



PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

*Lawyers / Patent & Trade-Mark Agents
Avocats / Agents de brevets et de marques de
commerce*

Reply to/Communiquez avec:
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October 20, 2020

BY HAND

Mr. Rick O'Connor
City Clerk
City of Ottawa
110 Laurier Avenue West
Ottawa, ON
K1P 1J1

Dear Mr. O'Connor:

**Re: Development Charges By-law and Development Charges Act Appeal
1325 Johnston Road – Tridan Developments Limited
Our Reference: DOAM 0008**

Please find attached an appeal in writing addressed to the City Council of the City of Ottawa, such appeal being submitted pursuant to section 20 of the Development Charges Act, 1997, S.O. c. 27. (the "Act")

Our client, Tridan Developments Limited (the "Appellant") appeals, complains and objects to the rejection of its Application for Industrial Use Determination, Development Charge By-law 2014 – 229 and Development Charge By-law 2019 -156.

In addition to the written submission to Council attached hereto, and pursuant to sub-sections 20(4) and (5) of the Appellant awaits notice of the hearing to be held before Council and seeks to make oral submissions to the Council.

Correspondence and Notices can be sent through this office to the attention of the writer but, in accordance with the requirements of the Act (s. 20(3)), the address of the Appellant is:

Tridan Developments Limited
c/o
Dan McKenna, President and CEO
Donnelly Automotive Group
2496 Bank Street, Ottawa, ON K1V 8S2

CITY OF OTTAWA
VILLE D'OTTAWA
Client Service Centre
Centre du Service à la clientèle

REC'D
REÇU

OCT 20 2020

Initials/Initiales



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Rick O'Connor
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Written submissions describing the reasons for the complaints (section 20(3) of the Act, are attached.

Yours very truly,

Joshua P. Moon
186:

Development Charges Appeal/Complaint to the Council of the City of Ottawa

Pursuant to

Sections 1, 16(1) and 20 - City of Ottawa Development Charges By-law 2019 – 156

And

S. 20 of the Development Charges Act, 1997, S.O. c. 27

By

Tridan Developments Limited

for Charges Levied on an Expansion/Addition at

1325 Johnston Road, Ottawa

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Development Charges By-law*

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Executive Summary

Tridan Developments Limited (“Tridan”) appeals the decision of City of Ottawa staff to classify an expansion of an existing building (the “Expansion”) as a “Non-Industrial Use”, resulting in a higher Development Charges Fee. Tridan submits to the City Council of the City of Ottawa that the expansion space at 1325 Johnston Road should be classified as an “Industrial Use” and the reduced Development Charge fee applied.

The City of Ottawa Development Charges By-law is clear that development charges apply only to the area for which a development application (in this case a building permit) has been submitted. The development at issue is the expansion portion of a building and the use of that expansion area is what is considered for assessing development charges. City staff agree with this.

Development charges were applied to the Expansion in July 2020 on a “Non-Industrial Use” basis for an expansion of just 3,627 square feet at 1325 Johnston Road, approximately 600 square feet for dedicated parts storage/warehousing and 3000 square feet for physical assembly space for rebuilding vehicles and research for rebuilding new models of cars such as Tesla vehicles.

The zoning for 1325 Johnston Road is Light Industrial – LPAT/OMB decisions say that zoning is relevant in determining how to characterize a use for development charges purposes (a summary of relevant OMB/LPAT cases is attached to the Appeal).

95% of the business in the expansion space is insurance company work and company fleet service. The public does not have access to the space.

The operations in the Expansion space provide **improved product by way of physical assembly and this use description, together with other related uses in the space, match the definition of an “Industrial Use” in the Development Charges By-Law.**

Where and what is the property? What is the zoning?

1325 Johnston Road is on the north side of Johnston Road to the east of Bank Street.

1325 Johnston Road is zoned IL in the City of Ottawa Zoning By-law – Light Industrial. LPAT/OMB have indicated that in addition to the definition of “Industrial Use” in a development charges by-law, the zoning is relevant to the process of determining “use” for the purposes of applying development charges and the applicable use.

The Expansion Space is the Only Area to Be Examined to Determine Use

From Section 1 of the Development Charges 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 increasing the size** or usability thereof, and includes redevelopment”.

