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FILE NO: 46107-1009

June 30, 2020

BY EMAIL

His Worship Mayor Jim Watson and Council
110 Laurier Avenue West
Ottawa, ON K1P 1J1

Attn: Rick O'Connor, City Clerk & David White, City Solicitor

Dear Mayor Watson and Council Members:

**Re: Complaint pursuant to s. 20 of the *Development Charges Act, 1997, S.O. 1997, c. 27*
500 Preston Ltd.**

We are the lawyers for 500 Preston Ltd. ("500 Preston") the owner of the property municipally known as 500 Preston Street (the "Subject Property"). The Subject Property has site plan approval for a 30-storey, mixed-use commercial and residential building. The residential component will consist of 260 affordable, purpose-built rental apartment units.

Please accept this letter as a formal complaint that we are filing on behalf of 500 Preston pursuant to subsection 20(1)(a) and 20(1)(c) of the *Development Charges Act* with respect to the development charges imposed on our client following the transition of rates that occurred on April 1, 2020. The reasons for the complaint are as follows:

1. The City of Ottawa enacted city-wide Development Charge By-law 2019-156 on May 22, 2019, pursuant to the *Development Charges Act*.
2. Section 12 of DC By-law 2019-156 establishes transitional provisions with respect to the new rates it imposes. In particular, subsections 12(4) and (5) relate to purpose built high-rise rental building:

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510 – 366 King Street, Kingston ON K7K 6Y3
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(4) Subject to subsection (3), in respect of complex buildings and purpose built high-rise rental buildings, subject to meeting the criteria in subsection (5), the applicable development charges under this by-law for the period from the date of enactment of this by-law to March 31, 2020 shall be in accordance with the transitional rates and the categories for that period set forth in Schedules "B" and "C" to this by-law.

(5) In order to qualify for the transitional rate pursuant to section (4), either clause (a) must apply or both clauses b) and c) must apply:

(a) The building permit is issued on or after May 23, 2019 and on or before June 28, 2019;

(b) A complete building permit application is submitted on or before June 28, 2019;

(c) The building permit is issued on or before March 31, 2020.

3. 500 Preston filed a complete application for a building permit on or before June 28, 2019, in accordance with subsection 12(5)(b).
4. It is admitted that the building permit did not issue on or before March 31, 2020, in accordance with subsection 12(5)(c), however, 500 Preston states that the permit was only issued after March 31, 2020 because of city staff's assurance that the applicable rates would not be increased as a result. Staff's assurance constitutes a misapplication of the City's Development Charge By-law, on which 500 Preston relied, and that resulted in the application of the higher rate. But-for staff's misapplication of the By-law, 500 Preston would have obtained its permit on or before March 31, 2020,
5. On March 25, 2020, 500 Preston's consultant wrote to City staff requesting that they confirm the amount of development charges that would be payable. By way of the same email, 500 Preston noted that all requirements for the building permit had been fulfilled and expressed its intention to collect the permit prior to April 1, 2020 in order to avoid the fee increase.
6. Staff responded to 500 Preston's email the same day, stating that development charges were payable in the amount of \$4,371,255.50 including demolition credits. With respect to the April 1st change of rates, the email states: "***[t]he fee increase has been postponed until the fall, so that may provide a little relief.***" A copy of the email is attached hereto as Schedule "A".
7. Notwithstanding staff's representation, the new rates imposed by DC By-law 2019-156 were imposed as of April 1, 2020.
8. In reliance on the erroneous belief that the rates would not be increased until fall of 2020, the building permit was not taken out until on April 4, 2020. As a result of the delay, the city calculated development charges at the new rate imposed by DC By-law 2019-156 at a total

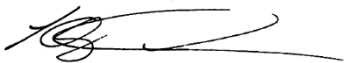
amount of \$4,947,148.28. This amount is \$575,892.78 more than the amount quoted by staff less than two weeks earlier.

9. On the issuance of the permit, 500 Preston paid development charges in the amount of \$726,059.92 to account for the commercial component of the mixed-use building. As a residential rental building, the balance of the development charges assessed in the amount of \$4,221,088.36 were deferred, to be paid in six equal annual installments, with the first installment to be paid on the date of occupancy.
10. Given staff's representation that development charges would be assessed in the amount of \$4,371,255.50, and the resulting reliance that this amount would not change by April 1, 2020, 500 Preston respectfully submits that the city erred in its application of the by-law and that the amount of development charged payable was incorrectly determined.
11. Consequently, 500 Preston requests that the amount of the overpayment on the commercial component of the development be refunded, and that the amount of the charges outstanding on the residential components be reduced, which 500 Preston reserves the right to pay in advance as a single lump sum.

In the alternative, 500 Preston requests that staff be directed to enter into an agreement with 500 Preston pursuant to section 27 of the *Development Charges Act*, providing that the development charges payable with respect to the Subject Property is to be determined as of March 31, 2020.

Please bring this complaint to the appropriate committee of council, and then to council at the earliest possible opportunity.

