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Sent via e-mail to maurizio.bevilacqua@vaughan.ca

Hon. Mayor Bevilacqua
Vaughan City Hall
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Communication
COUNCIL: <u>May 23/18</u>
<u>CW</u> Rpt. No. <u>18</u> Item <u>6.3.23</u>

**Re: Committee of the Whole – Board of Trade Golf Course
Keep Vaughan Green**

Dear Hon. Mayor Bevilacqua,

Donnelly Law represents Keep Vaughan Green (“KVG”). We write to advise that KVG is elated to have been informed that Clubhouse Developments Inc. (the “Proponent”) has withdrawn their Official Plan Amendment application for the Board of Trade Golf Course at the May 8, 2018 Committee of the Whole (“COW”).

This is exactly the “breathing room” needed for Vaughan Council to conduct necessary studies pursuant to protecting critical open space, the Board of Trade Golf Course and updating its Official Plan to put in place sensible policies regarding intensification, especially proposed new large scale “infill” developments.

We write concerning outstanding issues not addressed by Council at the meeting:

1. Why did Council refuse the KVG request to adopt an Interim Control By-law (“ICBL”), particularly a city-wide ICBL that would not impact the Proponent’s application? The application was withdrawn. Residents walked out after Council decided to discuss the merits of an ICBL *in camera*. What legal advice was provided to Council? Why was this deemed a confidential or litigation matter when no development application was before Council?;
2. How does Council propose to protect the ecological features of the site from site alteration and tree removal in advance of the new studies being conducted (residents are reporting a higher than usual marking and clearing program this Spring)? To repeat our earlier submission, tree preservation was not addressed by Council. It has been suggested that a prohibition on site alteration, and in particular, tree-cutting, is unnecessary at the Board of Trade Golf Course. This seems to be an odd conclusion given that golf courses are in

fact exempt from the *Private Property Tree Protection By-law 185-2007*, per s.3(2)(e);

3. What studies are Council proposing? Residents want an ecological study, pursuant to including the entirety of the Board of Trade Golf Course in the Greenbelt, a cultural heritage evaluation pursuant to creating a protected cultural heritage landscape, a social impact assessment, a mental health impact assessment, and a comprehensive land use analysis. What is Council's response to this request?;
4. In addition, now that there is no application in front of Council, it is time to address the outstanding commitment made to residents and the Huron-Wendat Nation that Vaughan's cultural heritage landscapes will be preserved;
5. Skandatut is still in private hands, despite the celebration and ceremony conducted by you and the Grand Chief of the Huron-Wendat on June 6, 2012. As part of that ceremony, a commitment was made to create a significant cultural heritage protected landscape, to be designated under section 29 of the *Ontario Heritage Act*. This is exactly the process used by Mayor Rob Burton and Oakville Council (unanimously) to preserve the 230-acre Glen Abbey Golf Course as open space; and
6. How will residents be included in the study design and execution? A Sub-Committee involving KVG is a minimum requirement for the studies.

It is this last point that is of most concern to residents. Will you commit to convening a Public Consultation session to engage and recruit residents to be part of a Sub-Committee to address critical issues such as study scope and terms of reference, funding, consultant selection and vetting, community engagement, etc.?

Regarding Council's curious decision to reject KVG's simple request for an ICBL, when will Council explain its decision to residents? Two Councillors listened to the City Solicitor's advice and decided to vote for the ICBL anyway. In addition, Oakville had no difficulty defending its ICBL, and that was in the context of processing a development application for Glen Abbey Golf Course, an important fact situation absent in the present case.

KVG does not have confidence Council has been given the correct legal advice regarding the ICBL.

