

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE
FROM:	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	DEVELOPMENT CHARGE COMPLAINT 1030 ELIAS STREET MEETING HELD ON TUESDAY, SEPTEMBER 09, 2014

RECOMMENDATION

That, on the recommendation of the Managing Director, Development and Compliance Services & Chief Building Official, the Development Charges complaint by the Junction Climbing Centre Inc. the operator of a portion of the building situated at 1030 Elias Street, **BE DISMISSED.**

BACKGROUND

A complaint letter (hereinafter referred to as 'complaint') was received on May 15, 2014 from Patton Cormier & Associates, lawyers for the Junction Climbing Centre Inc. (See Appendix 'A').

The aforementioned letter provides the following grounds for the complaint:

1. The amount of Development Charge was incorrectly determined.
2. The building was previously used for industrial purposes as a steel manufacturing and assembly plant.
3. The Climbing Centre will not create an increased need for services.
4. The interior alterations to the building will not result in additional floor space.
5. The amount of the Development Charge is neither fair nor reasonable in the circumstances.

A building permit application was received on March 28, 2014 for the interior alterations to part of the building situated at 1030 Elias Street to facilitate the construction of a 'rock climbing gym'.

The previous use of the building was classified as industrial (Group 'F' use in accordance with the Ontario Building Code classification). Item 2 of the grounds of complaint in the complaint letter received also confirms this previous use. The existing industrial use was exempt from Development Charges payment at the time it was originally erected (1999) in an effort for the City to attract industrial uses and thus none were paid.

The interior alterations consisted of changing the previous industrial use to an 'assembly occupancy' (Group A-2 according to the Ontario Building Code classification).

The work proposed under the building permit entailed the conversion of the existing 641 sq.m. (6,900 sq.ft.) floor space to a 'rock climbing gym' with the addition of washrooms and a party room. A floor plan is included in Appendix 'B'.

On April 25, 2014 the operator of the Junction Climbing Centre Inc. was issued a building permit for the interior alterations and the change of use from 'industrial' to 'assembly' and as a result remitted the amount of \$111,816.04 in Development Charges determined in accordance with Development Charges By-law C.P.-1473-212, (hereinafter referred to the DC By-law) that was in force and effect at that time.

The DC amount of \$111,816.04 was paid 'in protest'.

Development Charges By-law C.P-1473-212 and Grounds for Complaints

The DC By-law in s.27 provides the following (depicted in italicized font below):

27. Grounds of Complaint

(a) the amount of the development charge was incorrectly determined;

- The complaint letter indicates that the DC Charge was incorrectly determined but does not provide any information as to how the amount should've been 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;

- There is no credit available to be used against the development charge for this application.

(c) there was an error in the application of this by-law.

- The complaint letter does not indicate that an error was made in the application of the By-law.

Grounds for Complaint as provided in the complaint letter

As previously mentioned, the complaint letter provides the following grounds for the complaint:

- 1. The amount of Development Charge was incorrectly determined.***
- 2. The building was previously used for industrial purposes as a steel manufacturing and assembly plant.***
- 3. The Climbing Centre will not create an increased need for services.***
- 4. The interior alterations to the building will not result in additional floor space.***
- 5. The amount of the Development Charge is neither fair nor reasonable in the circumstances.***

Upon reviewing the above, it should be noted that:

- Item no. 1 is consistent with 27.(a) of the DC By-law as a ground of complaint.
- Item no. 2 is a statement of fact and not a valid ground of complaint.
- Item no. 3 is not a valid ground of complaint.
- Item no. 4 is merely a statement of fact and not a valid ground of complaint. The DC charge was not applied to any additional floor space as no additional floor space was created.
- Item no.5 is a statement of opinion and not a valid ground of complaint.

As the complaint letter makes no mention as to what resolution is being sought (i.e. full DC exemption, reduced DC amount etc.), the focus of this report is on how the DC By-law was applied and how the development charge was determined.

Is the conversion subject to payment of Development Charges?