From Section 16(1) of the Development Charges By-law: “Subject to subsection (2), the **development charge shall be calculated** as of and shall be payable on the date the first building permit is issued **in relation to a building or structure on land to which the development charge applies.**”

City staff are in agreement that the charge applies to the size of the addition space and that the use that is in question when applying the development charge is the use in the “addition”. One only looks to the addition/expansion and its uses.

What takes place in the Expansion Space (the area that is being added and is the subject of this appeal and application of any definitions)?

The Expansion space is used to expand the capacity of a collision repair centre. The activities in the Expansion space include the repair, restoration, refinishing and replacement of vehicle bodies and frames, windshields and window glass.

Vehicles that are damaged enter the area. All damaged parts are either repaired or replaced with new parts. This generally requires the physical assembly by hand. For some repair tools and machinery, such as frame pullers and straighteners, are used. Vehicles are then prepped to be painted by hand. Vehicles are then sent to be painted in a separate paint booth then returned to be reassembly. The end product results in a vehicle being an improved product repaired to manufacturer specifications.

Part of the area is used to warehouse vehicle parts used for the repair of vehicles in the expansion area and elsewhere. The activity requires storage of bulk quantities of parts materials as required for the physical assembly referred to herein.

Rebuilding of cars is the primary function of the Collision Center. This activity is consistent with the below definition from the City by-law “physical assembly by hand or machinery that leads to improve products”.

Research and development is implicit in the operation to the extent that technicians are encouraged to develop improved assembly techniques and are constantly being trained at this facility which has been earmarked to repair a new generation vehicles and is the recommended location for repair of the new Tesla vehicle product. This is consistent with the below from the City By-law “research and development in connection with physical manufacturing or physical assembly by hand or machinery that leads to new or improved products”.

What is the Definition of “Industrial Use” in the Development Charges By-law?

The following excerpt from section 1 of By-law 2019-229 has bold highlights at the aspects of the definition that match the use in the Expansion space exactly:

*“Industrial use” means lands, **buildings** or structures used or **designed or intended for use for physical manufacturing or physical assembly by hand or machinery that leads to new or improved products**; producing or processing of raw goods; **warehousing or bulk storage of goods**; distribution centre; **research or development in connection with physical manufacturing or physical assembly by hand or machinery that leads to new or improved products**; processing of raw goods and storage but does not include retail or offices unless it is attached to a building used for industrial use as defined above. Industrial use includes a cannabis production facility.*

Interpretation of the Definition and the Use

The definition of Industrial Use in the by-law must have a “plain meaning and intent” approach to interpretation applied to it. The key words of the definition are “...buildings or structures used...for....physical assembly by hand or machinery that leads to new or improved products,warehousing or bulk storage of goods,research and development in connection ...with physical assembly by hand or machinery that leads to new or improved products....”

On the plain meaning of the definition, the work carried out in the expansion space meets the tests and descriptions in the definition. They match in fact.

While there are few cases before OMB/LPAT on appeals of Council decisions on an industrial use definition for development charges purposes, there are at least two cases that support the position of the applicant with respect to “storage” and “physical assembly” (see summary of relevant cases).

What has been the Position of City Staff?

City staff **did not** rebut the argument that the use at the expansion at 1325 Johnston meets the definition. Rather, staff focused on the use being a “public service “ and auto repair (alluding to

public access and car repair servicing) and that the City had never used this approach to the definition before for auto repair premises.

It is respectfully submitted that this is an auto body collision center serving almost exclusively commercial fleets and insurance clients. The public does not attend at the expansion/addition space. It is not a retail use.

Argument to Rebut City staff position:

- Just because staff may have incorrectly categorized uses in the past does not mean that is an acceptable legal argument moving forward.
- There is a significant distinction between a Canadian Tire auto repair shop (the example used by City Staff) where the public drops off and picks up and the servicing is NOT “physical assembly”. A car receiving an oil change, for example, is not an “improved” product.
- The use at 1325 Johnston is heavy, intense, clearly “physical assembly” and ALL finished product leaving the operation is “improved”. The key is that all product is improved and the activity in the expansion space (the addition) is “physical assembly by hand or machinery”.
- The public is not directly served at the expansion space for which a permit was issued.
- **Commercial fleets and insurance companies are served and the operations that provide improved product by way of physical assembly match the definition of an industrial use.**

Conclusion:

Relying on analogous case law, the zoning of the property in question, the actual use at the expansion premises and using a plain meaning approach to interpretation and matching the plain meaning to the use in question, the “industrial use” development charge rate should apply to the expansion at 1325 Johnston Road.

