
REPORT TITLE: **Complaint Pursuant to Section 20 of the *Development Charges Act, 1997* – Kaneff Properties Limited**

FROM: Gary Kent, Chief Financial Officer and Commissioner of Corporate Services
Kealy Dedman, Commissioner of Public Works
Patrick O'Connor, Regional Solicitor

RECOMMENDATION

That, upon reviewing the evidence and submissions of the complainant, the section 20 *Development Charges Act, 1997* complaint of Kaneff Properties Limited and Kaneff Homes Compass Creek Inc. be dismissed, as no error was made in the application of the Region of Peel's Development Charges By-law, and the amount of applicable development charges was correctly determined in accordance with the *Development Charges Act, 1997* as well as the Region's Development Charges By-law.

REPORT HIGHLIGHTS

- The City of Mississauga (City) collected applicable development charges (DCs) and other fees including the Region of Peel (Region) portion of DCs on January 27, 2021 for the proposed development of the two residential buildings located at 202-206 Burnhamthorpe Road East, Mississauga.
- The Regional Clerk received a letter from Kaneff Property Limited ("Kaneff") on behalf of both Kaneff and Kaneff Homes Compass Creek Inc., the latter being the legal owner of the subject property being developed. The letter has been submitted as a formal complaint under Section 20 of the *Development Charges Act, 1997* (the "DC Act").
- Kaneff submits that the DCs for this development project were incorrectly determined contending that Kaneff relied on an invoice issued by the City dated October 16, 2020 and that there was a delay in the Region's Development Services review process.
- The initial invoice dated October 16, 2020 was issued by the City based on the DC rates applicable at the time. It correctly stated, at that time, that those rates would be valid for building permits issued by January 31, 2021 which represented the indexing date for both City and Regional charges.
- On December 10, 2020, Regional Council enacted By-law 77-2020, being the Region's 2020 Development Charges By-law, to take effect on January 22, 2021, with new rates. Subsequently on January 5, 2021 the City provided an email communication to Kaneff forewarning Kaneff of the then forthcoming January 22, 2021 DC rate increase.
- A final invoice dated January 26, 2021 based on the increased DC rate was issued to Kaneff just prior to the issuance of the building permit.
- Kaneff obtained its building permit on January 29, 2021 and was required to pay DCs at the increased DC rate in order to do so.
- In addition to the City's direct communication to Kaneff on January 5, 2021 the Region had kept and continued to keep the public informed of the impending 2020 Development Charge By-law update and the rate changes enacted under the by-law through various

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communication channels and community/industry engagement forums, as well as all required statutory public notices and meetings.

- Upon 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 than had been originally proposed.
 - Regional staff reviewed Development Services' turnaround timelines for this application, and it was found that there were no irregularities, departures from policies and process or undue delays.
 - The development charges were calculated in accordance with the Region's development charge by-law and the legislation.
 - Section 20 of the *DC Act* limits the grounds for development charges complaints to situations where an error in the calculation of the charge has occurred; this complaint does not fall within the permitted grounds under the legislation and therefore should be dismissed.
 - Should Kaneff succeed in its complaint, the applicability of any new regional by-law enacted in accordance with all statutory requirements may be put into question on a case by case basis and could practically act to limit Regional Council's authority and discretion.
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DISCUSSION

1. Background

Kaneff is in the process of developing the property known as 202-206 Burnhamthorpe Road East, City of Mississauga. The City collected the applicable DCs and other fees including the regional portion of DCs 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 sent an email to the Regional Clerk's Office on February 12, 2021 requesting a partial refund of the Regional DCs, on the basis that there was some confusion with the invoice received as well as a delay in the site servicing connection review process. Staff reviewed the request and brought forward a For Information report that provided Regional Council with information in response to the request on April 8, 2021.

On April 26, 2021, the Regional Clerk received a letter from Kaneff which submitted a formal complaint under Section 20 of the *DC Act*.