In accordance with the DC By-law, "***development***":

*"...means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of changing the size or usability thereof, and includes all enlargement of existing development which creates new dwelling units or additional non-residential space **and includes work that requires a change of use building permit as per Section 10 of the Ontario Building Code; and "redevelopment" has a corresponding meaning; (emphasis added)**"*

Part II s.4 of the DC By-law, requires the owner of a building that develops or redevelops said building to pay Development Charges.

“...4. Owner to Pay Development Charge

The owner of any land in the City of London who develops or redevelops the land or any building or structure thereon shall, at the time mentioned in section 5, pay Development Charges to the Corporation calculated in accordance with the applicable rate or rates in section 6, 7, 8 and 9 hereof...”

This is entirely consistent with section 5(1)9. of the Development Charges Act which states that :

“...9. Rules must be developed to determine if a development charge is payable in any particular case and to determine the amount of the charge, subject to the limitations set out in subsection (6)...”

The By-law rules applied to this permit application require the owner who redevelops a property to pay a development charge. This charge, upon redevelopment, is consistent with practice in the vast majority of municipalities in the province which recover some portion of growth costs upon intensification of development.

The conversion of the existing building has resulted in a change of use as defined in the Ontario Building Code. In accordance with OBC Div. C Table 1.3.1.4. (highlighted below), changing the use from ‘industrial (Group F) to ‘assembly’ occupancy (Group A-2) requires a building permit. A “Y” in any of the Table cells below indicates that a permit is required for the change of use. The premise behind the change of use permit, under the OBC, is based on the fact that with the commercial use there is an increase in the number of occupants in the building that would be unknown to each other and would behave independently with respect to the previous use which would’ve entailed supervision from the owner or plant supervisor. The occupants in a commercial setting would not be readily familiar with its surroundings as opposed to the former industrial use where the occupants would be workers that would attend on a regular basis and be familiar with the floor layout and exit locations. In essence, the change of use results in an inherent increased risk from the perspective of the OBC.

**Table 1.3.1.4.
Permit Required for Change of Use**

Forming Part of Sentence 1.3.1.4.(1)⁽¹⁾

		FROM ⁽²⁾												
		A-1	A-2	A-3	A-4	B-1	B-2	B-3	C	D	E	F-1	F-2	F-3
TO ⁽³⁾	A-1	N ⁽⁵⁾	Y	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	Y	Y	Y
	A-2	Y	N ⁽⁵⁾	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	Y	Y	Y
	A-3	Y	Y	N ⁽⁵⁾	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	Y	Y	Y
	A-4	Y	Y	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	Y	Y	Y
	B-1	Y	Y	Y	N ⁽⁵⁾	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	Y	Y
	B-2	Y	Y	Y	N ⁽⁵⁾	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	Y
	B-3	Y	Y	Y	N ⁽⁵⁾	Y	N ⁽⁵⁾	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y
	C	Y	Y	Y	N ⁽⁵⁾	Y	N ⁽⁵⁾	N ⁽⁵⁾	⁽⁴⁾	Y	Y	Y	Y	Y
	D	N ⁽⁵⁾	N ⁽⁵⁾	Y	N ⁽⁵⁾	Y	N ⁽⁵⁾	N ⁽⁵⁾	Y	N ⁽⁵⁾	Y	Y	N ⁽⁵⁾	N ⁽⁵⁾
	E	Y	Y	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	N ⁽⁵⁾	Y	Y	Y
	F-1	Y	Y	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	N ⁽⁵⁾	Y	Y
	F-2	Y	Y	Y	N ⁽⁵⁾	Y	Y	Y	Y	Y	Y	N ⁽⁵⁾	N ⁽⁵⁾	Y
F-3	Y	N ⁽⁵⁾	Y	N ⁽⁵⁾	Y	Y	Y	Y	N ⁽⁵⁾	N ⁽⁵⁾	N ⁽⁵⁾	N ⁽⁵⁾	N ⁽⁵⁾	

Notes to Table 1.3.1.4.:

⁽¹⁾ See Clause 1.3.1.4.(1)(a) and Clauses 3.17.1.1.(1)(a) and 9.40.1.1.(1)(a) of Division B.

