



## Minutes

### City Council - Special Meeting

### The Corporation of the City of Brampton

**Wednesday, September 30, 2020**

**Members Present:**

Mayor Patrick Brown  
Regional Councillor R. Santos  
Regional Councillor P. Vicente  
Regional Councillor M. Palleschi  
Regional Councillor M. Medeiros (arrived at 3:12 p.m. – personal)  
Regional Councillor P. Fortini  
Regional Councillor G. Dhillon  
City Councillor D. Whillans  
City Councillor J. Bowman  
City Councillor C. Williams  
City Councillor H. Singh (arrived at 3:24 p.m. – personal)

**Members Absent:**

**Staff Present:**

D. Barrick, Chief Administrative Officer  
D. Boyce, Acting Commissioner, Community Services  
M. Davidson, Commissioner, Corporate Support Services  
M. Medeiros, Acting Treasurer, Corporate Support Services  
A. Parsons, Director, Development Services, Planning, Building and Economic Development  
A. Wilson-Peebles, Legal Counsel, Legislative Services  
J. Lee, Manager, Capital and Development Finance, Corporate Support Services  
P. Fay, City Clerk  
C. Gravlev, Deputy City Clerk  
T. Brenton, Legislative Coordinator

The meeting was called to order at 3:09 p.m. and adjourned at 3:42 p.m.

The Mayor outlined the purpose of the Special Meeting to consider a complaint filed under Section 20 of the *Development Charges Act*, and noted that under Council's meeting rules, no other business will be considered at this special meeting.

**1. Call to Order**

As this meeting of Brampton City Council was conducted with electronic participation by Members of Council, the meeting started with the City Clerk calling the roll for attendance at the meeting, as follows:

Members present during roll call: Regional Councillor Dhillon, Regional Councillor Fortini, City Councillor Bowman, Regional Councillor Palleschi, City Councillor Whillans, Regional Councillor Vicente, Regional Councillor Santos, Mayor Brown, City Councillor Williams

Members absent during roll call: Regional Councillor Medeiros, City Councillor Singh

**2. Approval of Agenda**

**C372-2020**

Moved by City Councillor Williams

Seconded by Regional Councillor Palleschi

That the agenda for the Special Council Meeting of September 30, 2020 be approved as published and circulated.

Carried

**3. Declarations of Interest under the Municipal Conflict of Interest Act**

Nil

**4. Delegations**

- 4.1 Delegations re: Hearing under the Development Charges Act – Development Charges Complaint, s. 20 *Development Charges Act* – Dancor Construction Limited – 21 Coventry Road, Brampton

Mayor Brown noted that this statutory hearing is being held by Council pursuant to Section 20 of the *Development Charges Act, 1997*, and will be conducted in accordance with the rules established by the *Statutory Powers Procedure Act (SPPA)*.

The Mayor summarized the procedures under the SPPA and outlined the rules of evidence.

Tom Halinski, Aird Berlis, legal counsel for Dancor Construction Limited, presented the case for Dancor Construction as follows:

- Dancor is requesting that a full refund be paid in connection with this project, which was a change of use as well as an expansion to accommodate a gymnasium
- the facts of the case are outlined in detail in their appeal letter and chronology, which was included with the staff report (Item 5.1) appended to the agenda for this meeting
- there were undue delays in the processing of the planning applications, causing severe economic harm and putting into question the project's economic viability
- the charges are not tied to an increased need for services resulting from growth; the charges pertain to a change of use of comparable intensity within an existing building, and do not pertain to the addition
- Dancor would not have gone ahead with the project had they been told in discussions with planning and technical staff that development charges would be payable
- the Region of Peel does not charge development charges for this change of use and provided a full credit for the gross floor area
- Dancor is in disagreement with staff's conclusion in the report that there is no authority to grant the relief that it is seeking, and in their view, this was an artificial constraint that staff imposed and is not found anywhere in the Act
- Council has broad discretion under section 20 of the Act to determine there was an error in the application of the Development Charges By-law
- if Council is willing and finds the case is meritorious, then the Act provides a lawful way to address the situation
- the situation has become dramatically worse this year for both the owner and tenant (Frederick Banting International School) because of the pandemic
- the school is an important contributor to the City, and is valuable to the community as it provides not only a school function but also a community function
- the refund of development charges would allow Dancor to continue to facilitate the school operating, notwithstanding the hard times it is currently undergoing
- Dancor submits that the City incorrectly calculated the development charges on

