

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 OCTOBER 24, 2017

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** as the calculation of applicable Development Charges was made in accordance with the Development Charges By-law and as the complainant has not demonstrated that the complaint meets the grounds articulated in Section 28 of the Development Charges By-law.

BACKGROUND

A complaint letter (hereinafter referred to as 'complaint') was received on May 29, 2017 from Patton Law, lawyer for the Junction Climbing Centre Inc. (included in Appendix 'A').

The aforementioned letter provides the following grounds for the complaint:

1. The amount of the charge is excessive and unreasonable.
2. The amount of the charge does not relate or correspond in any reasonable, fair or equitable manner to the impact upon City Services.
3. The amount of the charge is inconsistent with previously imposed Development Charges on the redevelopment of the property and the use contained therein.
4. The amount of Development Charge must correspond fairly and equitably to the impact on Municipal Services.
5. Such further and other reasons as counsel may advise.

The Junction Climbing Centre Inc. (hereinafter referred to as 'Junction Centre') is a recreational facility open to members of the public. As per information contained on the establishment's website, The Junction Centre offers instructional classes related to wall climbing, birthday parties, and climbing related merchandise for sale.

A building permit application was received on November 28, 2016 for the construction of a new 313 sq.m. (approx. 3,369 sq.ft.) mezzanine at the Junction Centre. As part of the permit application documentation, Drawing A-02 was submitted and is included in Appendix 'B' of this report. An enlarged area of Drawing A-02 is provided in Appendix 'C'. The building permit was issued on March 17, 2017, at which time the assessed Development Charges of \$74,456.44 were paid by the Junction Centre.

As per PART IV (Complaints) of the Development Charges By-law, a complaint may be made no later than ninety (90) days after the day the development charge is payable. On May 29, 2017 the City clerk's office received a complaint letter from Patton Law, representing the Junction Centre. The grounds of complaint are further discussed in detail in the Analysis section of this report.

ANALYSIS

The Junction Centre operates at 1030 Elias Street and occupies a portion of the building. Its use, under the Development Charges By-law is classified as 'commercial'. As historical background, on April 25, 2014, a building permit was issued to convert a portion of the previously existing industrial building for the purposes of the Junction Centre. The Ontario Building Code, classifies this use as an 'Assembly Occupancy –Group A2'.

On November 28, 2016 a building permit application was submitted for the construction of a new 313 sq.m. mezzanine. Staff assessed the permit application, both in terms of compliance with the requirements of the Ontario Building Code and the City's Development Charges By-law C.P.-1496-244 (DC By-law).

Staff determined that the construction of the new 313 sq.m. mezzanine is considered 'development' under the City's DC By-law; a further, detailed analysis is provided below.

Is the addition/construction of mezzanine floor space subject to payment of Development Charges?

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 6, pay development charges to the Corporation calculated in accordance with the applicable rate or rates in Section 1 as described in section 8."

The DC By-law further defines 'development' as:

*"... 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)*

The addition of a mezzanine at the Junction Centre is considered as development considering it results in the "enlargement of existing development" and creates "additional non-residential space".

How was the Development Charge amount calculated?

The DC By-law defines a commercial building as follows:

*"...**"Commercial Building"** is a building used for :*

*....(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... (emphasis added)*

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 Commercial DC rate in effect at the time the permit application was submitted was \$237.88 /sq.m. Thus, the Development Charge amount due, before the time the permit was issued, was calculated to be \$74,456.44 ; (313 sq.m. @ \$237.88 / sq.m.). The full DC amount was paid by the permit applicant prior to building permit issuance.

Development Charges By-law C.P.-1496-244 and Grounds for Complaints

The DC By-law in PART IV, s.28 provides the following grounds for complaint (depicted in italicized bold font below). Accordingly, staff's position is also provided under each sub-clause.

28. Grounds of Complaint

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

- The complaint letter received does not indicate how the development charge amount 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,

- There is no credit available to be used against the development charge for this application. The complaint letter does not refer to a credit available.

(c) that 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.

The above grounds for complaint are identical to those provided in Section 20 of the *Development Charges Act*.

