

May 27, 2025

BY EMAIL

Matthew Trennum, City Clerk
Office of the City Clerk
City of Hamilton
71 Main Street West, 1st Floor
Hamilton, Ontario
L8P 4Y5

Raj Kehar
Partner
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rkehar@weirfoulds.com

File 16939.00018

Dear Mayor & Members of Council:

**Re: DEVELOPMENT CHARGES COMPLAINT pursuant to Section 20 of the
Development Charges Act, 1997, S.O. 1997, c. 27**

Building Permit Number: 21 137706 00R3

Losani Homes (1998) Ltd.

505, 509, 513, and 517 Highland Road West, Stoney Creek (the “Subject Lands”)

We are counsel to Losani Homes (1998) Ltd. (“**Losani**”), the owner of the Subject Lands, with respect to the above noted matter.

Losani is the applicant in respect of the development of two (2) eight storey apartment buildings containing 272 units and a one storey amenity building (the “**Proposed Development**”). The units in the Proposed Development will be a mixture of 1- and 2-bedroom rental apartment units, which will significantly add to the City’s much needed housing stock in an underserved market segment. This is an important development in the City that is currently under construction and will provide much needed rental housing in short order in an area of the City where the rental rates for the proposed units will be affordable. In fact, over 68 residential units have been offered at rental rates under \$2,000 per month inclusive of all building amenities and in most cases inclusive of parking and locker units as well.

On or around May 7, 2025, Losani, obtained a Building Permit for the Proposed Development, and in doing so was required to submitted its Development Charge Instalment Declaration Form and Affidavit, listing a Development Charge (“**DC**”) fee in the amount of \$870,794.40 to the City of Hamilton (the “**City**”), and a payment under protest in the amount of \$102,360, for the Educational DCs in respect of the Proposed Development.

Losani disputes that it owes any amount in DCs for the Proposed Development because, among other reasons, it has prior DC credits that are applicable to the Proposed Development. Accordingly, both the DC fee in the amount of \$870,794.40 is protested, as is the payment in the amount of \$102,360 that was made to the City. A copy of the payment under protest letter is attached here as **Appendix “A”**.

Pursuant to section 20 of the *Development Charges Act*, 1997, S.O. 1997, C.27 (the “**DC Act**”), Losani complains to City Council on the basis that:

1. The City incorrectly determined the amount of the DCs owing;
2. The City incorrectly determined, and did not correctly apply a credit that is available to be used against the DC levied; and
3. There was an error in the application of the development charge by-law as the City used the wrong development charge by-law in calculating the DCs owing for the Proposed Development and it incorrectly applied how the development charge by-law applies credits.

Background

On June 10, 2019, Losani submitted a complete application for Site Plan Approval (the “**Old SPA**”) to facilitate the Proposed Development. At the time the Old SPA was submitted, the City’s Development Charges By-law 19-142 (the “**2019 DCBL**”) was in effect. The Old SPA was assigned City file no. DA-19-125, and the City calculated \$7,218,564.00 in DCs owing.

For various reasons, including the City’s over two year delay in processing the Old SPA, Losani paid the DCs owed for the Old SPA under protest in 2021, and made a complaint to the City, pursuant to section 20(1) *DC Act*. Following the City’s dismissal of that Complaint, Losani then appealed the City’s decision to the Ontario Land Tribunal (the “**Tribunal**”) on March 29, 2022, where it remains to be heard.

Subsequent to that appeal, and in an effort to convert the Proposed Development from freehold condominium units to purpose-built rental housing units, on September 5, 2023, and at City staff’s request, Losani submitted a new Site Plan Application (the “**New SPA**”) to facilitate the Proposed Development. The New SPA is not a minor revision to the Old SPA, but a new site plan application as that term is used in the *Planning Act* and the *DC Act*. This is in part evidenced by the fact that the New SPA changes the unit allocations between buildings, was approved under a new file number (SPA-23-070), was circulated to 21 different individuals/agencies—the same level of

circulation as the Old SPA – and that the conditional approval of the New SPA incorporated a new two year expiry date (as opposed to an extension of the previous expiry date). The City did not use its process for making a “minor change” to revise the Old SPA; instead, it required a full, new site plan application amendment process.

