units. On a proportionate basis, the increased density of 19,023 square metres, being 18.3% of the development's total gross floor area, accounts for 48,298 square metres or 159.46 units, consisting of as 97.65 single bedroom units and 61.81 two bedroom units.

2. Calculation of Development Charges for the Protected Density

No development charges are payable in respect of 85,004 square metres of floor area to which the development charge credit is applicable, because the total development charges in respect of that portion of the development are less than the available development charges credit. Because the full 85,000 square metres of gross floor area is being developed, the full amount of the development charges credit will be deemed to be utilized pursuant to Section 2.05 of the DC Agreement.

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Development Charges for Protected Density

Proposed Use	Protected Density	Development Charge Rate	Development Charge Payable
Residential - One Bedroom	436.35 units	\$4,198/unit	\$1,831,795.47
Residential - Two Bedroom	276.19 units	\$6,755/unit	1,865,672.21
Office	16,957 m ²	No rate	0
Retail	4,127 m ²	\$83.63/m ²	345,169.77
Hotel	11,365 m ²	No rate	0
Foodstore	3,760 m ²	\$83.63/m ²	314,486.49
Daycare	497 m ²	No rate	0
Total Development Charges			\$4,357,123.94
Credit			\$ 5,424,375
Net Payment			\$0

3. Calculation of Development Charges for Additional Density

The development charges payable on the increased density of 19,023 square metres, which is not subject to the development charges credit, totals \$975,078.45:

Development Charges Payable for Increased Unprotected Density

Proposed Use	Unprotected Density	Development Charge Rate	Development Charge Payable
Residential - One Bedroom	97.65 units	\$4,198/unit	\$ 409,936.53
Residential - Two Bedroom	61.81 units	\$6,755/unit	417,517.79
Office	3,795 m ²	No rate	0
Retail	924 m ²	\$83.63/m ²	77,245.36
Hotel	2,543 m ²	No rate	0
Foodstore	842 m ²	\$83.63/m ²	70,378.77
Daycare	111 m ²	No rate	0
Total Development Charges			\$975,078.45

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4. Municipal Staff Calculation and Calculation of Overpayment

Municipal staff calculated the development charges on the basis that the entire amount of the additional 19,023 square metres would be allocated to residential uses. When allocated entirely to residential uses, the additional density of 19,023 square metres represents 32.18% of the total residential gross floor area of the development such that development charges are payable on 171.87 single bedroom units and 108.78 two bedroom units.

Municipal Staff Calculation

Total Project Residential Gross

Floor Area 59,106 m²Increased Density 19,023 m²

Proportion of Residential Use 32.18%

Proposed Use	Total Units	Units included in Increased Density	Development Charge Rate	Development Charge Payable
Residential - One Bedroom	534	171.87	\$4,198 /unit	\$ 721,491.35
Residential - Two Bedroom	338	108.78	\$6,755/unit	734,834.42
Municipal Staff Calculation of Development Charges				<u>\$1,456,325.77</u>

Calculation of Overpayment

Municipal Staff Calculation of Development Charges	\$1,456,325.77
Less Development Charges Payable based on proportion of each use	975,078.45
Total Overpayment	<u>\$ 481,247.32</u>