2. Analysis

a) Issues Raised by Kaneff in the Section 20 Complaint

- The building permit was issued on January 29, 2021. Kaneff was required to pay the Regional development charges in the amount of \$11,932,628.75 at the prevailing DC rates which had come into effect on January 22, 2021 following the enactment on December 10, 2020 of the most recent Regional Development Charge By-law 77-2020 (the "New DC By-law").
- Kaneff's letter submits that Kaneff experienced delay in obtaining clearance for a servicing permit from the Region which in turn resulted in the delay in obtaining the

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building permit issuance for the development, and subsequently higher applicable DCs payable.

- The letter submits that the DCs for the project were incorrectly determined citing that the DC rate applicable should have been \$10,114,607.58 under the former Regional DC By-law 46-2015 (the “Old DC By-law”) which Kaneff states would have applied had there be no delay in the development approval.
- The letter further submits that Kaneff should be entitled to rely solely on the invoice dated October 16, 2020 issued by the City of Mississauga as the collection agent for the Regional DCs which stipulated for a Regional DC payable amount of \$10,114,607.58 which would have applied had a building permit been issued at that time.

b) Staff Findings

i) The Invoice Issuance and Related Communication

In October 2018, Kaneff submitted a building permit application to the City for the subject development of two apartment buildings located at 202-206 Burnhamthorpe Road East.

On October 16, 2020, an initial invoice of Development Charges and Cash-In-Lieu for Park Purposes was issued by City staff to Kaneff for the amounts that would have been payable had a building permit been issued at that time. The invoice includes the Regional portion of development charges payable which was calculated in accordance with the DC rates in effect at the time. The invoice stated that the variety of rates which it set out, including rates for City, School Board, GO Transit and Regional DCs were valid for building permits issued by January 31, 2021. The January 31st date represented the last day before which the existing rates would have been indexed. At the time of the invoice, Regional Council had not yet enacted the New DC By-law, and the new rates had not yet been established. At the time of its issuance, the Mississauga invoice was accurate.

In September 2020 Kaneff informed the Region’s staff in Development Services that Kaneff intended to relocate private sanitary sewer infrastructure and an easement traversing the proposed development lands. Staff immediately communicated to Kaneff that Kaneff’s proposed change would have a direct impact on the timelines for the registration of the access and sanitary sewer easements and of the draft reference plan. This plan had been cleared by the Region in January 2020 but would have to be revised as a result of Kaneff’s initiative to relocate the private sanitary sewer infrastructure and easement since the technical design proposed by Kaneff for the servicing application would change. Registration of the reference plan and easements were required prior to building permit issuance. Development charges are calculated and payable upon building permit issuance at the rate applicable on that date. On January 4, 2021 Kaneff contacted regional staff to request for a meeting (which was then scheduled for January 5, 2021) to discuss their plan to revert back to the original servicing plan – on the basis that the development charges would be increasing substantially at the end of January and they wished to advance their approvals in order to avoid the increase.

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City staff advised Kaneff in an email dated January 5, 2021 that any building permit issued after January 22, 2021 would be subject to the increased Regional development charge in accordance with the new Development Charge By-law (77-2020), which had been passed by the Region on December 10, 2020.

On January 22, 2021, the Region's Development Charge By-law 77-2020 came into effect imposing increased Regional development charge rates. The January 22, 2021 commencement date was legally effective despite the reference in the October 16, 2020 Mississauga invoice to a January 31, 2021 date.

On January 26, 2021, the final invoice was issued by the City for payment of Regional DCs at the rate as increased effective January 22, 2021 to Kaneff in conjunction with the building permit issuance. Kaneff contacted Regional staff on the same day requesting waiving of the increase in DCs. Regional staff from Development Services, Finance and Legal Departments reviewed the file and advised Kaneff that there was no authority to waive development charges, or any portion of the charge.

ii) Region's DC By-law 77-2020 Public Consultation and Community/Industry Engagement

The Region has been keeping the public informed of the 2020 Development Charge 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 media 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, DC By-law consultation and stakeholder engagement had 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 their respective terms of references.

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

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

The Region's previous Development Charges 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 *DC Act* as enacted by the Schedule 1 of the *Coronavirus (COVID-19) Support and Protection Act, 2020*.
- The draft Development Charges 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 New 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.

iv) Development Servicing Review Requirement for Building Permit Issuance

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 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 the 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.

