

**REPORT OF THE HONOURABLE ROBERT P. ARMSTRONG, Q.C.
REGARDING THE IMPACT OF THE INAPPROPRIATE INFLUENCE AS FOUND IN THE
REPORT OF THE INTEGRITY COMMISSIONER OF THE CITY OF VAUGHAN
DATED JUNE 27, 2017**

JANUARY 23, 2018

Table of Contents

| | |
|---|----|
| Introduction and Executive Summary..... | 2 |
| Part 1 – Background..... | 4 |
| i. The First OMB Appeal | 4 |
| ii. The Second OMB Appeal | 6 |
| iii. The IC Report | 7 |
| Part 2 – Scope of my Review..... | 10 |
| i. Identifying the Decision | 10 |
| ii. Interviews Conducted and Materials Reviewed | 13 |
| Part 3 – Findings re: the Impact of any Improper Influence on City Council..... | 15 |
| i. Direct Influence - Members of City Council | 16 |
| ii. Indirect Influence - The TRCA..... | 17 |
| iii. Indirect Influence - City of Vaughan staff | 19 |
| iv. Indirect Influence - Members of the Public | 19 |
| Conclusion..... | 21 |

Introduction and Executive Summary

1. This Report was requested by the Council of the City of Vaughan (“**City Council**”) as a result of the Final Report of the Integrity Commissioner of the City of Vaughan (the “**Commissioner**”) dated June 27, 2017 (the “**IC Report**”)¹. In the IC Report, the Commissioner concluded that former Regional Councillor and Deputy Mayor Michael Di Biase engaged in conduct that constituted improper use of influence in breach of Rule 7 of the Code of Ethical Conduct, in the context of decisions made regarding a property known as 230 Grand Trunk Avenue (the “**Property**”).

2. At a Council Meeting on June 27, 2017, City Council adopted a recommendation of the Special Committee of the Whole as follows:

That the Council decision regarding 230 Grand Trunk Avenue referenced within the context of the Integrity Commissioner’s Final Investigation Report be addressed in a future report to Council that considers the issue of whether or not the inappropriate influence found in the Integrity Commissioner’s report impacted upon the decision

3. This resolution of City Council (“**Council’s Resolution**”) is the basis of my current mandate. On September 22, 2017, I was formally retained by City of Vaughan legal staff to review City Council’s decision regarding a planning matter in respect of the Property, with reference to Council’s Resolution and the IC Report.

4. Having completed the review contemplated in my retainer, I have prepared this Report for delivery to City of Vaughan legal staff and, ultimately, for presentation to City Council.

¹ Code of Conduct Complaint #110116(f) Investigation Report in Respect of Former Regional Councillor/Deputy Mayor Michael Di Biase, dated June 27, 2017.

5. In conducting my review, I have interviewed City Councillors and other officials with first-hand knowledge of the events in issue, and I have been provided with a significant volume of documents.

6. I have endeavoured to respect the sensitive and sometimes confidential nature of the information that I have been asked to review, although I note at the outset that I am not bound by the same statutory and Code of Ethical Conduct (the “**Code**”) obligations that constrained the Commissioner in the preparation of the IC Report.

7. This Report addresses the following:

- Part 1: a brief chronology describing the recent background facts and events surrounding the development of the Property (the “**Development**”), which ultimately led to the IC Report and Council’s Resolution;
- Part 2: a description of the scope of my review, including my consideration as to what “decision” of City Council may have been impacted by the improper influence found in the IC Report and a summary of the interviews and materials that formed part of my review;
- Part 3: my findings in respect of the impact, if any, of Mr. Di Biase’s conduct on the decision of City Council in respect of the Development.

8. My report does not address the planning issues that were previously or are presently before the Ontario Municipal Board (“**OMB**”) and in particular the various planning concerns that have been expressed by neighbouring land owners and others. Those matters obviously fall properly within the jurisdiction of the OMB.

