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May 20, 2016

Reply To: Joel D. Farber
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Our File No. 07/4598

VIA EMAIL

Regional Clerk
York Region
17250 Yonge Street, 1st Floor, Room 12000
Newmarket, Ontario
L3Y 6Z1

Dear Sir:

Re: DEVELOPMENT CHARGE COMPLAINT

**GTA MAPLE – 230 SWEETRIVER BOULEVARD, VAUGHAN – VAUGHAN SITE
PLAN APPLICATION D.A. 15-035 (the “Development”)**

We are the solicitors for 1938388 Ontario Limited, developer of the lands municipally known as 230 Sweetriver Boulevard, Vaughan.

Pursuant to Section 20 of the *Development Charges Act, 1997* and Section 257.85 of the *Education Act*, our client hereby complains to the Council of York Region that the amount of the Regional and Education development charges were incorrectly determined and that there was an error in the application of the by-laws in respect of the Development.

In particular this complaint alleges that our client was incorrectly charged DCs for parking areas in the basement of the building. The amount of the refund sought is as follows:

REGIONAL DC OVERCHARGE	\$735,536.63
EDUCATIONAL DC OVERCHARGE	\$14,106.36
TOTAL OVERCHARGE	\$749,642.99

THE DEVELOPMENT and NATURE OF THE COMPLAINT

The Development is proposed to be a new Grand Touring Automobile dealership in Maple on Sweetriver Boulevard. The new dealership will carry Lamborghini and Aston Martin

automobiles, and will include a 9 bay service centre for servicing a wide range of luxury automobiles.

The developer is an affiliate of the Auto World Imports Network ("AWIN") (www.awin.ca). AWIN has 13 new and used car dealerships across the GTA, including a number of dealerships in York Region, and maintains its corporate head office in the City of Vaughan.

The subject lands are the last remaining vacant parcel in the auto complex that has developed at the southwest quadrant of Jane Street and Canada's Wonderland Drive. Development of the site is constrained as approximately 18% (.3 acres/1.63 acres) of the site area is an undevelopable buffer area for the naturalized drainage block to the south. TRCA required a 9m setback of development along the southerly lot line as shown on the Site Plan, a copy of which is attached. With that constraint, it was not possible to provide all the required parking onsite except by way of a parking garage within the building (see Basement Floor Plan attached). While it is acknowledged that the Development could have proceeded with a smaller building or a larger parcel of land, in either case those options would have resulted in a much more inefficient use of land from what is proposed.

The nature of the complaint is that Regional DCs have been levied for the below grade parking areas, which parking areas are required to comply with Vaughan zoning requirements. As set out below, the parking areas within the basement of the Development should be excluded from gross floor area for the purposes of calculating Regional DCs as the basement parking area will not be used for automobile inventory storage. For Educational DCs, all below grade space, irrespective of the use thereof, is excluded from gross floor area. Our analysis is as follows:

IMPROPER APPLICATION OF REGIONAL DEVELOPMENT CHARGE BY-LAW

The Region's development charges by-law 2012-36 (the "Regional DC By-law") defines *gross floor area* ("GFA") as follows:

"gross floor area" means, in the case of a non-residential building or structure or the non-residential portion of a mixed-use building or structure, the aggregate of the areas of each floor, whether above or below grade, measured between the exterior faces of the exterior walls of the building or structure or from the centre line of a common wall separating a non-residential and a residential use, excluding, in the case of a building or structure containing an atrium, the sum of the areas of the atrium at the level of each floor surrounding the atrium above the floor level of the atrium, and excluding, in the case of a building containing parking spaces, the sum of the areas of each floor used, or designed or intended for use for the parking of motor vehicles unless the building or structure is a parking structure, and, for the purposes of this definition, notwithstanding any other section of this by-law, the non-residential portion of a mixed-use building is deemed to include one-half of any area common to the residential and non-residential portions of such mixed-use building or structure. Notwithstanding any other section of this by-law, gross floor area shall not include the surface area of

swimming pools or the playing surfaces of indoor sport fields including hockey arenas, and basketball courts; (underline added)

According to this definition, in the case of a building containing parking spaces, the area of each floor used, or designed or intended for use for the parking of motor vehicles is excluded from GFA unless the building (or any part thereof) is a *parking structure*.

A *parking structure* is defined as follows:

"parking structure" means a building or structure principally used for the parking of motor vehicles and shall include a building or structure, or any part thereof, where motor vehicles are stored prior to being sold or rented to the general public;

There are then two situations where parking areas within a building are subject to DCs as follows:

1. A building or structure principally used for the parking of motor vehicles; and
2. A building or structure, or any part thereof, where motor vehicles are stored prior to being sold or rented to the general public.

The Development is a car dealership, not a building or structure principally used for the parking of motor vehicles. Therefore #1 is not applicable.

It is acknowledged that #2 could apply, but only in respect of that part of the Development where motor vehicles are stored prior to being sold or rented to the general public.

The subject building contains parking spaces in the basement, including at least 26 of which are required for zoning by-law compliance requirements. In fact, approximately 40% of the total required parking of 63 spaces are provided in the basement of the building. The entirety of the basement floor area of 1,748.53 m² is designed and intended to be used for the parking of motor vehicles and will be so used. These parking areas are designed for and capable of being used for service customer vehicle storage and staging (either awaiting service or pick up), as well as employee and guest parking. Only those parking areas specifically devoted to automobile inventory storage are to be included as GFA and subject to DCs.