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 that administrative requirements including the registration of the required easement and final fee payments were to be undertaken prior to servicing connection approval. The outstanding administrative requirements were not satisfied by the applicant at that time and the applicant was unable to receive its servicing connection clearance, which is a condition for building permit approval. In effect, Kaneff had in January 2020 Regional approval in principle to obtain servicing connection clearance including acceptable servicing drawings and clear direction as to the requirements for finalizing such approval.

Prior to addressing the outstanding administrative requirements to resolve the servicing connection clearance matter, in September 2020 Kaneff informed the Region that it was revising its proposal and would be relocating the existing private servicing easement. Staff immediately communicated to Kaneff that its proposed change would have a direct impact on the timelines for Regional clearance.

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Kaneff's initiation of a change necessitated a further review of municipal easement documentation. On January 4th, 2021 Kaneff requested a meeting with regional staff to discuss changes to their servicing plan for the purposes of advancing approvals and avoid development charges increases which were coming into effect at the end of the month. On January 5, 2021 upon the recommendation of Regional staff, Kaneff decided to pursue the relocation of the private sanitary easement at another time. Regional staff received and cleared an acceptable draft reference plan on January 7, 2021. Once Kaneff provided its approval of the Region's easement schedule, the required municipal easements were registered the same day on January 22, 2021. Subsequently the applicant submitted the necessary fee payment and administrative materials on January 27, 2021. The Regional approval required to enable the issuance of a building permit (hence the payment of development charges) was issued directly to the City the following day.

Kaneff's allegations of Regional delay in providing the servicing connection clearance necessary to enable building permit issuance (and hence calculation and payment of Regional DCs) can be summarized as follows:

1. That it took from December 2, 2020 to January 4, 2021 for Regional staff to comment on Kaneff's submission revised by Kaneff to reflect Kaneff's decision to relocate the private sanitary easement.
2. That it took from January 13, 2021 to January 22, 2021 for the Region to register required easement once the approved reference plan locating those easements had been deposited.

Regional staff take issue with Kaneff's assertions of delay.

- As to the December 2, 2020 to January 4, 2021 period: Regional service standards provide for a three-week turnaround time for dealing with such a matter, which in this case encompassed the Christmas and New Years periods.
- As to the January 13, 2021 to January 22, 2021 period: virtually the whole of this time was taken up in responding to registration related issues raised by Kaneff personnel to their satisfaction, upon the attainment of which registration proceeded immediately.

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 September 2020 decision to relocate the private servicing easement and the associated time delay incurred awaiting Kaneff's resubmission of materials revised to reflect its relocation decision and ultimately of Kaneff's decision on January 5, 2021 to abandon, at least temporarily, its relocation decision.

v) Legislation Requirements

Section 20 of the *DC Act* provides that, a person required to pay a Development Charge may complain to the municipal Council based solely on the following reasons:

- The amount of the Development Charge was incorrectly determined.

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- 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.

In accordance with the *DC Act*, after hearing the evidence and submissions of the complaint, Regional Council may dismiss the complaint or rectify any incorrect determination or errors that was the subject of the complaint.

The *DC Act* provides that a complaint may appeal the Council's decision to the Local Planning Appeal Tribunal (LPAT) within 40 days after a decision is made by Council.

The statement in the City's invoice that various rates set out in the invoice, including Regional DC rates, were valid for building permits issued by January 31, 2021 could not have the effect of preventing the new rates enacted in the Region's new DC by-law with effect from January 22, 2021 from coming into force on January 22, 2021. It is the correctness of the application of the rates in force on the date of the building permit issuance which Regional Council is called upon to decide under the section 20 *Development Charges Act* complaint process that Council is now deciding.

Kaneff's allegations cannot lead to a proper finding of inapplicability of the Region's New DC By-law or of error in its application to Kaneff. For that reason, it is appropriate that Regional Council dismiss the section 20 complaint.

Rather, Kaneff's allegations amount to an assertion that a representation by the City in the invoice gives rise to damages to Kaneff resulting from the proper application of the Region's New DC By-law. Such a case is properly pursued in a legal action which only a court of law has jurisdiction to decide and not by means of the section 20 complaint now before Council.