9. Based on my analysis of all the information gathered during my review, I have concluded that any improper influence exerted by Mr. Di Biase (as found in the IC Report) did not impact the decisions of City Council in respect of the Development.

Part 1 – Background

10. The history of the Development dates back many years. For the purposes of this Report, and based on information collected from my interviews and related documents, I have set out only the more recent, relevant history.

i. The First OMB Appeal

11. The relevant background commences when, as part of the Vaughan Official Plan 2010, the Property was designated as “Natural Areas”, a designation that prevented virtually all development. In June 2012, the previous owner of the Property, Mr. Eugene Iacobelli, commenced an appeal to the OMB in respect of this designation (the “**First OMB Appeal**”). For several years, Mr. Iacobelli’s efforts to develop the Property and to push forward his appeal at the OMB were unsuccessful in the face of opposition from residents, the City, and the Toronto and Region Conservation Authority (“**TRCA**”)².

12. In April 2015, following the death of Mr. Iacobelli, the Property was purchased by the current owners, Dufferin Vistas Ltd., a company affiliated with the prominent Milani family of developers (the “**Owner**”). The Owner took over carriage of the First OMB Appeal to re-designate the Property.³

13. Soon after taking carriage of the First OMB Appeal, the Owner proposed a settlement to City officials in respect of the First OMB Appeal. This settlement was considered by City Council at an *in camera* meeting on June 23, 2015. Although I have been provided with only limited information regarding what took place at this meeting, what is clear is that City Council approved the settlement at least in principle on a very narrow vote, against the recommendations of City planning staff. City staff was then

² In particular, the TRCA was granted party status at the OMB in respect of this matter in September 2013.

³ I was advised by several interviewees that prior to the Owner’s acquisition of the Property, other interested developers had approached members of City Council, City staff, and TRCA officials to inquire as to the development prospects of the Property. Upon being advised of the planning and environmental difficulties that would face any developer, these interested parties proceeded no further, leaving the Owner as the only developer to ultimately acquire the Property and make a concrete development proposal to City Council.

directed to work towards minutes of settlement in advance of the scheduled hearing on the First OMB Appeal.

14. Over the summer of 2015, the TRCA also considered its position regarding the proposed settlement.⁴ On July 24, 2015, the TRCA Authority resolved to re-affirm the TRCA's party status before the OMB, and directed its staff to work towards a settlement with the City of Vaughan, the Owner, and other parties "to ensure that the requirements of The Living City Policies, TRCA's Ontario Regulation 166/06, [...] Oak Ridges Moraine Conservation Plan (ORMPC) and Provincial Policy Statement (PPS) are met".⁵

15. In the result, the City of Vaughan, the Owner, and the TRCA ultimately agreed on a settlement in respect of the First OMB Appeal (the "**Settlement**"). The result of this Settlement, if approved by the OMB, would be to re-designate certain parts of the Property from "Natural Areas" to "Low-Rise Residential" and "Low-Rise Residential Special Study Area". The Settlement also called for the Owner to complete a set of plans and studies to the satisfaction of the City, in consultation with the TRCA, prior to the start of any site alteration or development.

16. At the hearing before the OMB on October 14, 2015, representatives from the City, the TRCA and the Owner appeared in support of the Settlement. Also in attendance to support the Settlement was the head of the Eagle Hills Community Association, Mr. Peter Badali. Four individual neighbourhood residents were also allowed to participate in the hearing, all of whom opposed the Settlement.

17. On March 9, 2016, the OMB released its decision, approving the Settlement and re-designating the Property as provided for in the Settlement.⁶

⁴ The subject of the IC Report, Mr. Di Biase, had a seat on the TRCA and served as Vice-Chair. As discussed further below, the IC Report concludes that Mr. Di Biase used his influence as both a member of City Council and of the TRCA to misrepresent the positions of both entities, both to each other and to the public.

