



OAKVILLE

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: MARCH 9, 2015

FROM: Legal Department

DATE: March 5, 2015

SUBJECT: **Parkland Dedication - Ontario Municipal Board Decision
Regarding Richmond Hill Parkland Policies**

LOCATION: Town-wide

WARD: Town wide

Page 1

RECOMMENDATION:

That the Town Solicitor be instructed to intervene in the Divisional Court proceedings relating to the Ontario Municipal Board decision (PL110189) regarding the Richmond Hill parkland policies as set out in the report from the Legal Department, dated March 5, 2015.

KEY FACTS:

The following are key points for consideration with respect to this report:

- On January 15, 2015, the Ontario Municipal Board issued a decision with respect to the contested parkland policies contained in Richmond Hill's Official Plan.
- In that decision, the Board ordered in part that Richmond Hill's use of the alternate rate for calculating parkland dedication of 1 hectare of land for each 300 units is capped at a maximum of 25%.
- Many municipalities across Ontario, including the Town of Oakville, use this alternate rate authorized under the *Planning Act*.
- Richmond Hill has requested a review by the Board and has also filed an application for leave to appeal to the Divisional Court. Richmond Hill seeks the support of other municipalities in the appeal.

BACKGROUND:

Section 42 of the *Planning Act* provides that a municipality may by by-law require land or cash in lieu thereof for the purposes of park or public recreational purposes. As an alternative requirement to the 5% of land specified, one hectare of land for each three hundred units may be required for residential purposes or at a lesser rate

From: Legal Department
Date: March 5, 2015
Subject: **Parkland Dedication - Ontario Municipal Board Decision Regarding Richmond Hill Parkland Policies**

as may be set by by-law. This alternative requirement requires that the municipality have specific policies in its official plan dealing with the provision of lands for park or other public recreational use and the use of the alternative requirement.

In its new Official Plan, the Town of Richmond Hill had included such policies and set its parkland dedication rate at one hectare for every three hundred units. This, along with other policies, was appealed to the Ontario Municipal Board.

On January 15, 2015, the Board issued its decision regarding the parkland dedication policies in the Richmond Hill Official Plan. One issue before the Board was whether the Town's Official Plan policy requiring one hectare for every three hundred units was appropriate, or whether a lesser amount should be imposed.

The Board ordered in part that Richmond Hill's parkland alternative requirement policies be modified to ensure that "in no case shall the amount of land required to be conveyed for park or other public recreational purposes exceed the equivalent of 25% of the land proposed for development."

Richmond Hill has filed a request to review the decision with the Board and has also filed an application seeking leave of the Divisional Court to appeal the Board's decision, each in respect of this alternative requirement 25% land cap. If granted, Richmond Hill will be asking the Court to determine whether the Board has erred in its interpretation of the *Planning Act's* alternative parkland provisions.

Richmond Hill has requested that other municipalities take notice of this decision and has sought assistance with an appeal to Divisional Court. See Appendix A for a briefing note provided by the Town of Richmond Hill.

COMMENT/OPTIONS:

The essential legal dispute in this matter is whether the Board has jurisdiction to set the parkland rate (rather than Council). Although the alternate rate provisions of the *Planning Act* require that it be provided for in a municipality's Official Plan, the alternate rate must be set by Council by-law.

Despite recognizing the amount of parkland required as part of Richmond Hill's Parks Plan, the Board nonetheless capped and limited Richmond Hill's ability to secure those facilities through new development. This could force Richmond Hill to either reduce the amount of parkland already established to be necessary for anticipated development, or force the use of other revenue tools such as taxation to raise the capital needed to implement its plan.

From: Legal Department
Date: March 5, 2015
Subject: Parkland Dedication - Ontario Municipal Board Decision Regarding Richmond Hill Parkland Policies

In order to be granted leave to appeal to the Divisional Court, one of the tests is whether the OMB decision involves a matter of broad public importance. This decision could set a significant precedent for other municipalities if it is upheld. By supporting Richmond Hill's application for leave to appeal, the Town will be fostering continued support among municipalities, similar to the assistance the Town received by several municipalities as part of the OMB hearing on the drive-through policies.

Given the potential for a significant precedent, it is recommended that the Town seek to intervene as a "friend of the court" in Richmond Hill's application for leave to appeal. If leave is granted, the Town could then seek intervenor status in the hearing of the appeal, which would allow the Town to more actively participate in the hearing. The Town's position would be to support Richmond Hill's interpretation of section 42 of the *Act*: that determining whether to use a lesser alternative rate is the absolute discretion of Council

A recently released proposed amendment to the *Planning Act* and the *Development Charges Act* currently proposes to replace the one hectare for every 300 units with a cap of one for every 500 units. This matter is before the legislature as Bill 73 and it will be monitored as it progresses.

CONSIDERATIONS:

(A) PUBLIC

If Council wishes to receive any legal advice in relation to this matter, it is recommended that it do so in the absence of the public.

(B) FINANCIAL

It is anticipated that this matter will be handled by internal staff resources, but depending upon the timing, may require some assistance of external legal counsel. As with any court proceedings, there may be potential cost consequences, but these may be mitigated by the genuine public interest.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

The Commissioner of Community Development as well as the Commissioner of Community Services has reviewed this report.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do

(E) COMMUNITY SUSTAINABILITY

This issue impacts the pillar of economic sustainability.

From: Legal Department

Date: March 5, 2015

Subject: **Parkland Dedication - Ontario Municipal Board Decision Regarding Richmond Hill Parkland Policies**

APPENDICES:

Appendix A – Public – Briefing Note from Richmond Hill

Prepared by:

Joanna B. Wice & Nadia Chandra

Assistant Town Solicitors

Recommended by:

Doug Carr

Town Solicitor