

11. **Development Charge Complaint – 1325 Johnston Road**

**Plainte relative aux redevances d'aménagement – 1325, chemin Johnston**

**Committee recommendation, as amended**

**That Council sustain the development charge complaint in respect of 1325 Johnston Road and direct that the municipal development charges paid be reimbursed.**

**Recommandation du Comité, telle que modifiée**

**Que le Conseil de ne pas rejette la plainte relative aux redevances d'aménagement municipales du 1325, chemin Johnston et de donner directive de rembourser les redevances payées.**

**Documentation/Documentation**

1. Acting Chief Building Official's report, Planning, Infrastructure and Economic Development Department, dated December 22, 2020 (ACS2021-PIE-BCS-0001)  
  
Rapport du Chef du service du bâtiment par intérim, Direction générale de la planification, de l'infrastructure et du développement économique, daté le 22 décembre 2021 (ACS2021-PIE-BCS-0001)
2. Extract of draft Minutes, Planning Committee, January 14, 2021  
  
Extrait de l'ébauche du procès-verbal du Comité de l'urbanisme, le 14 janvier 2021

**Report to  
Rapport au:**

**Planning Committee  
Comité de l'urbanisme  
14 January 2021 / 14 janvier 2021**

**and Council  
et au Conseil  
27 January 2021 / 27 janvier 2021**

**Submitted on 22 December 2020  
Soumis le 22 décembre 2020**

**Submitted by  
Soumis par:  
John Buck**

**Acting Chief Building Official / Chef du service du bâtiment  
Planning, Infrastructure and Economic Development Department / Direction  
générale de la planification, de l'infrastructure et du développement économique**

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**Ward: GLOUCESTER-SOUTHGATE  
(10)**

**File Number: ACS2021-PIE-BCS-0001**

**SUBJECT: Development Charge Complaint – 1325 Johnston Road**

**OBJET: Plainte relative aux redevances d'aménagement – 1325, chemin  
Johnston**

## **REPORT RECOMMENDATION**

**That Planning Committee recommend that Council authorize a development charge refund in the amount of \$8,919.88 but otherwise dismiss the development charge complaint in respect of 1325 Johnston Road.**

## RECOMMANDATION DU RAPPORT

**Que le Comité de l'urbanisme recommande au Conseil d'autoriser le remboursement des redevances d'aménagement liées au 1325, chemin Johnston, d'un montant de 8 919,88 \$, mais de rejeter, d'autre part, la plainte relative à ces redevances.**

## BACKGROUND

The *Development Charges Act*, Section 20 provides that a complaint may be filed by an owner in respect of the development charges imposed by a municipality 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 charges, 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 complaint is by the owner of 1325 Johnston Road. In respect of a building permit for an addition at this property, issued on July 29, 2020, the owner takes the position that the development in question should be characterized as Industrial. The position taken by City staff was that the development was classified as non-industrial. The municipal development charges paid under protest by the owner were \$117,144.32. In the event that the development is found to be Industrial, as further discussed below, no municipal development charges would be payable.

The Development Charge complaint by the solicitor for the owner, is attached as Document 1, to this report.

## DISCUSSION

The complaint letter makes reference to how the land use is classified for building code and zoning purposes. Each of the Building Code, the Zoning By-law and the Development Charges By-law have their own applicable definitions and in making a decision under each of them, it is the definition in the applicable Code or by-law that should be utilized.

The addition in question involves the expansion of an automobile collision repair centre. As set forth in the complaint, the addition is for the repair, restoration, refinishing and replacement of vehicle bodies and frames, windshields and window glass.

The relevant definitions from the Development Charges By-law, Bylaw 2019-156, are the following:

“industrial use” means lands, buildings or structures used or designed or intended for use for physical manufacturing or physical assembly by hand or machinery that leads to new or improved products; producing or processing of raw goods; warehousing or bulk storage of goods; distribution centre; research or development in connection with physical manufacturing or physical assembly by hand or machinery that leads to new or improved products; processing of raw goods and storage but does not include retail or offices unless it is attached to a building used for industrial use as defined above. Industrial use includes a cannabis production facility;

“non-industrial use” includes all land used for non-residential purposes other than for industrial use.

In effect, any non-residential use that is not an industrial use is considered a non-industrial use.

It is the understanding of staff that the use of the addition is that for the repair of automobiles, typically for the public at large with the vehicles being directed to the facility by the insurers. Repair is not found within the definition of industrial use above nor is it contained within the definition of an existing industrial building found within the regulations made under the *Development Charges Act*. Given this and the nature of those serviced by this use, staff have concluded that it is non-industrial in nature.

A review has been done by staff of building permits issued since amalgamation where the description of the permit includes a reference to automotive or repair garage. 46 building permits were identified, and in each case, a non-industrial development charge was applied.

#### Adjustment to Square Footage

In reviewing the file history for the preparation of this report, in particular the square footages at issue, there were several different figures for the square footage of the addition: 4306-building permit application, 4544 at building permit review, 3637 in the

complaint. Building Permit staff have determined that the size of the addition was 4198 square feet, rather than 4544 square feet which was the basis for the original amount of the municipal development charges imposed. As a result, independent of the issue of into which category this development should be characterized, the owner is entitled to a refund of \$8,919.88.

### **Addition of Less Than Fifty Per Cent to an Industrial Use**

The existing facility at 1325 Johnston Road, prior to the addition in question, was also a fleet repair and collision repair centre. In the event that the addition were considered an industrial use, in the opinion of staff it would follow that the existing facility is an industrial use. The *Development Charges Act*, section 4 provides the following in respect of industrial uses:

#### **Exemption for industrial development**

4 (1) If a development includes the enlargement of the gross floor area of an existing industrial building, the amount of the development charge that is payable in respect of the enlargement is determined in accordance with this section.

#### **Enlargement 50 per cent or less**

(2) If the gross floor area is enlarged by 50 per cent or less, the amount of the development charge in respect of the enlargement is zero.

In accordance with this provision, the City's Development Charge By-law states the following:

7. (1) Subject to Subsection (3), the following shall be exempt from development Charges

(k) The first enlargement of the floor area of an industrial building in existence on May 22, 2019, or the first enlargement of the floor area of an industrial building erected thereafter, to the extent that the existing floor area is enlarged by 50 percent or less;

The existing facility at 1325 Johnston Road was approximately 16,150 square feet in size, prior to the addition. The addition, at 4198 square feet, is less than 50 per cent of this amount. As a result, if the addition is characterized as an industrial use, it is the opinion of staff that no municipal development charges would be payable.

## **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

## **COMMENTS BY THE WARD COUNCILLOR**

The ward Councillor is aware of this application and supports the applicants challenge that a Collision Centre should be classified as an industrial use.”.

## **LEGAL IMPLICATIONS**

Following Council's consideration of this complaint, notice of the decision will be sent to the complainant. The complainant has the ability to appeal Council's decision to the Local Planning Appeal Tribunal.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

## **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications associated with the recommendations of this report.

## **FINANCIAL IMPLICATIONS**

The report recommendations will result in a Development Charge refund of \$8,919.88. In the event, the complaint is upheld, the Development Charge refund would be \$117,144.32.

## **ACCESSIBILITY IMPACTS**

There are no accessibility impacts associated with this report.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications associated with this report.

## **TERM OF COUNCIL PRIORITIES**

There are no Term of Council priorities impacted by this report.

**SUPPORTING DOCUMENTATION**

Document 1 Development Charges Complaint (distributed separately)

**DISPOSITION**

The Office of the City Clerk will advise the solicitor for the complainant of Council's decision.