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Communication
COUNCIL: May 23/18
CW Rpt. No. 18 Item 6.3.23

May 8, 2018

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

Hon. Mayor Bevilacqua
Vaughan City Hall
2141 Major Mackenzie Dr.
Vaughan, ON L6A 1T1

**Re: Committee of the Whole, Report No. 18 – Board of Trade Golf Course
Keep Vaughan Green**

Dear Hon. Mayor Bevilacqua,

Donnelly Law represents Keep Vaughan Green (“KVG”). We have provided a legal opinion to KVG regarding the legality and utility of a proposed Interim Control By-law (“ICBL”) for the Board of Trade Golf Course property. The letter submitted by KVG dated April 18, 2018 was reviewed by our office.

It is our summary conclusion that an ICBL is warranted in this case, is consistent with the *Planning Act* and the Provincial Policy Statement, 2014 and is also consistent with the principles of good planning.

We note that a similar Interim Control By-law was passed by the Town of Oakville concerning the Glen Abbey Golf Course. Oakville Council voted unanimously to pass the ICBL and ordered a Cultural Heritage Landscape Evaluation.

Vaughan Planning Staff have apparently advised you that the ClubLink application in Oakville is now under litigation. While this is true, the merit of the litigation is tied directly to a decision of the Ontario Municipal Board (“OMB”), in *ClubLink Corporation ULC v. Oakville (Town)* 2017 CarswellOnt 7477, 93 O.M.B.R. 374, (the “Decision”) decided by Executive Chair Dr. B. W. Krushelnicki on May 10, 2017.

The facts are that in February, 2016, the Town of Oakville enacted an Interim Control By-law (No. 2016-024). ClubLink appealed the passage of the ICBL.¹

The Board held that:

Indeed, if ever there was a development proposal that warranted and justified the appropriate establishment of an ICBL to allow a study of land use policy and implications for the Town's growth, it is a proposal to develop a significant portion of a 230-acre parcel of land in the heart of a residential area of the Town on lands that had for several decades been designated and zoned for open space and natural area.²

Having considered all of the issues raised in respect to the proposal for an ICBL and the one-year renewal of the ICBL, the Board finds for the Town and concludes that the ICBL is appropriate and necessary. It is justified and based on a legitimate planning rationale. It has been enacted in good faith, does not unfairly target the subject proposal in comparison with others and there is no evidence that it has been enacted for purpose of delay or to frustrate the proper assessment of the merits of a development application. It is in conformity with the RHOP and the Provincial Growth Plan, and is consistent with the PPS.³ [emphasis added]

It should be noted that Dr. Krushelnicki once taught the Planning Course at the University of Brock and wrote the definitive text on the OMB and its procedures.

Please be advised that "bad faith" is a primary allegation of the ClubLink litigation, which the Board clearly addressed in its Decision.

It appears Vaughan Staff may have neglected to provide you with this Decision. This is a significant oversight. An ICBL will give Vaughan and residents the "breathing space"⁴ necessary to ensure a proper planning process.

In addition, 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).

Finally, from our past shared experience with the Huron-Wendat Nation, you are no doubt aware the Board of Trade Golf Course is situated in the middle of one of Canada's richest cultural heritage landscapes. All around the site are Skandatut, Thonnakona Ossuary, Seed-Parker, Mackenzie and Boyd Park sites. Even without a

¹ *ClubLink Corporation ULC v. Oakville (Town)* 2017 CarswellOnt 7477, 93 O.M.B.R. 374 para. 1

² *Ibid* para. 36

³ *Ibid* para. 93

⁴ *Ibid* para. 6

comprehensive cultural heritage evaluation, it is obvious to even a lay person that this is a prime candidate property for inclusion in the Greenbelt and designation under s.29 of the *Ontario Heritage Act*. Have First Nations been notified of today's Committee of the Whole ("COW") meeting?

Please add this correspondence to the record of the COW. If time permits, I will be attending the COW meeting. I am reliably informed that a number of local residents will be attending at 1:00pm. From the agenda it appears that Staff has pushed this item to 23 of 25.

In my experience, controversial items involving public interest matters involving a large segment of the community are always provided with the courtesy of an early start time. I am hoping this same courtesy will be extended to KVG.

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,

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

David R. Donnelly

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