



RECEIVED

April 27, 2021

REGION OF PEEL
OFFICE OF THE REGIONAL CLERK

April 26, 2021

Regional Municipality of Peel
Members of Council
10 Peel Centre Drive, 5th Floor, Suite A
Brampton, ON L6T 4B9

Dear Council Members:

**RE: Request pursuant to Section 20 of the *Development Charges Act, 1997* for correction and reimbursement of development charges
Kaneff Properties Limited, 206 Burnhamthorpe Road East, Mississauga**

Kaneff Properties Limited ("Kaneff") is hereby making a request to the Council of the Regional Municipality of Peel (the "Region") to correct an error in the imposition and collection of a development charge for a residential condominium development ("the Development") at 206 Burnhamthorpe Road E, Mississauga (the "Property"), pursuant to section 20 of the Development Charges Act, 1997 (the "Act"). Whereas the legal and registered owner of the Property is Kaneff Homes Compass Creek Inc., the Invoice (described below) was issued to Kaneff; therefore the request is being filed on behalf of both Kaneff Homes Compass Creek Inc. and Kaneff.

As described in more detail below, on October 16, 2020 an Invoice was issued to Kaneff stating that the Regional development charge owing in respect of the Development was \$10,114,607.58, with a clear declaration on the Invoice that "THE RATES BELOW ARE VALID FOR BUILDING PERMITS ISSUED BY JAN 31, 2021." Kaneff relied on that Invoice, and took the steps necessary to ensure that a building permit was issued prior to January 31, 2021.

However, when a building permit was issued for the Development on January 29, 2021, Kaneff was required to pay a higher Regional development charge in the amount of \$11,932,628.75 – an increase of \$1,818,021.17 over the amount set out on the Invoice.

The Invoice was so explicit that the rates would apply if a building permit was issued by January 31, 2021, it amounted to a commitment or promise to Kaneff that those rates would indeed be applied. There is absolutely no suggestion on the Invoice that the rates could potentially be increased. Kaneff was entitled to rely on the unequivocal terms of the Invoice, and it governed its actions toward obtaining a building permit accordingly. It would be entirely unfair and inequitable to Kaneff if the Region could now decide not to honour the rates set out on the Invoice.

In addition, we note that while we do not doubt that Regional staff have been doing their utmost to process matters as quickly as possible during these challenging times, Kaneff was significantly delayed in obtaining its building permit as a result of delays in obtaining a servicing permit from the Region. Kaneff should not be



burdened with the higher development charge because the Region was not able to process the approval of its servicing permit in a timely way.

Accordingly, Kaneff submits that the Regional development charge required to be paid for the Development was incorrectly determined. Kaneff respectfully requests that Council rectify the incorrect determination of the development charge required to be paid, and order the refund of the \$1,818,021.17 overpayment that Kaneff was required to make.

Kaneff's Actions to Obtain All Required Permits

The Development is comprised of a 2-tower, 406-unit residential condominium project called Keystone by Kaneff. The Property is the remaining parcel of a development by Kaneff, called Compass Creek, which was completed in 2001.

An application for site plan approval was submitted by Kaneff to the City of Mississauga (the "City") in 2017. Kaneff worked diligently with the City to satisfy its site plan approval requirements, and a Site Plan Approval Notice was issued by the City on July 30, 2020.

In the meantime, Kaneff had also submitted an application for the issuance of a building permit for the Development with the City on October 4, 2018. By the time Kaneff obtained site plan approval, essentially all of the requirements for the issuance of a building permit had also been satisfied, except that Kaneff required a site servicing permit from the Region.

Kaneff submitted the required site servicing plans to the Region with its building permit application. The site servicing plans submitted were generally acceptable to the Region, but to obtain the site servicing permit, easements were required to be registered in favour of the Region, which required the registration of a reference plan of survey ("R-Plan") to show the location of the easements. The Region provided Kaneff with its R-Plan requirements on June 19, 2019, and Kaneff provided its first draft R-Plan for the Region's review on August 2, 2019. The Region ultimately provided comments on the draft R-Plan on November 6, 2019 that Kaneff was unable to satisfy for the reasons noted below.

Having obtained Site Plan Approval, in August 2020 Kaneff attempted again to resolve Region's site servicing permit requirements, and engaged the Region again regarding the draft R-Plan. The main issues of concern related to requests by the Region that easements for storm sewers that might potentially be required by the City be shown on the R-Plan, as well as easements for the possible relocation of a sanitary sewer that services a neighbouring landowner. Neither of these matters are requirements of the Development. As the City had not requested the storm sewer easements, and in any event they were not Regional requirements, and there were no arrangements in place for the relocation of the private sanitary sewer, these were not matters that should be addressed by the Regional site servicing plan for the Development and should not be shown on the related R-



Plan. However, until the meeting on January 5, 2021 noted below, the Region was still insisting these items had to be shown on the R-Plan.

