

## RECORD OF PROCEEDING

### CORPORATE SERVICES COMMITTEE

convening as a tribunal under section 27 of Part IV of By-law C.P.-1496-244 to hear a complaint under section 20 of the Development Charges Act, by Junction Climbing Centre Inc., the operator of a portion of the building situated at 1030 Elias Street, regarding the development charges imposed by The Corporation of the City of London in connection with development on the land known as 1030 Elias Street.

October 24, 2017 – 1:30 PM  
Council Chambers  
London City Hall

### PRESENT

Councillor Paul Hubert, Chair  
Councillor J. Morgan, Tribunal Member  
Councillor T. Park, Tribunal Member  
Councillor H.L. Usher, Tribunal Member  
L. Rowe, Registrar  
B. Card, City Solicitor  
P. Kokkoros, Deputy Chief Building Official  
G. Kotsifas, Managing Director, Development and Compliance Services and Chief Building Official  
P. Yeoman, Director, Development Finance  
J. Kudelka, Complainant  
A. Patton, Patton Law, Complainant's Agent

### CALL TO ORDER

The Chair called the Tribunal to order at 1:30 PM on October 24, 2017.

### DECLARATIONS OF PECUNIARY INTEREST

None.

### HEARING

Hearing before the Corporate Services Committee (CSC), convening as a Tribunal, with respect to the development charge imposed by The Corporation of the City of London in connection with development on the land known as 1030 Elias Street.

#### 1. Preliminary and Interlocutory Matters:

The Chair provided a brief overview and explanation of the Hearing process.

G. Kotsifas, Managing Director, Development and Compliance Services and Chief Building Official; P. Kokkoros, Deputy Chief Building Official; P. Yeoman, Director, Development Finance; and B. Card, City Solicitor appeared on behalf of the City of London. A. Patton, Patton Law and J. Kudelka, Junction Climbing Centre Inc, appeared on behalf of Junction Climbing Centre Inc.

#### 2. Summary of the Evidence Received by the Tribunal:

The following attached documents were submitted as Exhibits at the Hearing:

Exhibit #1: Notice of Hearing dated September 26, 2017;

Exhibit #2: Written complaint from Junction Climbing Centre Inc., submitted by A. Patton, Patton Law, lawyer for the Junction Climbing Centre Inc., date stamped in the City Clerk's Office on May 29, 2017;

Exhibit #3: Staff report dated October 24, 2017 from the Managing Director, Development and Compliance Services & Chief Building Official;

Exhibit #4: Undated submission by A. Patton, Patton Law, made at the Tribunal hearing on October 24, 2017, being a copy of a letter dated October 24,

2014 to Analee Ferreira, Patton & Associates, entitled “1030 Elias Street”, and also including four diagrams depicting the subject property entitled, respectively, “2014 – Original Charges”, “2014-As Per Council Decision”, “2017 Current” and “2017-Based Upon 2014 Precedent”;

Exhibit #5 Undated submission by P. Kokkoros, Deputy Chief Building Official, made at the Tribunal hearing on October 24, 2017, being the Ontario Building Code Matrix for the subject development at 1030 Elias Street;

Exhibit #6: Undated submission by P. Kokkoros, Deputy Chief Building Official, made at the Tribunal hearing on October 24, 2017, comprised of two architectural drawings for the subject development at 1030 Elias Street; and

Exhibit #7: PowerPoint presentation made by P. Kokkoros, Deputy Chief Building Official, made at the Tribunal hearing on October 24, 2017, and entitled “1030 Elias Street – Development Charges Complaint – Corporate Services Committee Tribunal – October 24, 2017”.

Mr. Patton indicated that Mr. Kudelka would be presenting as the principal of Junction Climbing Centre Inc. He further indicated that he had an Exhibit to present to the Tribunal but felt it may be most appropriate to provide that document after Mr. Kudelka’s presentation. He indicated that the Exhibit included a copy of a resolution of Council, dated September 16, 2014, which Mr. Patton believed was precedent for this matter where Council granted a reduction in the development charges. He stated that he believed that the arguments for the current complaint are basically the same. Mr. Patton offered to provide the Tribunal with the Exhibit now, if they so wished, but was advised by the Chair that the Tribunal could wait to receive the document after Mr. Kudelka’s presentation, at the time of Mr. Patton’s summation.

Mr. Kudelka thanked the Tribunal for its time today. He explained that Junction Climbing Gym was an indoor rock climbing gym in the Old East Village. Their story began in 2011 when they set in place plans for a climbing gym in London. At the time London was the largest market in Ontario without a climbing gym. He noted that it seemed a straight forward business choice until they quickly learned why London lagged behind so many jurisdictions: development charges for converting industrial space to commercial uses were astronomical, \$174.44 per square metre. He advised that they eventually opened just a portion of their planned facility and even then it cost just shy of \$112,000 to convert a 641 square metre, or about 7,000 square feet, of empty warehouse space from industrial to commercial use. But for them to open they were stuck paying it since commercial properties with the height for a climbing gym simply do not exist; it would have to be an industrial building if they were to open. Paying the development charges was an incredible strain on their budget and one that was especially tough to swallow as the new development was in a 15 year old building in a 150 year old neighbourhood. Still they believed that London was the right place to open and that Council would see a way to charge fees that would more accurately reflect the use and demand on City resources. Mr. Kudelka went on to say that the Council of the day, one that was notoriously split around ideologies and alliances, united around a sensible approach. In a vote that went 10-3, they agreed that charges at our property were not calculated correctly. The correct calculation should be on the bathrooms and the utility rooms that they were having built. Each of these rooms had water systems connected to City services, constituting new demand. The climbing areas, while certainly impressive to look at, were fundamentally no different than a factory with added equipment.

The Tribunal was further advised by Mr. Kudelka that now, three years later, they have been able to finish the product they designed in 2013 and 2014. Again, they are facing development charges, this time for a mezzanine space that provides exclusively for climbing. The fees for this space, the presence of which places no additional demands on City services, are \$74,456.44. This is almost 25% of the project’s budget and actually costs more than the concrete floor that has been installed. It is their belief that these charges were not calculated correctly, that they should have been charged as they were before: on the area of the internal spaces with fixtures that increase the water demand. This area represents 98.7 square metres, making fees \$23,478.76. Mr. Kudelka indicated that he was sure that that the Tribunal will have concerns about the precedent this will set. He indicated that it was his belief that the records will show that it is rare that intensification on this scale will occur inside an established building. After all, not many buildings are four storeys tall but still empty on the inside. Additionally, Mr. Kudelka stated that charging recreation spaces on a per square foot basis creates a very

difficult situation for operators. It creates a financial pressure to reduce space to save costs and as a result can compromise safety, not to mention user experience. Mr. Kudelka mentioned there would be five pages provided for the Tribunal's reference: the first shows the resolution of Council as it was done in 2014, the second will show the area they were originally charged on, the next page what they were charged on after the resolution and the next two pages show the current area being charged and the area that, based upon the 2014 precedent, should be charged.

Mr. Kudelka summarized that he did not object to paying City taxes or fees, but he did, however, believe that the application of the charges is currently inaccurate and that the calculation based upon the precedent for their use is correct and that it will better serve the City in its goal of development in the Old East Village and the City as a whole into a thriving, healthy and connected community. He thanked the Tribunal and staff for their time in this matter and indicated he would be happy to answer any questions.

The Chair asked for Mr. Patton to make his summation, after which questions would be asked.

Mr. Patton indicated he would now pass out the material that had been referenced, which was then circulated by the Registrar and recorded as Exhibit #4.

Mr. Patton took the Tribunal through the Council resolution of September 16, 2014, noting that this is sadly the second time that Mr. Kudelka and his business have had to deal with development charges that they feel are inappropriate. He noted that after a hearing similar to this Council made a decision as noted in their resolution of September 16, 2014. The issue at the time was, was there any new floor area added in the Phase 1 of the Junction Climbing Centre's project. He pointed out that the finding of Council, based upon the evidence, was that there was an inequity and development charges were not warranted. \$111,816.04 of Mr. Kudelka's money was initially paid in protest. That was for the newly-developed floor area as illustrated in Exhibit #4. The development charges that were returned as a result of the Council decision was \$96,064.11. Those development charges dealt with Phase 1 of the project. Mr. Patton drew the Tribunal's attention to its agenda to show the subject floor space, and the Chair encouraged the Members to refer to the diagrams contained in Exhibit #4 as they were easier to understand given they were in colour. Mr. Kudelka confirmed the diagrams in Exhibit #4 were the same. Mr. Patton indicated that what happens on the Mezzanine Level is not really activity space and that's the problem. He then apologized and said that there is an activity space and what happens up there is an additional washroom, a party room and a maintenance room that occupies the space.

Mr. Kudelka assisted by clarifying the area (coloured in red on Page 3 of Exhibit #4) that they were currently being charged for. That area was added to the additional climbing space. The development charges are on that additional mezzanine space. He added that the area coloured in green on the last page of Exhibit #4 was newly constructed and that is the area that they believe they should be charged on based upon the precedent and it is in keeping with development charges being based on increased demand on City services. Mr. Kudelka indicated that are happy paying for the areas where there is increased demand, but to charge them for empty concrete where they were not charged for empty concrete before seems inaccurate.

Mr. Patton added that he would not use the word inaccurate, but rather inequitable and inconsistent with the decision of the previous Council. He indicated that certainly the Tribunal was not bound by the previous decision, but the principle was fairly well established that the one coloured area has no impact on municipal services. Mr. Patton indicated that subject to any questions of himself or Mr. Kudelka, that concluded their submission.

Councillor Park enquired if all of the works were completed on one permit and was advised yes by Mr. Kudelka. He further clarified that maybe there were two permits depending on your view, as the washroom ceiling was joined and went from a ceiling to a floor.

In reference to Exhibit #4, Councillor Hubert indicated that the 2014 pink area was what the original charges were based on, and the green area on the next page was the area the charges were applied to as a result of the September 2014 Council decision. The next page shows where the development charges are being applied on the now larger pink area, and the request is that based on the 2014 precedent the City would only apply the charges to the green area on the final page of the Exhibit.

