

## **CITY OF VAUGHAN**

### **EXTRACT FROM COUNCIL MEETING MINUTES OF NOVEMBER 26, 2014**

Item 1, Report No. 40, of the Special Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on November 26, 2014.

#### **1 INDEMNIFICATION REQUEST BY REGIONAL COUNCILLORS DI BIASE AND ROSATI FOR INDEMNIFICATION UNDER BY-LAW 91-2011**

The Special Committee of the Whole recommends:

- 1) That the recommendation contained in the following report of the Interim City Manager, dated November 26, 2014, be approved;
- 2) That Confidential Communications C1, and C7, be received;
- 3) That the deputation of Mr. Nick Pinto, West Woodbridge Homeowners Association Inc., Mapes Avenue, Woodbridge, be received; and
- 4) That Communication C3, from Ms. Carrie Liddy, Humberview Drive, Woodbridge, dated November 26, 2014, be received.

#### **Recommendation**

The Interim City Manager, in consultation with the Commissioner of Legal & Administrative Services/City Solicitor and external legal counsel, recommends:

1. That the requests for indemnification with respect to legal proceedings commenced by DiPoce Management Limited, Court File No. CV-14514649 ("Claim"), received from Regional Councillor Gino Rosati and Regional Councillor Michael DiBiase, dated November 6, 2014 and November 10, 2014 respectively ("the requests for indemnification"), be denied at this time, if the Councillors utilize the City's insurance coverage; and
2. That the requests for indemnification be denied without future reconsideration, if the Councillors refuse the City's insurance coverage.

#### **Contribution to Sustainability**

Not applicable.

#### **Economic Impact**

If Recommendation #1 made in this Report is approved, there will be no economic impact for the City at this time. If the Councillors proceed under the insurance coverage and the legal claim is settled without any admission of fault, or the Councillors are ultimately found by a court to have not acted unlawfully or in bad faith, the Interim City Manager can at that point make a determination as to the qualification for indemnification under Section 4 of the By-law and the City may indemnify the Councillors for the deductible amount up to \$50,000 in total and amounts in excess of the insurance coverage limit.

If Recommendation #2 made in this Report is approved, there will be no economic impact for the City now or in the future.

If staff's recommendations are not approved and indemnification is granted by Council, the economic impact will be dependent on the fees and costs billed, as well as the duration and conduct of the legal proceedings and any court award or settlement that may be rendered or entered into. As reported to Council at the time the Indemnification By-law was approved on April 5, 2011, any approved legal costs for this matter would be paid from the Legal Services Professional Fees Budget. There are no budgeted funds for any damages that may be awarded, by a court, or any settlement that may be reached.

## **CITY OF VAUGHAN**

### **EXTRACT FROM COUNCIL MEETING MINUTES OF NOVEMBER 26, 2014**

Item 1, SPCW Report No. 40 – Page 2

#### **Communications Plan**

The City's Communications Department will be providing Council with Key Messages, as the Claim has already been reported in the media.

#### **Purpose**

The purpose of this Report is to seek Council's approval of staff's recommendations (as set out above) to deny the Councillors' requests for indemnification pursuant to the City's Indemnification By-law in respect of the Claim.

#### **Background**

On October 22, 2014, a Statement of Claim was issued in the Ontario Superior Court of Justice by DiPoce Management Limited ("DiPoce") against Regional Councillors Michael DiBiase and Gino Rosati (the "Claim"). The City is not a named party in the Claim. The Claim alleges that the Councillors improperly opposed DiPoce's development application and sought to defer and essentially to thwart approval of the application before Council. The Claim alleges that the Councillors failed to properly exercise their public office by:

- acting in a conflict of interest;
- committing misfeasance;
- breaching their fiduciary duties;
- acting in bad faith and for improper purposes; and
- conspiring to injure the applicant, DiPoce;

When the City was notified of the Claim, it immediately notified its insurer, OMEX, as required under the terms of its insurance policy coverage. OMEX in turn communicated with both Councillors regarding coverage under the City's insurance policy and has appointed one of its approved legal counsel, Charles Loopstra of Loopstra Nixon, to defend the Claim on behalf of both Councillors.