⁵ This Resolution #A142/15 was passed by the TRCA Authority in a closed session on July 24, 2015. The Resolution was subsequently made part of the public record at a later TRCA Authority meeting on May 27, 2016.

⁶ 2016 CanLII 13042 (ON OMB).

ii. The Second OMB Appeal

18. Even before the OMB approved the Settlement, the Owner continued to move the development process forward. In January 2016, the Owner submitted an application for approval of a new draft plan of subdivision (the “**Subdivision Application**”). On April 5, 2016, a Public Hearing in respect of the Subdivision Application was held by City Council. At this Public Hearing, City Council approved various recommendations from City planning staff, and resolved that a community meeting “be organized by the local ward Councillor with the [Owner], residents and appropriate City staff to address issues raised”.

19. This community meeting was held on May 2, 2016. In attendance were various City Councillors. The IC Report focuses on specific comments made by Mr. Di Biase at this meeting, namely that the “City’s hands were tied” in respect of the Property.

20. Separately, on April 25, 2016, the owner submitted an application for zoning by-law amendments in respect of the property (the “**Zoning Application**”). Together with the Subdivision Application, the Zoning Application was necessary for the Development to proceed. Over the ensuing months, the Owner revised its applications at various times, in response to public concerns,⁷ and some of the studies contemplated as part of the approved Settlement were completed.

21. On September 29, 2016, however, the Owner exercised its rights under the *Planning Act* to appeal both its Zoning Application and its Subdivision Application to the OMB, as more than 120 and 180 days had passed since the filing of each application, respectively, and no final decision had yet been made by City Council (the “**Second OMB Appeal**”). A 3-day hearing was scheduled to commence on March 22, 2017.

⁷ For example, the initial plan of subdivision called for 105 townhouse units. By July 2016, the Owner’s revised proposal called for a phased approach, starting with a Phase 1 development of 32 single detached homes on the less environmentally sensitive western portion of the Property.

22. As was the case in the context of the First OMB Appeal, the TRCA continued to be involved in these proceedings. On June 8, 2016, the TRCA sent a letter to area residents assuring them that “we will continue to protect TRCA’s interests and carry out our regulatory mandate as the development process progresses”. At the TRCA Authority meeting on January 27, 2017, the TRCA adopted a resolution in respect of the Second OMB Appeal similar to what had been adopted in respect of the First OMB Appeal. Specifically, the TRCA resolved that it would obtain legal counsel and appear at the Second OMB Appeal, and staff was directed “to continue to work towards a settlement” with the City, the Owner and other parties to ensure compliance with the various relevant environmental policies and regulations.

23. At a meeting on February 21, 2017, in advance of the scheduled OMB hearing dates, City Council approved a report of City planning staff, which called for the approval in principle of the Subdivision Application and the Zoning Application, subject to a lengthy list of technical and environmental conditions.

24. Ultimately, the scheduled hearing dates in March 2017 before the OMB were adjourned, and the OMB scheduled 15 days of hearings set to commence on January 15, 2018 in respect of the Owner’s proposed applications. The length of the hearing was deemed necessary in light of the number of parties and residents that were granted standing by the OMB.

iii. The IC Report

25. Against the backdrop of events described above, on November 1, 2016, the Commissioner received a formal complaint in respect of then Regional Councillor and Deputy Mayor, Michael Di Biase.

26. The complaint alleged that Mr. Di Biase had contravened Rule No. 7 of the Code (Improper Use of Influence) in his capacity as a member of City Council and as a member

of the TRCA. The complainant alleged this improper use of influence took place during the following specific events:⁸