Councillor Usher asked for clarification of the washroom area that had been built with the concrete ceiling that was now forming part of the floor of the mezzanine level. Mr. Kudelka indicated that in the space there are two levels. The lower level has the washrooms and the upper level is the mezzanine where we added climbing on a new floor and it is just climbing. The lower level was not charged under the current Development Charges By-law. The project was, however, charged on the upper level because of the way that development charges are calculated based upon the existing foot print, and indicated that he was sure City staff would be happy to clarify the exact nature of those charges. Mr. Kudelka further stated that while they were very happy not to be charged on the lower level, they were charged on the upper level. They think the charges for the upper level are inaccurate and that the precedent should be that they are charged for the bathrooms and washrooms like they were before. The pink second floor, which is essentially empty space (it has climbing, but it does not have any demand on City services), is what they were charged on based upon how the by-law is structured and that resulted in a \$75,000 charge to use empty space in their own building, that would just be ceiling above them. But, now it is two floors you are looking at, an upper level that they got charged on and a lower level that they didn't get charged on and that is why they think the charges should be waived.

Councillor Usher asked for further clarification and referred back to the diagrams in Exhibit #4. Mr. Kudelka explained they were operating under two Development Charges By-laws. He indicated that under the old by-law development charges were based entirely upon the foot print of your building and for commercial users the foot print of a building can be massive because they operate volleyball and tennis and all kinds of recreational users were being turned away from London because they couldn't afford the space to convert an industrial building. Junction Climbing forged ahead, Council saw the merits in what they were doing and said that for this situation the correct calculation (because for a recreational user the building doesn't change a lot---you add washrooms but the rest of it stays as a warehouse) was for the features they added that would put demand on City services. This time, the City is charging them as if they built an addition on the building. Their unique situation is this new floor space is within the existing building and the rate for a commercial use such as theirs is astronomical---\$75,000 for the space that is already owned. Their belief is that the precedent set in 2014 was the appropriate way to charge for the washrooms they installed, but they are not part of the new by-law calculation so they are asking that Council charge in 2017 what was seen as appropriate in 2014. He noted that if all the walls were removed, it would be a warehouse again and you would not need to change anything to change it back to storage.

The Chair asked if the mezzanine existed prior to the second phase. Mr. Kudelka advised that the ceiling to the washrooms was there, but the mezzanine was not. He further stated that a concrete ceiling was put on the bathrooms, with the hope that one day they would be able to expand to a second level and the ceiling would then form part of the floor of the second level. The bathroom ceiling was not used as a mezzanine, just as a ceiling, when originally constructed.

The Chair invited Mr. Kokkoros to make his submission and submit any additional Exhibits. The Registrar circulates the two Exhibits provided by Mr. Kokkoros: Exhibit #5 being the Ontario Building Code Matrix for the subject development at 1030 Elias Street, and Exhibit #6 comprised of two architectural drawings for the subject development at 1030 Elias Street. He then proceeded to provide the attached PowerPoint presentation, a copy of which is included as Exhibit #7.

Councillor Usher referred to the drawings contained in Exhibit #6 and asked for the clarification between the two diagrams. Mr. Kokkoros advised that Diagram A-01 was the Main Floor Plan reflecting some interior alterations on the Main Floor Level and to help plans examination staff better address exiting from the Mezzanine Floor space, while Diagram A-02 was the newly-created Mezzanine Floor Plan. Councillor Usher further asked if the development charges were based on A-01 and was advised by Mr. Kokkoros that the development charges were based strictly on A-02. Mr. Kokkoros drew Councillor Usher's attention to the gridlines, numbers and circles on the top of the diagram and directed him to look between gridlines D and E where he'd see the word "Mezzanine" and 313 square metres. Councillor P. Hubert offered further clarification for Councillor Usher as to what area the development charges were based upon. Councillor Usher asked if the hand washing rooms, locker rooms, etc. were all new. Mr. Kokkoros advised that the main floor had already been addressed in 2014 and indicated that there were additional rooms created in 2017 but they did not trigger development charges

because the use is already commercial and if you alter an existing commercial use the Development Charges By-law does not stipulate that you charge development charges, so staff would not and did not charge development charges for what was newly added on the Main Floor. What was newly added in 2017 as non-residential space, which would be subject to development charges, was the newly-created mezzanine space of 313 square metres. Under the Building Code it is considered a second floor and under the Building Code Data Matrix the architect himself indicates that the 313 square metres is a new second floor.

Councillor Usher refers again to Diagram A-02, and indicated that he thought development charges were based upon the services being used, so when he looks at the Mezzanine Floor he is trying to figure out the services that are being used on that floor, in that new capacity. P. Yeoman, Director, Development Finance, explains how development charges are applied, drawing a connection between this project and how development charges are applied City-wide. He also indicated how collected development charges are utilized.

Councillor T. Park enquired if the proponent had created a non-load bearing ceiling then we wouldn't be in this situation as the proponent would not be creating any additional usable space. Mr. Kokkoros confirmed that the creation of a ceiling would not be a material alteration under the Building Code and would not, therefore, trigger a development charge.

Councillor J. Morgan indicates that given the Tribunal was circulated with the previous Council decision firstly, what was the rationale beyond what is noted in the resolution and secondly, were there development charge changes from the 2014 decision that would be relevant to the decision that has to be made today? Mr. Kokkoros responded to the first question by answering that, respectfully, staff still do not understand where the error in calculation was made in connection with the 2014 complaint. The Tribunal had recommended dismissal of the complaint but Council overturned that recommendation on the basis stated in the September 16, 2014 resolution. Mr. Yeoman responded to the second question indicating that the 2014 Development Charges By-law was not as favourable to demolition and conversion credits, but the 2017 is more favourable in that regard. However, this file is not dealing with a conversion, rather it is a new build.

Councillor P. Hubert asked if there was a Mezzanine floor, other than what was on top of the Main Floor washrooms, prior to Phase 2. Mr. Kokkoros advised that there was no second floor area, and referred to the building permit application and the Building Code Matrix, which both list the work as an addition. He further indicated that the work on the First Floor was alterations that were not subject to development charges.

Councillor J. Morgan advised that Councillor J. Helmer would normally be part of this Tribunal, and noted that the subject property was in his Ward, but that he is out of town at a Policy Conference that was booked several months ago and would otherwise have been here today.

Councillor J. Morgan noted that reference has been made today to "precedent". Staff have commented on some of the differences between the last decision and this complaint. He asked Mr. Card if in fact there is a precedent. Mr. Card advised no, there would not be a precedent and even if there were, the decision of the Tribunal would not be binding on this Tribunal. Mr. Card further advised that he did look at the earlier decision and could not understand any rationale on that decision.

The Chair invited the complainant to provide any further information in relation to the information provided by the City's Administration or, in short, to provide a rebuttal. Mr. Kudelka indicated that the word precedent had been touched upon. He said that sometimes development charges are the hammer solution to not everything being a nail, especially for businesses like theirs. He further stated that the question of what the rationale was for the 2014 decision would likely come up before the Tribunal again. Adding that speaking personally, he has, probably once every three months, had a business approach him asking how he handled the fact that he has to deal with these regulations. He noted that he thinks the implementation and changes made to the Development Charges By-law make a great step forward and make things better for businesses like his. However, also he also suggested that a business like his is perhaps an out layer because they started the project under one Development Charges By-law and are finishing it under another Development Charges By-law. He summarized by

stating that he hopes that the situation can be made bearable by his business and extended his appreciation for the time spent on this process.

The Chair then outlines the options as to next steps with respect to the complaint.

Councillor Usher indicates he feels like he understands this situation and feels there is no option but to dismiss the complaint.

Councillor Park considered what decision would be made in an industrial or residential situation and she arrived at the same conclusion as Councillor Usher. The proponent has increased the usage and there are rules in that regard. With more individuals entering the facility there will be more usage of roads, etc.

**RECOMMENDATION:**

That, after convening as a tribunal under section 27 of Part IV of By-law C.P.-1496-244 to hear a complaint under section 20 of the Development Charges Act, by Junction Climbing Centre Inc., the operator of a portion of the building situated at 1030 Elias Street, regarding the development charges imposed by The Corporation of the City of London in connection with development on the land known as 1030 Elias Street, as detailed in the attached Record of Proceeding, the complaint BE DISMISSED on the basis that the Tribunal finds that the calculation of the applicable development charges was made in accordance with the Development Charges By-law and the complainant has not demonstrated that the complaint meets the grounds articulated in Section 28 of the Development Charges By-law.

**ADJOURNMENT**

The Tribunal adjourned at 2:28 PM.



300 Dufferin Avenue  
P.O. Box 5035  
London, ON  
N6A 4L9

**London**  
CANADA

September 26, 2017

Mr. Alan Patton  
Patton Law  
1512-140 Fullarton Street  
LONDON ON N6A 5P2

Dear Mr. Patton:

**Re: Development Charges Complaint – 1030 Elias Street**

Further to our telephone conversation of yesterday's date, notice is hereby given that the development charges complaint of your client, Junction Climbing Centre Inc., with respect to the calculation of development charges for the property located at 1030 Elias Street, will be heard by the Corporate Services Committee on Tuesday, October 24 at 1:30 PM.

This meeting will be held in the Council Chambers, 2nd Floor, City Hall, 300 Dufferin Avenue, London.

You will be given the opportunity to make representations to the Corporate Services Committee at this meeting about the complaint. A copy of the staff report associated with this matter is attached hereto for your reference.

If you have any questions regarding this hearing, please contact Linda Rowe at 519 661-2500, Ext. 5396.

Linda Rowe  
Deputy City Clerk

Attachment

- c. B. Card
- A. Anderson
- G. Kotsifas
- P. Kokkoros
- Chair and Members, Corporate Services Committee

<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE</b>
<b>FROM:</b>	<b>G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>DEVELOPMENT CHARGE COMPLAINT 1030 ELIAS STREET MEETING HELD ON OCTOBER 24, 2017</b>

**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.

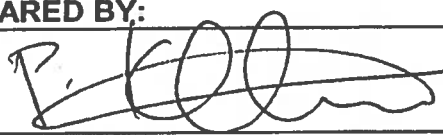
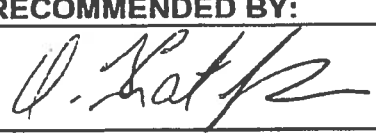
This item is very similar to item no.2 and comments have been provided above.

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.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
	
<b>P. KOKKOROS, P. ENG. DEPUTY CHIEF BUILDING OFFICIAL, DEVELOPMENT AND COMPLIANCE SERVICES</b>	<b>G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>

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.