On November 6, 2014, the Interim City Manager received a request for indemnification of legal fees, awards, damages, etcetera, from Regional Councillor Gino Rosati, pursuant to By-law 91-2011, with respect to the Claim. On November 10, 2014, the Interim City Manager received a request for indemnification of legal fees, awards, damages, etcetera, from Regional Councillor Michael DiBiase pursuant to By-law 91-2011, with respect to the Claim. Both Councillors are requesting alternate lawyers to represent them. One of the named Councillors is also requesting separate legal representation.

On November 10, 2014, the Interim City Manager denied, at this time, the indemnification request received from Regional Councillor Gino Rosati. After Councillor Rosati was provided with the City Manager's decision, he requested a reconsideration, and Council direction is being sought at this time. A decision therefore has not been rendered with respect to the request made by Regional Councillor Michael DiBiase.

#### **Analysis and Options**

Section 8 of the City's Indemnification By-law permits indemnification by the City only to the extent that costs, expenses and damages are not assumed, paid or reimbursed under any provision of the City's insurance policy. In this matter, the City's insurance coverage provides for the payment of defence costs, damages, etcetera, resulting from a civil action. The insurance coverage provides for a \$50,000 deductible for the whole Claim. If one or both of the Councillors refuse the City's insurance coverage, indemnification should be denied pursuant to section 8 of the Indemnification By-law.

## **CITY OF VAUGHAN**

### **EXTRACT FROM COUNCIL MEETING MINUTES OF NOVEMBER 26, 2014**

#### **Item 1, SPCW Report No. 40 – Page 3**

Also, Section 4 of the Indemnification By-law stipulates that in order to qualify for indemnification, by the City, the City Manager (in consultation with the City Solicitor) must make a determination that the act or omission giving rise to the legal proceeding was done or made in good faith and based on the reasonable belief that such act or omission was lawful and in the best interests of the City. These determinations are at the very core of the Claim wherein DiPoce has alleged that the Councillors acted unlawfully, in bad faith and in misfeasance of public office. Accordingly, the City Manager cannot make a determination to qualify (or disqualify) the Councillors at this point in time under the By-law and therefore, the Councillors cannot be indemnified at this time as any indemnification would not be in compliance with the By-law for any amounts not covered by the insurance policy.

If the Councillors proceed under the insurance coverage and the legal claim is settled without any admission of fault, or the Councillors are ultimately found by a court to have not acted unlawfully or in bad faith, the Interim City Manager can at that point make a determination as to the qualification for indemnification under Section 4 of the By-law.

#### **Relationship to Vaughan Vision 2020/Strategic Plan**

Not applicable.

#### **Regional Implications**

There are no regional implications associated with this Report.

#### **Conclusion**

The Interim City Manager recommends that Council deny the requests for indemnification at this time, if the Councillors proceed under the City's insurance coverage. The Interim City Manager further recommends that the requests for indemnification be denied, and that they not be reconsidered in the future, if the Councillors refuse the City's insurance coverage.

#### **Attachments**

Attachment 1 – City of Vaughan By-law 91-2011 (Indemnification By-law)

#### **Report prepared by:**

Nancy Salerno  
Legal Council

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

*Regional Councillor Di Biase declared an interest with respect to the foregoing matter, as he is a named defendant in the matter and is therefore directly affected, and did not take part in the discussion or vote on the matter.*

*Regional Councillor Rosati declared an interest with respect to the foregoing matter, as he is a named defendant in the matter and is therefore directly affected, and did not take part in the discussion or vote on the matter.*

## **SPECIAL COMMITTEE OF THE WHOLE - NOVEMBER 26, 2014**

### **INDEMNIFICATION REQUEST BY REGIONAL COUNCILLORS DI BIASE AND ROSATI FOR INDEMNIFICATION UNDER BY-LAW 91-2011**

#### **Recommendation**

The Interim City Manager, in consultation with the Commissioner of Legal & Administrative Services/City Solicitor and external legal counsel, recommends:

1. That the requests for indemnification with respect to legal proceedings commenced by DiPoce Management Limited, Court File No. CV-14514649 ("Claim"), received from Regional Councillor Gino Rosati and Regional Councillor Michael DiBiase, dated November 6, 2014 and November 10, 2014 respectively ("the requests for indemnification"), be denied at this time, if the Councillors utilize the City's insurance coverage; and
2. That the requests for indemnification be denied without future reconsideration, if the Councillors refuse the City's insurance coverage.

#### **Contribution to Sustainability**

Not applicable.