The New SPA involves a proposal to change the unit tenure of the Proposed Development, offering that all residential units be designated for rental housing development (as opposed to condominium sales). The *DC Act* recognizes “rental housing development” as a distinct form of development, as reflected in subsection 26.1(3), which provides a separate payment scheme for rental housing development as compared to other development types. Losani’s decision to confirm the unit tenure through the New SPA triggered the application of the *DC Act*’s provisions for rental housing, thereby validating its position that the New SPA constitutes a new form of development and a new site plan application.

On March 28, 2024, Losani had also sent a letter to the City, describing in detail how the Proposed Development would be designated as purpose rental housing. This letter was sent many months prior to the issuance by the City of Final Site Plan approval of the New SPA on August 1, 2024. Therefore, City staff understood the New SPA was intended to implement rental housing development before the City approved that application.

On June 1, 2024, the City adopted the City of Hamilton Development Charges By-law, 2024-072 (the “**2024 DCBL**”). As indicated below, it is Losani’s position that the 2024 DCBL does not apply to the New SPA because section 26.2 of the *DC Act* freezes the DC rate to the rate applicable on the date of a site plan application. City staff’s failure to recognize this is one of the many errors they made in calculating the DCs owed in respect of the Proposed Development. It is notable that subsection 26.2 (4) of the *DC Act* also states that if more than one application, such as a site plan application is filed in respect of a development, it is the later one that is relevant to consider for the purposes of the DC freeze.

Grounds for Complaint

1. The Amount of DCs were Incorrectly Determined

The City makes several mistakes in calculating the DCs owing.

First, the Incorrect DC By-law was used in the City’s calculations.

Pursuant to subsection 26.2(1) of the *DC Act*, where a development requires site plan approval, the applicable DCs are those in effect under the DC By-law on the day the site plan application is

made. Subsection 26.2(4) further provides that if more than one site plan application is submitted for a development, it is the later application that governs for the purposes of determining the applicable DCs.

In this case, on the date the New SPA was submitted, the 2019 DCBL was in effect. However, the DCs levied by the City were calculated under the 2024 DCBL. City staff have taken the position that the New SPA is not a new application, but merely a revision to the Old SPA. On that basis, and because the building permit was issued more than 18 months after the Old SPA was submitted, the City applied the 2024 DCBL and calculated the amount owing to the City as \$870,794.40.

The City's position that the New SPA is merely a revision to the Old SPA is not supported by the facts or the applicable provisions of the *DC Act* and *Planning Act*. As indicated above, the New SPA was submitted as a distinct application, with a new file number, an increased unit count, a change in unit tenure, and full circulation to commenting agencies—identical to the process followed for the original application. The City did not treat the New SPA as a “minor revision,” but instead required a new site plan approval process. Under subsection 26.2(4) of the *DC Act*, it is this later application—the New SPA—that determines the applicable DCs. As such, the DCs should have been calculated under the 2019 DCBL, which was in effect on the day the New SPA was submitted.

Second, the City calculated DCs owing for only 64 units, rather than the 272 units in the Proposed Development.

As noted, the Proposed Development, as reflected in the New SPA, is for 272 rental units, being a mixture of 182 1-bedroom units and 90 2-bedroom units. The Old SPA, in contrast, proposed only 242 condominium units, being a mixture of 118 1-bedroom units and 124 2-bedroom units.

The City has apparently taken the position that, because the Proposed Development submitted under the New SPA, has 64 more 1-bedroom units, and 34 less 2-bedroom units than submitted under the Old SPA, the DCs should be charged on these unit changes only. This position is incorrect because: (1) the New SPA applies to the entirety of the Proposed Development, not only a part of it, and; (2) the entire building has been converted to rental units, not only the 64 new units in the New SPA, and as such, the DCs for all 272 units must be given the legislated rental discount under subsection 26.2(1.1) of the *DC Act*.