Analysis of 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 the charge is excessive and unreasonable.
2. The amount of the charge does not relate or correspond in any reasonable, fair or equitable manner to the impact upon City Services.
3. The amount of the charge is inconsistent with previously imposed Development Charges on the redevelopment of the property and the use contained therein.
4. The amount of Development Charge must correspond fairly and equitably to the impact on Municipal Services.
5. Such further and other reasons as counsel may advise.

Upon reviewing the above, it should be noted that it is staff's position that:

- Item no. 1 is not consistent with s. 28 of the DC By-law as a valid ground of complaint.

The rate used to calculate the total DC amount is derived from the DC By-law and was the correct rate used. The terms "excessive" and "unreasonable" are not considered nor mentioned in the DC By-law. It is uncertain as to whether a full exemption from payment of Development Charges is being sought. Part V of the DC By-law addresses 'Exemptions and Exceptions'; the construction of new non-residential floor space (mezzanine) in a commercial use does not qualify for exemption under Part V of the DC By-law.

- Item no. 2 is not consistent with s.28 of the DC By-law as a valid ground of complaint.

Section 5.(6)2 of the Development Charges Act 1997, as amended, states:

"...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, relate, or correspond directly to the impact on City 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(s) for the servicing is immaterial to the recovery of Development Charges.

As per the provisions of the DC By-law, the Chief Building Official (CBO) need not consider an increase or impact in municipal services as a determining factor in considering whether Development Charges are applicable.

- Item no. 3 is not consistent with s.28 of the DC By-law as a valid ground of complaint.

DC amounts, where applicable, are determined based on the merits of individual development or redevelopment cases. Previously imposed DCs were based on the redevelopment (conversion) of an industrial use to commercial use. At this location, the commercial use for the Junction Centre was established in 2014 via the change of use building permit that was issued and remains a commercial use.

For the purposes of the present complaint, the creation of non-residential floor space for this commercial use is considered development and the applicable DC rate was used to determine the DC amount due.

- Item no. 4 is not consistent with s.28 of the DC By-law as a valid ground of complaint.

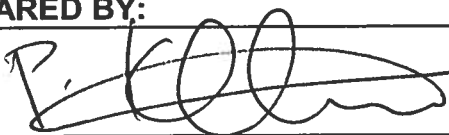
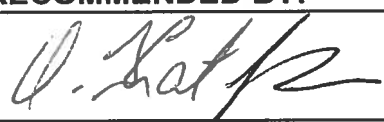
This item is very similar to item no.2 and comments have been provided above.

Staff maintains that the DC calculation and corresponding dollar amount was properly determined under the By-law in force at the time of the building permit application submission. Further, the complainant has not demonstrated that the complaint meets the grounds for complaint articulated in the DC By-law. Staff therefore recommends dismissal of the complaint.

It should be noted that staff has consistently considered any mezzanine floor space pertaining to commercial uses as ‘non-residential floor space’ and has included this space in DC calculations when DC payment is due.

CONCLUSION

The complaint letter submitted by Patton Law on behalf of the Junction Centre regarding incorrect determination of the Development Charges was reviewed and it is staff’s respectful opinion that the addition of a 313 sq.m. mezzanine is considered development and is subject to Development Charges in accordance with the DC By-law in force and effect at the time of building permit application submission. It is the Chief Building Official’s opinion that the Development Charges were correctly determined and that the complaint filed by Patton Law should be dismissed.

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

PK:pk

c.c. Angelo DiCicco-Manager of Plans Examination
 Barry Card-City Solicitor,
 Nicole Hall-Solicitor II
 Paul Yeoman-Director, Development Finance
 Building File.

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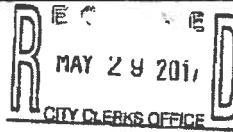
APPENDIX 'A'

PATTON LAW

Alan R. Patton, B.A., LL.B.

May 29, 2017

The Corporation of the City of London
City Hall
300 Dufferin Avenue
London, ON N6B 1Z2



HAND DELIVERED

Re: **Junction Climbing Centre Inc.**
1030 Elais Street,
London ON N5W 3P6
Development Charges By-law Section 28

I represent Junction Climbing Centre Inc. and file this complaint pursuant to sections 28, 29 and 30 of the Development Charges By-law, "the By-law".