- a. The June 23, 2015 *in camera* meeting of City Council, when the proposed settlement of the First OMB Appeal was considered.
 - The complaint alleges that at this meeting, Mr. Di Biase advised City Council that he was aware of “the discussions at the TRCA and represented that [the TRCA] had no outstanding concerns about the [development of the Property]”.⁹ The complaint also “alleges that [Mr. Di Biase] suggested that the TRCA would likely withdraw its objection to the development”.¹⁰
- b. The April 5, 2016 public hearing of City Council, when the Subdivision Application was first considered.
 - The IC Report does not specify what exactly Mr. Di Biase is alleged to have said or done at this meeting in contravention of the Code.
- c. The May 2, 2016 community meeting convened by the City.
 - The complaint alleges that Mr. Di Biase made statements at this meeting to the effect that “the City’s hands were tied” in respect of the Property.
- d. Various 2016 meetings of the TRCA board.
 - The complaint alleges that at various times, Mr. Di Biase attempted to convince his fellow TRCA board members that the City of Vaughan “had dealt with it”, referring to the development of the Property, and that the TRCA should therefore withdraw from the proceedings.

⁸ IC Report, pages 2-3.

⁹ IC Report, pages 3 and 7.

¹⁰ IC Report, pages 3 and 7.

27. As part of her investigation, the Commissioner interviewed numerous individuals. The identities of these individuals, and the specific evidence they gave, is not described in the IC Report. The identity of the complainant and the formal complaint itself is similarly kept confidential. The Commissioner also reviewed various “public and confidential City documents, emails, audio and video recordings of meetings and certain other materials”.¹¹

28. Mr. Di Biase was given a chance to respond to the complaint itself, and to a preliminary version of the Commissioner’s final report. In general, Mr. Di Biase denied that he exerted any improper influence, and he disputed the chronology of events as laid out in the complaint and the preliminary report.

29. Ultimately, the Commissioner accepted the facts as alleged by the complainant. In particular, she concluded as follows: ¹²

“[O]n a balance of probabilities, [Mr. Di Biase] engaged in conduct that constituted improper use of influence and a breach of Rule 7.

[...] I had the opportunity to review audio and video recorded meetings including an audio recording of [Mr. Di Biase’s] remarks at the May 2, 2016 meeting. [Mr. Di Biase’s] recorded remarks contradict his evidence with respect to his comment about the “City’s hands being tied”. In fact, this comment directly followed his representation that the TRCA had decided to settle with the Owner.

This representation was not accurate. As indicated in its letter of June 8, 2016, the TRCA continued to have concerns about the proposed development. Despite [Mr. Di Biase’s] attempts to persuade the TRCA to withdraw from the proceeding, the TRCA Board continued to oppose the Development. As a result, Mr. Di Biase’s remark that the “City’s hands were tied” was inaccurate and misleading and designed to further third-party interests. It

¹¹ IC Report, page 5.

¹² IC Report, page 9.

should be noted that the TRCA supported, through the settlement agreement with the parties, the principle of development, subject to the Owner's completion of certain studies.

In the course of my investigation, I also interviewed individuals who had attended the relevant TRCA Board meetings and Council meetings and provided evidence of [Mr. Di Biase's] comments at these meetings. Based on this evidence, I find that [Mr. Di Biase] did misrepresent the positions of the respective organizations, for which he held positions of significant authority [...]"

30. On May 19, 2017, Mr. Di Biase resigned as a member of City Council. Mr. Di Biase's resignation came in response to an unrelated report from the Commissioner. As a result of his resignation, however, the IC Report does not recommend any form of penalty or sanction for Mr. Di Biase, since the Commissioner noted that the scope of her jurisdiction is limited only to sitting members of City Council.

Part 2 – Scope of my Review

i. Identifying the Decision

31. Council's Resolution calls for a review of City Council's "decision regarding 230 Grand Trunk Avenue" as referenced in the IC Report. As such, one of the first steps in my review was to determine precisely what "decision" was at issue.

32. As part of my retainer, City of Vaughan legal staff advised me of their initial view that the "decision" at issue was Council's decision at the February 21, 2017 meeting in respect of the Second OMB Appeal. Namely, the decision to approve a report of City planning staff which called for the approval, in principle, of the Subdivision Application and the Zoning Application, subject to a lengthy list of technical and environmental conditions.