#### **Economic Impact**

If Recommendation #1 made in this Report is approved, there will be no economic impact for the City at this time. If the Councillors proceed under the insurance coverage and the legal claim is settled without any admission of fault, or the Councillors are ultimately found by a court to have not acted unlawfully or in bad faith, the Interim City Manager can at that point make a determination as to the qualification for indemnification under Section 4 of the By-law and the City may indemnify the Councillors for the deductible amount up to \$50,000 in total and amounts in excess of the insurance coverage limit.

If Recommendation #2 made in this Report is approved, there will be no economic impact for the City now or in the future.

If staff's recommendations are not approved and indemnification is granted by Council, the economic impact will be dependent on the fees and costs billed, as well as the duration and conduct of the legal proceedings and any court award or settlement that may be rendered or entered into. As reported to Council at the time the Indemnification By-law was approved on April 5, 2011, any approved legal costs for this matter would be paid from the Legal Services Professional Fees Budget. There are no budgeted funds for any damages that may be awarded, by a court, or any settlement that may be reached.

#### **Communications Plan**

The City's Communications Department will be providing Council with Key Messages, as the Claim has already been reported in the media.

#### **Purpose**

The purpose of this Report is to seek Council's approval of staff's recommendations (as set out above) to deny the Councillors' requests for indemnification pursuant to the City's Indemnification By-law in respect of the Claim.

## **Background**

On October 22, 2014, a Statement of Claim was issued in the Ontario Superior Court of Justice by DiPoce Management Limited ("DiPoce") against Regional Councillors Michael DiBiase and Gino Rosati (the "Claim"). The City is not a named party in the Claim. The Claim alleges that the Councillors improperly opposed DiPoce's development application and sought to defer and essentially to thwart approval of the application before Council. The Claim alleges that the Councillors failed to properly exercise their public office by:

- acting in a conflict of interest;
- committing misfeasance;
- breaching their fiduciary duties;
- acting in bad faith and for improper purposes; and
- conspiring to injure the applicant, DiPoce;

When the City was notified of the Claim, it immediately notified its insurer, OMEX, as required under the terms of its insurance policy coverage. OMEX in turn communicated with both Councillors regarding coverage under the City's insurance policy and has appointed one of its approved legal counsel, Charles Loopstra of Loopstra Nixon, to defend the Claim on behalf of both Councillors.

On November 6, 2014, the Interim City Manager received a request for indemnification of legal fees, awards, damages, etcetera, from Regional Councillor Gino Rosati, pursuant to By-law 91-2011, with respect to the Claim. On November 10, 2014, the Interim City Manager received a request for indemnification of legal fees, awards, damages, etcetera, from Regional Councillor Michael DiBiase pursuant to By-law 91-2011, with respect to the Claim. Both Councillors are requesting alternate lawyers to represent them. One of the named Councillors is also requesting separate legal representation.

On November 10, 2014, the Interim City Manager denied, at this time, the indemnification request received from Regional Councillor Gino Rosati. After Councillor Rosati was provided with the City Manager's decision, he requested a reconsideration, and Council direction is being sought at this time. A decision therefore has not been rendered with respect to the request made by Regional Councillor Michael DiBiase.

## **Analysis and Options**

Section 8 of the City's Indemnification By-law permits indemnification by the City only to the extent that costs, expenses and damages are not assumed, paid or reimbursed under any provision of the City's insurance policy. In this matter, the City's insurance coverage provides for the payment of defence costs, damages, etcetera, resulting from a civil action. The insurance coverage provides for a \$50,000 deductible for the whole Claim. If one or both of the Councillors refuse the City's insurance coverage, indemnification should be denied pursuant to section 8 of the Indemnification By-law.

Also, Section 4 of the Indemnification By-law stipulates that in order to qualify for indemnification, by the City, the City Manager (in consultation with the City Solicitor) must make a determination that the act or omission giving rise to the legal proceeding was done or made in good faith and based on the reasonable belief that such act or omission was lawful and in the best interests of the City. These determinations are at the very core of the Claim wherein DiPoce has alleged that the Councillors acted unlawfully, in bad faith and in misfeasance of public office. Accordingly, the City Manager cannot make a determination to qualify (or disqualify) the Councillors at this point in time under the By-law and therefore, the Councillors cannot be indemnified at this time as any indemnification would not be in compliance with the By-law for any amounts not covered by the insurance policy.

If the Councillors proceed under the insurance coverage and the legal claim is settled without any admission of fault, or the Councillors are ultimately found by a court to have not acted unlawfully or in bad faith, the Interim City Manager can at that point make a determination as to the qualification for indemnification under Section 4 of the By-law.