The reasons for the complaint are:

1. The amount of the charge is excessive and unreasonable;
2. The amount of the charge does not relate or correspond in any reasonable, fair or equitable manner to the impact upon City Services;
3. The amount of the charge is inconsistent with previously imposed Development Charges on the redevelopment of the property and the use contained therein;
4. The amount of Development Charge must correspond fairly and equitably to the impact on Municipal Services;
5. Such further and other reasons as counsel may advise.

Yours truly,
PATTON LAW

A handwritten signature in black ink, appearing to read "Alan R. Patton".

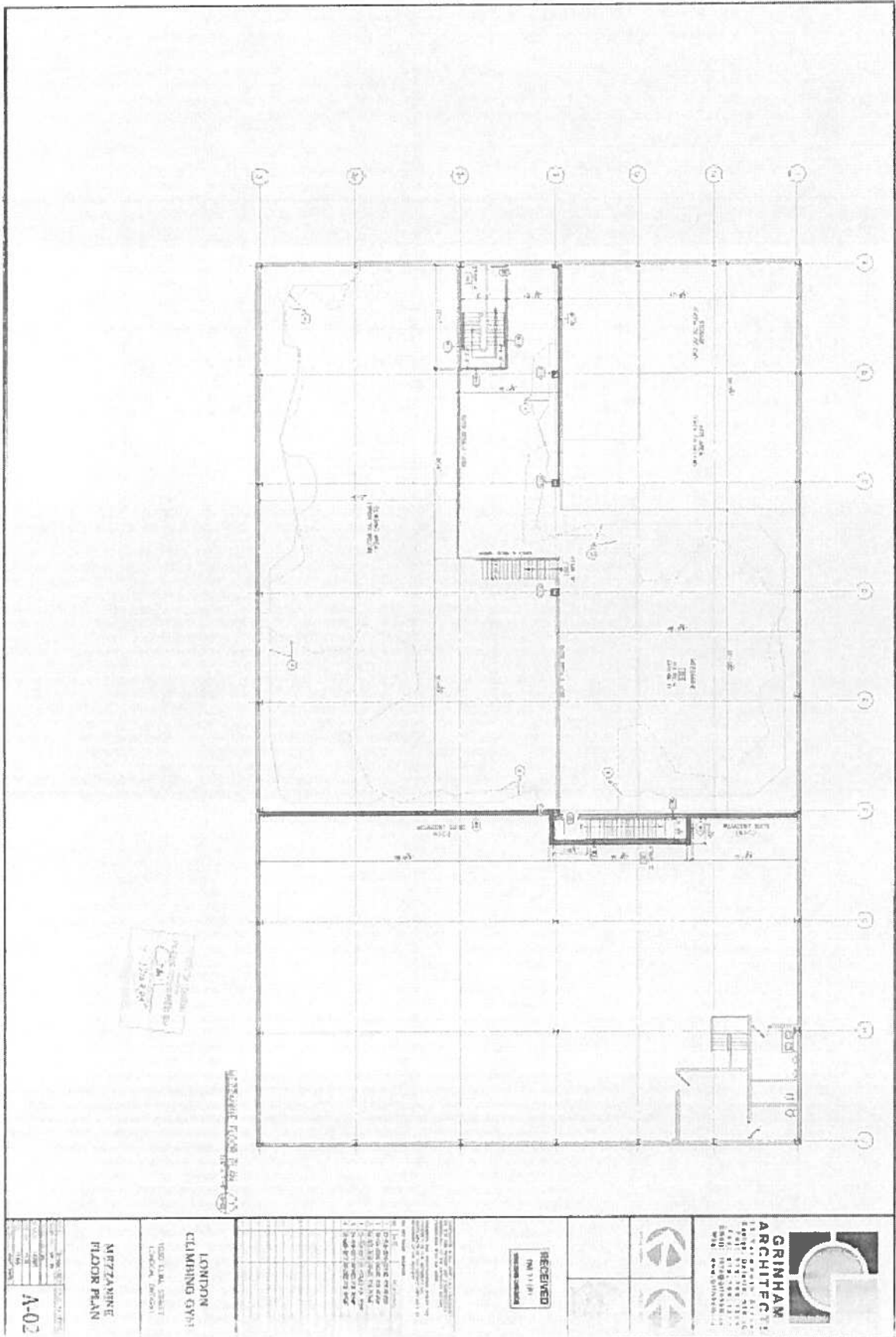
Alan R. Patton
alan@pattonlaw.ca

ARP/klp

Cc: Junction Climbing Centre Inc.

