
For Information

REPORT TITLE: **Request for Development Charges Relief – Kaneff Properties Limited**

FROM: Julie Pittini, Acting Commissioner of Finance and Chief Financial Officer
 Andrea Warren, Interim Commissioner of Public Works

OBJECTIVE

To provide Regional Council with information in response to email correspondence submitted from Kaneff Properties Limited which requested development charges relief concerning the property located at 202-204 Burnhamthorpe Road East, City of Mississauga, Ward 4.

REPORT HIGHLIGHTS

- Kaneff Properties Limited (Kaneff) submitted email communication to the Region of Peel (Region) requesting a partial development charges (DC) refund, related to the Regional development charge rate increase effective January 22, 2021 under the Region's most recent development charge by-law 77-2020 enacted December 10, 2020, on the basis that there was confusion with the invoice received and a delay in the development services review process.
 - The Region has kept the public informed of the 2020 Development Charges By-law update and the rate changes enacted under the by-law through various communication channels and community engagement forums.
 - Considering the challenges associated with the COVID-19 pandemic, the Region had taken measures to provide more time for the development community to transition from the old DC rates to the new rates.
 - The initial invoice was issued October 16, 2020 based on the DC rates applicable at that time. Subsequently on January 5, 2021 an email communication was provided to Kaneff which noted the then forthcoming January 22, 2021 DC rate increase.
 - Development Services turnaround timelines were reviewed for this application to ensure they aligned with established processes and it was found that there were no irregularities.
 - Council's authority to exempt development charges that have been properly determined in accordance with the development charges by-law is limited in accordance with s.106 of the *Municipal Act, 2001* and the *Development Charges Act, 1997*.
 - Legislation provides for the process to resolve such DC issues/complaints and such complaints are required to follow this formal process. Should it wish to do so, Kaneff may proceed with a section 20 *Development Charges Act* complaint to Council. A section 20 process will need to be followed in accordance with the legislation.
-

Request for Development Charges Relief – Kaneff Properties Limited

DISCUSSION

1. Background

Kaneff Properties Limited (Kaneff) is the owner of the property known as 202-204 Burnhamthorpe Road East, City of Mississauga. The City collected the applicable development charges and other fees including the regional portion of DC on January 27, 2021 and issued the building permit for the proposed development of the two new residential buildings on the site on January 29, 2021. Kaneff submitted an email to the Regional Clerk's Office on February 12, 2021 requesting a partial refund of the Regional DC, on the basis that there was some confusion with the invoice received as well as a delay in the site servicing connection review process. A copy of the email is attached as Appendix I.

At the February 25, 2021 Regional Council meeting, Council referred the item to staff for further information for Council's consideration.

2. Findings

a) Development Services Process

The Development Services Division provides one window review, commenting and coordination services on all forms of development applications, including site servicing connection applications. The site plan application for the subject lands was submitted to the City of Mississauga in 2014 and associated minor variance applications to address numerous development standards, including parking, landscaping, maximum permitted dwelling units and maximum permitted building height were appealed to the Ontario Municipal Board, now Local Planning Appeal Tribunal, which resolved these matters with the issuance of a decision in late 2016. Consistent with typical application processing, three resubmissions of materials were received and reviewed between 2018 and June of 2020, when Regional clearance for site plan approval was issued to the City of Mississauga.

In addition, the Region's site servicing connection review was undertaken concurrently with the planning process. In January 2020, Regional site servicing comments to the applicant advised that the required materials for municipal easements, including Regional servicing drawings were satisfactory and the easement could be registered in advance of final fee payments and issuance of servicing connection approval. The outstanding requirements were not satisfied by the applicant at that time and subsequently, in August 2020 the applicant advised that the existing private servicing easement was to be relocated, necessitating a further review of municipal easement documentation. Following an iterative process of resubmissions and commenting, acceptable easement documentation was received and cleared by Regional staff on January 7, 2021. The required municipal easements were registered on January 22, 2021, and the applicant submitted the necessary fee payment and administrative materials on January 27, 2021. Regional approval was issued directly to the City of Mississauga the following day.

A detailed review of the process suggests that normal Regional review processing timelines were achieved throughout the site servicing review process and the significant contributing elements to the ultimate clearance result from the applicant's decision to

Request for Development Charges Relief – Kaneff Properties Limited

relocate the private servicing easement and the associated time delay in resubmitting revised materials.

b) The Invoice and Related Communication

In October 2018, Kaneff submitted a building permit application to the City of Mississauga for the development of two apartment buildings located at 202-204 Burnhamthorpe Road East.

On October 16, 2020, an initial invoice of Development Charges and Cash-In-Lieu for Park Purposes was issued by City of Mississauga staff to Kaneff. The invoice includes the regional portion of development charges payable which was calculated in accordance with the DC rates in effect at the time.

On January 5, 2021, Staff from the City of Mississauga noted in email correspondences to Kaneff that any building permit not issued prior to January 22, 2021 will be subject to the increased DC rates as the Region passed a new Development Charge By-law (77-2020) on December 10, 2020.

On January 22, 2021, the Region's Development Charge By-law 77-2020 came into effect.

On January 26, 2021, Kaneff contacted Regional staff requesting waiving of the top-up development charges related to the DC rate increase. Staff from Development Services, Finance and Legal Departments reviewed the file and advised Kaneff that staff does not have the authority to waive development charges, or any portion of the charge.

c) Region of Peel's DC By-law 77-2020 Public Consultation and Community Engagement

The Region has been keeping the public informed of the 2020 DC By-law update and the rates changes.