It bears repeating that the New SPA must be treated as an entirely new application, not as a revision to the Old SPA. The City's conflation of the two SPAs is a fundamental error that also taints its calculation of the DC Credits owing to Losani.

2. The Available Credit was Incorrectly Determined and not correctly used against the Development Charges, and the City Erred in the Application of its Development Charge By-law

Both sections 31(a) of the 2019 DCBL and 34(a) of the 2024 DCBL provide that where an existing building is converted from one use to another, the amount of DCs payable is to be reduced by a credit, calculated pursuant to this by-law at the current development charges rates in respect of the previous use.

Due to Losani's proposal that all of the Proposed Development be rental housing units, and the change in rates between the Old SPA (which DCs were paid under) and the New SPA, the credit—calculated under the 2019 DCBL—amounts to \$8,028,494.00 (the “**DC Credit**”). The DC Credit exceeds the DCs otherwise payable if correctly calculated. On the date it submitted the New SPA, Losani held a DC Credit sufficient to reduce the DCs owing to \$0. As interest cannot accrue on a \$0 balance, no interest is payable.

The City proposes to apply a credit, but only on the 64 2-bedroom units that were removed from the Proposed Development between submission of the Old SPA and the New SPA. For the reasons outlined above, this approach is not legally correct because the New SPA is a separate application, and therefore, the City must give credits for all 118 1-bedroom units and 124 2-bedroom units proposed under the Old SPA.

In addition to calculating the credit incorrectly under the 2024 DCBL, the City made the additional mistake of purportedly calculating the credits owed to Losani under the 2019 DCBL, as reduced by the discounts provided by subsection 26.2(1.1) of the *DC Act*. While Losani agrees that the 2019 DCBL ought to be determinative in calculating both the DCs owing and the credits given, the City's approach is inconsistent and unfair in that it charges DCs under the more-expensive rates in the 2024 DCBL, then credits under the less-expensive rates in the 2019 DCBL. The City has provided no justification for why this approach should be taken, especially considering (1) this goes against section 34(a) of the 2024 DCBL, which states credits shall be “calculated pursuant to this By-law” (**emphasis** added), and (2) that the rental discount in the *DC Act* was never included in the DC rates under the 2019 DCBL.

It is Losani's position that the 2019 DCBL applies to its DC calculation for the Proposed Development and if the existing DC credits are correctly applied, it owes no further DCs in connection with its Proposed Development. However, even if it is assumed the City is correct, and the 2024 DCBL is applicable, if the City's calculation correctly applied credits under the 2024 DCBL, Losani would also not owe any further DCs.

Request for Notice

We request that notice for a date for a City Council hearing on our client's complaint be provided pursuant to subsections 20(4) and (5) of the *DC Act*. Please send notice of the date of the City Council hearing to the undersigned together with a copy to our client at the following address:

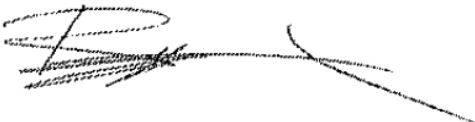
Losani Homes (1998) Ltd.
William Liske, Vice-President and Chief Legal Officer
203-430 McNeilly Rd, Stoney Creek, ON L8E 5E3
Email: wLiske@losanihomes.com

Copies of Losani's calculations and its comments on the City's calculations in respect of the DCs owing and credits applied, are contained within **Appendix "B"** and **Appendix "C"** respectively. **Appendix "D"** contains the City's Calculations, as provided to Losani on April 23, 2025.

Should you have any questions and/or concerns regarding the above and/or enclosed, please do not hesitate to contact us.

Yours truly,

WeirFoulds LLP

A handwritten signature in black ink, appearing to read 'Raj Kehar', with a long horizontal stroke extending to the right.

