

**Report to
Rapport au:**

**Planning Committee / Comité de l'urbanisme
July 12, 2016 / 12 juillet 2016**

**and Council / et au Conseil
August 24, 2016 / 24 août 2016**

**Submitted on June 14, 2016
Soumis le 14 juin 2016**

**Submitted by
Soumis par:**

John L. Moser,

**Acting Deputy City Manager / Directeur municipal adjoint par intérim,
Planning and Infrastructure / Urbanisme et Infrastructure**

Contact Person

Personne ressource:

**Tim Marc, Senior Legal Counsel, City Clerk and Solicitor Department / Conseiller
juridique principal, Bureau du greffier municipal et chef du contentieux
(613) 580-2424, 21444, Timothy.Marc@ottawa.ca**

Ward: KNOXDALE-MERIVALE (9)

File Number: ACS2016-PAI-PGM-0119

SUBJECT: Development Charge Complaint – 300 Greenbank Road

**OBJET: Plainte concernant les redevances d'aménagement – 300, chemin
Greenbank**

REPORT RECOMMENDATION

**That Planning Committee recommend that Council reduce the municipal
development charges in respect of 300 Greenbank Road by \$1,949.00 (from
\$33,054.03 to \$31,105.03) but otherwise dismiss the development charges
complaint under the *Development Charges Act*.**

RECOMMANDATION DU RAPPORT

Que le Comité de l'urbanisme recommande au Conseil de réduire les redevances d'aménagement liées au 300, chemin Greenbank de 1 949 \$ (pour passer de 33 054,03 \$ à 31 105,03 \$), mais de rejeter, d'autre part, la plainte concernant ces redevances en vertu de la *Loi sur l'aménagement du territoire*.

BACKGROUND

The *Development Charges Act*, section 20 provides that a complaint may be filed by an owner in respect of the development charges imposed in respect of a project on the basis that:

- (a) the amount of the development charge was incorrectly determined;
- (b) whether 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.

Basis of Complaint

The letter received from the complainant is attached as Document 1. The basis of the complaint is that the area of the drive-through within the development, 3,921 square feet, should not have been included within the area for which development charges were imposed. The development charges imposed in respect of this area are as follows:

Municipal Development Charges:	\$33.054.03
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The complainant states that the drive-through bay is utilized exclusively for parking and should not have been included in the area upon which development charges are imposed.

DISCUSSION

The definition of non-residential gross floor area in the City's development charge by-law, By-law 2014-229, with respect to the imposition of development charges is as follows:

gross floor area means

- (b) in the case of a non-residential use building or structure or in the case of a mixed-use building or structure in respect of the non-residential portion thereof, the total area of all building floors above or below grade measured between the outside surfaces of the exterior walls or between the outside surfaces of exterior walls and the centre line of party walls separating two uses; and
 - (i) includes the area of a mezzanine as defined in the Ontario Building Code; and
 - (ii) excludes those areas used exclusively for parking of vehicles unless the parking of vehicles is the primary use of the building or structure;

The complaint takes the view that the space in question comes within the exception set forth in (b)(ii) above and therefore should be excluded from the gross floor area against which the development charges are imposed.

It is the opinion of staff however that, subject to one modification described below, the space in question is an integral part of the operation of the facility.

In the typical retail or office building where space is provided for parking, such is incidental to the function of the space and is provided for the convenience of those who wish to arrive at the building by vehicle as opposed to other modes of transportation, i.e. walking or transit. In the instance of a storage facility such as at 300 Greenbank Road, the space in question is not used exclusively for parking of vehicles as is required for the (b)(ii) exemption. Rather it is part of the operation of the facility by which the items to be stored are brought to the premises and then moved from there to the individual storage facilities.

Building permits have been sought for several similar facilities over the years being:

323 Coventry Road

27 Auriga Drive

4338 Innes Road

2420 Bank Street

1830 Walkley Road

110 Didsbury Road

1554 Carling Avenue

In each of the above instances, except for 323 Coventry Road, development charges were imposed in respect of the area that is disputed in the current case and such was not challenged. In the case of 323 Coventry Road, it was an addition to an existing building and as the development charges were considered to be imposed for industrial purposes and the addition was less than 50 per cent, all of the gross floor area was exempt pursuant to the requirements of the regulation made under the *Development Charges Act*.

In review of the building permit file in preparation of this report, staff noted that the required parking place for persons with disabilities was located within the building and had been included within the gross floor area upon which municipal development charges had been imposed. As this is required parking then, pursuant to the provisions of the by-law cited above, such is not subject to development charges. This leads to a reduction of development charges in the amount of \$1,949.00 (231.2 sq ft @ \$8.43).

RURAL IMPLICATIONS

A similar facility in the rural area would be subject to the same interpretation as to Gross Floor Area as in the urban area.

CONSULTATION

The *Development Charges Act* requires that 14 days notice of this report coming before Committee be provided to the complainant. Such notice has been given.

COMMENTS BY THE WARD COUNCILLOR

Councillor Egli is aware of this report.

LEGAL IMPLICATIONS

Following Council's consideration of this complaint, notice of the decision will be sent to the Legal Counsel for the Complainant. The Complainant has the ability to appeal Council's decision to the Ontario Municipal Board.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with the recommendation in this report.

FINANCIAL IMPLICATIONS

The re-calculation of Development Charges reduces There are no direct financial implications associated with the recommendation. In the event that the development charges complaint is not dismissed and a reduction is approved,

The proposed \$1,949 reduction corrects the amount of DCs to be collected under the *Development Charges Act*. In the event that the development complaint is not dismissed and a reduction of the \$31,105.03 is approved, the reduction would be funded from the DC Exemption provision within the 2016 Operating Budget, in accordance with the DC policy.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

No term of Council priorities are impacted by this report.

SUPPORTING DOCUMENTATION

Document 1 Development Charges Complaint

DISPOSITION

The Office of the City Clerk and Solicitor will advise the Legal Counsel for the Complainant with Council's decision.

Document 1 - Development Charges complaint

GREENBANK STORAGE CORPORATION

July 23, 2015

City of Ottawa
110 Laurier Avenue West
Ottawa, ON
K1P 1J1

Dear Sirs:

Re: Development Charges – 300 Greenbank

We have today paid Educational Development Charges in the amount of \$134,505.50 in respect to the development of our Dymon Storage facility at 300 Greenbank (the "Property").

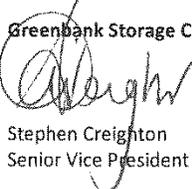
In addition, we entered into a Development Charges Deferral Agreement dated July 8, 2015 for the municipal portion of development charges for the Property in the amount of \$933,051.62.

This letter serves as our official protest in respect to the development charges assessed on the property for both educational and municipal purposes. It is our view that under By-law (2014-229), the area of the drive-through should not have been included in the calculation of the development charge amounts. Paragraph (b) (ii) of the definition of "Gross Floor Area", **excludes those areas used exclusively for parking of vehicles unless the parking of vehicles is the primary use of the building or structure.**

The drive-through bay for this Dymon Storage facility is used exclusively for the parking of vehicles and its area should not have been included by the City in the calculation of the development charges assessed on the property.

Yours very truly,

Greenbank Storage Corporation


Stephen Creighton
Senior Vice President