Y:\Shared\building\Rep&Recs\2017\PY 2017-09-12 - CSC - 1030 ELIAS ST - DC COMPLAINT -PK -Aug 31 version\_final.doc

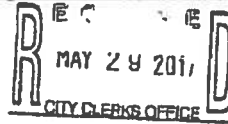
APPENDIX 'A'

**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 be "Alan R. Patton", written over a horizontal line.

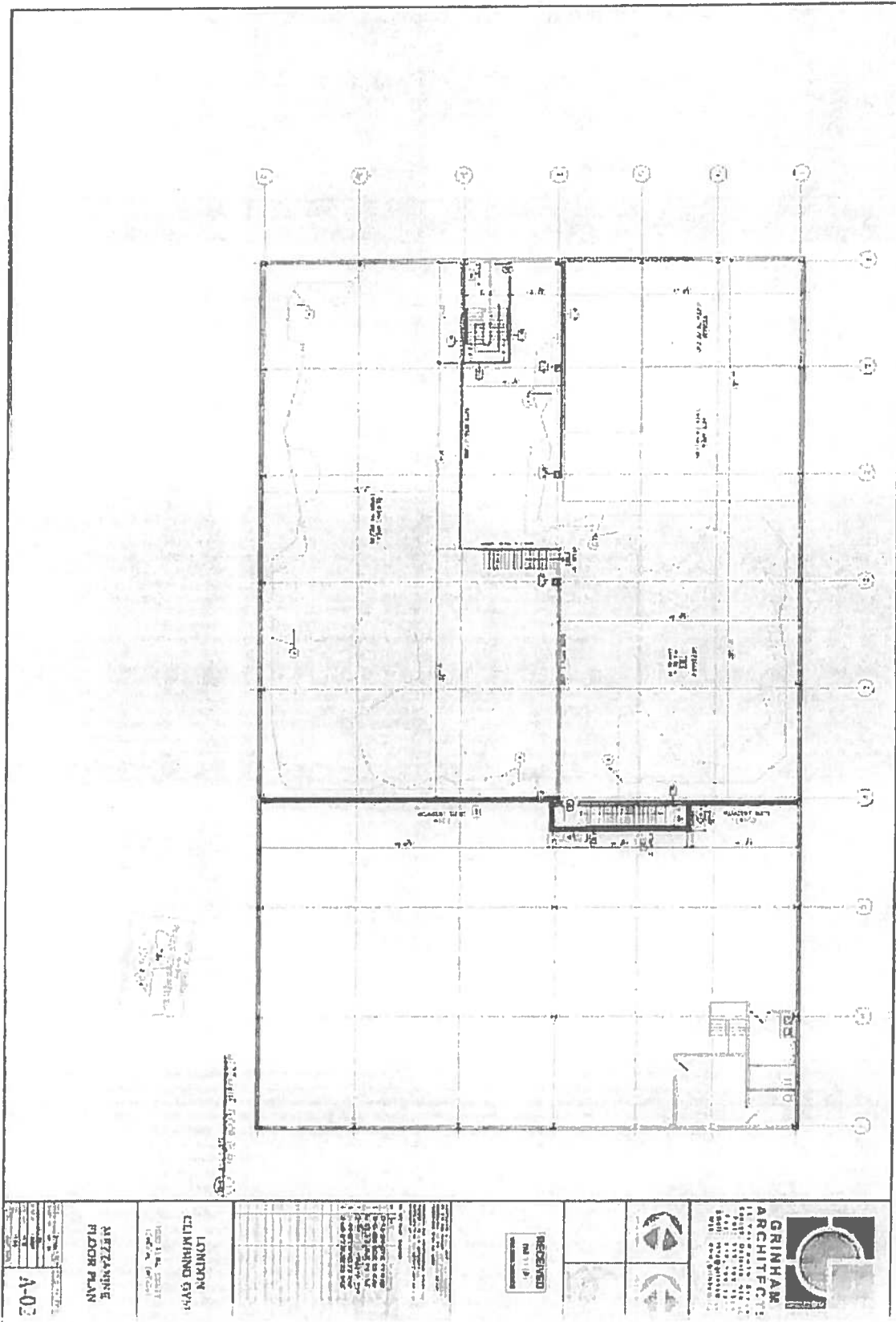
Alan R. Patton  
[alan@pattonlaw.ca](mailto:alan@pattonlaw.ca)

ARP/kip

Cc: Junction Climbing Centre Inc.

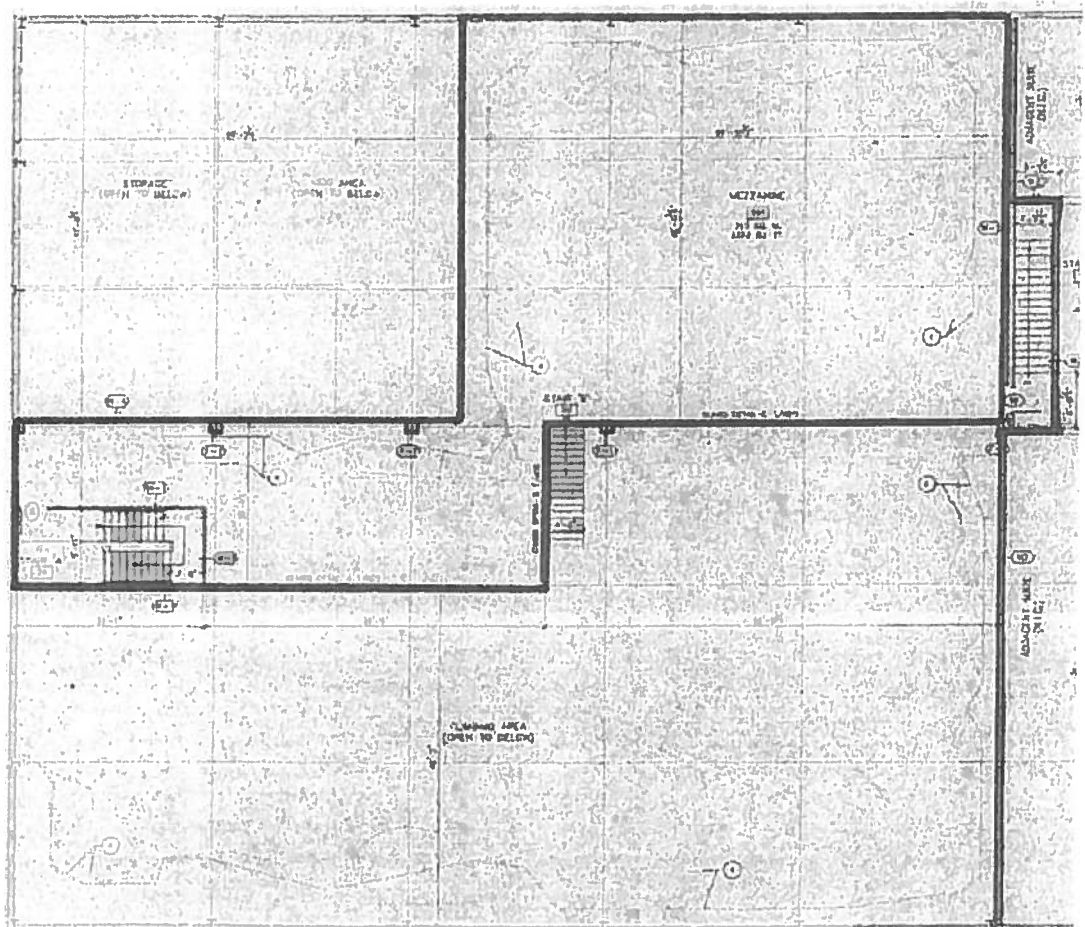
1512-140 Fullarton Street, London, ON N6A 5P2 tel: 519.432.8282 fax: 519.432.7285

APPENDIX 'B'



Drawing A-02: Mezzanine Floor Plan

APPENDIX 'C'

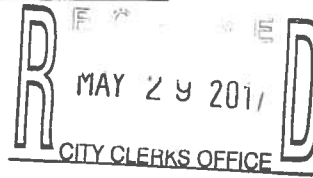


Drawing A-02: Enlarged portion of Mezzanine Floor Plan

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', enclosed within a hand-drawn oval.

**Alan R. Patton**  
[alan@pattonlaw.ca](mailto: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



<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE</b>
<b>FROM:</b>	<b>G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>DEVELOPMENT CHARGE COMPLAINT 1030 ELIAS STREET MEETING HELD ON OCTOBER 24, 2017</b>

### 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.

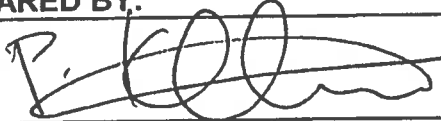
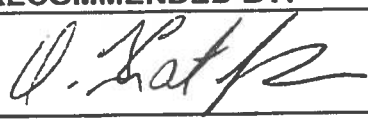
This item is very similar to item no.2 and comments have been provided above.

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.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
	
<b>P. KOKKOROS, P. ENG.  DEPUTY CHIEF BUILDING OFFICIAL,  DEVELOPMENT AND COMPLIANCE  SERVICES</b>	<b>G. KOTSIFAS, P.ENG.  MANAGING DIRECTOR,  DEVELOPMENT AND COMPLIANCE  SERVICES &amp; CHIEF BUILDING  OFFICIAL</b>

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.