Raj Kehar
Partner

RK/nk

APPENDIX “A” – Losani’s Payment under Protest Letter

(See attached overleaf)

LOSANI

H O M E S

May 7, 2025

Delivered by Hand

DC Request Team

Financial Planning, Administration & Policy
Finance & Corporate Services Department, City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Email: DCRequest@hamilton.ca

To Whom it May Concern,

**RE: Payment Under Protest – Development Charges for Rental Housing Development
505 & 517 Highland Road West, Hamilton, Ontario L8J 2V4**

Further to building permit number 21 137706 00R3 for the rental housing development located at 505 and 517 Highland Road West, Hamilton, Ontario, please find enclosed the City of Hamilton's Development Charge Instalment Declaration Form and Affidavit listing a Development Charge fee in the amount of **\$870,794.40**, which we submit under protest in accordance with Section 26.2 of the *Development Charges Act, 1997*.

Please also find enclosed our payment in the amount of \$102,360.00 for the Educational Development charges.

We dispute the accuracy of the City's calculation and request the City revisit the Development Charge calculations pertaining to this development.

Sincerely,

2324780 ONTARIO INC.

Per:



William Liske

Vice President and Chief Legal Officer

APPENDIX “B” – Losani Calculations

		Losani Comments
Bylaw Used to Calculate DCs	DC By-law 19-142	By-law & Rates in force on day of New SPA.
Calculation Date	September 5, 2023	Date of calculation is when New SPA was submitted.
1 Bedroom Units	Number of Units: 182 Charge per unit: \$26,827 Rental Unit Discount effective Nov 28, 2022: 15% $(182 * \$26,827) * 0.85 = \$4,150,136.90$	Note that 15% discount, as introduced on November 28, 2022 through Bill 23, the <i>More Homes Built Faster Act, 2022</i> was not included in the DC rates in By-law 19-142, and therefore is applied separately from the rates therein.
2 Bedroom Units	Number of Units: 90 Charge per Unit: \$39,217 Rental Unit Discount: 20% $(90 * \$39,217) * 0.80 = \$2,828,624.00$	Note that 20% discount, as introduced on November 28, 2022 through Bill 23, the <i>More Homes Built Faster Act, 2022</i> was not included in the DC rates in By-law 19-142, and therefore is applied separately from the rates therein.
TOTAL DCs	$\$4,150,136.90 + \$2,828,624.00 =$ \$6,973,760.90	
Credits	Credit for 118 1-bedroom units: $= \$26,827 * 118 \text{ units}$ $= \$3,165,586.00$ Credit for 124 2-bedroom units $= \$39,217 * 124 \text{ units}$ $= \$4,862,908.00$ Total Credits = \$8,028,494.00	A credit is provided for the previous use (established via Building Permit 21-137706-00 R3). Section 31(a) of DC By-law 19-142 provides that a credit be provided at the rates applicable pursuant to this by-law. The previous use was condominium units and therefore the credit for the previous use is not discounted by the rental discount.
Net Payable DCs	$6,973,760.90 - \$8,028,494.00 = 0$	Section 31(d) of DC By-law provides that a credit shall not exceed the charges otherwise payable. Therefore, the City DCs owning would be nil. As the amount is nill, it would effectively not accrue interest because on the date of the New SPA the City already had all of the DCs it was owed in relation to the Proposed Development.