the addition, in that the charges for the gymnasium addition were calculated based on 623 square metres of gross floor area, and while this may be physically correct, the charges ought to have been calculated instead on the basis of the gross floor area net of the mechanical equipment and the washrooms, which amount to 405 square meters, and Dancor understood staff were in agreement with the calculation of charges on this basis

- in the alternative, if Council does not find favour with Dancor's main request, then Dancor requests that Council provide an opportunity for Dancor to finalize calculations with staff so that the amount can at least be corrected.

Andrea Wilson Peebles, Legal Counsel, Corporate Support Services, presented the case for the City, as follows:

- the grounds for a charge under Section 20 of the *Development Charges Act* are:

1. that the amount of the development charge was incorrectly determined,
2. that the credit was incorrectly given or incorrectly applied, and
- 3 that there was an error in the application of the Development Charges By-law

- Council is not able to make any decision or take broad authority on these appeals

- Council's powers are outlined in subsection 6 of Section 20 of the Act and allows Council to dismiss the complaint or rectify an incorrect determination or error that was the subject of the complaint

- neither in their written materials nor in their submissions today, has the applicant provided any evidence of a Section error

- the grounds outlined by Mr. Halinski, including the change of use to comparable intensity, the fact that the Region does not charge in this case, and the undue delays and the economic harms are not grounds under the Section 20 criteria for granting a complaint

- for some of these claims, the applicant should have appealed the by-law itself if they didn't agree with how it was applied or if they had concerns about charges not being properly based on increased needs

- the by-law is not under appeal and the purpose today is not to determine whether the City should or shouldn't charge in accordance with the by-law, the by-law was duly approved and is in force

- the concerns regarding the delays that were experienced generally speaking are not concerns for the purposes of granting approval of a complaint under the *Development Charges Act*

- it is Council's role on a Section 20 complaint to review the evidence to show that one of the three grounds were met

- the applicant has provided no evidence that there was any error, they have simply objected to the application of any charges

- in terms of the alternative argument that the development charges were incorrectly calculated, staff have been and continue to be willing to refund any amount that was incorrectly charged based on revised plans
- it is not possible for staff to give a refund without having the appropriate architectural plans, and staff would continue to support a resolution to provide that refund, subject to receipt of the appropriate plans
- the delays the applicant has described in objections to the application of the by-law do not relate to Council's authority under Section 20, which requires Council to find that there was an error before granting a refund, and staff would be supportive of the alternative grounds.

Mr. Halinski provided a closing submission on behalf of Dancor, as follows:

- in terms of the facts, they are uncontroverted before Council
- if Council finds it has the statutory authority to grant his client's request, he thinks the facts not only support this request, but are not in question between Dancor and staff
- under Section 20 of the *Development Charges Act*, as City's Counsel has indicated, there are three grounds for relief:
  1. the amount was incorrectly determined and this is part of Dancor's request as far as the expansion goes
  2. deals with credit and does not apply to this complaint, and
  3. subsection c of Section 20 deals with an error in the application of the Development Charges by-law, and does not just refer to the amount but whether the charge ought to have been levied in the first place; there is nothing in the Act or any of the case law he is aware of (Ontario Municipal Board or the Local Planning Appeal Tribunal) that would restrict Council's discretion to provide a refund, particularly in the situation where there is no increase in the level of services required by the development through the change of use
- reiterated his client's request that Council direct a refund of the charges levied in this case

During Council discussion on this matter, staff and Mr. Halinski responded to questions and provided the following:

- confirmation of staff's willingness to provide any refund that is owing upon receipt of revised plans, and an indication that staff has tried to reach a resolution since the complaint was initially filed, but has not been successful so far
- indication from Mr. Halinski that Dancor is prepared to continue working with staff on alternative relief and to provide the requested information
- details from Mr. Halinski regarding the portion of the City's development charges for the expansion relative to charges for the overall project, and

differences between the charges applied by the City and those applied by the Region

- advisory from staff that the reason for a full credit on the Region's portion is because the Region's by-law differentiates the rates by industrial or not industrial, and this project was for a change of use from an office building to a commercial building, these two employment types fall under what the Region considers non-industrial and therefore no change of use was applied through the Region's by-law
- staff would be willing to undertake research to determine if there are other upper-tier and lower-tier municipalities, such as York Region, Halton Region, that have different Development Charges By-laws

Ms. Wilson-Peebles noted that Council's discussion on this matter demonstrates that the City's Development Charges By-law was correctly applied, as there are no provisions in the by-law for a full credit for change of use.

Ms. Wilson-Peebles provided a closing submission on behalf of the City, as follows:

- normally she would review the evidence and take Council through the key pieces, but Council's discussion on this matter clarifies staff's position
- in order to determine that the Development Charges By-law was incorrectly applied, Council would need to go back and reopen the by-law, but the by-law is not what is before Council as it was not appealed and it was duly applied
- the differences in the Region's and City's charges are reflected in the language of those respective by-laws
- pursuant to Section 20 the *Development Charges Act*, the power of Council to issue a refund is based on discrepancy or error of which there were none, and absent of revised plans to demonstrate that a refund is due with respect to any errors in the plans the applicant has submitted, staff requests that Council dismisses the complaint

The following motions were considered.

**C373-2020**

Moved by Regional Councillor Palleschi

Seconded by Regional Councillor Vicente

That the followings submissions, to the Special Council Meeting of September 30, 2020, re: **Hearing under the *Development Charges Act* – Development**

**Charges Complaint, s. 20 Development Charges Act – Dancor Construction Limited – 21 Coventry Road, Brampton, be received:**

1. Tom Halinski, Aird Berlis, on behalf of Dancor Construction Limited; and,
2. Andrea Wilson-Peebles, Legal Counsel, Corporate Support Services, on behalf of the City of Brampton.

Carried

**C374-2020**

Moved by Regional Councillor Palleschi

Seconded by Regional Councillor Vicente

1. That the staff report titled: Complaint Pursuant to Section 20 of the *Development Charges Act, 1997* – Dancor Construction Limited, to the Special Council Meeting on September 30, 2020, be received; and
2. That the complaint of Dancor Construction Limited be dismissed, as the development charges have been calculated and collected in accordance with the City's development charges by-laws and the *Development Charges Act, 1997*, hence there is no basis for this complaint under the provisions of the legislation.

Carried

**5. Reports from Corporate Officials**

- 5.1 Staff Report re: Complaint Pursuant to Section 20 of the Development Charges Act, 1997 – Dancor Construction Limited

**Dealt with under Item 4.1 - Resolution C374-2020**

See also Resolution C373-2020

**6. Public Question Period**

Members of the public were given the opportunity to submit questions via email to the City Clerk's Office regarding any decisions made at this meeting.

Peter Fay, City Clerk, confirmed that no questions were submitted regarding decisions made at this meeting.

7. **Confirming By-law**

The following motion was considered.

**C375-2020**

Moved by Regional Councillor Santos

Seconded by Regional Councillor Vicente

That the following by-law before Council at its Special Meeting of September 30, 2020, be given the required number of readings, taken as read, and signed by the Mayor and the City Clerk, and the Corporate Seal affixed thereto:

By-law 190-2020 – To confirm the proceedings of Council at its Special Meeting held on September 30, 2020.

Carried

8. **Adjournment**

The following motion was considered.

**C376-2020**

Moved by Regional Councillor Medeiros

Seconded by City Councillor Williams

That Council do now adjourn to meet again for a Regular Meeting of Council on Wednesday, October 14, 2020 at 9:30 a.m. or at the call of the Mayor.

Carried

---

P. Brown, Mayor

---

P. Fay, City Clerk