⁽²⁾ Major occupancy of all or part of a building before change of use.

⁽³⁾ Major occupancy of all or part of a building after change of use.

As this conversion is a change of use requiring a building permit, this is indeed considered ‘development’ as defined in the DC By-law. Development is subject to Development Charges.

How were the Development Charges calculated?

The By-law requires development or redevelopment to pay Development Charges.

The redeveloped floor area was proposed to be used for commercial use. The DC By-law defines a commercial building as follows.

"Commercial Building" is a building used for :

(a) Office or administrative uses...

(b) Retail purposes including activities of offering foods, wares, merchandise, substances, articles or things for sale or rental directly to the public and includes offices within the same building, which support, are in connection with, related or ancillary to such uses, or **activities providing entertainment and recreation**. Retail purposes shall include but not be limited to...

...private schools, private lodging and retirement homes, **private recreational facilities**, sports clubs, golf courses...

With the intent of providing some flexibility in the administration of this section, any building use not named specifically above which is considered an adventure in the nature of trade, and is neither an Institutional nor Industrial use, may be deemed to be a Commercial use at the discretion of the Director of Building Controls.

The use as a climbing gym is deemed a commercial use and hence the commercial DC rate of \$174.44 per sq.m. was applicable.

The DCs payable were determined by multiplying the Commercial DC rate with the floor area converted.

This yielded:

641 sq.m. x \$174.44/sq.m. = \$111,816.04

DC Exemptions as per the DC By-law in effect

As previously mentioned the complaint letter is unclear in terms of a resolution sought. Should the complainant suggest that the conversion be exempt from Development Charges, below are the exemption provisions as provided in section 35 of DC By-law C.P.-1473-212.

35. Certain Developments Exempt

No development charge under section 4 is payable where the development or redevelopment;

(a) is an enlargement of an existing dwelling unit;

(b) creates one or two additional dwelling units in an existing single detached dwelling if the total gross floor area of the additional dwelling unit or units does not exceed the gross floor area of the dwelling unit already in the building;

(c) creates one additional dwelling unit in a semi-detached or row dwelling if the gross floor area of the additional dwelling unit does not exceed the gross floor area of the dwelling unit already in the building;

(d) creates one additional dwelling unit in any existing residential building other than a single detached dwelling, a semi-detached dwelling or a row dwelling if the gross floor area of the additional dwelling unit does not exceed the gross floor area of the smallest dwelling unit already in the building;

(e) is a parking building or structure;

(f) is a bona fide non-residential farm building;

(g) is a structure that does not have water and sanitary facilities and that are intended for seasonal use only;

(h) is a commercial truck service establishment;

(i) is a „temporary garden suite“ installed in accordance with the provisions of the Planning Act, as amended.

(j) is an air supported structure or arch framed structure clad with fabric-type material, temporary in nature, the purpose of which is to provide indoor facilities for recreational and sports activities owned and operated by a non-profit organization and available for public use.

It is clear that the change of use from industrial use to commercial is not eligible for a DC exemption as per section 35 above.

The issue of an increased need in municipal services

One of the grounds of complaint refers to no creation of an increased need for services. Despite the fact that this is not a valid ground under section 27 of the DC By-law, under section 5.(6)2 of the Development Charges Act 1997, as amended:

“...If the rules expressly identify a type of development they must not provide for the type of development to pay Development Charges that exceed the capital costs, determined under paragraphs 2 to 8 of subsection (1), that arise from the increase in the need for services attributable to the type of development. However, it is not necessary that the amount of the development charge for a particular development be limited to the increase in capital costs, if any, that are attributable to that particular development.(emphasis added)”

As noted above, the charges imposed need not be limited to the increase in capital costs for services to the site of the particular development in question. In other words, the development charge rates recover costs from each category of development, based on the increase in capital costs for that category as a whole. The development charge is not, nor could reasonably be, based on the individual capital costs of a development, on a development-by-development basis. Rather, the DC rates reflect the averaged costs of growth applicable to all the expected development in each category of development – Residential, Commercial, Institutional and Industrial.