Kaneff submitted another revised R-Plan to the Region on December 2, 2020. At this critical time, Region staff took over a month to respond – not providing comments until January 4, 2021. Finally, following a meeting on January 5, 2021 that was requested by Kaneff after the staff comments were received the day before, Regional staff agreed that the R-Plan could be finalized without showing the City storm sewer and relocated private sanitary easements, as they were not matters related to the Regional servicing permit for the Development. The revised R-Plan was provided to the Region by Kaneff on January 6, 2021, it was approved by the Region on January 7, 2021, and it was registered on January 13, 2021.

The required easements were then not registered by the Region until January 22, 2021. In the meantime, the final site servicing plan could not be finalized until after Registration of the R-Plan and easements, as the Region requires the details of the registered easements to be identified on the plan. The final site servicing plan was approved by the Region on January 26, 2021, and on the same date Kaneff paid its site servicing permit fees. All of this had to be done before the City would issue a building permit.

While Kaneff has no doubt that Regional staff were originally sincere in their belief that the issues of the potential City storm sewer easement and private sanitary sewer easement should be addressed, they ultimately accepted that their requests that these be dealt with through the site servicing permit were made in error. However, Regional staff's error in that regard resulted in Kaneff being unable to obtain its Regional servicing permit, and ultimately its building permit, for several months.

Development Charge Invoice and Payment

In the meantime, having obtained final Site Plan Approval on July 30, 2020, Kaneff sought to finalize arrangements with the City for the issuance of its building permit. As the City's Building Department had signed off on the building permit drawings, the City issued an Invoice for Development Charges and Cash-in-Lieu of Parkland Purposes, dated October 16, 2020. Pursuant to section 29 of the Development Charges Act, 1997, lower-tier municipalities like the City have the statutory authority and responsibility to collect development charges imposed by their upper-tier municipality. The City acts as the Region's agent for the collection of the Region's development charge. Accordingly, the Invoice included the Regional development charges payable in the following amounts:

DEVELOPMENT CHARGES	G.F.A./UNIT	RATE	AMOUNT
Region of Peel – Apartment	119 unit	\$32,752.38	\$3,897,533.22
Region of Peel – Small Apartment	287 unit	\$21,662.23	6,217,074.36
			\$10,114,607.58



The Invoice contains the following statement in block letters:

"THE RATES BELOW ARE VALID FOR BUILDING PERMITS ISSUED BY JAN 31, 2021"

There are no caveats or qualifiers on the Invoice pertaining to the above statement. It is unequivocal that the rates on the Invoice, including the amount of \$10,114,607.58 for the Regional development charge, are valid for building permits issued by January 31, 2021. In its ongoing dealings with the City and Region thereafter, and in respect of its internal finances, Kaneff relied on that amount. A copy of the invoice is enclosed as Appendix "A".

Having finally resolved the issue of the site servicing permit with the Region on January 5, 2021, Kaneff reached out to City staff to confirm the process for electronic payment of the Invoice. To Kaneff's absolute surprise, the City Building Services staff responded with an email that stated:

"...please note on December 10, 2020 the Region of Peel passed a new development charge by-law that included an increase to their current rates. The effective date of this new by-law and rates is January 22, 2021. Any permits not issued prior to January 22, 2021 will be subject to the increased rates and a top up may be required."

We note that the City had made no attempt to advise Kaneff of the change in Regional development charges, until Kaneff initiated the process to arrange payment.

By the time Kaneff received notice from the City on January 5 that the Regional development charge was increasing, it had less than two weeks to finalize the registrations of the required easements for the issuance of a site servicing permit and building permit, in order to make the January 21, 2021 deadline for the issuance of a building permit before the increased Regional development charge rates took effect. In the midst of the pandemic, Kaneff could not change course and obtain its building permit by that date.

Ultimately, the City issued a new invoice on January 26, 2021, with the higher amount for Regional development charges in the amount of \$11,932,628.75. Kaneff had no choice at that point but to pay the higher amount, and obtained its building permit on January 29, 2021.

Conclusion

Kaneff has always had an excellent working relationship with the Region and the City. That relationship is extremely important to us.

While we wish we were not in this position, we sincerely relied on the Invoice issued to us that very clearly stated that the development charge rates it set out would apply if we obtained a building permit before January 31,



2021. Kaneff relied on that information in all of the actions it took leading up to the issuance of the building permit for the Development, which we did in fact obtain before the January 31, 2021 date.

This is not an instance where Kaneff is simply asking the Region to waive or provide a rebate of development charges, as we were entitled to rely on the clear representation made by the City, on behalf of the Region, that the development rates in effect on October 16, 2021 would be applicable until January 31, 2021. We note that section 26 of the Act allows a municipality to agree that a development charge may be paid early or late, and to establish which rates will be applied. The Invoice also amounted to an agreement with Kaneff that it was entitled to pay its development charge at the rates in effect on October 16, 2020, provided a building permit was issued and the charge paid before January 31, 2021.

