



ARNPRIOR

Town of Arnprior

Special Meeting of Council Agenda

Date: Monday, August 28th, 2023

Time: 5:30 p.m.

Location: Council Chambers – 105 Elgin Street West, Arnprior

- 1. Call to Order**
- 2. Roll Call**
- 3. Land Acknowledgement Statement**
- 4. Adoption of Agenda (Additions / Deletions)**
- 5. Disclosures of Pecuniary Interest**
- 6. Awards/Delegations/Presentations**
 - a) **Hearing Pursuant to s. 20 of the Development Charges Act,**
Arnprior Bay Property Ltd – 124 Fourth Avenue (Self-Storage Facility)
- 7. Staff Reports**
 - a) **Development Charges Hearing Report,** Robin Paquette, CAO
and Jennifer Morawiec, GM Client Services/Treasurer (Page 1-11)
- 8. Confirmatory By-law**

By-law No. 7420-23 to confirm the proceedings of Council
- 9. Adjournment**

Please note: Please see the Town's [website](#) to view the live stream. The meeting will be uploaded to YouTube for future viewing.

The agenda is made available in the Clerk's Office at the Town Hall, 105 Elgin Street West, Arnprior and on the Town's [website](#). Persons wishing to receive a print item on the agenda by email, fax, or picked up by hand may request a copy by contacting the Clerk's Office at 613-623-4231 ext. 1818. The Agenda and Agenda items will be prepared in an accessible format upon request.

Full Distribution: Council, C.A.O., Managers and Town Administrative Staff

E-mail to: Metroland Media; Oldies 107.7/My Broadcasting Corporation; Valley Heritage Radio; Ottawa Valley Business



Town of Arnprior Staff Report

Subject: Complaint Pursuant to Section 20 of the Development Charges Act, 1997 – 124 Fourth Avenue – Self-Storage Facility

Report Number: 23-08-28-01

Report Author and Position Title: Robin Paquette, CAO/Jennifer Morawiec, General Manager, Client Services / Treasurer

Department: CAO's Office / Client Services

Meeting Date: August 28, 2023

Summary:

The Town has received a complaint from Arnprior Bay Property Limited operating as Huntington Properties (the "**Complainant**") regarding the calculation of development charges payable in connection with the development of a self-storage facility at property municipally known as 124 Fourth Avenue.

The development consists of 4 self-storage buildings containing mini storage units, which are to be constructed behind an existing industrial building at 124 Fourth Avenue (the "**Self-Storage Facility**"). Staff have calculated development charges payable with respect to the development of the Self-Storage Facility. The Complainant believes that the development of the Self-Storage Facility benefits from an exemption under the Town's Development Charges By-law for the reasons detailed in the written complaint filed with the Town and attached to this Report.

Town staff have reviewed the complaint and have concluded that no error was made in the determination of the applicable development charges.

Development Charges Complaints Process:

Under Section 20 (1) of the *Development Charges Act, 1997* ("**DC Act**"), a person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that:

- (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 the Development Charges By-law.

The DC Act requires Council to hold a hearing into the complaint and to give the Complainant an opportunity to make representations at the hearing.

After hearing the evidence and submissions of the Complainant, Council may either:

(a) Dismiss the complaint; or,

(b) Rectify any incorrect determination or error that was the subject of the complaint.

A Complainant may appeal Council's decision to the Ontario Land Tribunal by filing with the clerk of the municipality a notice of appeal setting out the reasons for the appeal.

Background:

On August 12, 2021, the Complainant made an application for site plan approval for the Self-Storage Facility. A "Commercial Self Storage Facility" is a permitted use on this property and the application was granted by the Town with conditions.

The Self-Storage Facility will consist of 4 stand-alone self-storage buildings containing mini storage units. Electrical service and heating for the Self-Storage Facility will be supplied through a connection to the existing industrial building at the front of the property at 124 Fourth Avenue. Units in the Self-Storage Facility are currently being advertised for lease for premium vehicle storage.

Based on a review of available information, it appears that the existing building at 124 Fourth Avenue is currently used for a variety of industrial purposes.

The Complainant has proceeded with construction of the Self-Storage Facility.

The development charges by-law in effect in 2021 when the application for site plan approval for the Self-Storage Facility was made was By-Law 6508-18 (the "**2018 DC By-law**").

On March 13, 2023, Council passed the current development charges by-law, By-law No. 7369-23 (the "**2023 DC By-law**").

On July 11, 2023, the building permit was issued to the Complainant for the development at issue and development charges as calculated by the Town were paid under protest.

Legislation and By-laws at Issue:

Section 26(1) of the DC Act directs that a development charge is payable upon a building permit being issued for the development (unless the development charge by-law provides otherwise).