The complainant’s claim that the charges must somehow equate directly to the need for new services at the specific location of the proposed development is without merit. Development Charges are the averaging of growth costs over all development that occurs. Whether the development directly triggers new cost for the servicing is immaterial to the recovery of Development Charges. Development includes redevelopment.

As explained above, and as per the provisions of the DC By-law, the CBO need not consider an increase in municipal services as a determining factor in considering whether Development Charges are applicable. Notwithstanding this, the conversion of a portion of the former industrial building to a commercial facility has resulted in the installation of the following new water fixture units:

- 3 water closets (toilet fixtures)
- 1 urinal
- a janitor’s sink
- 3 hand sinks

It is also expected that a commercial facility such as the ‘rock climbing gym’ will generate more traffic than the previous industrial use.

The By-law applicable to this development application contained no provision for conversion credit for this former industrial facility. Staff maintains that the charge was properly determined under the By-law in force at the time of the application, and therefore recommends dismissal of the complaint.

CONCLUSION

<p>The complaint submitted by Patton Cormier & Associates on behalf of the Junction Climbing Centre Inc. regarding incorrect determination of the Development Charges was reviewed and it has been concluded that this redevelopment is subject to Development Charges in accordance with the DC By-law in force and effect at the time of permit application submission. It is the Chief Building Official’s (Director of Building Controls) opinion that the Development Charges were correctly determined and that the complaint filed by Patton Cormier & Associates should be dismissed.</p>

PREPARED BY:	RECOMMENDED BY:
P. KOKKOROS, P. ENG. DEPUTY CHIEF BUILDING OFFICIAL	G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL

PK:pk

c.c. Angelo DiCicco-Manager of Plans Examination, Jim Barber-City Solicitor, Nicole Hall-Solicitor II, Peter Christiaans-Director, Development Finance, Building File.

APPENDIX 'A'

PATTON CORMIER & ASSOCIATES
LAWYERS

Alan R. Patton, B.A., LL.B.
Elizabeth K. Cormier, B.A., LL.B.
Analee J.M. Ferreira, B.A., LL.B.

May 15, 2014

Via courier and email: csaunder@london.ca

Corporate Services Committee, c/o City Clerk's Office
The Corporation of the City of London
City Hall, 3rd Floor
300 Dufferin Avenue
P.O. Box 5035
London On N6A 4L9

Re: **Development Charges Complaint - 1030 Elias Street, London**
Junction Climbing Centre Inc.

We are the Lawyers for the Junction Climbing Centre Inc. Our Client has leased space in a building located at 1030 Elias Street, London for the purpose of opening and operating an indoor recreational climbing centre.

A Commercial Building Permit was issued in connection with the alterations required for this facility on April 25, 2014. A Development Charge in the amount of \$111,816.04 was imposed by the City, which has been paid by our Client under protest.

Pursuant to section 27 of Development Charges By-law C.P.-1473-212, the Junction Climbing Centre Inc. hereby submits a complaint against the Development Charge. We ask that this complaint be heard by the Committee as soon as possible. The grounds for the Complaint are as follows:

1. The amount of the Development Charge was incorrectly determined.
2. The building was previously used for industrial purposes as a steel manufacturing and assembly plant.
3. The Climbing Centre will not create an increased need for services.
4. The interior alterations to the building will not result in additional floor space.
5. The amount of the Development Charge is neither fair nor reasonable in the circumstances.