Tridan asks that Council, pursuant to section 20(6) “rectify and incorrect determination”.

The Appeal Process

The Provinces Development Charges Act, 1997, S.O. c. 27 directs a complaint to the city council of the municipality imposing the charge and Tridan Developments Limited relies on s. 20(1) (a) and (c) for this request

20 (1) *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 charge by-law.

This Appeal/Complaint is filed in accordance with the provisions above. The City Council is now obligated as follows:

Hearing

(4) The council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing. 1997, c. 27, s. 20 (4).

Notice of hearing

(5) The clerk of the municipality shall mail a notice of the hearing to the complainant at least 14 days before the hearing. 1997, c. 27, s. 20 (5).

Council's powers

(6) After hearing the evidence and submissions of the complainant, the council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint. 1997, c. 27, s. 20 (6).

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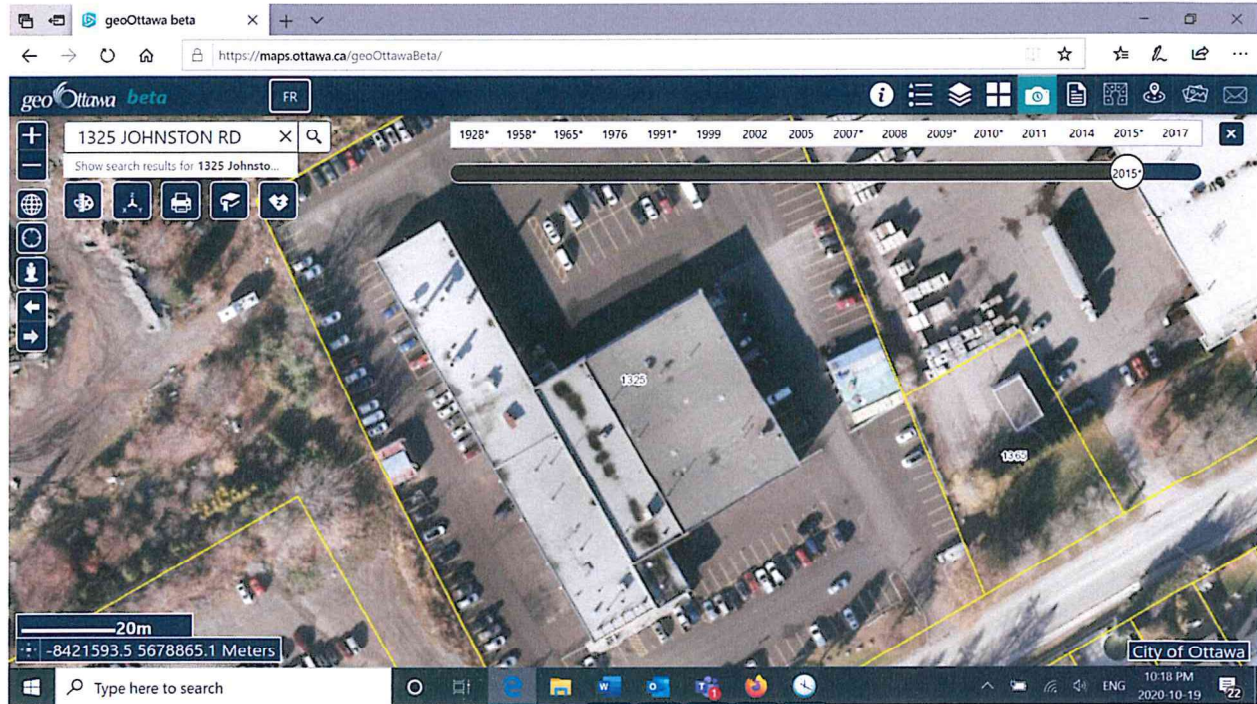
Schedule 1 – Aerial Photo