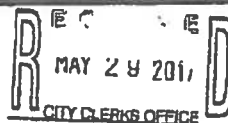
APPENDIX 'A'

**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 be "Alan R. Patton", written over a horizontal line.

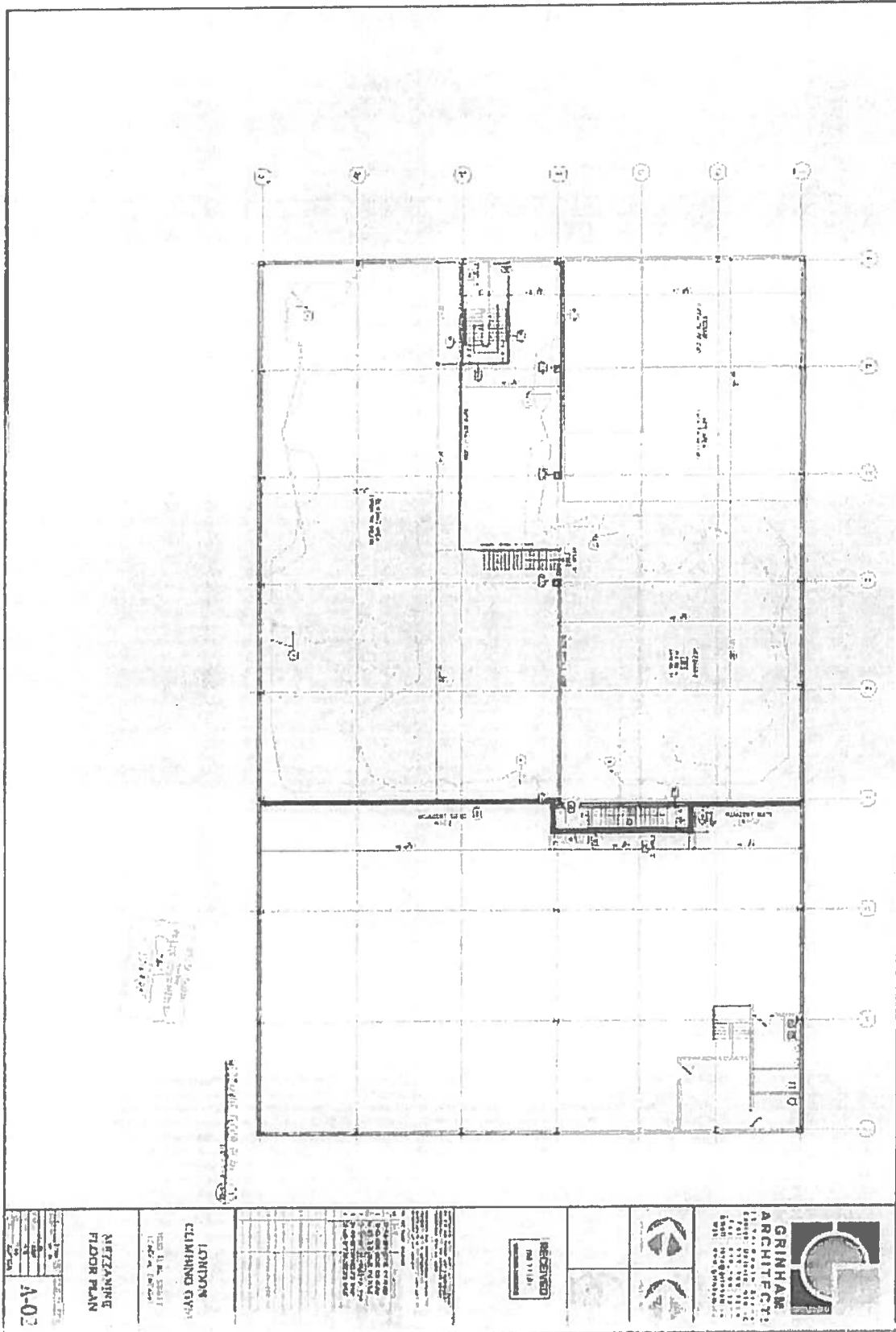
Alan R. Patton  
[alan@pattonlaw.ca](mailto:alan@pattonlaw.ca)

ARP/klp

Cc: Junction Climbing Centre Inc.

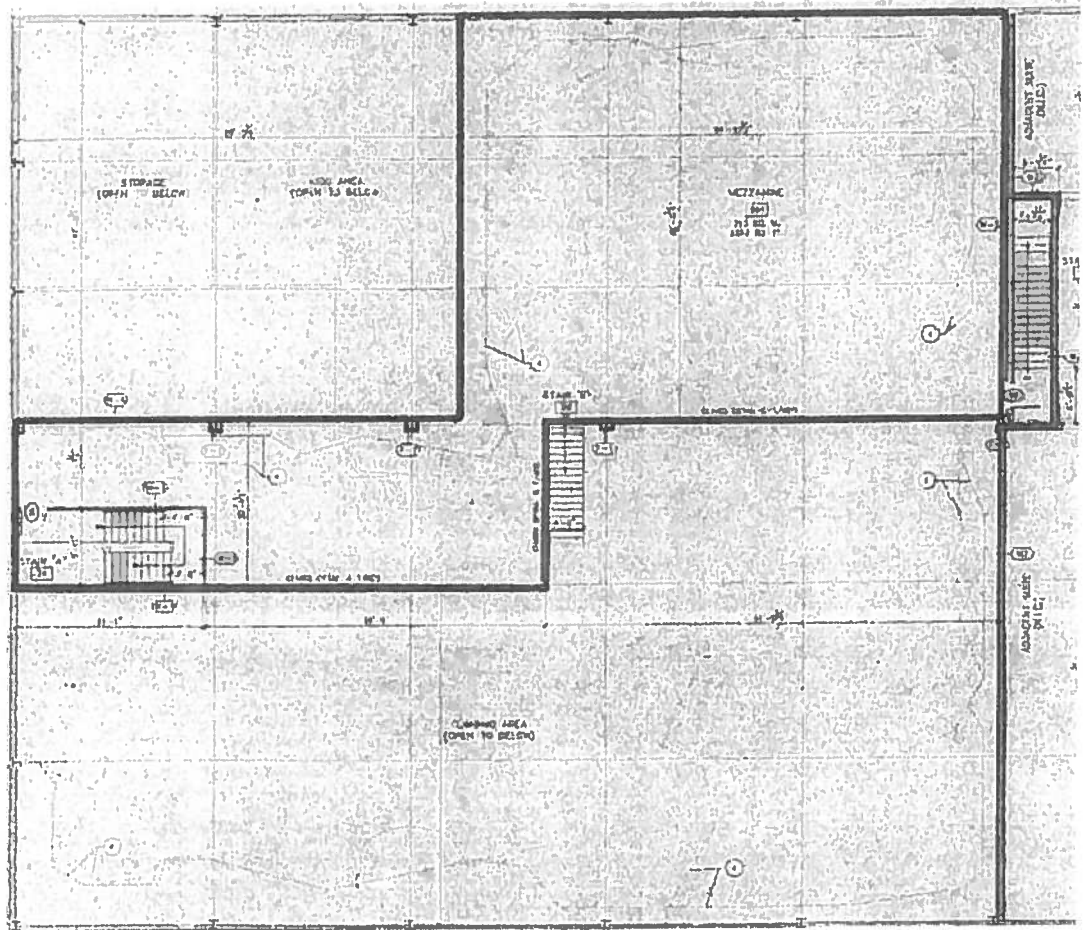
1512-140 Fullarton Street, London, ON N6A 5P2 tel: 519.432.8282 fax: 519.432.7285

APPENDIX 'B'



Drawing A-02: Mezzanine Floor Plan

APPENDIX 'C'



Drawing A-02: Enlarged portion of Mezzanine Floor Plan





P.O. Box 5035  
London, ON  
N6A 4L9

**London**  
CANADA

EXHIBIT '4'

October 24, 2014

Analee Ferreira  
Patton & Associates  
Barristers & Solicitors  
1512-140 Fullarton Street  
London, Ontario N6A 5P2

COPY

Dear Ms. Ferreira:

**Re: 1030 Elias Street**

---

Further to the Resolution of Council dated September 16, 2014, directing that:

- a) the development charges in the amount of \$14,373.86 BE APPROVED, subject to any necessary adjustment arising from confirmation by The Corporation of the City of London, in order to rectify an incorrect determination or error based on the newly-developed floor area at 1030 Elias Street occupied by the additional washrooms, party room and maintenance room (estimated to total approximately 887 sq.ft.); and,
- b) the Chief Building Official BE DIRECTED to refund the difference between the original calculation and the amount confirmed by The Corporation of the City of London arising from this decision,

Please find enclosed a refund cheque in the amount of \$96,300.98 payable to your firm in trust.

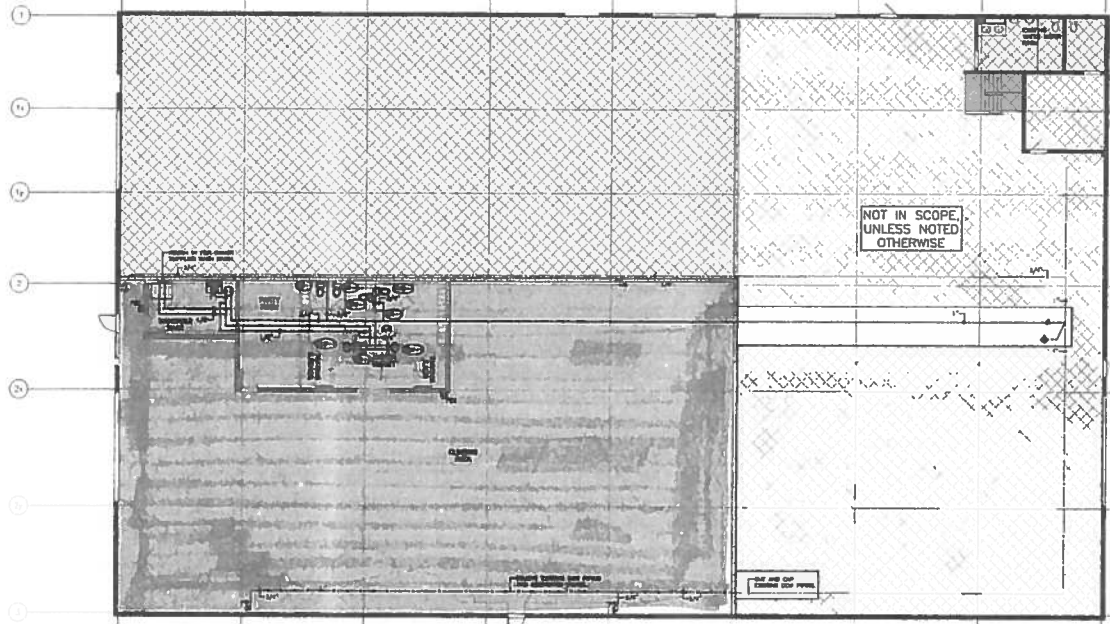
I am advised by development services staff that notwithstanding the change of use occurred throughout the entire 641 square metre space, the principle amount of the refund was calculated as directed by the Resolution of Council, as follows:

Development Charges paid under protest:	\$111,816.04
Newly Developed Floor Area:	90.3 square metres (20'-4" x 39'-1 5/8" & 16'-6 3/8" x 10'-8")
Revised Development Charges:	\$15,751.93 (90.3 sq.m. X \$174.44 per sq.m.)
Principle Refund amount:	\$96,064.11

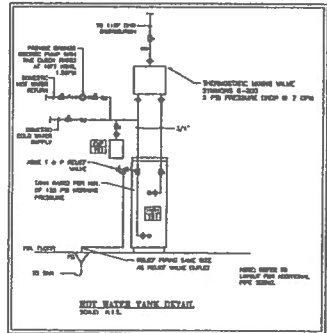
The enclosed refund cheque also includes interest calculated on 180 days at a rate of 0.5% on \$96,064.11 totaling \$236.87 in accordance with the *Development Charges Act*, and Regulations thereto.