Yours very truly,



Philip Osterhout
PO/

c.c. Alan K. Cohen
Timothy C. Marc
Bruce Greenberg

SCHEDULE 'A'

Philip Osterhout

From: Thomas, Cairine <Cairine.Thomas@ottawa.ca>
Sent: Wednesday, March 25, 2020 10:18 AM
To:
Cc: Hunt, Terri
Subject: RE: 500 Preston A14-008019

Hello Martin,

The fee increase has been postponed until the fall, so that may provide a little relief.

The Development Charges are currently \$4,371,255.50 and that includes the credit for the demolition of 2 dwelling units at 486 Preston.

You will be sent the final fees by the tech clerk when notification is given that the permit is ready to be issued.

There is now a different process for dropping off cheques and picking up permits. Once you receive notification that the permit is ready please follow up with the process below.

➤ **Issuance of Building Permits**

- Clients are to contact Building Code Services at 613-580-2424 ext. 29312 or e-mail buildingpermits@ottawa.ca for further direction.

Sincerely,

Cairine Thomas

Zoning Plan Examiner
Building Code Services Branch
City of Ottawa | Ville d'Ottawa
101 CentrepoinTE Dr. 2nd Floor
Ottawa ON K2G 5K7
(613) 580-2424 xt 14173
cairine.thomas@ottawa.ca

From: martin Chénier
Sent: March 25, 2020 9:40 AM
To: Thomas, Cairine <Cairine.Thomas@ottawa.ca>
Cc: Hunt, Terri <Terri.Hunt@ottawa.ca>
Subject: RE: 500 Preston A14-008019

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Hi Cairine,

F

I imagine you are working remotely these days? If not, must a be a ghost town going into work...

I believe that we have submitted everything required and I'm now just getting the checks ready for when I get the call to go and get the building permit. On that note, could I get you to confirm the amounts for the development charges please? I'm also hoping that I can get the permit prior to April 1st which is when all the fees are supposed to increase. I'm also curious about the credits I'm supposed to get and how we plan on applying them to the fees.

Thanks,

Martin Chénier T.P., PMP

From: Thomas, Cairine <Cairine.Thomas@ottawa.ca>

Sent: Thursday, March 5, 2020 3:08 PM

To: martin Chénier

Cc: Hunt, Terri <Terri.Hunt@ottawa.ca>

Subject: RE: 500 Preston A14-008019

I will just need confirmation from my manager, Terri Hunt that sufficient information was provided for the RSC to allow issuance of a permit.

From: martin Chénier

Sent: March 05, 2020 1:04 PM

To: Thomas, Cairine <Cairine.Thomas@ottawa.ca>

Subject: Re: 500 Preston A14-008019

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On Mar 5, 2020, at 12:46 PM, Thomas, Cairine <Cairine.Thomas@ottawa.ca> wrote:

Thank you! It only needs to go to me!

From: martin Chénier

Sent: March 05, 2020 12:28 PM

To: Thomas, Cairine <Cairine.Thomas@ottawa.ca>

Subject: Fwd: 500 Preston A14-008019

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Here is the revised certificate. Do I need to send it to someone else as well?

Thanks.

Begin forwarded message:

From: Chris Hall
Date: March 5, 2020 at 11:25:44 AM EST
To: martin Chénier

Subject: RE: 500 Preston A14-008019

Hi Martin,

Please find the revised certificate attached.

Chris

-----Original Message-----

From: martin Chénier
Sent: March 5, 2020 9:58 AM
To: Chris Hall
Subject: Re: 500 Preston A14-008019

Thanks.

On Mar 5, 2020, at 7:52 AM, Chris Hall wrote:

Martin,

I see the issue. Areas G and H are actually portions of areas A and C that were the subject of a CofA decision for a minor variance on Jan 22, 2016. I will have a new certificate issued.

Chris

-----Original Message-----

From: martin Chénier
Sent: March 4, 2020 3:30 PM
To: Chris Hall
Subject: FW: 500 Preston A14-008019

Chris,

Can you help me out please? I'm not sure what she is referring to.

H

Thanks,

Martin Chénier T.P., PMP

-----Original Message-----

From: Thomas, Cairine <Cairine.Thomas@ottawa.ca>

Sent: Wednesday, March 4, 2020 11:12 AM

To: martin Chénier

Subject: FW: 500 Preston A14-008019

Hello Martin,

I am reviewing the file to confirm that the zoning items were all resolved and in reading the Surveyor's Certificate a wee bit closer I noticed the last 2 items are referencing an Area G and an Area H on Schedule 287.

I don't see Areas G & H on Schedule 287, so I am going to cross out those 2 items on the certificate as opposed to requesting a new certificate. If you are aware of what Areas G and H are, please let me know.