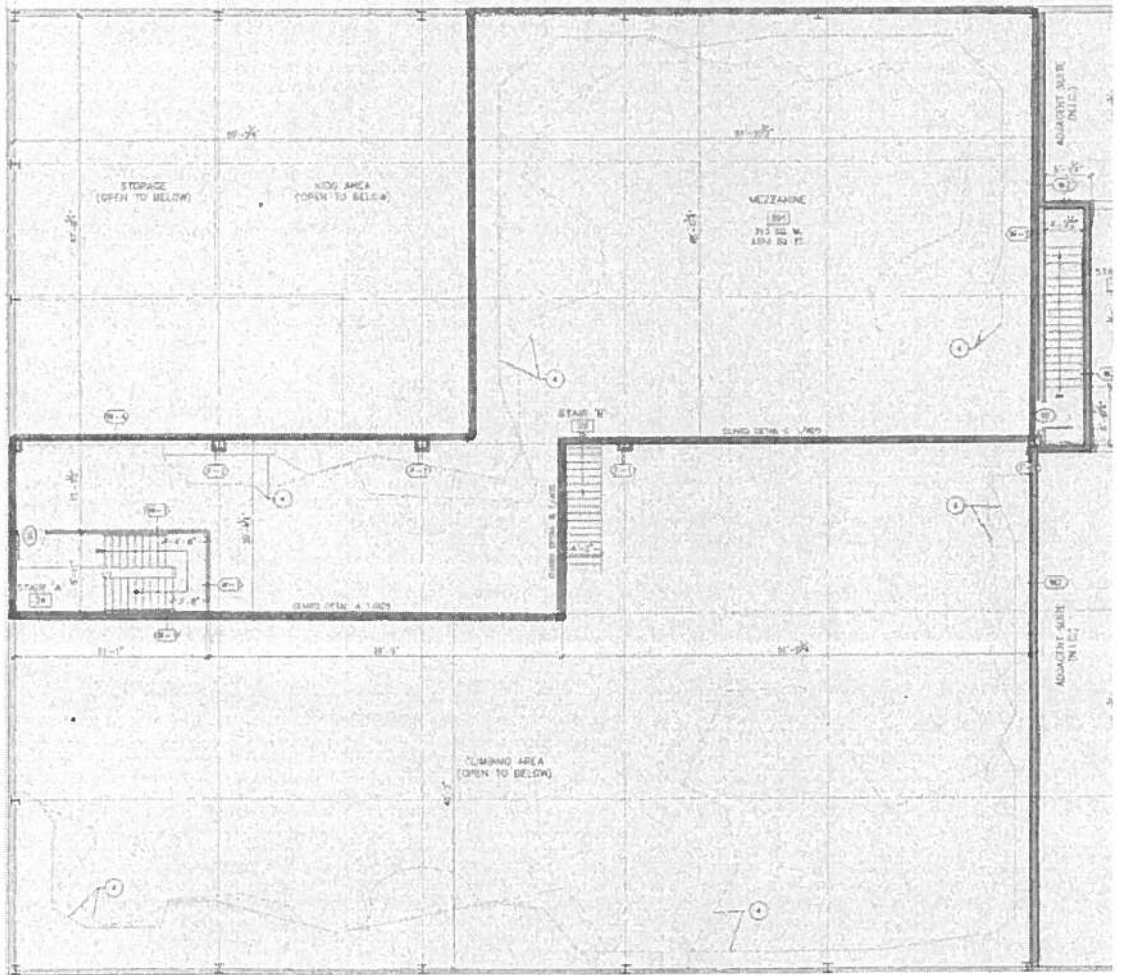
1512-140 Fullarton Street, London, ON N6A 5P2 tel: 519.432.8282 fax: 519.432.7285

APPENDIX 'B'



Drawing A-02: Mezzanine Floor Plan

APPENDIX 'C'



Drawing A-02: Enlarged portion of Mezzanine Floor Plan