It is beyond the scope of this report to advise on the merits or demerits of such a lawsuit, beyond advising that should such a lawsuit be commenced Regional staff would recommend that it be vigorously defended.

Additionally, it should be recognized that if Kaneff were to succeed in its complaint, the applicability of any new regional by-law enacted in accordance with all statutory requirements may be put into question on a case by case basis, and could practically act to limit Regional Council's authority and discretion going forward.

FINANCIAL AND LEGAL IMPLICATIONS

The Section 20 letter from Kaneff is requesting 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:

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Table 1- DC Amount Calculation

	Amount
Estimated DC Payable in accordance with the DC rates in effect under the Old DC By-law (By-law 46-2015)	\$10,114,607.58
DC Paid per the final invoice dated January 26, 2021 in accordance with the new DC rates at the time when the building permit was issued (per the New DC By-law 77-2020)	\$11,932,628.75
Difference	\$1,818,021.17

A complaint under Section 20 of the *DC Act* does not confer on Council the authority to waive or reduce DCs correctly determined in accordance with the *DC Act* and the Regional DC By-law. Council's authority under Section 20 of the *DC Act* is limited to correcting errors; this complaint does not fall within the permitted grounds under the legislation. Staff have reviewed Kaneff's complaint and concludes that the development charges were correctly calculated, and the application of the Region's DC By-law was appropriate. Staff recommends that the complaint be dismissed as the complaint does not satisfy any of the grounds permitted under Section 20 of the *DC Act*. Table 2 below summarizes key chronology of pertinent events, details of which are provided in earlier sections of this report.

Key Events	Dates
Kaneff submitted a building permit application	October 2018
The Region provided a clearance of the draft reference plan	January 2020
Kaneff informed the Regional staff of its intent to relocate existing private servicing and easement; Regional staff immediately communicated to Kaneff that its proposed change would have a direct impact on the timeline for Regional clearance	September 2020
City Issued the original invoice for the amount that would have been payable under the Region's Old DC By-law	October 16, 2020
Regional comments on the Kaneff initiated relocation resubmission identify continuing deficiencies-Kaneff chooses to proceed without the relocation initiative at this time	December 2, 2020
Regional Council passed the New DC By-law	December 2020
Kaneff resubmission seeking service connection clearance reflecting it new relocation initiative-Regional advice that this would extend timelines for obtaining service connection clearance	January 4, 2021
The City of Mississauga staff informed Kaneff of the DC rates increase	January 5, 2021
The Region's New DC By-law 77-2020 came into force	January 22, 2021
Kaneff provided its approval of the Region's easement schedule	January 22, 2021
The required easements were registered	January 22, 2021
The City of Mississauga staff issued the final DC invoice based on the Region's New DC By-law	January 26, 2021
Kaneff reached out to Regional staff requesting DC relief	January 26, 2021
The Regional approval to enable the issuance of a building permit	January 27, 2021
Kaneff paid the DCs per the final invoice	January 27, 2021

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The Building Permit was issued	January 29, 2021
Kaneff submitted the Section 20 DC Complaint to the Region	April 26, 2021

In the absence of grounds under Section 20 of the *DC Act*, should Council nevertheless wish to direct staff to refund any portion of the DCs paid, such refund would need to be funded from a non-DC funding source. Furthermore, Regional DC rates are updated every time a new DC By-law is reviewed and are subject to semi-annual adjustment in accordance with prescribed indexing terms; allowing the complaint and issuing a refund would create a precedent that would impair the Region's ability to consistently apply the Region's Development Charges By-law for future developments in the Region.

CONCLUSION

Staff conclude that the development charges were correctly calculated, and the application of the Region's DC By-law was appropriate. Staff recommends that the complaint be dismissed as the complaint does not satisfy any of the grounds for relief permitted under Section 20 of the *DC Act*.

APPENDICES

Appendix I – A Copy of the Section 20 Complaint Letter from Kaneff Properties Limited
Appendix II – A Copy of Invoices and Related Correspondences

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.

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