33. This position of City of Vaughan legal staff was based on the IC Report itself. The Commissioner emphasized in the IC Report that “the allegations and [her] findings in this matter primarily relate to the issues raised in the [Second OMB Appeal]”.¹³ The IC Report noted that “the complaint does not pivot on the actions with respect to the [First OMB Appeal]”, but rather that the “comments and actions that are alleged in this complaint to be in contravention of the Code of Conduct are in relation to the [Second OMB Appeal]”.¹⁴

34. At the City Council meeting on June 27, 2017, when the IC Report was presented by the Commissioner and formally accepted by City Council, the Commissioner made additional oral comments regarding the scope of her investigation. She noted that the City of Vaughan Complaint Protocol for Council Code of Conduct prescribes a 6-month time limit: specifically, section 2 provides that “all complaints must be addressed ... within six (6) months of the alleged violation or no action will be taken on the complaint”. In response to a question from City Council, the Commissioner stated as follows: “I did not investigate the so-called first appeal, and comments around that first appeal; I cannot make a statement that there was no substance, but I was barred by the Code Protocol from investigating those particular allegations.”

35. Despite these statements, the IC Report also put considerable focus on events and conduct of Mr. Di Biase that took place in the context of the First OMB Appeal, well before the Second OMB Appeal had commenced. In particular, the allegations surrounding the June 23, 2015 *in camera* meeting of City Council were clearly connected only to the First OMB Appeal. Furthermore, the comments made at the May 2, 2016 community meeting were arguably related, at least in part, to the First OMB Appeal, even though the meeting itself was convened in response to the Subdivision Application, which would later become the subject of the Second OMB Appeal. Finally, the June 8,

¹³ IC Report, page 3.

¹⁴ IC Report, page 3.

2016 letter from the TRCA to area residents, upon which the Commissioner relied to conclude that Mr. Di Biase had misrepresented the position of the TRCA to City Council,¹⁵ also focused on the First OMB Appeal.

36. I note the Commissioner's comments regarding the limited scope of the IC Report, and that she did not formally "investigate" the allegations surrounding the First OMB Appeal. That said, for the purposes of my review of Council's "decision", I have found it necessary to take a broader approach, by also gathering and considering information and documents relating to the First OMB Appeal. In my view, City Council's decision in respect of the First OMB Appeal, namely the decision to enter into the Settlement with the Owner, is inextricably linked with all subsequent decisions regarding the Development. This was repeatedly confirmed by those individuals I interviewed.

37. I would also note that in introducing Council's Resolution at the meeting on June 27, 2017, Councillor Shefman remarked as follows:

"I've kept it broad enough to ensure that staff can look at, as wide a parameter around decision-making as they can. We've already been informed that one decision relating to that has been under an OMB appeal, therefore we cannot address that issue, but perhaps there are some components [...] perhaps that may be drawn, because I want to allow the breadth of discussion."

38. Councillor Shefman's comments reflect an understanding that it was not within City Council's ability to reverse or otherwise undo the OMB's decision in the First OMB Appeal. It is clear to me, based on his comments and for the reasons noted above, that any meaningful response to Council's Resolution must consider the full factual context of the Development, which includes matters relating to the First OMB Appeal. I concluded that if I failed to consider the full picture, my Report would be open to the criticism that it was too narrowly focused.

¹⁵ IC Report, pages 7-9.