Accordingly, we respectfully request that the Regional Council honour the Invoice on which Kaneff relied, and refund the \$1.8 million overpayment we were required to pay as a result.

We also hope that the City and Region will review their processes regarding site servicing permits and collecting development charges, as we all collectively work together through this difficult time toward economic recovery.

Yours truly,

KANEFF PROPERTIES LIMITED

A handwritten signature in black ink, appearing to read 'Kristina Kaneff', written over a horizontal line.

Kristina Kaneff, B.A., M.Sc (Oxon.), J.D.
Vice President and General Counsel

Encl.

cc: Dimitrina Kaneff, President, Kaneff Group
cc: Anna-Maria Kaneff, Executive Vice President, Kaneff Group



APPENDIX "A"

Development Charges Cash-in-lieu for Park Purposes

In accordance with Development Charges By-law 0096-2019

Planning and Building Department
Building Division
300 City Centre Drive, 3rd floor
Mississauga, ON L5B 3C1
Tel: 905-896-5511
www.mississauga.ca



October 16, 2020

INVOICE

Applicant Information

Name KANEFF PROPERTIES LIMITED
Fax/Email

Project Information

File BP 3NEW 18-3661
Address 206 BURNHAMTHORPE RD E
Legal Description: PT BLK D & BX R.P. 957 & PT LT 14, CON 1 NDS, PART PT 14, PTS 15-17, 43R23935
Project Description: (2) NEW APARTMENT BUILDINGS - 20 & 23 STOREYS (562 UNIT'S) WITH (3) STOREY UNDERGROUND PARKING GARAGE
Type: Residential New

THE RATES BELOW ARE VALID FOR BUILDING PERMITS ISSUED BY JAN 31, 2021

For an associated rezoning or site plan application submitted on or after January 1, 2020, the rates below will be valid for 2 years from the approval date of the later application.

DEVELOPMENT CHARGES	G.F.A. / UNIT	RATE	AMOUNT
Region Of Peel			
Region Of Peel - Apartment	119 unit	\$32,752.38	\$3,897,533.22
Region Of Peel - Small Units	287 unit	\$21,662.28	\$6,217,074.36
			<u>\$10,114,607.58</u>
Go Transit			
Go Transit - Small Units	287 unit	\$215.19	\$61,759.53
Go Transit - Apartment	119 unit	\$415.25	\$49,414.75
			<u>\$111,174.28</u>
City Of Mississauga Storm Management			
City Storm Water Mgmt Paid Under BP 97-6727	0 ha	\$15,143.00	\$0.00
			<u>\$0.00</u>
City Of Mississauga			
City - Other Services - Apartment	147 unit	\$27,997.00	\$4,115,559.00
City - Other Services - Small Units	259 unit	\$15,254.00	\$3,950,786.00
			<u>\$8,066,345.00</u>
Peel District School Board			
Pdsb - Apartment	406 unit	\$3,476.00	\$1,411,256.00
			<u>\$1,411,256.00</u>
Dufferin Peel Catholic School Board			
Dpcsb - Apartment	406 unit	\$1,096.00	\$444,976.00
			<u>\$444,976.00</u>
TOTAL:			\$20,148,358.86
CASH IN LIEU FOR PARKS	G.F.A. / UNIT	RATE	AMOUNT
City Of Mississauga Cash In Lieu For Parks			
City - Cash In Lieu For Parks - High Density	406 unit	\$10,400.00	\$4,222,400.00
			<u>\$4,222,400.00</u>
TOTAL:			\$4,222,400.00

The above TOTAL PAYABLE amount must be paid prior to the issuance of the building permit. Please make cheque payable to the Treasurer, City of Mississauga and submit payment to Business and Customer Services, Building Division, Planning and Building Department, 3rd Floor, City of Mississauga, 300 City Centre Drive, Mississauga, ON, L5B 3C1. The cheque does not need to be certified. The City does not accept payment by credit card for development charges or cash-in-lieu of parkland dedication.

For more information visit: www.mississauga.ca/portal/residents/developmentcharges

For more information contact:

Melissa Bruno
P&B/Building & Business Services
(905) 615-3200 x5515
melissa.bruno@mississauga.ca



Development Charges Cash-in-lieu for Park Purposes

In accordance with Development Charges By-law 0096-2019

Planning and Building Department
Building Division
300 City Centre Drive, 3rd floor
Mississauga, ON L5B 3C1
Tel: 905-896-5511
www.mississauga.ca



October 16, 2020

INVOICE

TOTAL PAYABLE:	\$24,370,758.86
TOTAL RECEIVED:	\$0.00
OUTSTANDING:	\$24,370,758.86

Approved By: A.Andreana 2020-10-15

Comments:

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For more information visit: www.mississauga.ca/portal/residents/developmentcharges

For more information contact:
Melissa Bruno
P&B/Building & Business Services
(905) 615-3200 x5515
melissa.bruno@mississauga.ca