**Relationship to Vaughan Vision 2020/Strategic Plan**

Not applicable.

**Regional Implications**

There are no regional implications associated with this Report.

**Conclusion**

The Interim City Manager recommends that Council deny the requests for indemnification at this time, if the Councillors proceed under the City's insurance coverage. The Interim City Manager further recommends that the requests for indemnification be denied, and that they not be reconsidered in the future, if the Councillors refuse the City's insurance coverage.

**Attachments**

Attachment 1 – City of Vaughan By-law 91-2011 (Indemnification By-law)

**Report prepared by:**

Nancy Salerno  
Legal Council

Respectfully submitted,

Barbara Cribbett  
Interim City Manager

# ***THE CITY OF VAUGHAN***

# ***BY-LAW***

## **BY-LAW NUMBER 91-2011**

**A By-law to provide for the indemnity and defence of members of council and employees of the Corporation against loss or liability incurred while acting on behalf of the Municipality.**

WHEREAS pursuant to subsection 279(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, municipalities may pass by-laws for, among other things, the indemnification and protection of any members of Council or any of the employees or former members of Council or employees against risks, liability or losses, including the payment of any damages or costs awarded against them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as members of Council or employees, including while acting in the performance of any statutory duty imposed by any general or special Act, the payment of any sum required in connection with the settlement of such action or other proceeding, and for assuming the costs of defending them in such an action or other proceeding.

NOW THEREFORE the Council of The Corporation of the City of Vaughan enacts as follows:

### **Definitions**

1. In this By-law, unless a contrary intention appears,
  - (a) "Corporation" means The Corporation of the City of Vaughan;
  - (b) "City Solicitor" means the City Solicitor of the Corporation of the City of Vaughan, or the person that he or she designates to perform the functions of the City Solicitor under this By-law;
  - (c) "City Manager" means the City Manager of the Corporation of the City of Vaughan, or the person that he or she designates to perform the functions of the City Manager under this By-law;
  - (d) "employee" means any member of Council, including the Mayor, salaried officer or employee, in the employ of the Corporation or any former member of Council, salaried officer or employee;

(e) "legal proceeding" means

- (i) a civil or administrative action;
- (ii) a proceeding wherein a person is charged with an offence under the *Criminal Code*, R.S.C. 1985, c. C. 46 or the *Highway Traffic Act*, R.S.O. 1990, s. H.8, where the person is subsequently acquitted of the offence or the charges are withdrawn; or,
- (iii) a complaint to a professional association.

but excludes

- (i) any proceeding commenced by the Corporation; or,
- (ii) any proceeding in which the Corporation is a party adverse in interest; or,
- (iii) any proceeding where the City's and the employee's interests conflict.

### **Indemnification of Employees**

2. Subject to the provisions of this By-law, the Corporation shall indemnify an employee of the Corporation and his or her heirs and legal representatives in the manner and to the extent provided for in this By-law, in respect of any legal proceeding arising out of acts or omissions done or made by the employee in his or her capacity as an employee of the Corporation, including acts or omissions done or made by such employee while acting in the performance of any statutory duty imposed by any general or special Act.
3. If an employee seeks indemnification pursuant to this By-law, he or she shall make a written request,
  - (a) to the City Manager, with a copy to the City Solicitor; or,
  - (b) where the employee requesting indemnification is the City Manager, to the City Solicitor, who shall perform the functions of the City Manager that are outlined in this By-law; or,
  - (c) where both the City Manager and the City Solicitor are named as parties in the legal proceeding giving rise to the request, to Council, which shall perform the functions of the City Manager that are provided for in this By-law.
4. An employee shall qualify for indemnification pursuant to this By-law if the City Manager, in consultation with the City Solicitor or his or designate, determines that the act or omission giving rise to the legal proceeding was done or made in good faith, and based on the reasonable belief that such act or omission was lawful and in the best interests of the Corporation.



5. The City Manager shall provide a written response to a request made under section 3, within 10 calendar days of delivery of the request.