39. I pause to emphasize that the scope of my review is limited only to whether Mr. Di Biase's conduct influenced City Council's decision-making. Although as discussed further below, I have also considered the possibility of indirect influence on City Council as a result of Mr. Di Biase's conduct with members of City staff, the TRCA, and the public.

ii. Interviews Conducted and Materials Reviewed

40. Between September 25, 2017 and November 21, 2017, I conducted interviews with 15 individuals:

1. City Council

- i. Mayor Maurizio Bevilacqua
- ii. Regional Councillor Mario Ferri
- iii. Regional Councillor Gino Rosati
- iv. Local Councillor Tony Carella
- v. Local Councillor Rosanna DeFrancesca
- vi. Local Councillor Marilyn Iafrate
- vii. Local Councillor Sandra Yeung Racco
- viii. Local Councillor Alan Shefman

2. City Staff

- i. Anthony Iacobelli, Manager of Environmental Sustainability, City of Vaughan
- ii. John MacKenzie, Deputy City Manager, Planning and Growth Management, City of Vaughan

3. TRCA Officials

- i. Maria Augimeri, City of Toronto Councillor and Chair of the TRCA

- ii. Brian Denney, Chief Executive Officer, TRCA
- iii. Carolyn Woodland, Director of Planning and Development, TRCA
- iv. June Little, Senior Manager, Development Planning and Regulation, TRCA

4. Integrity Commissioner of the City of Vaughan

- i. Suzanne Craig

41. I also extended an invitation to interview Mr. Di Biase. However, he declined my offer, citing concerns as to the City of Vaughan's claims of confidentiality and privilege over information related to the OMB Appeals. Mr. Di Biase did refer me to the comments he had provided to the Commissioner as part of her investigation.

42. The above interviews were variously conducted at Vaughan City Hall, TRCA headquarters, Toronto City Hall, or in my office. My assistant in this review, Daniel Dawalibi,¹⁶ was present for all the above interviews.

43. In advance of the above interviews, I was provided with a package of materials by City legal staff which included the following:

- i. Extract from Council Meeting Minutes of June 27, 2017, including the IC Report and its appendices;
- ii. Extract from Council Meeting Minutes of February 21, 2017, specifically Item 5, Report No. 6 of the Committee of the Whole relating to Zoning By-law Amendment File Z.16.016 and Draft Plan of Subdivision File 19T-16V001 for the Property; and

¹⁶ Mr. Dawalibi is Legal Counsel with Arbitration Place in Toronto, where I maintain an independent arbitration and mediation practice.

- iii. Decision of the Ontario Municipal Board dated March 9, 2016 in respect of the First OMB Appeal (2016 CanLII 13042).

44. Over the course of the interviews, I was also provided with additional documents from various interviewees and the City legal staff, including minutes from other City Council meetings and TRCA meetings. I also had the opportunity to view video recordings of City Council's February 21, 2017 and June 27, 2017 meetings.

Part 3 – Findings re: the Impact of any Improper Influence on City Council

45. As noted above, the scope of my review is limited only to whether Mr. Di Biase's conduct as found in the IC Report influenced City Council's decision-making, and not the decision-making of other bodies such as the TRCA or the Region of York.

46. I emphasize that contrary to what some may have anticipated, the scope of my retainer pursuant to Council's Resolution does not include an inquiry into all aspects of the Development, nor to engage in a review or re-evaluation of the IC Report.

47. My review started with interviews of the members of City Council themselves, in order to assess what impact, if any, Mr. Di Biase's conduct may have had on their decision-making. However as noted above, my review also considers the possibility of indirect influence on City Council in three other respects. My findings are therefore divided as follows:

- a. Direct Influence: Whether Mr. Di Biase influenced any of his fellow members of City Council;
- b. Indirect Influence:
 - i. Whether Mr. Di Biase's conduct in his capacity as Vice-Chair of the TRCA influenced City Council;

- ii. Whether Mr. Di Biase influenced City of Vaughan staff members, and the planning staff in particular; and
- iii. Whether Mr. Di Biase influenced members of the public.

i. Direct Influence - Members of City Council

48. Without exception, the members of City Council advised me that Mr. Di Biase had no influence on them in respect of their decision-making related to the Development. Nothing that Mr. Di Biase said or did swayed their decisions one way or another.