The Corporation of the City of London  
City Solicitor's Office, Room 1014  
Office: 519-661-2500 Ext. 4711  
Fax: 519-661-5530  
nhall@london.ca

# 2014 - ORIGINAL CHARGES



**DOMESTIC WATER PIPING LAYOUT**  
 ROAD 1/8" = 1'-0"



01	CONTRACT FOR PROJECT	DATE	01-01-14
02	DESIGN FOR PERMIT	DATE	01-01-14
03	DESIGN FOR CONSTRUCTION	DATE	01-01-14
04	DESIGN FOR PLACING ORDER	DATE	01-01-14
05	REVISIONS	DATE	01-01-14

**Callidus Engineering**  
 A Division of 14-0000 Group Inc.  
 1030 ELIAS STREET, LONDON, ONTARIO N6A 1K9  
 TEL: 519-837-1100 FAX: 519-837-1101

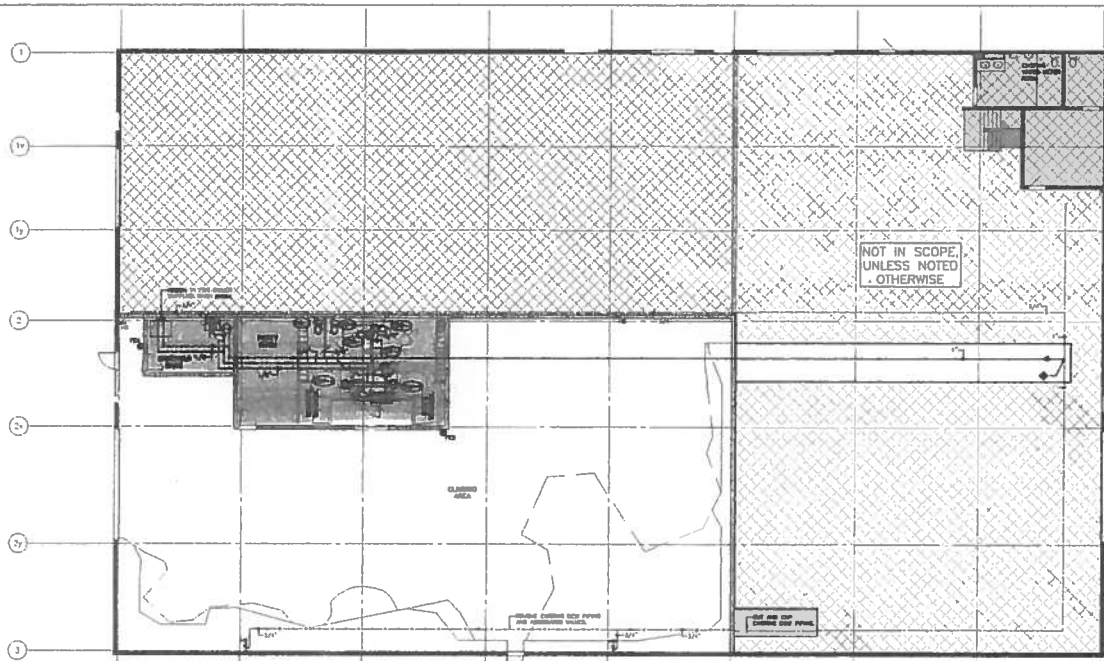


1030 ELIAS STREET,  
 LONDON, ONTARIO.

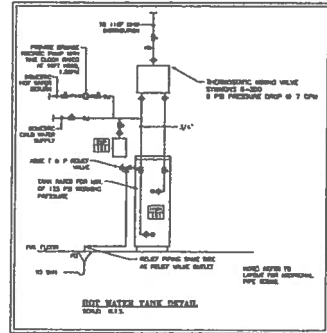
**DOMESTIC WATER PIPING LAYOUT AND DETAIL**

DESIGNED BY	RAJ/ONS	CHECKED BY	CC-ONS
DRAWN BY	RAJ/ONS	DATE	01-01-14
SCALE	AS SHOWN	PROJECT NO.	M3

# 2014 - AS PER COUNCIL DECISION



**DOMESTIC WATER PIPING LAYOUT**  
SCALE 1/8" = 1'-0"



01	CC-00000 FOR PERMIT	ISSUED	01/14
02	ISSUED FOR REVIEW	ISSUED	01/14
03	ISSUED FOR DESIGN REVIEW	ISSUED	01/14
04	ISSUED FOR PLANNING PERMIT	ISSUED	01/14
05	APPROVED	01/14	01/14

**Callidus Engineering**  
A Division of Laidlaw Design Inc.  
1200 West Beaver Creek Road #1, Toronto, Ontario M3B 1Y7  
416-491-3000 416-491-1000 416-491-1000

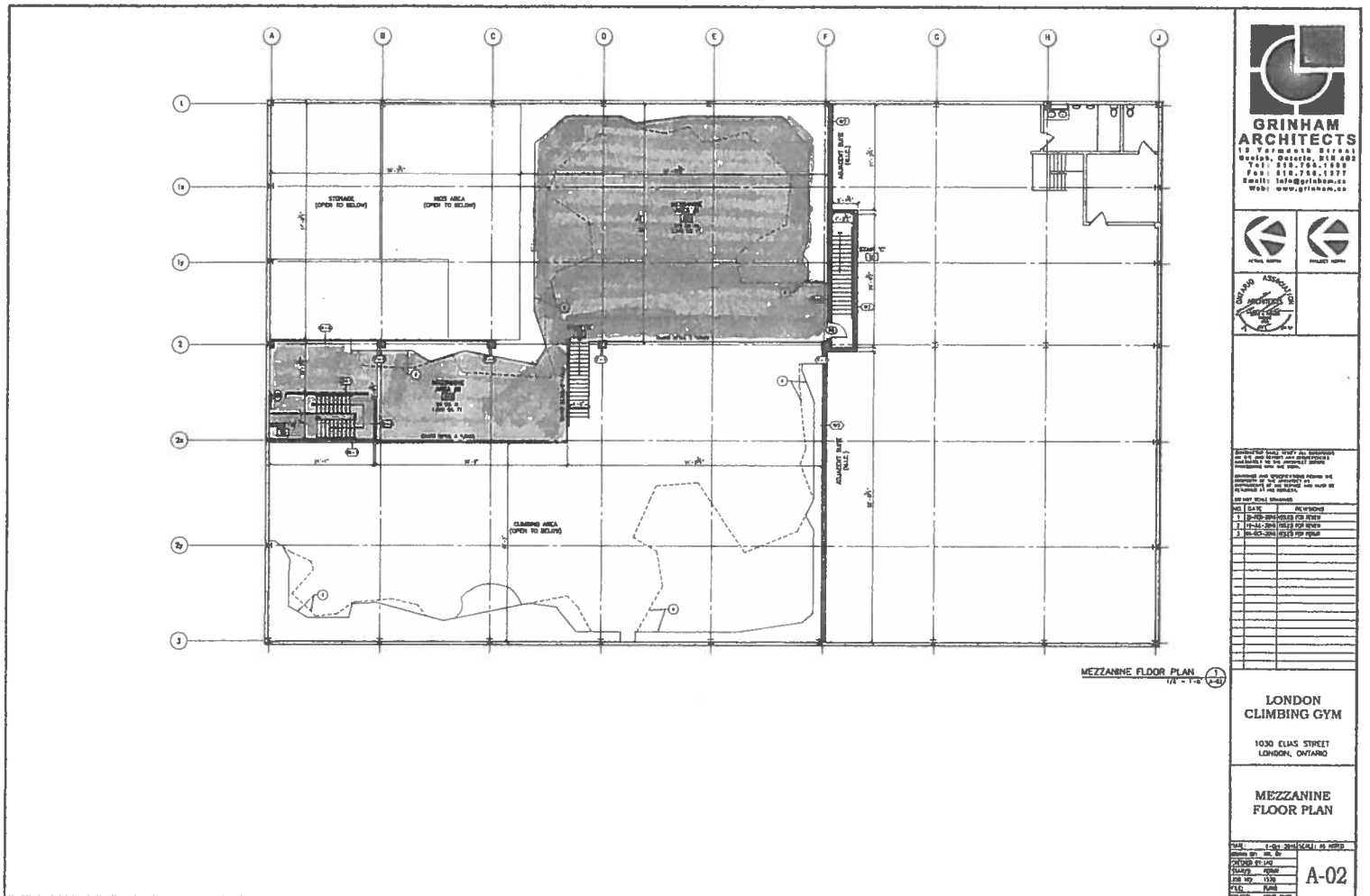


1030 ELIAS STREET,  
LONDON, ONTARIO.

**DOMESTIC WATER PIPING LAYOUT AND DETAIL**

PROJECT NO.	CC-0000
CLIENT	CALLIDUS
DATE	01/14
SCALE	AS SHOWN
NO.	M3

# 2017 CURRENT



**GRINHAM ARCHITECTS**  
 10 Foremost Street  
 Markham, Ontario, M1H 0G2  
 Tel: 226-756-1000  
 Fax: 226-756-1377  
 Email: info@grinham.ca  
 Web: www.grinham.ca



