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December 12, 2013

CORPORATE SERVICES (LEGAL) REPORT 2013-14

TO: Committee of the Whole

SUBJECT: Update following the OMB Pre-hearing on Tuesday, December 10, 2013 re: Marianneville appeals to the OMB

ORIGIN: Director, Legal Services/Municipal Solicitor

RECOMMENDATIONS

THAT Corporate Services (Legal) Report 2013-14 dated December 12, 2013 regarding an Update following the OMB Pre-hearing on Tuesday, December 10, 2013 re: Marianneville appeals to the OMB be received for information, and the following recommendation be adopted:

THAT Council provide direction to staff regarding the request by OMB Chair Chee-Hing at the pre-hearing of December 10, 2013 that the parties consider participating in mediation facilitated by the OMB prior to the first phase of the hearing scheduled to begin on March 17, 2014.

COMMENTS

Council will recall that on November 25, 2013, Council adopted recommendations as follows:

THAT Development and Infrastructure Services/Planning and Building Services Report 2013-47 dated October 15, 2013 regarding Application for Official Plan Amendment – D9NP1210; Zoning By-law Amendment – D14NP1210; and Draft Plan of Subdivision – D12NP1210 be received and the following recommendations be adopted:

- i) THAT the applications for Official Plan Amendment – D9NP1210, Zoning By-law Amendment – D14NP1210 and Draft Plan of Subdivision – D12NP1210 submitted on April 20, 2012 be denied.***
- ii) THAT the Without Prejudice Offer in the form as submitted on August 23, 2013 not be accepted.***
- iii) AND THAT the Council direct staff to advise the Ontario Municipal Board that the Town will be seeking consideration for a two-staged hearing process that would first allow for discussion and ruling on the principle of development.***

iv) AND THAT Council direct staff to engage outside legal/planning counsel who have Ontario Municipal Board expertise and experience in defending the principles of development.

Following the adoption of those recommendations, the Town's external legal counsel prepared a motion to request an adjournment of the currently scheduled full hearing and request a two phased hearing to allow for consideration of the preliminary issue as to whether development should occur on the subject lands. The motion was heard at the second pre-hearing on December 10, 2013.

Marianneville filed significant responding materials in which it opposed the Town's request for a two phased hearing and adjournment. The GPA filed responding materials in which it supported the Town's motion. The Region took no position in connection with the Town's request.

At the pre-hearing of December 10, counsel for the York Regional District School Board attended and requested party status but took no position in connection with the Town's motion. The Town raised a preliminary issue regarding the appropriateness of Marianneville's responding material which included many references to "Without Prejudice" letters, discussions and meetings. After argument by each party's counsel, the OMB ruled that those portions of Marianneville's responding materials that referred to "Without Prejudice" letters, discussions and meetings should not be struck out, since Marianneville specifically permitted most of the documents to be circulated and available for public review and comment.

Counsel for Marianneville then summonsed Ruth Victor to give evidence. After Ms. Victor finished giving her evidence, counsel for each of the parties had a discussion about settling the Town's motion. Marianneville agreed to settle the motion, to delay the commencement of the hearing, and to proceed to a two phased hearing. The OMB Chair subsequently endorsed the settlement and ordered that the Town's request for a two phased hearing be permitted, and a new time schedule was established to accommodate the two phased hearing. The OMB will be issuing a subsequent Order in which the new schedule and dates will be finalized.

The first phase of the hearing will commence on March 17. That phase will deal with the issue of whether development should occur on the lands. If the Town is not successful in the first phase of the hearing, then the second phase of the hearing will commence no earlier than March 31.

In his concluding comments, the OMB Chair directed Esther Armchuk to advise Members of Council that based on a thorough review of the materials to date, the OMB strongly suggested that Council consider mediation of this matter prior to the first phase of the hearing. Mediation is entirely voluntary, and any agreement or resolution must be on the consent of the parties. Marianneville has indicated that it is willing to participate in an OMB-lead mediation and that its counsel is generally available between January 9 and March 17, 2014. The OMB is seeking the Town's availability for such a mediation.

Staff are requesting direction from Council regarding participating in mediation.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This report supports the *Well Equipped* and *Well Managed* objectives of the Town's strategic plan in the area of efficient management of development in the Town.

CONSULTATION

Consultation occurred with external counsel representing the Town.

HUMAN RESOURCE CONSIDERATIONS

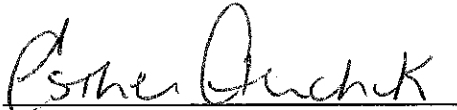
Staffing levels are not impacted as a result of the recommendations in this report.

BUDGET IMPACT (CURRENT AND FUTURE)

There is no budget impact associated with this report

CONTACT

For information regarding this report, please contact Esther Armchuk, Director, Legal Services/Municipal Solicitor (905) 953-5300, Ext. 2432; earmchuk@newmarket.ca



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Anita Moore
Commissioner, Corporate Services