49. Rather, the Councillors affirmed that they come to their own conclusions in respect of any given decision that is before them, including all decisions relating to the Development. In the case of planning matters such as the Development, the Councillors advised me that they typically receive information and recommendations from City planning staff. When an OMB appeal is at stake, Councillors also receive advice from City legal staff.

50. That said, despite their reliance on City staff, it is clear that members of City Council can and often do disagree with staff recommendations, as some of them did in the case of the First OMB Appeal decision made during the June 23, 2015 *in camera* meeting. Specifically, I was advised by multiple interviewees that City Council narrowly voted at this meeting to move forward towards the Settlement, against the recommendations of City planning staff. Those Councillors that voted to proceed with the Settlement (a group that included Mr. Di Biase) did so for various reasons, but I was not able to find evidence that their reasons connected to anything that Mr. Di Biase is alleged to have said or done as found by the Commissioner.

51. In particular, I am satisfied that Mr. Di Biase's misrepresentation of the TRCA's position to City Council (as found in the IC Report) did not influence any members of City Council. Based on the information provided to me by multiple interviewees, it is clear

that members of City Council did not rely on Mr. Di Biase for their information as to what the TRCA's position was in respect of any given development project.

52. The influence exerted – as found in the IC Report – by Mr. Di Biase at the April 5, 2016 public hearing and May 2, 2016 community meeting is also unlikely to have impacted on the decisions of City Council. To the extent that other Councillors were present at these meetings,¹⁷ they may have overheard Mr. Di Biase make the comments referenced in the IC Report such as the “City's hands were tied”.

53. The Commissioner found that this was a misrepresentation of the City's position. Accepting that finding, I am nevertheless satisfied that any member of Council would have known that it was a misrepresentation, because Mr. Di Biase's fellow Councillors would have understood whether the City's hands were actually tied or not. As such, it is highly unlikely that other members of City Council would have been influenced in this manner.

ii. Indirect Influence - The TRCA

54. According to the information provided to me by TRCA officials, the TRCA was surprised to learn about City Council's decision made during the June 23, 2015 *in camera* meeting to co-operate with the Owner in respect of the First OMB Appeal.

55. I was advised that in the summer of 2015, Mr. Di Biase attempted to convince his fellow TRCA executive committee members to withdraw the TRCA from the First OMB Appeal process. Mr. Di Biase's efforts were unsuccessful: the executive committee rejected his proposal, and as noted above, at the full Authority meeting on July 24, 2015, the TRCA resolved to remain actively involved in the First OMB Appeal.

¹⁷ The May 2, 2016 community meeting in particular was not attended by all members of City Council, though several Councillors confirmed they were in attendance.

56. Although the TRCA ultimately entered into the Settlement with the City and the Owner, it did so after securing commitments from the Owner to comply with the TRCA's various regulatory requirements.

57. The improper influence exerted by Mr. Di Biase at various TRCA meetings (as found in the IC Report) could not have impacted any decision of City Council, for three reasons.

- a. First, I can conclude from the information before me that no other members of City Council were present at the relevant TRCA meetings.¹⁸
- b. Second, even if other members of Council had been at the TRCA meetings or subsequently learned of Mr. Di Biase's statements to the TRCA, I find that they could not possibly have been influenced. To the extent that Mr. Di Biase misrepresented the position of City Council to the TRCA, other members of City Council would have known that the statements were false and would not have been misled by them.
- c. Third, it is evident that all of Mr. Di Biase's efforts to get the TRCA to withdraw from their involvement in the Development were unsuccessful, so those efforts could not have had any impact on the decisions of City Council. On the contrary, I was advised that City Council made its decisions with the benefit of City staff describing the TRCA's position to City Council. I was told that the Councillors did not rely on Mr. Di Biase to advise them of the TRCA's position.