Yours truly

PATTON CORMIER & ASSOCIATES

per:



Analee J.M. Ferreira
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c.c. John Kudelka, Junction Climbing Centre

1512-140 Fullarton Street, London, ON N6A 5P2 tel: 519.432.8282 fax: 519.432.7285

APPENDIX 'B'

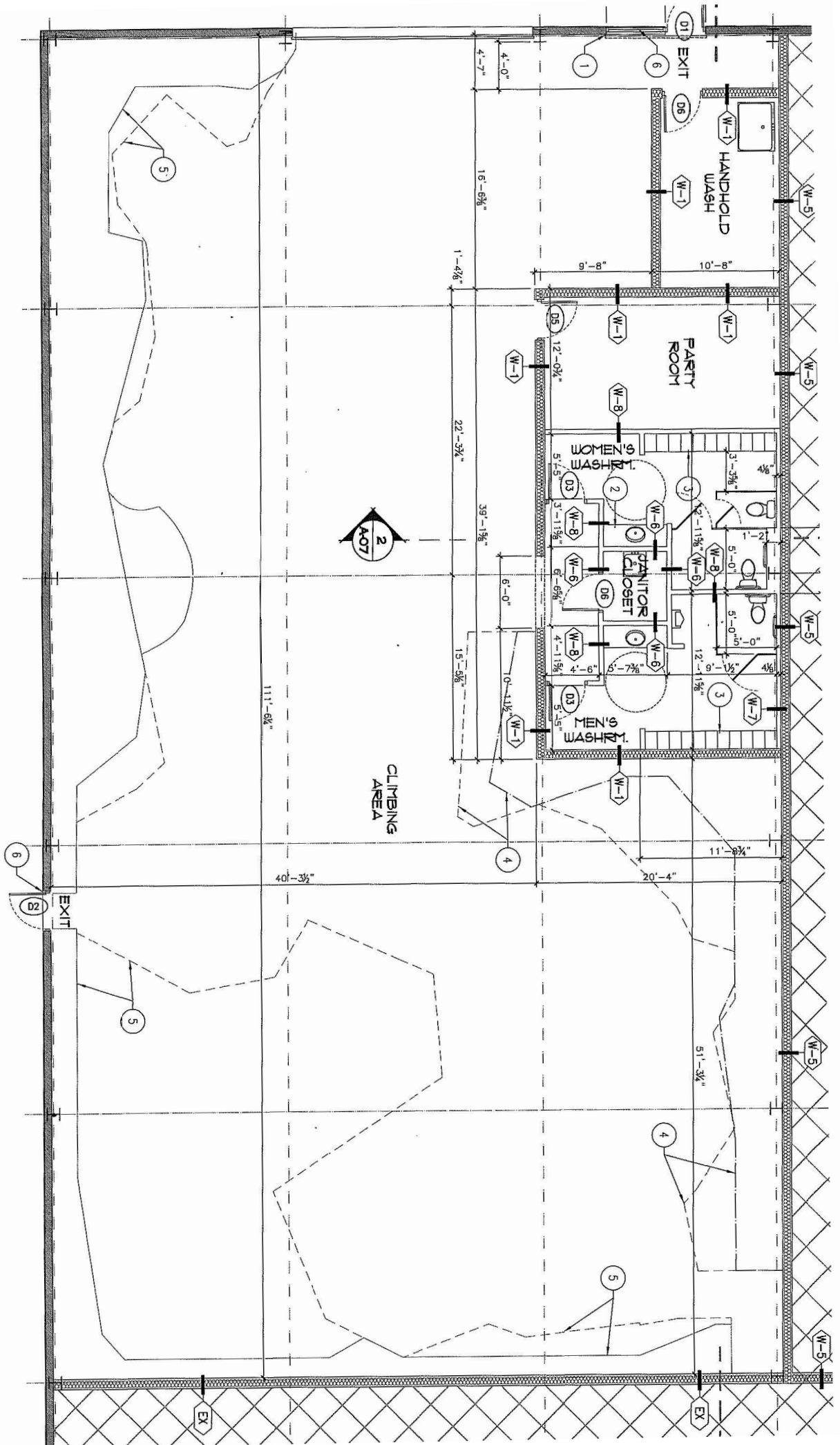


Fig.1 Floor plan of converted space.