REVISIONS

NO.	DATE	DESCRIPTION
1.	20-05-2016	FOR PERMIT
2.	17-01-2016	MEZZANINE FLOOR PLAN
3.	04-05-2015	FOR PERMIT

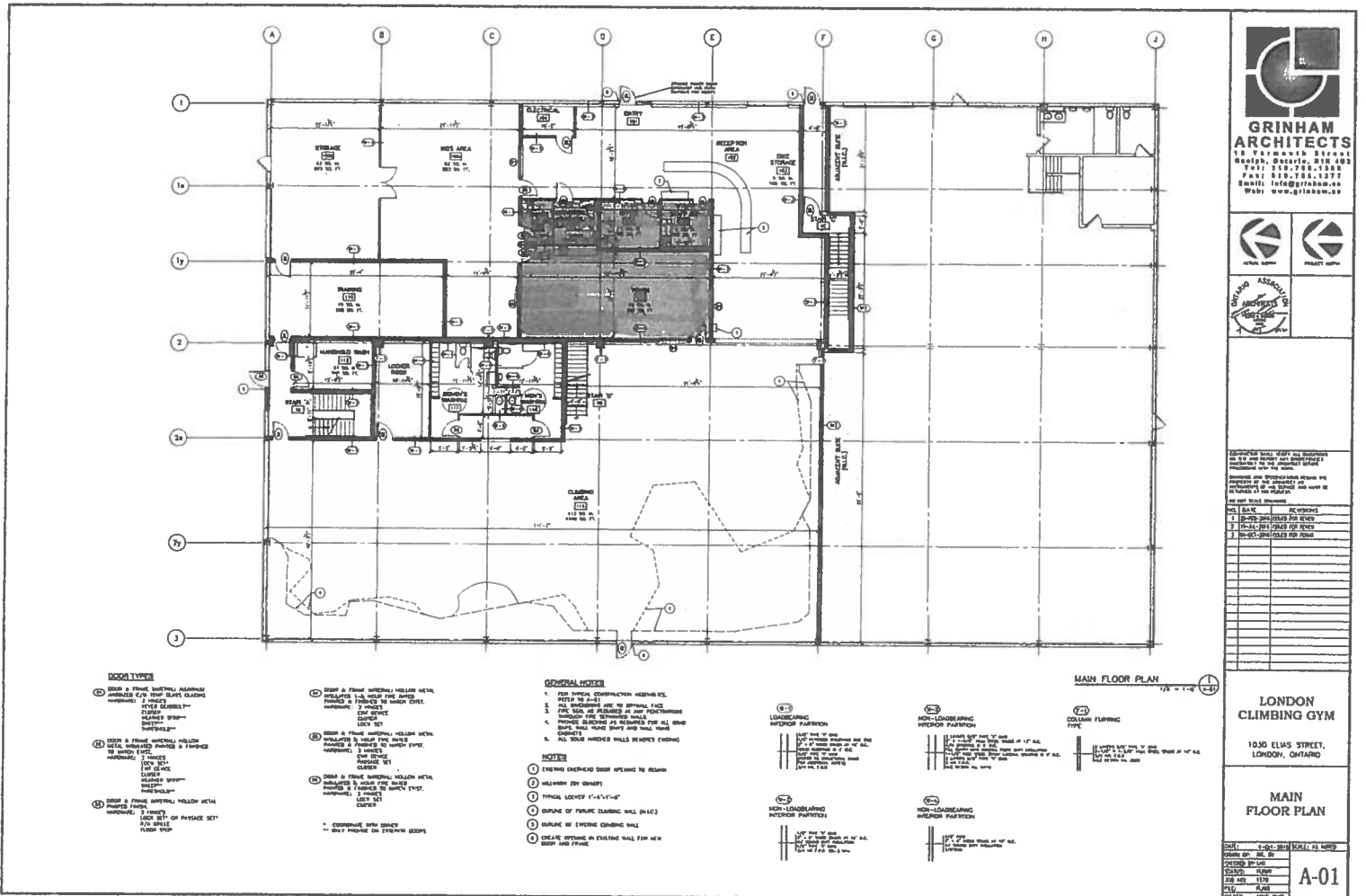
**LONDON CLIMBING GYM**  
 1030 ELIAS STREET  
 LONDON, ONTARIO

**MEZZANINE FLOOR PLAN**

DATE: 1-05-2016  
 DRAWN BY: M. B.  
 CHECKED BY: M. B.  
 STATUS: PERMIT  
 FILE NO.: 113  
 PLOT: 4x6  
 PLOTTED: 05/05/2016

**A-02**

2017 - BASED ON 2014 PRECEDENT



Item	Ontario Building Code Data Matrix Parts 3 & 9							OBC Reference			
1	Project Description:		<input type="checkbox"/> New		<input type="checkbox"/> Part 11		<input checked="" type="checkbox"/> Part 3		<input type="checkbox"/> Part 9		
	JUNCTION CLIMBING GYM - INTERIOR FIT-UP		<input type="checkbox"/> Addition								
	<input checked="" type="checkbox"/> Change of Use		<input checked="" type="checkbox"/> Alteration								
2	Major Occupancy(s)		Group 'A-Z', Assembly - Gymnasias				T 3.1.2.1.				
3	Building Area (m2)		Existing 1,840 m2		New N/A		Total 1,840 m2				
4	Gross Area (m2)		Existing 1,840 m2		New 313		Total 2,153 m2				
5	Number of Storeys		Above Grade 1		Below Grade 0						
6	Height of Building (m)		12.1 m								
7	Number of Streets/ Access Routes		1				3.2.5.4				
8	Building Classification		3.2.2.26				3.2.2.26				
9	Suite Area (m2)		Ground 1167.5 m2		Second 313		Total 1480.5 m2				
10	Gross Suite Area (m2)		Ground 1167.5 m2		Second 313		Total 1480.5 m2				
11	Sprinkler System Proposed		<input checked="" type="checkbox"/> entire building								
			<input type="checkbox"/> suite only								
			<input type="checkbox"/> in lieu of roof rating								
			<input type="checkbox"/> not required						3.2.2.26		
12	Standpipe Required		<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No				3.2.9		
13	Fire Alarm Required		<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No						
14	Water Service/ Supply is Adequate		<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No						
15	High Building (3.2.6)		<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No						
16	Permitted Construction		<input type="checkbox"/> Combustible		<input type="checkbox"/> Non-combustible		<input checked="" type="checkbox"/> Both		3.2.2.26		
	Actual Construction		<input type="checkbox"/> Combustible		<input type="checkbox"/> Non-combustible		<input checked="" type="checkbox"/> Both				
17	Mezzanine(s) Area m2		Existing N/A		New N/A		Total N/A				
18	Occupant Load Based On		m2/person		design of suite						
	Existing		Occupancy N/A		Load 0 persons						
	New		Occupancy N/A		Load 300 persons						
	Total		Occupancy N/A		Load 300 persons						
19	Washroom Facilities (# of Water Closets)		Existing: Men N/A		Proposed: Men 2		3.7.4.3.12				
			Existing: Women N/A		Proposed: Women 2						
20	Barrier-free Design		<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No (Explain)				3.8.1		
21	Hazardous Substances		<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No						
22	Required Fire Resistance Rating (FRR)		Horizontal Assemblies FRR (Hours)				Listed Design No. Or Description				
			Floors 3/4 Hours		SEE ASSEMBLY SCHEDULE ON A-01		3.2.2.26				
			Roof N/A Hours		N/A						
			Mezzanine N/A Hours		N/A						
			FRR of Supporting Members				Listed Design No. Or Description				
			Floors 3/4 Hours		SEE ASSEMBLY SCHEDULE ON A-01		3.2.2.26				
			Roof N/A Hours		N/A						
			Mezzanine N/A Hours		N/A						
23	Spatial Separation - Construction of Exterior Walls							T.3.2.3.1.C			
	Wall	Area of EBF (m2)	L.D. (m)	L/H or H/L	Permitted Max. % of Openings	Proposed % of Openings	FRR (Hours)	Listed Design or Description	Comb Const	Comb. Constr. Nonc. Cladding	Non-comb. Constr.
	North	226	22	L/H	100%	18.0%	-	-	-	-	<input checked="" type="checkbox"/>
	South	N/A	-	L/H	-	-	-	-	-	-	-
	East	N/A	-	L/H	-	-	-	-	-	-	-
West	414	4.8	L/H	30%	0.5%	-	-	-	-	<input checked="" type="checkbox"/>	
24	Other - Describe		References based on proposed 641 m2 interior fit-up, Spatial Separation calculations based on fire compartment of proposed fit-up.								

EXHIBIT '5'

*Cemil*

DATE: 17/03/15

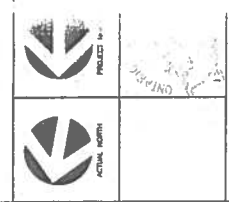
FOR THE CHIEF BUILDING OFFICIAL

ONTARIO ASSOCIATION OF ARCHITECTS

MEMBER A. GRIMHAM

LICENCE 4762

3 MAR 017



**RECEIVED**  
 MAY 14 2011  
 BUILDING DIVISION

**CONSTRUCTION SHALL VERIFY ALL DIMENSIONS ON SITE AND REPORT ANY DISCREPANCIES IMMEDIATELY TO THE ARCHITECT BY PHONE OR IN WRITING.**

**REVISIONS AND SPECIFICATIONS BEYOND THE APPROVED SET OF DRAWINGS SHALL BE INDICATED BY A REVISION TABLE AND MUST BE APPROVED BY THE ARCHITECT.**

**NO WORK SHALL BE DONE WITHOUT THE ARCHITECT'S APPROVAL.**

NO.	DATE	REVISIONS
1	12-FEB-2011	SCHEMATIC PER PLAN
2	19-APR-2011	SCHEMATIC PER PLAN
3	04-05-2011	SCHEMATIC PER PLAN
4	15-FEB-2011	RE-SCHEMATIC PER PLAN
5	24-FEB-2011	RE-SCHEMATIC PER PLAN
6	10-MAR-2011	RE-SCHEMATIC PER PLAN
7	13-MAR-2011	RE-SCHEMATIC PER PLAN

**LONDON CLIMBING GYM**  
 1030 ELIAS STREET,  
 LONDON, ONTARIO

**MAIN FLOOR PLAN**

DATE: 13-MAR-2011 SCALE: AS NOTED  
 DRAWN BY: MK, BY  
 CHECKED BY: JAC  
 STATUS: PERMIT  
 JOB NO.: 1520  
 FILE: P100  
 DESIG: PERC  
 A-0