APPENDIX “C” – City Calculations with Losani’s Comments

		Losani Comments
Bylaw Used to Calculate DCs	DC By-law 24-072 and Bylaw 19-142	Wrong By-law used for Calculation (Should be By-law 19-142).
Calculation Date	December 1, 2024 – date of building permit application	Date of calculation should be September 5, 2023, when the New SPA was submitted.
1 Bedroom Units	<p>Number of Units: 64 Charge per unit: \$35,911 Rental Unit Discount: 15%</p> <p>$= (64 * \\$35,911) * 0.85 = \mathbf{\\$1,953,558.40}$</p>	<p>The numbers used to calculate this are based on the wrong by-law, in line with the comments above.</p> <p>In addition, the DCs should be calculated for all 272 units in the Proposed Development, as reflected in the New SPA, not only the 64 additional units that were added since the Old SPA.</p> <p>The City’s calculation does not provide any rental discount for 208 units in the Proposed Development, whereas a discount is legislated at 15% for 1-bedroom units and 20% for 2-bedroom units</p>
Credits	<p>Credit for 118 1-bedroom units: $= \text{nil}$</p> <p>Credit for 34 2-bedroom units $= (\\$31,928 * 34) = \mathbf{\\$1,085,522}$</p>	<p>It is not clear where the \$31,928 number comes from.</p> <p>However, it appears the City is applying the 2019 DCBL rate of (\$39,217.00) and then applying a 20% discount assuming those units were rental units (even though that was not the case) and thereby should be apply a credit of $\\$39,217.00 \times 0.80 = \\$31,373.60$.</p> <p>If the credit were calculated under the 2024 DCBL, the credit should be $\\$57,959 \times 34 \text{ units} = \\$1,970,606.00$, because no rental discount should apply to the credit, and if the DC credit correctly applied, no further DCs would be owed even under the City’s calculation.</p>

		<p>This City's calculation is flawed for several reasons, including:</p> <ul style="list-style-type: none"> (1) If they are going to apply to the 2024 DCBL for our DC charge (which we say is incorrect), the credits should also be calculated under the 2024 DCBL (2) Under the 2019 DCBL our previous use was not rental, and so the City should not be applying a rental discount on the credit per unit. (3) As the New SPA applies to all units in the Proposed Development, Credits should be provided for all 242 units proposed in the Old SPA.
GO Transit DCs	Calculated (minus credits) at \$2788.	(No issues).
Net Payable DCs	1-bedroom DCs + Go Transit DCs – Credits = \$1,953,558.40 + \$2788 - \$1,085,522 = \$870,854.40	The City has taken the position that the rental discount should apply to the DC Credits given.

APPENDIX “D” – City Calculations as provided by the City on April 23, 2025

(See attached overleaf).

WITHOUT PREJUDICE PREPARED



FINANCIAL PLANNING, ADMINISTRATION AND POLICY DEVELOPMENT CHARGES, PROGRAM AND POLICIES

Development Charges Estimate

2024-2025 Pamphlet(s) in Effect

Dec 1, 2024 - May 31, 2025 Rates Applied

This estimate has been prepared based on information provided to date and may be subject to additional review by the Building Division and Financial Planning, Administration and Policy.

Estimate prepared on: April 23, 2025

Estimate valid for permits issued on or after: April 23, 2025

Estimate valid for permits issued on or before: May 31, 2025

DC Request form number: Not Applicable

ESTIMATE TOTAL

\$870,794.40

Building Division contact: Sherif Rizkalla

PREPARED FOR THE PURPOSES OF INTERNAL LEGAL CONSULTATION IN RELATION TO CITY & GO DEVELOPMENT CHARGES ONLY. EDUCATION DEVELOPMENT CHARGES WILL APPLY.

Legislated Instalment Documentation attesting to rental usage must be received and approved in order for the closed rates and exemptions to apply. This permit may not be issued without approval from DCCP Staff.

PROPERTY DETAILS

Address: 505 Highland Road West
Former municipality: Hamilton
Area: Separated Sewer System - Urban Area A
Special Area Charge applies: No
Currently recognized as: Residential

Proposed development type: Residential
Development details: Recomposition of units to decrease number of 2+ bedroom units by 34 and increase 1 bedroom units by 64. New units will be for rental purposes. Credit for decrease provided at rate previously paid.