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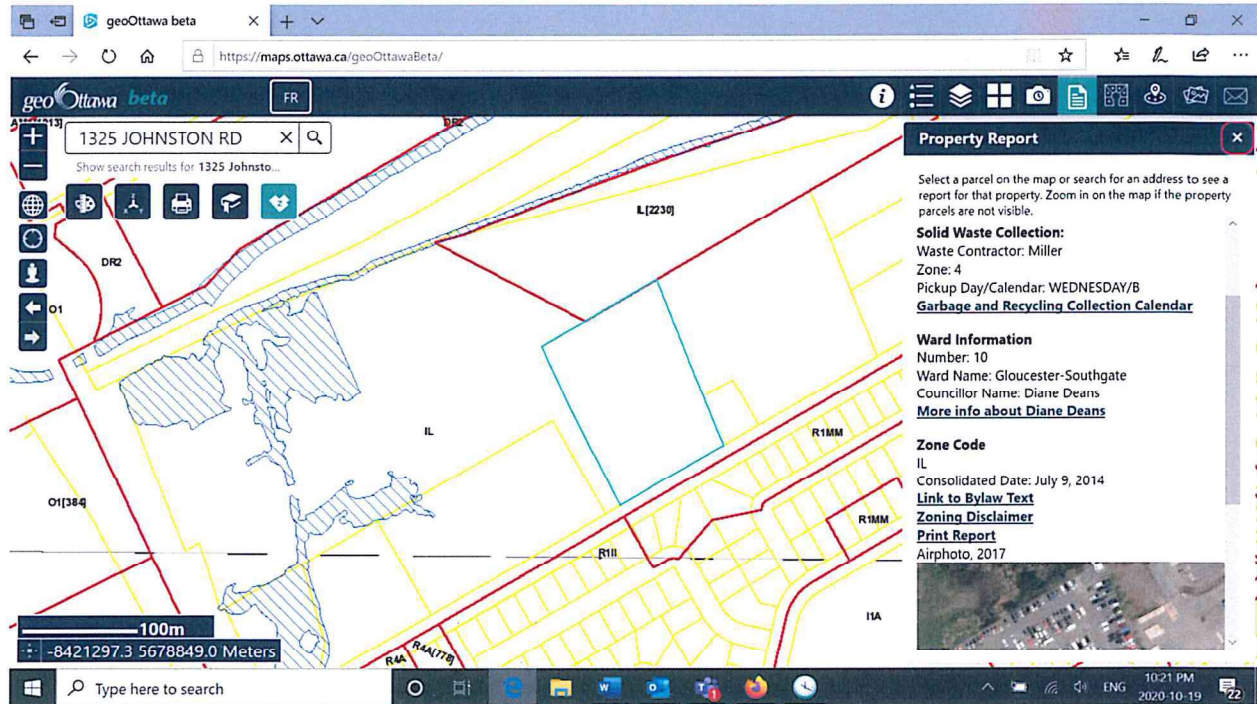
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Relevant Cases – Summaries

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1162117 Ontario Limited v. Brampton (City), 2015, CarswellOnt 18808, OMB – a finding that motor vehicle repair service is an industrial use. In this complaint by Tridan it is argued that the collision repair shop is NOT motor vehicle repair or retail in the way City of Ottawa staff interpret it. This case is shown to note that even the City of Ottawa staff position may be inherently wrong even if the use by Tridan was motor vehicle repair (which it is not specifically in the sense that staff described it).