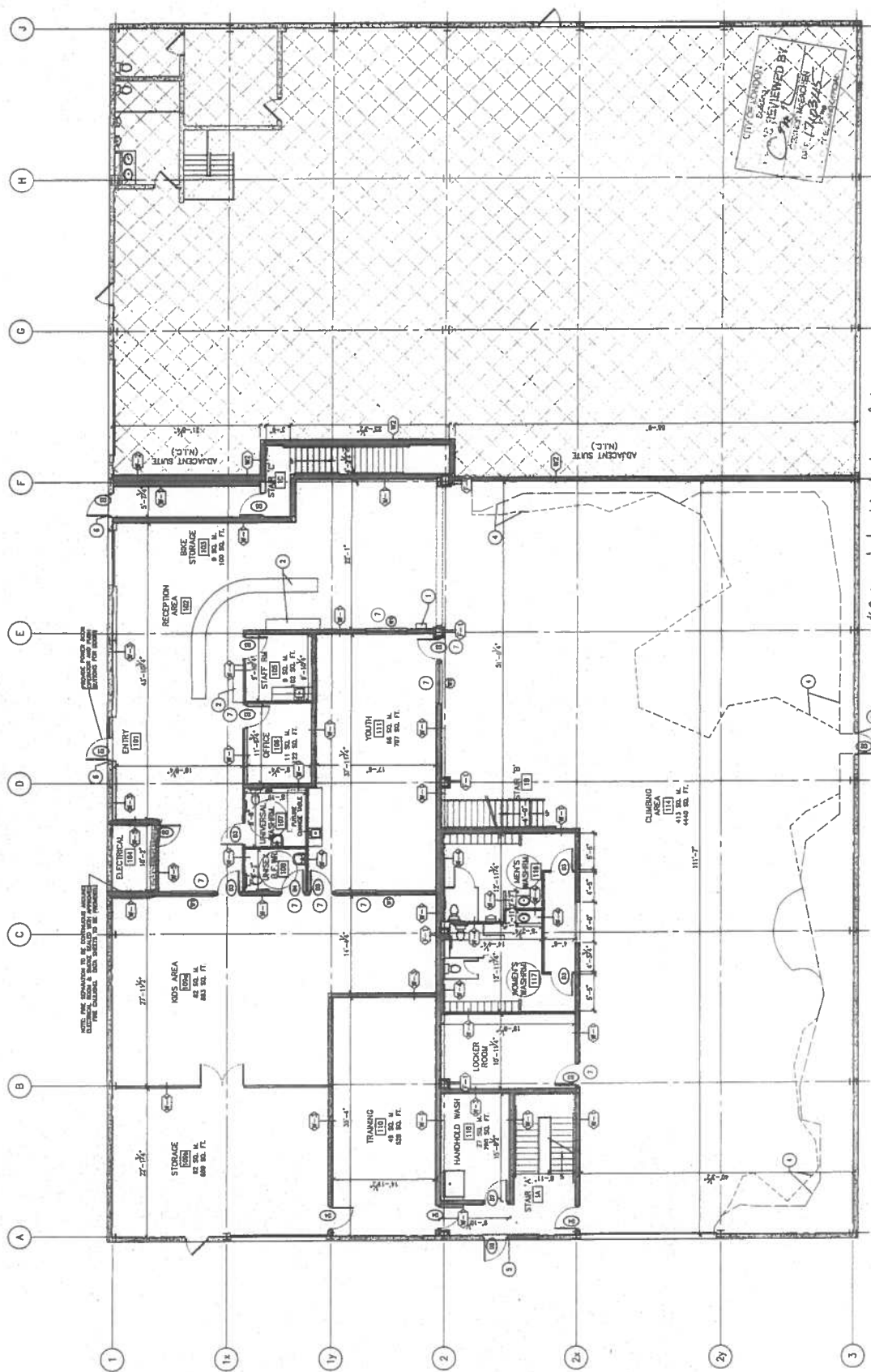
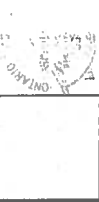
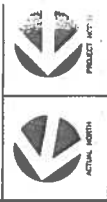


EXHIBIT '6'

- MAIN FLOOR PLAN 1/8" = 1'-0" (A3)**
- GENERAL NOTES**
- SEE THE CONSTRUCTION ASSEMBLY REFER TO A-1
  - ALL DIMENSIONS ARE TO FINISH FACE UNLESS NOTED OTHERWISE
  - THROUGH FOR SPANNING WALLS THROUGH FOR SPANNING BEAMS
  - BASE WALL HANG STOPS AND WALL HANG
  - UNFINISHED MATCHED WALLS INDICATES COSTING
  - PROVIDE DOOR CLOSER IN UNIFORM
  - PROVIDE EMERGENCY CALL SYSTEM AS PER 3.8.1.1(U) (NBC)
  - SEE SPEC. 3.8.1.1(C)
- NOTES**
- EXISTING OVERHEAD DOOR OPENING TO REMAIN
  - MATERIAL (BT OWNER)
  - TYPICAL LOCKER 1'-8" X 1'-0"
  - OUTLINE OF FUTURE CLIMBING WALL (N.L.C.)
  - OUTLINE OF EXISTING CLIMBING WALL
  - CREATE OPENING IN EXISTING WALL FOR NEW BOARD INSIDE ROOM OPENINGS PRIOR TO CONSTRUCTION OF CLIMBING WALL
  - 3/4 HR. F.A.R. OF SUPPORTING STRUCTURE
- DOOR TYPES**
- 5'-2" x 7'-0" MATERIAL: ALUMINUM ANODIZED OR TEMP GLASS GLAZING HARDWARE: 3 HINGES CLOSER: CLOSER WITH STRIP\*\* THRESHOLD\*\*
  - 3'-2" x 7'-0" MATERIAL: HOLLOW METAL FINISHED & PAINTED TO MATCH EXIST. HARDWARE: LOCK SET OR PASSAGE SET R/A GRILLE FLOOR STOP
  - 3'-2" x 7'-0" MATERIAL: HOLLOW METAL FINISHED & PAINTED TO MATCH EXIST. HARDWARE: EXIT DEVICE CLOSER
  - 3'-2" x 7'-0" MATERIAL: HOLLOW METAL FINISHED & PAINTED TO MATCH EXIST. HARDWARE: LOCK SET CLOSER
  - 3'-2" x 7'-0" MATERIAL: HOLLOW METAL FINISHED & PAINTED TO MATCH EXIST. HARDWARE: LOCK SET CLOSER
  - 3'-2" x 7'-0" MATERIAL: HOLLOW METAL FINISHED & PAINTED TO MATCH EXIST. HARDWARE: LOCK SET CLOSER
  - COORDINATE WITH OWNER
  - ONLY PROVIDE ON EXTERIOR DOORS
- LEGEND**
- (C-1) COLUMN FINISH TYPE
  - (C-2) NON-LOADBEARING INTERIOR PARTITION
  - (C-3) NON-LOADBEARING INTERIOR PARTITION
  - (C-4) NON-LOADBEARING INTERIOR PARTITION
  - (C-5) NON-LOADBEARING INTERIOR PARTITION
  - (C-6) NON-LOADBEARING INTERIOR PARTITION
  - (C-7) NON-LOADBEARING INTERIOR PARTITION
  - (C-8) NON-LOADBEARING INTERIOR PARTITION
  - (C-9) NON-LOADBEARING INTERIOR PARTITION
  - (C-10) NON-LOADBEARING INTERIOR PARTITION
  - (C-11) NON-LOADBEARING INTERIOR PARTITION
  - (C-12) NON-LOADBEARING INTERIOR PARTITION
  - (C-13) NON-LOADBEARING INTERIOR PARTITION
  - (C-14) NON-LOADBEARING INTERIOR PARTITION
  - (C-15) NON-LOADBEARING INTERIOR PARTITION
  - (C-16) NON-LOADBEARING INTERIOR PARTITION
  - (C-17) NON-LOADBEARING INTERIOR PARTITION
  - (C-18) NON-LOADBEARING INTERIOR PARTITION
  - (C-19) NON-LOADBEARING INTERIOR PARTITION
  - (C-20) NON-LOADBEARING INTERIOR PARTITION
  - (C-21) NON-LOADBEARING INTERIOR PARTITION
  - (C-22) NON-LOADBEARING INTERIOR PARTITION
  - (C-23) NON-LOADBEARING INTERIOR PARTITION
  - (C-24) NON-LOADBEARING INTERIOR PARTITION
  - (C-25) NON-LOADBEARING INTERIOR PARTITION
  - (C-26) NON-LOADBEARING INTERIOR PARTITION
  - (C-27) NON-LOADBEARING INTERIOR PARTITION
  - (C-28) NON-LOADBEARING INTERIOR PARTITION
  - (C-29) NON-LOADBEARING INTERIOR PARTITION
  - (C-30) NON-LOADBEARING INTERIOR PARTITION
- STAMP:**  
 CITY OF LONDON  
 REVIEWED BY:  
 M. K. HAYES  
 DATE: 13-MAR-2011