Subsections 26.2(1) of the DC Act specifies that the total amount of a development charge is the amount of the development charge that would be determined under the development charge by-law in effect on the day an application for site plan approval was

made in respect of the development that is the subject of the development charge. Subsection 26.2(2) confirms that this is the case regardless of whether the by-law under which the amount would be determined is no longer in effect on the date the development charge is payable.

Section 4 of the DC Act creates certain exemptions from development charges applicable to the enlargement of “existing industrial buildings” as defined in O. Reg 82/92. That regulation provides the following definition:

“existing industrial building” means a building used for or in connection with,

- (a) manufacturing, producing, processing, storing or distributing something,*
- (b) research or development in connection with manufacturing, producing or processing something,*
- (c) retail sales by a manufacturer, producer or processor of something they manufactured, produced or processed, if the retail sales are at the site where the manufacturing, production or processing takes place,*
- (d) office or administrative purposes, if they are,*
 - (i) carried out with respect to manufacturing, producing, processing, storage or distributing of something, and*
 - (ii) in or attached to the building or structure used for that manufacturing, producing, processing, storage or distribution; (“immeuble industriel existant”)*

As indicated above, the 2018 DC By-law is the development charges by-law which was in effect when the application for site plan approval for the Self-Storage Facility was made.

The exemption in section 4 of the DC Act is carried through in Section 3.10 of the 2018 DC By-law as follows:

3.10 Notwithstanding any other provision of this By-law, no Development Charge is payable with respect to an enlargement of the gross floor area of an existing industrial or commercial building, where the gross floor area is enlarged by 50 percent or less.

The following definitions are found within the 2018 DC By-law:

“Existing” means the number, use and size that existed on the date this By-law was passed; [...]

“Industrial” means lands, buildings or structures used or designed or intended for use for manufacturing, processing, fabricating or assembly of raw goods, warehousing or bulk storage of goods, and includes office uses and the sale of commodities to the general public where such uses are accessory to an industrial use, but does not include the sale of commodities to the general public through a warehousing club.;

Complainant's Position:

As required by the DC Act, the Complainant has set out the basis for its complaint in writing and has filed the complaint with the Town. A copy of the complaint is included in Document 3 attached. An additional letter was also filed with the Town prior to the delivery of the formal complaint and it is included as Document 1.

The basis for the complaint as set out in Document 3 is that the Self-Storage Facility is “an industrial building expansion” and that because development charges will only become payable with respect to the Self-Storage Facility following the enactment of the 2023 DC By-law, the exemption for industrial development set out in that by-law applies to the Self-Storage Facility. That exemption is as follows:

2.8 Notwithstanding any other provision of this by-law, there shall be an exemption from the payment of development charges for one or more enlargements of an existing industrial building on its site, whether attached or separate from an existing industrial building, up to a maximum of fifty percent of the gross floor area [...].

The Complainant states that the construction of the Self-Storage Facility in separate buildings constitutes an expansion of the existing industrial building at 124 Fourth Street and meets the above requirements.

Analysis By Town Staff:

The 2023 DC By-law does not apply to the Self-Storage Facility irrespective of when development charges are payable. Section 26.2(2) of the DC Act clearly states that the by-law in effect on the date an application for site plan approval was made applies regardless of whether the by-law under which the amount would be determined is no longer in effect on the date the development charge is payable.”

The exemption from development charges contained in Section 3.10 of the 2018 DC By-law refers exclusively to an expansion of the gross floor area of an existing industrial building. The existing industrial building appears to be used for some form of industrial or manufacturing process. The Self-Storage Facility will be comprised of new, stand-alone buildings, which are being developed for a separate commercial purpose, specifically as a commercial self-storage building. This is a different use than the existing industrial building.

The Self-Storage Facility is neither an “enlargement” of the existing industrial facility, nor itself an “industrial” building as defined in the O. Reg 82/98 and the 2018 DC By-law. This is the case regardless of the fact that the electrical service and heating for the Self-Storage Facility is provided via a connection extending from the existing industrial building.

This interpretation is reinforced by reference to the Town’s Zoning By-law No. 6875-18,

which expressly differentiates commercial self-storage from industrial warehousing as follows:

Commercial Self-Storage Use means an establishment used for the temporary storage of household items and secured storage areas or lockers which are generally accessible by means of individual loading doors. [...]

Industrial Use means an establishment used for the warehousing of goods and materials, the assembly of manufactured goods, the manufacturing of goods, the repair and servicing of goods and similar uses, but does not include a motor vehicle repair garage, a motor vehicle body shop or a motor vehicle service station. For the purposes of this definition, research laboratories and printing establishments are considered to be industrial uses.