Council is rarely at a loss finding high-priced legal representation from outside counsel to support controversial development applications. In the case of the Dufferin Vistas Ltd. Ontario Municipal Board Appeal PL 160978, Vaughan retained Mr. Pittman Patterson (Partner) and Ms Piper Morley (Senior Associate) of the Bay Street law firm Borden Ladner Gervais LLP to support an application for a 31-unit sub-division on 5-acre parcel of land. Why didn't Council similarly seek outside legal advice to deal with this 290-acre, 660-unit development? This seems unfair to KVG and a clear benefit to the developer.

Notwithstanding this recommended course of action, the law on ICBLs is crystal clear.

Supreme Court of Canada

The Supreme Court of Canada dealt with the legality of ICBLs in *RSJ Holdings Inc. v London (City)*, 2002 SCC 29, 2007 CarswellOnt 3919. The facts in this case are that RSJ Holdings (the “Developer”) bought property and applied for demolition and building permits. London City Council discussed the application in two closed meetings as the Committee of the Whole. They recommended a land-use study be undertaken and advised that City Council approve a proposed ICBL. After the second meeting, as City Council they resumed the regular public meeting for eight minutes. They passed an ICBL freezing development at the proposed site. The Developer appealed, and the ICBL was quashed by the Court of Appeal.

The City appealed to the Supreme Court of Canada (the “SCC”). The SCC held:

There is only one statutory precondition to passing an interim control by-law, namely the stipulation in s. 38(1) of the *Planning Act* requiring a municipal council to direct that a land use study be undertaken, and the City complied with that condition.¹

In other words, municipalities have clear and uncomplicated authority to pass ICBLs without fear of legal challenge, provided a simple process is followed.

These rules around process are extremely simple. In addition, the SCC held that:

By virtue of s. 38(3) of the *Planning Act* a municipality need not give prior notice or hold a public hearing before it passes an interim control by-law. However, the meeting in which Council is to consider and vote on the interim control by-law is to be open.²

Local Appeal Tribunal Act

Previously, under subsection 38(4) of the *Planning Act*, anyone who was given notice of the passing of an ICBL could appeal the by-law within 60 days after the by-law was passed. The *Building Better Communities and Conserving Watersheds Act, 2017* has amended the *Planning Act* to read:

The Minister may, within 60 days after the date of the passing of a by-law under subsection (1), appeal to the Tribunal by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection.³

Accordingly, only the Minister is able to appeal an ICBL when it is first passed. Again, what is the legal opinion contrary to the clear new statutory authority to enact and

¹ *RSJ Holdings Inc. v London (City)*, 2007 SCC 29, 2007 CarswellOnt 3919, para 40.

² *Ibid*, annotation pg 5.

³ *Planning Act*, RSO 1990 c. P. 13, s. 38(4)

ICBL without fear of an appeal? On this basis, KVG does not have confidence in the advice given to Council.

Mayor and Council, KVG would be shocked and dismayed if the legal advice you received was contrary to this jurisprudence.

Most importantly, in *RSJ Holdings* the Supreme Court reminded readers that decision-making of the kind exhibited on May 8, 2018 at the Vaughan COW is not in keeping with important democratic principles. The Court held:

The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when *intra vires*, are less worthy of deference.⁴

Residents of Oakville have had little difficulty in understanding the decisions of their Council. KVG is simply asking for a similar courtesy.

In conclusion, it respectfully submitted that the issue of protection of the Board of Trade open space, residents' engagement in the cultural heritage evaluation and reformulation of the infill development Official Plan policies must be dealt with immediately. It would be naïve to think that this development application has been withdrawn permanently. In the interim, before the next submission, KVG wants Council to respect the wishes of citizens.

Please do not hesitate to contact me at 416-572-0464, or by email to david@donnellylaw.ca, cc'ing alexandra@donnellylaw.ca should you have any questions or concerns.

Yours truly,



David R. Donnelly

cc. Council
Keep Vaughan Green
Huron-Wendat Nation
Toronto and Region Conservation Authority

⁴ *RSJ Holdings Inc. v London (City)*, 2007 SCC 29, 2007 CarswellOnt 3919, para 38