Proposed Development

	Reference Number	Application Date	Approval/ Issuance Date	Interest Tool Applicable	Notes
Site Plan:	DA-19-125	11-Mar-22	13-Apr-22	Rate Lock-In Not Applicable	Rate Lock-In Not Applicable
Site Plan Amendment:				Not Applicable	
Zoning By-Law Amendment:				Not Applicable	
Building Permit:	21 137706 01 R3	1-May-24	-	-	
Demolition Permit:				-	
AMANDA DC Folder:		-	-	-	

New

Redeveloped/ Demolished

Single-Detached Dwelling & Semi-Detached Dwellings:

Townhouses & Other Multiple Unit Dwellings:

2+ Bedroom Apartment, Stacked Town, Mobile Home:

Bachelor/ 1 Bedroom Apartment, Stacked Town, Mobile Home:

Residential Facility Dwelling & Lodging House & Garden Suite:

Non-Residential:

64 dwelling unit(s)

Exemption Eligibility

DEVELOPMENT		USAGE		OWNERSHIP		LOCATION	
Heritage Building:	No	Long Term Care Home:	No	Public Hospital:	No	Downtown CIPA (Res Dev):	No
Temporary Building:	No	Retirement Home:	No	Board of Education:	No	Downtown CIPA (NR Dev):	No
Intensification:	No	Hospice:	No	City/Housing Hamilton:	No	Downtown CIPA (Mixed Dev):	No
Transition Rates:	No	Child Care Centre:	No	City of Hamilton:	No	Other CIPA:	No
Lodging House/ Res Facility:	No	Place of Worship:	No	Local Board:	No		
Non-Profits Housing:	No	Agricultural - Farm Business:	No	Metrolinx:	No		
Detached Secondary Dwelling Unit:	No	Farm Labour Residence:	No	University:	No		
Affordable Housing:	No	Office:	No	College of Applied Arts & Technology:	No		
		Office Expansion:	No	Indigenous Institute:	No		
		Class A Office:	No				
		Industrial:	No				
		Industrial Expansion - Attached:	No				
		Industrial Expansion - Detached:	No				
		Manufacturing:	No				
		Manufacturing Expansion - Detached:	No				
		Production or Artist Studio:	No				
		Self Storage:	No				
		Community Housing/ Shelter:	No				
		Rental:	Yes				

CALCULATION SUMMARY

Full Rate Development Charges Calculation

RESIDENTIAL

	Quantity	Rate	City Total	Rate	GO Total	Public Education	Separate Education	Special Area Charges
Single-Detached Dwelling & Semi-Detached Dwellings:	0 unit(s)	-	-	-	-			
Townhouses & Other Multiple Unit Dwellings:	0 unit(s)	-	-	-	-			
2+ Bedroom Apartment, Stacked Town, Mobile Home:	0 unit(s)	-	-	-	-			
Bachelor/ 1 Bedroom Apartment, Stacked Town, Mobile Home:	64 unit(s)	35,911.00	2,298,304.00	160.00	10,240.00			
Residential Facility Dwelling & Lodging House & Garden Suite:	0 unit(s)	-	-	-	-			
Total			2,298,304.00		10,240.00			
			\$ 2,298,304.00		\$ 10,240.00			

Exemptions

	City Total	GO Total	Public Education	Separate Education	Special Area Charges
Usage - Rental (1 Bedroom):	15% 344,746	15% 1,536			
	\$ 344,745.60	\$ 1,536.00			

DCs Previously Paid for Removed 2 Bedroom Units

	Quantity	Rate	City Total	Rate	GO Total	Public Education	Separate Education	Special Area Charges
2+ Bedroom Apartment, Stacked Town, Mobile Home:	34 unit(s)	31,928.00	1,085,552.00	174.00	5,916.00			

DEVELOPMENT CHARGES PAYABLE

City:	868,006.40
City Interest:	-
GO:	2,788.00
GO Interest:	-
	870,794.40

References

City of Hamilton Development Charges Web Page
City of Hamilton Development Charges By-Law 24-072
City of Hamilton Development Charges Information Pamphlet (2024-2025)
HWDSB Education Development Charges By-Law 24-1

