



January 9, 2015

Andrew Brouwer
Director, Legislative Services, Town Clerk
Town of Newmarket
395 Mulock Drive
Newmarket, Ontario
L3Y 4X7

Development Charges for redevelopment of 487 Queen Street

Dear Mr. Brouwer:

On November 18, 2014 I paid the Town of Newmarket \$133,794.57 for Town of Newmarket development charges and on January 7, 2015 I paid the Town of Newmarket \$228,092.17 for Regional development charges for the redevelopment of 487 Queen Street. I paid such fees under protest as evidenced by the attached letters.

In accordance with the Development Charges Act, 1997, I am hereby making a complaint to the Town of Newmarket Council concerning such development charges. Specifically, under Section 20(1) I believe (a) the amount of the development charge was incorrectly determined and (c) there was an error in the application of the development charge by-law.

I am making such complaint on behalf of Brixton Commercial Realty Advisors Ltd. which owns the property in question and of which I am the sole owner. Notices to me can be addressed to:

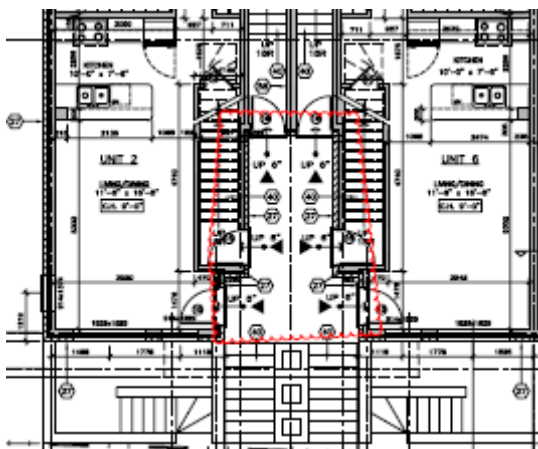
Brixton Commercial Realty Advisors Ltd. c/o
Brent Fleming
10 Kingsborough Crescent
Toronto, M9R 2T9

I have also made a complaint to the York Region Council directly concerning the regional development charges.

The building in question is a 16 suite residential building. The Town and the Region of York have considered the building to be a stacked townhouse. I believe under Town By-Law 2014-42 concerning development charges and the York Region Bylaw 2012-36, 12 of the suites should properly be considered “apartment units”. This is the “error in the application of the development charge by-law” in my view. As a consequence, I feel the “amount of the development charge was incorrectly determined”.

12 Suites

I will address the 12 suites I believe should be considered “apartment units”. There are 2 main entrances to the building, each of which serves 6 units. One of the entrances can be viewed below.



Let's start of by determining what these suites *are not*. They do not satisfy the definition of “stacked townhouse” in the Town’s Development Charge By-law. A “stacked townhouse means a building...containing at least 3 dwelling units...each dwelling unit having an entrance to grade shared with no more than 3 other units.” The Town definition for “stacked townhouse” is not satisfied as it only allows for a total of 4 units sharing an entrance to grade where this building form has 6 units sharing an entrance to grade.

The definition for “apartment unit” is “residential building... consisting of more than 3 dwelling units, which dwelling units have a common entrance to grade”. My opinion is the building form in question has a common entrance to grade shared by 6 dwelling units and therefore the units in question are “apartment units”. The common entrance is fully within the building, it is enclosed with a fireproofed ceiling and fireproofed walls, it is serviced by lights and is shared by the 6 units. There is a fire plan and fire alarm enunciator in the common entrance area that is “common” to the 6 units. It is not a public space and it is not an outdoor space. The only thing the common entrance does not have is a door. “Entrance” is not a defined term. The question is does an “entrance” need a door. An “exit” under the OBC doesn’t need to have a door. One could make the

argument if an “exit” doesn’t need a door an “entrance” doesn’t need a door either. The Oxford Dictionary defines an entrance as “an opening, such as a door, passage or gate that allows access to a place. “Opening” and “Passage” do not indicate the need for a door and an argument can be made the common entrance to the 6 suites in question is entered via an “opening” and/or “passage”. In any event, the definition does not explicitly state a door is needed. It only refers to a “common entrance”.

It is important to note the Town of Newmarket definition for an “apartment unit” was changed recently. The previous definition included the provision that: “..the residential units are connected by an interior corridor”. The fact this stipulation was removed suggests an interior corridor is not needed to satisfy the definition of “apartment unit”.

“Common” is a key word. The “stacked townhouse” definition does not reference the word “common”. Stacked townhouses and townhouses have separate exterior entrances to each suite typically. An “apartment unit” specifically refers to a “common entrance”. The building form in question has more in common with an “apartment unit” than a stacked townhouse in this regard. The unit entrances are not individual entrances to outdoor, but rather are entrances to an interior common space.

The “Multiple dwelling” definition allows for “..all other residential uses that are not included in the definition of “apartment building”...”. I think it is reasonable to suggest putting a building form into the “Multiple dwelling” classification should only be used if the building form does not fall into any other definition cleanly. My opinion is the “apartment unit” definition satisfies and as such the “multiple dwelling” definition should not be relied upon.

The financial ramification to the Town in recognizing the 12 units as “apartment units” rather than as “stacked townhouses” is \$31,188.

I recognize practices in other municipalities aren’t considered relevant but do note many municipalities including Toronto are treating stacked townhouses as apartments for development charge purposes in order not to penalize such new building forms.

I look forward to participation in the hearing to be scheduled on the matter.

Sincerely,
Brixton Commercial Realty Advisors Ltd.



Brent N. Fleming