Sincerely,

Cairine Thomas

Zoning Plan Examiner
Building Code Services Branch
City of Ottawa | Ville d'Ottawa
101 CentrepoinTE Dr. 2nd Floor
Ottawa ON K2G 5K7
(613 580-2424 xt 14173
cairine.thomas@ottawa.ca

-----Original Message-----

From: martin Chénier
Sent: October 28, 2019 3:33 PM
To: Thomas, Cairine <Cairine.Thomas@ottawa.ca>
Subject: RE: 500 Preston A14-008019

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Hi Cairine,

Sorry about the name in the other emails... David Anderson explained to me my faux-pas...

Attached is the certified building height letter that I believe to be the last outstanding item aside from the fees.

Can you tell me who I should be contacting in order to carry out the payment of the fees please.

Thanks,

Martin Chénier T.P., PMP

-----Original Message-----

From: martin Chénier
Sent: Friday, October 25, 2019 9:13 AM
To: Thomas, Cairine <Cairine.Thomas@ottawa.ca>
Subject: RE: 500 Preston A14-008019

Hi Thomas,

Was hoping to send this with the certified building height but I was told I'd only get that next week...

I'm also meeting with David Anderson later today to finalize the two building permit application required including the demolition one. Once I get confirmation on the value of the Development charges fees and

School fees, I'll be in a position to complete the payment and post securities.

I believe that I would only have the fees and certified building height letter as outstanding items to resolve.

Thanks

Martin Chénier T.P., PMP

-----Original Message-----

From: Thomas, Cairine <Cairine.Thomas@ottawa.ca>

Sent: Wednesday, October 9, 2019 10:03 AM

To:

Subject: RE: 500 Preston A14-008019

Hello Martin,

Further to correspondence from August,

Zoning

1. It appears the bicycle parking is predominately on the 2nd floor with only a few spaces on P6 and P1. Please confirm.
2. One barrier free parking space is required for the commercial parking. Please identify the location.
3. An approved demolition permit will be required for 486 Preston at the time of approval of the construction permit. The 2 permits must be issued concurrently. Please submit a demolition permit application.
4. Please provide the certified building height letter as there does not appear to be one in the file.
5. Minor Variance obtained - resolved
6. Minor Variance obtained - resolved
7. Sketch provided removing the balconies - resolved

Other Requirements

1. Site Plan Control and related conditions must be registered and satisfied.
6. Updated Development Charges - \$4,402,702.50. After March 31, 2020, the Transition provision (2019-156) for complex buildings will expire. Applicable redevelopment credits against the Development Charges, will be applied once the demolition permit application is submitted.

If you require further clarification, please do not hesitate to contact me.

Sincerely,

Cairine Thomas

Zoning Plan Examiner
Building Code Services Branch
City of Ottawa | Ville d'Ottawa
101 CentrepoinTE Dr. 2nd Floor
Ottawa ON K2G 5K7
(613 580-2424 xt 14173
cairine.thomas@ottawa.ca

-----Original Message-----

From: martin Chénier

Sent: August 26, 2019 6:50 AM

To: Sarazin, Charles <Charles.Sarazin@ottawa.ca>

Subject: FW: 500 Preston

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Hi Charles,

Following a review of these documents, here is our response:

Zoning

1. A total of 139 bicycle spots, spread from P5 to P1 is shown on the issued for Tender drawing. A copy of which will be provided.
2. This is a private parking, therefore no BF is required.

3. A demolition permit application will be made once we have a building permit in order to avoid demolition control.
4. A mandate will be given to Annis O'Sullivan Vollebeck to provide a certified building height confirmation
5. Addressed through the attached Minor Variance, item "e"
6. Addressed through the attached Minor Variance, item "g"
7. I believe that we will need a new Minor Variance to address this

Other Requirements

1. All outstanding fees will be paid shortly
6. Development charges are still in discussion with Kendra Becking

Thanks

Martin Chénier T.P., PMP

-----Original Message-----

From: Rozy

Sent: Tuesday, August 6, 2019 9:37 AM

To: Charles Sarazin <Charles.Sarazin@ottawa.ca>

Cc: Bruce Greenberg <bgreenberg@starwoodgroup.com>; John Bassi <john@jbpa.ca>; Rod Lahey <rlahey@rodericklahey.ca>; martin Chénier

Subject: FW: 500 Preston

Charles:

Thanks for your help.

Martin (attached Will be moving this file forward on behalf of owner

Rosario (ROZY Lindia P.Eng

Vice President Construction &

Project Management Services

-----Original Message-----

From: Sarazin, Charles [<mailto:Charles.Sarazin@ottawa.ca>]

Sent: July-24-19 1:01 PM

To: 'Rozy Lindia'
Cc: 'rlyndia@bassi.ca' <rlyndia@bassi.ca>
Subject: 500 Preston

-----Original Message-----

From: donotreply <donotreply@ottawa.ca>
Sent: July 24, 2019 12:46 PM
To: Sarazin, Charles <Charles.Sarazin@ottawa.ca>
Subject: Scanned document: /email/doc01986020190724120913.pdf

The scanned document is attached to this message.

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