- The Region's 2020 DC Background Study and the proposed DC By-law were released to the public on September 18, 2020.
- An information report that tabled the draft 2020 DC Background Study and the DC By-law were brought to the September 24 Regional Council Meeting for consideration.
- The statutory public meeting was held on October 8, 2020, public notices of the meeting were placed in local newspapers, Region's website, and social medias on September 17, 2020.
- The Notice of the Passing of the DC By-law was posted in local newspapers as well as the Region's website. The notice was also provided to the Building Industry and Land Development Association (BILD), local municipalities and other organizations as requested.

Additionally, the DC By-law consultation and stakeholder engagement have been undertaken through multiple channels. The proposed DC rates change, and the approved DC rates were communicated to the development community through the following forums as per its respective terms of references.

- Development Industry Working Group (DIWG) - Primary stakeholder consultation through meetings with the BILD and their representatives. It is our understanding

Request for Development Charges Relief – Kaneff Properties Limited

that BILD had been communicating details of our DC By-law update including rates changes through BILD newsletters to its members.

- Building Industry Liaison Team (BILT) - Supplementary consultation with various BILD Peel Chapter members.
- Inter-Municipal Working Group (IMWG) – Supplementary consultation with local municipalities.

d) Transition from Old DC Rates to the Rates under the New DC By-law

The Region's previous DC By-law 46-2015 would have expired on October 5, 2020. Considering the challenges associated with the COVID-19 pandemic, the Region had taken measures to provide more time for the development community to transition from the old DC rates to the new ones:

- At the May 14, 2020 Regional Council meeting, Council endorsed staff's recommendation to extend the 2015 DC By-law expiry date to January 24, 2021 as permitted under section 9.2 of the *Development Charges Act, 1997* as enacted by the Schedule 1 of the *Coronavirus (COVID-19) Support and Protection Act, 2020*.
- The draft DC By-law released on September 18, 2020 proposed to set the effective date of the new By-law as January 1, 2021. On December 10, 2020 Council approved staff's recommendations to move the effective date of the 2020 DC By-law to January 22, 2021 with a view to providing the development community with more time for the drawing of building permits and to ease administration of the permitting process in and around the busy holiday season.

FINANCIAL IMPLICATIONS

Kaneff is requesting for a partial refund of the Regional portion of DC in the amount of \$1,818,021.17. The detailed calculation is outlined in Table 1 below:

Table 1- DC Amount Calculation

	Amount
Estimated DC Payable provided in the Invoice dated October 16, 2020 in accordance with the DC rates in effect at the time (By-law 46-2015)	\$10,224,607.58
DC Payable Amount provided in the final invoice dated January 26, 2021 in accordance with the new DC rates at the time when the building permit was issued (per By-law 77-2020)	\$11,932,628.75
Difference	\$1,818,021.17

Section 106 of the *Municipal Act, 2001* prohibits Council from issuing a refund/exemption from a levy or charge to a business, where the charge was correctly calculated in accordance with the Region's DC By-law. However, where it is alleged that the charge was incorrectly calculated, a remedy is available to the business pursuant to section 20 of the *Development Charges Act*. Kaneff Property Limited has not submitted a formal complaint to Council under Section 20 of the *Development Charges Act* but may still do so in accordance with time limitations set out in the

Request for Development Charges Relief – Kaneff Properties Limited

Act. Section 20 provides that, a person required to pay a development charge may complain to Council that:

- a) The amount of the development charge was incorrectly determined;
- b) 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; or,
- c) There was an error in the application of the Development Charge By-law.

If the Region receives a Section 20 complaint from Kaneff prior to April, 27, 2021 (i.e. 90 days after January 27, 2021 which was the day the development charge was payable), a Section 20 hearing process will need to be followed which includes but is not limited to:

- Council holding a hearing into the complaint and giving the complainant an opportunity to make representations at that hearing.
- After hearing the evidence and submission of the complainant, Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint.

A section 20 complaint does not confer on Council the ability to waive or reduce the development charges otherwise correctly determined in accordance with the *Development Charges Act* and the DC By-law. Council's authority under section 20 of the *Act* is limited to correcting certain types of errors prescribed under the *Development Charges Act*.

CONCLUSION

Staff from Public Works, Legal and Finance have reviewed the email from Kaneff, as it relates to the applicable provisions in the *Municipal Act, 2001*, the *Development Charges Act, 1997* and the Region's Development Charge By-law 77-2020. Staff are satisfied that no error in calculation of the Kaneff charge was made. However, should they wish to do so, Kaneff may proceed with filing a complaint to Council in accordance with Section 20 of the *Development Charges Act*, at which point the Region will proceed with its section 20 hearing process. At the conclusion of the formal hearing Council can decide the issue within the parameters of the *Development Charges Act*

APPENDICES

Appendix I – A Copy of the Email Correspondence from Kaneff

For further information regarding this report, please contact John Hardcastle, Interim Director Development Services, Ext. # 4418, john.hardcastle@peelregion.ca, and Stephanie Nagel, Treasurer & Director of Corporate Finance, Ext. #7105, stephanie.nagel@peelregion.ca.

*Authored By: Carol Clark, Manager, Servicing Connections
Maggie Wang, Manager, Financial Policy and Development Finance*

Reviewed and/or approved in workflow by:

Department Commissioner, Division Director and Legal Services.