Financial Considerations:

Development charges calculated under the 2018 DC By-law are outlined in Table 1. Interest applies on these charges from date of completed site plan application (August 12, 2021) to the date the development charges are payable (when the building permit is issued – July 11, 2023). The Complainant made the Total Payment described below under protest on July 11, 2023.

Table 1.

Development Charge Calculation - 2018 By-Law			
	sq ft	Rate	Total
Building A	4860	\$ 7.62	\$ 37,033.20
Building B	4400	\$ 7.62	\$ 33,528.00
Building C	9600	\$ 7.62	\$ 73,152.00
Building D	6000	\$ 7.62	\$ 45,720.00
Subtotal			\$ 189,433.20
Interest (Site Plan to Building Permit Date)			\$ 18,175.55
Total Payment (Received July 11, 2023)			\$ 207,608.75

Staff Recommendation:

Staff are recommending that Council:

- (a) Make a determination that development charges have been properly applied to the Self-Storage Facility; and,
- (b) Dismiss the complaint dated May 29, 2023 with respect to 124 Fourth Avenue filed pursuant to Section 20 of the DC Act.

Consultation:

Emma Blanchard, Town Solicitor of Record, Borden Ladner Gervais

Documents:

1. Letter to Robin Paquette, CAO from Huntington Properties dated April 28, 2023 – Re: Expansion of storage facilities – 124 Fourth Ave., Arnprior
2. Letter to W. Alan Whitten, President, Arnprior Bay Property Limited dated May 9, 2023 – Re: Expansion of storage facilities – 124 Fourth Ave., Arnprior
3. Letter to Town of Arnprior from Bell Baker LLP dated May 29, 2023 – Re: Industrial Building Expansion at 124 Fourth Ave., Arnprior

Signatures

Reviewed by Department Head: Jennifer Morawiec

Reviewed by General Manager, Client Services/Treasurer: Jennifer Morawiec

CAO Concurrence: Robin Paquette

Workflow Certified by Town Clerk: Shelley Mackenzie



April 28th, 2023

Robin Paquette, CAO
Town of Arnprior
105 Elgin Street West
Arnprior, ON K7S 0A8

By email - rpaquette@arnprior.ca

Dear Robin,

RE: Expansion of storage facilities - 124 Fourth Ave., Arnprior

As you are likely aware, we have arranged a new Site Plan Agreement dated April 21st, 2023 relating to the expansion of our storage facilities at 124 Fourth Avenue in Arnprior. One of the considerations involved in this project is the payment of development charges, and the Town of Arnprior By-law No. 6805-18, your 'Development Charges By-Law'.

In the preamble to the By-law, it states that the purpose of the By-law is to ensure that the capital cost of meeting growth related demands for, or burdens on, municipal services does not place an excessive financial burden on the Town or its existing taxpayers. Council also recites a portion of the *Development Charges Act* and the relevant regulation 82/98, where development charges against land may be used to pay for increased capital costs required because of an increased need for services.

Capital Cost is defined in the By-law as costs incurred by the Town to acquire land, improve land, construct or improve buildings or structures, construct or improve facilities and undertake studies. All of these matters would impose a cost burden on the Town and development charges are imposed to reduce this burden.

Notwithstanding the general application of development charges, there are specific exceptions. One of those exceptions is set out in Section 3.10 of By-law 6805-18. This exception states that no development charges are payable with respect to the enlargement of the gross floor area of an existing industrial or commercial building where the gross floor area is enlarged by 50% or less.

We think it is clear that under the definitions provided in the *Development Charges Act* and regulation 82/98, that our current building at 124 Fourth Avenue is an existing industrial or commercial building. The expanded use that we are planning is to increase the storage facilities which have been operating in the building.

Our SPA involves construction of additional storage buildings, foundations of which will have an underground cement link to the foundation of the existing building, for the purposes of utilizing existing city, hydro and other services.

For the additional storage square footage, there will be no water or sewer requirements in the newly constructed area. Hydro will be supplied from the existing building, all management facilities will be in the existing building, no new parking or employee facilities will be necessary and no new access to existing roads will be required.

Capital costs that could be incurred by the Town because of increased need for services, are minimal or non-existent, and certainly no more than if we re-configured the construction to add to, or connect to existing walls or if we constructed a second floor to create additional space. It appears that the spirit of the development charges By-law and the exemption set out in Section 3.10 is met by our plan for enlargement of the gross floor area. Indeed, with the direct foundation connection and the same storage use, it is not just the spirit of the By-law that is being met, it really is an increase in the gross floor area of the existing building.

In light of all of the above, we are requesting that the Town acknowledge that the construction of the additional storage facilities represents an enlargement of the gross floor area of an existing industrial or commercial building, where the gross floor area is enlarged by 50% or less.

If you would like to discuss any part of the By-law or its interpretation in more detail, I would be pleased to hear from you.