**RECEIVED**  
 MAR 14 2017  
 BUILDING DIVISION

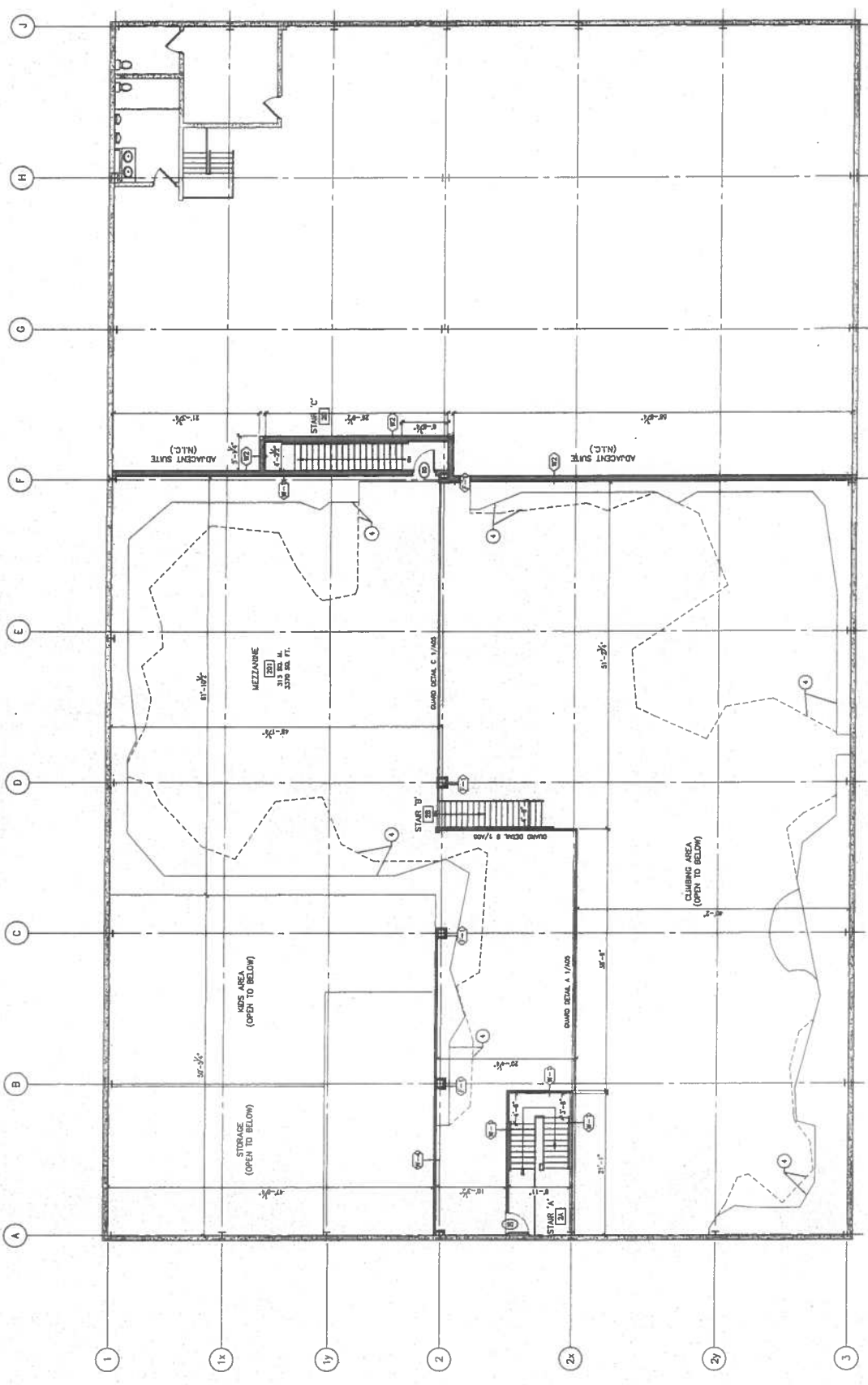
THESE DRAWINGS AND SPECIFICATIONS SHALL BE USED ONLY FOR THE PROJECT AND SITE INDICATED HEREON. ANY REUSE OF THESE DRAWINGS FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF GRINHAM ARCHITECTS IS STRICTLY PROHIBITED. ANY REUSE OF THESE DRAWINGS FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF GRINHAM ARCHITECTS IS STRICTLY PROHIBITED. ANY REUSE OF THESE DRAWINGS FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF GRINHAM ARCHITECTS IS STRICTLY PROHIBITED.

NO.	DATE	REVISIONS
1	15-NOV-2016	ISSUED FOR PERM
2	15-NOV-2016	ISSUED FOR PERM
3	10-DEC-2016	ISSUED FOR PERM
4	15-FEB-2017	RE-SELED FOR PERM
5	24-FEB-2017	RE-SELED FOR PERM
6	10-MAR-2017	REUSED FOR PERM

**LONDON CLIMBING GYM**  
 1030 ELIAS STREET,  
 LONDON, ONTARIO

**MEZZANINE FLOOR PLAN**

DATE	10-MAR-2017	SCALE	AS NOTED
DRAWN BY	MA, BV	CHECKED BY	JAC
STATUS	PERM	FILE	1570
PROJECT NO.	1570	PLANS	A-02
FOUNDER	WHE, DICE		



MEZZANINE FLOOR PLAN 1/8" = 1'-0"

LET BY LONDON  
 PLAN RECEIVED BY  
 CM  
 17/03/17





# LONDON

1030 ELIAS STREET

**Development Charges Complaint  
Corporate Services Committee Tribunal**

October 24, 2017



# LONDON

## BACKGROUND

The Junction Climbing Centre Inc. applied for and obtained a building permit to convert a part of an industrial building at 1030 Elias Street to a commercial use ; building permit issued April 25, 2014.

On November 28, 2016 the JCC Inc. submitted a building permit application to create new non-residential floor space (313 sq.m. mezzanine) ; building permit issued on March 17, 2017.

The mezzanine comprises 49% of the JCC Inc.'s floor area and under the Ontario Building Code is considered a 'storey' when calculating building height.

In accordance with the DC By-law, Development Charges were assessed on the new non-residential floor space created and DC amount calculated at \$74,456.44 ; paid in full, 'under protest'.





# LONDON

May 29, 2017- City received letter from Patton Law with the following grounds of 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.



# LONDON

## DC By-law provides the following "Grounds of Complaint":

s.28

- (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 this by-law.*

None of the reasons provided in the complaint letter make reference to the above-mentioned 'grounds of complaint' as stipulated in the DC By-law.





# LONDON

## Are Development Charges payable?

### 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 Schedule 1 as described in section 8.*

### 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 C.1.3.1.4 of the Ontario Building Code ; and redevelopment has a corresponding meaning;"(emphasis added)*



# LONDON

## How was the Development Charge amount calculated?

The creation of new non-residential space is considered as development.

New non-residential floor space added : 313 sq.m. (approx. 3,369 sq.ft.)

Commercial DC rate (at permit application) : \$237.88 / sq.m.

Development Charges due: 313 sq.m. x \$237.88/ sq.m. = \$74,456.44





# LONDON

## Impact on municipal services

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

*"... 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."*

The Development Charges imposed need not be limited to the increase in capital costs for services to the site of the particular development in question. 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.



# LONDON

## CONCLUSIONS

-The newly created non-residential floor space is considered as 'development'.

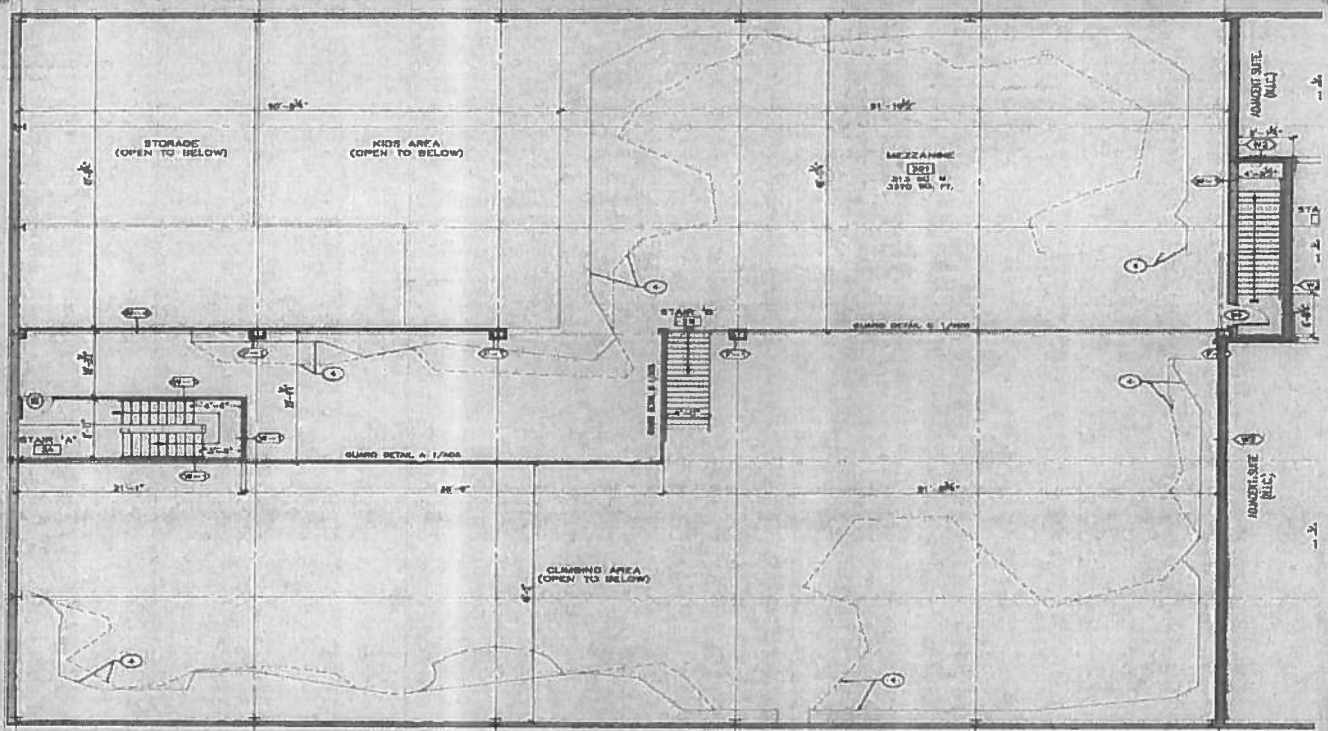
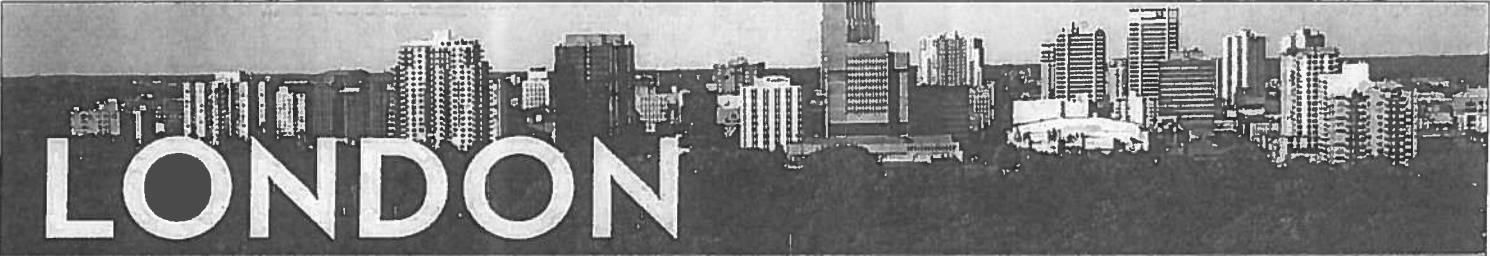
-Considering the grounds of complaint per s.28 of the DC By-law:

- (a) the amount of development charge was not incorrectly determined
- (b) no credit was available to be used against the development
- (c) there was no error made in the application of the By-law

-Mezzanine floor areas have consistently been included in the determination of the total non-residential floor space when calculating DC amounts due.

**Staff respectfully requests the complaint be DISMISSED.**





New mezzanine floor space