#### **Approval Of Lawyer**

6. (1) A written request referred to in Section 3 may include a request for approval of a lawyer chosen by the employee, or may request that the City Solicitor suggest three lawyers as indicated in subsection (2).  
(2) Where a request for indemnification also seeks approval of a lawyer chosen by the employee, the response referred to in section 5 shall also:
  - (a) approve the request to retain the lawyer chosen by the employee; or,
  - (b) deny the request and suggest three lawyers of the Corporation's choice who could represent the employee in the legal proceeding at issue.(3) Where the City Solicitor has suggested three lawyers, the employee shall select from the list and shall notify the City Manager of the selection, within 5 calendar days of receipt.  
(4) This section does not apply to legal proceedings as defined in section 1(e)(ii).

#### **Persons Served With Process**

7. Where an employee is served with any document which initiates any proceeding that arises out of acts or omissions done or made by an employee of the Corporation in his or her capacity as an employee, including a legal proceeding covered by this By-law, or any other proceeding for which indemnification may be sought under this By-law, then he or she shall,
  - (a) forthwith deliver the process or a copy thereof to the Commissioner of the department for which the employee works or to a person designated by the department head to receive such process, who in turn shall deliver a copy thereof to the City Manager and the City Solicitor; or
  - (b) if the employee is a Commissioner of a department, forthwith deliver the process or a copy thereof to the City Manager and the City Solicitor.

#### **Manner and Extent of Indemnification**

8. Where an employee qualifies for indemnification under this By-law, the Corporation shall:
  - (a) pay the costs of defending such employee in the legal proceeding; and/or,

(b) pay any damages or costs, including any monetary penalty, or award against such employee as a result of a legal proceeding; and/or,

(c) pay, either by direct payment or by reimbursement, any expenses reasonably incurred by the employee as a result of a legal proceeding; and/or,

(d) pay any sum required in connection with the settlement of a legal proceeding, provided that as a condition precedent the City approves the terms of the settlement;

to the extent that such costs, damages, expenses, monetary penalty, other award or other sums related to the legal proceeding are not assumed, paid or reimbursed under any provision of the Corporation's insurance for the benefit and protection of such person against any liability incurred by him or her.

#### **Limits of Indemnification**

9. (1) The City Manager, acting reasonably and in consultation with the City Solicitor, may request or impose one or all of the following:
- (a) Periodic Budgets for anticipated legal costs, which may be revised; and / or
  - (b) Status Updates in respect of the progress of the proceedings; and / or
  - (c) A limit on quantum of indemnification.
- (2) The City shall have the right to reasonably limit the amount which it shall pay an employee for legal costs, and may require that any account for legal costs for which reimbursement is sought be assessed by Court Assessment Officer prior to payment by the City. The City Manager shall be provided with copies of the statements of account on a monthly basis, which shall outline all fees and disbursements, and shall be provided with information relating to these accounts, as may be requested from time to time.

#### **Failure To Comply With By-law / Exclusions**

10. If an employee who has been approved to receive indemnification fails or refuses to comply with any of the provisions of this By-law, or in the event of one or more of the following:
- (a) the employee or his or her lawyer takes a step which is unnecessary, or otherwise prejudicial to the conduct of the proceeding, as determined by the City Solicitor; or
  - (b) the quantum of indemnification exceeds the Budget referred to in section 9; or

(c) the maximum amount of indemnification has been paid, or

(d) the employee commences a counterclaim, crossclaim, third party claim or other proceeding related to the legal proceeding for which reimbursement is sought, without first obtaining prior approval from the City Manager,

then the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, monetary penalty or other sums mentioned in Section 8 of this By-law.

#### **Appeal**

11. Where a person seeks to appeal a judgment or decision in a proceeding covered by this By-law, the City shall have the sole discretion to determine whether the costs of the appeal will be covered by this By-law. If an individual pursues an appeal without representation by the City and is successful in that appeal, the City shall have sole discretion to determine whether the employee shall be indemnified for his or her legal costs.

#### **Executive Acts Authorized**

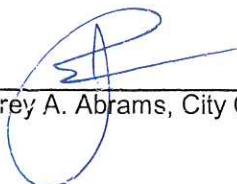
12. The Mayor and the proper officers of the Corporation are hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the Corporation, to give effect to this By-law according to its true intent and meaning.

#### **Commencement**

13. This By-law comes into force on the day it is passed.

Enacted by City of Vaughan Council this 7<sup>th</sup> day of June, 2011.

  
Hon. Maurizio Bevilacqua, Mayor

  
Jeffrey A. Abrams, City Clerk

Authorized by Item No. 22 of Report No. 14  
of the Committee of the Whole  
Adopted by Vaughan City Council on  
March 22, 2011