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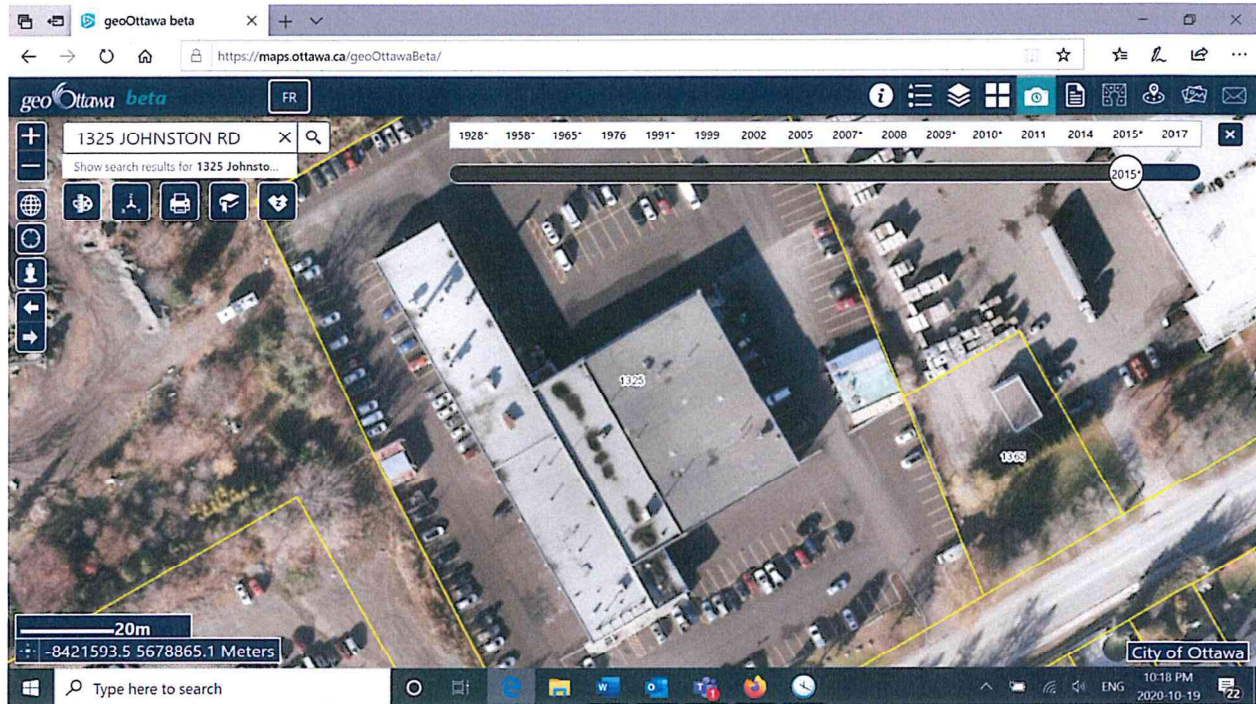
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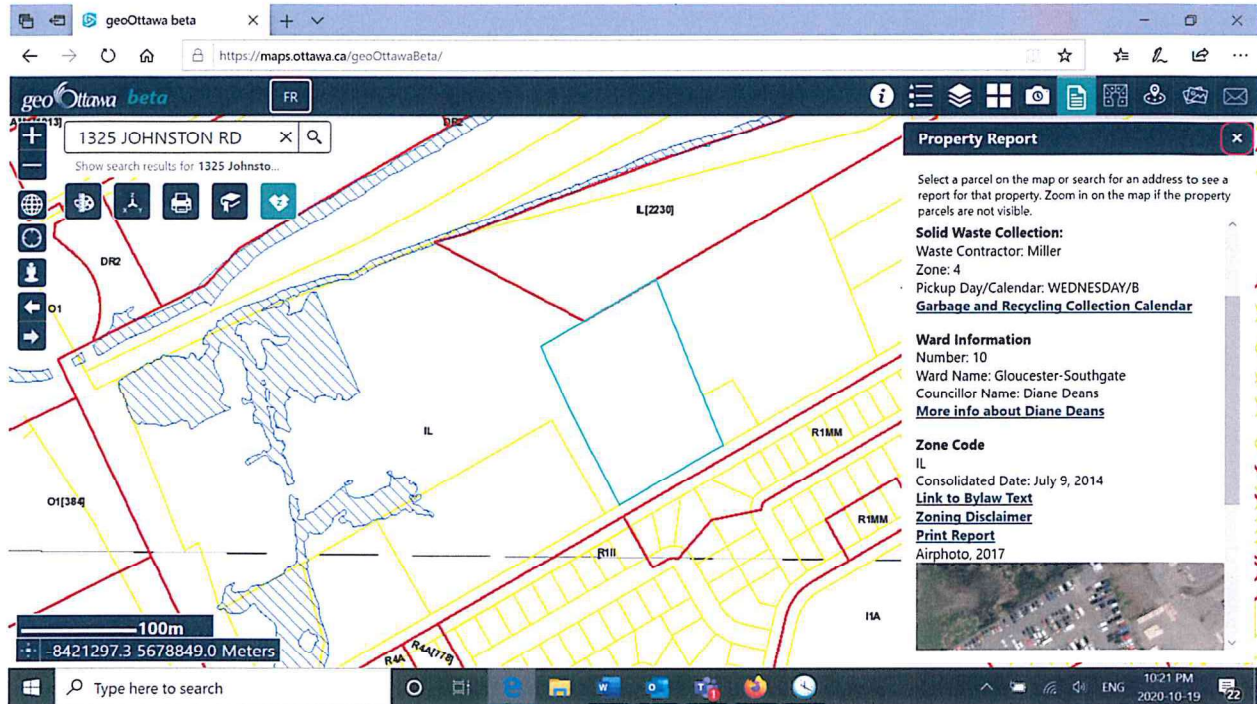
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