Yours truly,

Arnprior Bay Property Limited



W. Alan Whitten

President



105 Elgin St. West
Arnprior, ON K7S 0A8

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fax 613 623 8091

arnprior@arnprior.ca
www.arnprior.ca

May 9, 2023

W. Alan Whitten
President
Arnprior Bay Property Limited

Via email: awhitten@huntingtonproperties.ca

Dear Alan:

RE: Expansion of storage facilities – 124 Fourth Ave., Arnprior

I am in receipt of your letter dated April 28th, 2023 regarding the payment of development charges and the Town of Arnprior's Development Charges By-law, 6805-18. Staff reviewed your suggestions that the construction of the additional storage facilities represents an enlargement of the gross floor area if an existing industrial or commercial building, where the gross floor area is enlarged by 50% or less.

In our review of By-law 6805-18, we have determined that the structures being built as part of the Site Plan Agreement are separate structures, not an enlargement of an existing building, in accordance with the Ontario Building Code. Therefore, we do not agree that section 3.10 meets the requirement of the By-law for an exemption for the new structures being built.

Furthermore, we disagree with the statement that no water or sewer requirements will be in place for the newly constructed buildings. For example, floor drains will be installed in the new structures, as well as a new hydrant installed on site.

Trusting this information is of assistance, I remain,

Sincerely,

Robin L. Paquette
Robin Paquette
CAO

VIA EMAIL: rpaquette@arnprior.ca

May 29, 2023

Matter No. 06373432

Town of Arnprior

105 Elgin St. West
Arnprior, Ontario
K7S 0A8

Attention: Robin Paquette, CAO

Dear Ms. Paquette:

RE: Industrial Building Expansion at 124 Fourth Avenue, Arnprior

We are solicitors for Arnprior Bay Property Limited and are writing to you in response to your email of May 19, 2023 concerning development charges for our client's industrial building expansion project at 124 Fourth Avenue in Arnprior.

The regime for development charges in Ontario sets out the timing for the determination of development charges and the payment of development charges. This is reflected in the repealed Arnprior Development Charges By-Law No. 6805-18, the current Arnprior Development Charges By-Law No. 7369-23 and the *Development Charges Act* itself.

In the Act, there are several provisions dealing with how and when development charges are determined. However, there is a clear distinction as to when these charges are determined and when and if they are payable. The Act sets out a series of rules for determination under a Development Charges By-Law. In the case of our client's industrial building expansion project, such development charges were determined at the time of project approval under the now repealed By-Law No. 6805-08. However, these charges were not payable at that time as Section 25 of the Act provides for payment at the time of a building permit being issued. A building permit will be applied for shortly and the new By-Law now in effect (No. 7369-23) will apply to our client.

Section 2.8 of By-Law 7369-23 provides for an exemption from the **payment** of development charges (or a portion thereof) that have already been determined. Our position is that we fall directly into this exemption. Our client owns an existing industrial building which is being expanded. In our case, the exemption from payment of development charges is 100% as the expansion of the existing industrial building,

Geoffrey A. Howard
Patricia A. Lawson
Charlotte A. Watson

Cheryl L. Hess
John E. Summers
Scott J. Pommerville
Caitlin E. O'Garr

W. John Rick
F. Alexis Hébert
Nevada Fenton

whether attached or separate, is less than 50% of the gross floor area before the first enlargement. This is in accordance with the plain wording of the development charges By-Law now in effect.

The previous By-Law, which has been repealed, did not contain the words “whether attached or separate” in describing the building expansion. We can find no reference in the Ontario Building Code or the *Building Code Act* that would say our expansion, through new structures that are connected with underground cement channels, removes us from the development charge payment exemption in the previous By-Law. However, the new By-Law, using the words “attached or separate”, makes this discussion moot.

Simply put, although development charges have been determined with respect to our client’s expansion project, there is an exemption from **payment** of these development charges pursuant to the *Act* and By-Law No. 7369-23.

Under section 20 of the *Act*, a person required to pay development charges may complain to the Municipality that there was an error in the application of the development charges By-Law. If you do not agree with the exemption of development charges for the project described above, please accept this letter as such a complaint to counsel. For this complaint, we wish to provide the following information as required by the *Act*:

Complainant name:	Arnprior Bay Property Limited
Complainant address for Notice:	1306 Wellington St. West, Suite 200 Ottawa, Ontario K1Y 3B2
Reason for Complaint:	The complainant is entitled to an exemption from payment of development charges in respect of its industrial building expansion project at 124 Fourth Avenue in Arnprior. This exemption is pursuant to Section 2.8 of Arnprior By-Law No. 7369-23.

Yours very truly,

BELL BAKER LLP



GEOFFREY A. HOWARD

GAH/lm
Encl.