GTA Maple will have very little, if any, in the way of automobile inventory on hand given the nature of its business. Typically all of the inventory on hand will be on the showroom floor, which can accommodate 14 display vehicles. The basement parking area includes 14 tandem spaces which are not permitted to be included as required parking for zoning purposes but are nevertheless designed and intended to be used for parking of motor vehicles and thus exempt from DCs. Originally, it was intended that a handful of these tandem spaces could be used for automobile inventory storage as maybe required from time to time, but given the fact that DCs are payable on such areas, automobile inventory can be stored outside and use of the interior

parking areas will be for service staging and storage, as well as employee and guest vehicle parking.

All of the basement parking area is therefore to be excluded from GFA as it is a parking area which will not be used for the storage of automobile inventory. A refund is therefore due to our client in the amount of \$735,536.63 as the DC charges included all the basement area in GFA for the purposes of calculating DCs for the Development.

Without prejudice to the merits of our complaint, please be advised that our client would be willing entertain a resolution by which it would provide a small defined area of the basement parking area for auto inventory storage, provided that it was agreed that Regional DCs would only be levied against such defined areas. The most space conceivably required at this time for this purpose would be 6 of the tandem spaces, which would result in approximately 14% of the total basement area (based on 6 of the total basement parking area of 43 spaces and including a proportionate share of the drive aisles). Our client would be prepared to pay \$102,975 in DCs provided an agreement was obtainable on that basis to allow use of such defined area for automobile inventory storage.

EDUCATION DEVELOPMENT CHARGES

Under the Education Development Charges By-law 2014-02, gross floor area excludes all below grade space. Education Development Charges have therefore been improperly levied against the basement area in the amount of \$14,106.36, based on 1,748.53 m² of basement space at the rate of \$8.07 m². The EDC by-law defines *gross floor area* as follows:

"gross floor area" means the total floor area, measured between the outside of the exterior walls or between the outside of exterior walls and the centre line of party walls dividing the building from another building, of all floors above the average level of finished ground adjoining the building at its exterior walls.."

POLICY ISSUES

While this complaint is to be determined with reference to the plain and ordinary meaning of the DC by-laws, and the application of the by-laws to the facts, it is nonetheless important to note the policy implications of the matter. As noted above, our client was required to provide a parking garage in the building simply to comply with zoning requirements. The alternatives would have been to find a larger or less constrained site to accommodate more outside parking, or build a much smaller building on the site. Neither of those options would be consistent with provincial or Regional land use policies to make efficient use of land. Our client is effectively being penalized for undertaking an efficient form of development. That penalty is, however, based on an incorrect application of the DC by-laws.

Kindly schedule a hearing of this matter before Regional Council. We would of course welcome the opportunity to review the matter further with staff prior to the hearing.

Note a similar complaint has been made to the City of Vaughan, a copy of which is enclosed for your information.

Please advise if there are any questions or concerns.

Yours truly,

FOGLER, RUBINOFF LLP

"Joel D. Farber"

Joel D. Farber*

JDF/sz

Encls.

cc: client

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DA 15.035

DEVELOPMENT CHARGE PAYMENTS

TO: Finance Department
FROM: Building Standards Department

DATE: Oct 30/15

FOR BUILDING STANDARDS DEPARTMENT USE:

Applicant/Contact Person:			Phone No.:		
TYPE OF BUILDING			*DEMOLITION PERMITS (For Credits Only)		
<input type="checkbox"/> Single Family /Semi	<input type="checkbox"/> Apartments	<input type="checkbox"/> Other Multi-Family	<input checked="" type="checkbox"/> Non-Residential	<input type="checkbox"/> Type of building Demolished: Permit No. Date Issued:	
LEGAL DESCRIPTION					
Lot(s)	Blk.(s) 2	Plan(s) 3706	Unit(s)	Conc.(s)	19T(s)
Severance App. #			Date of Severance:		

RESIDENTIAL		NON-RESIDENTIAL	
TYPE OF BUILDING	NO. OF UNITS	GROSS FLOOR AREA	SQUARE METRES
<input type="checkbox"/> Single Family/Semi <input type="checkbox"/> APARTMENTS: <input type="checkbox"/> Small Apt. <input type="checkbox"/> Large Apt. <input type="checkbox"/> Other Multi Family		Gross Floor Area Proposed by the Building Permit Application	3831.64
Less: Demolition Credits		Less: Demolition Credits	
Net Number of Units		Net Gross Floor Area	3831.64

For Finance Department Use:

RESIDENTIAL LEVIES					
Type of Levy	No. of Units	Unit Levy	Total Due	Payment Date	Receipt No.
CITY OF VAUGHAN					
REGION OF YORK					
SCHOOL BOARDS					

NON-RESIDENTIAL LEVIES					
Type of Levy	G.F.A.	Cost / sq.m.	Total Due	Payment Date	Receipt No.
CITY OF VAUGHAN	3831.64	\$54.	\$ 206,908.56		
REGION OF YORK	3831.64	420.66	1,611,817.68		
SCHOOL BOARDS	3831.64	807	30,921.33		

SPECIAL AREA CHARGES					
Type of Levy	No. of H.A.	Levy / H.A.	Total Due	Payment Date	Receipt No.

OTHER					
City of Parkland			\$72,000-		
TOTAL			\$1,921,647.57		

FINANCE CLEARANCE

Date: Apr 25 / 2016 Name: RP

BUILDING PERMIT ISSUED

Date: _____ Name: _____

*Note - Demolition permit must be presented upon application.
WHITE & BLUE - "Finance", YELLOW - "Applicant", GREEN & PINK - "Building Standards"