¹⁸ Regional Councillor Rosati was the only other member of City Council that also had a seat on the TRCA along with Mr. Di Biase. Mr. Rosati was not on the TRCA executive committee and he was not present at the full authority meeting on July 24, 2015.

iii. Indirect Influence - City of Vaughan staff

58. No information was provided to me to suggest that any City of Vaughan staff members were improperly influenced by Mr. Di Biase, nor is there any suggestion to that effect in the IC Report. On the contrary, it is clear that City planning staff strongly advised City Council to reject the Owner's proposal at the June 23, 2015 meeting, a position that would have been in opposition to Mr. Di Biase.

59. After City Council made its decision to move forward towards the Settlement, City staff worked towards that goal, ultimately leading to the planning staff recommendation report that City Council approved in respect of the Zoning and Subdivision Applications at the February 21, 2017 meeting. Notably, the planning staff report that was approved by City Council at this meeting contains a lengthy list of technical and environmental conditions that must be satisfied by the Owner, including:

- a. The implementing Zoning By-law shall be drafted to the satisfaction of the City in consultation with the TRCA.
- b. An independent third-party Peer Review shall be undertaken at the Owner's expense, to review the Geotechnical Report, Hydrogeological Report, Natural Heritage Evaluation, and Functional Servicing Reports that have been submitted by the Owner as part of its applications, and the Peer Review shall be completed to the satisfaction of the City in consultation with the TRCA.

iv. Indirect Influence - Members of the Public

60. The IC Report describes how Mr. Di Biase misrepresented the position of City Council at the May 2, 2016 meeting when he stated that the "City's hands were tied". It is possible that members of the public in attendance at that meeting could have been

misled by Mr. Di Biase, and that these members of the public may have then influenced individual members of City Council.

61. Specifically, it is possible that some area residents that otherwise would have opposed City Council's decisions to move forward with the Development would have withdrawn their opposition in reliance on Mr. Di Biase's misrepresentation that the "City's hands were tied". In other words, Mr. Di Biase may have succeeded in reducing the amount of public opposition faced by his fellow Councillors, and the positions of these Councillors with respect to the Development could have been influenced accordingly.

62. In my view, this hypothetical scenario is without merit. Based on the timing of the May 2, 2016 community meeting, the only decision of City Council that may have been influenced is the February 21, 2017 adoption of the planning report to conditionally approve the Owner's Zoning and Subdivision Applications. City Council's decision at the June 23, 2015 *in camera* meeting pre-dates any conduct of Mr. Di Biase as found in the IC Report, which may have influenced members of the public.

63. It is clear to me – both from the comments of multiple interviewees and from my review of the relevant documents – that public opposition to the Development at the time of the February 21, 2017 meeting, despite any efforts on the part of Mr. Di Biase, remained very strong. I was advised by multiple members of City Council that they were aware of this opposition, but City Council nevertheless voted 8-1 to approve the planning staff report and move forward with the Development.

64. City Council's reasons for voting this way in the face of significant public opposition are again, varied. Some Councillors who opposed the initial decision to approve the Settlement in June 2015 ultimately voted in favour of proceeding with the Development in February 2017. They did so not because of a lack of public opposition, but rather because they viewed that the "ship had sailed" with the OMB's decision on the First OMB

Appeal. With the Property having been re-designated by the OMB in the Official Plan, it only made sense to defer to planning staff's recommendations to bring the draft plan of subdivision and zoning by-law in line with the Official Plan. As indicated above, the planning staff report that was approved by City Council in February 2017 contains a lengthy list of technical and environmental conditions that must be satisfied by the Owner.

65. With that factual context in mind, I am therefore satisfied that Mr. Di Biase did not indirectly influence any members of City Council through his statements to members of the public in respect of the Development.

Conclusion

66. As indicated at the outset of this Report, based on my analysis of all the information gathered during my review, I conclude that any improper influence exerted by Mr. Di Biase (as found in the IC Report) did not impact the decisions of City Council in respect of the Development.

Dated the 23rd day of January, 2018

The Honourable Robert P. Armstrong, Q.C.

