



LOOPSTRA NIXON LLP

BARRISTERS AND SOLICITORS

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BY EMAIL

April 2, 2019

Finance and Corporate Services Committee
City of Barrie
P.O. Box 400
70 Collier Street
Barrie, Ontario
L4M 4T5

Dear Members of the Finance and Corporate Services Committee,

**Re: Tax Certificate N.: 52354
Property Roll Number: 4342050-005-30800-0000
685 Yonge Street
Con 12 Plan 1213 Lot 11 to 12
Ashford Kingston Developments Limited**

We are the lawyers for Ashford Kingston Developments Limited and we write with respect to the property municipally known as 685 Yonge Street in the City of Barrie ("Subject Property").

On February 5, 2019, we appeared before you to request that charges purportedly assessed pursuant to the *City of Barrie Act*, 1960 on the Subject Property of approximately \$32,000.00 (about half of which is interest) ("Charges") be cancelled or withdrawn as the Charges are invalid and illegal and are resulting in costs and damages to my client. We suggested that this could occur through confirmation from Council that the Charges were never authorized, and through the removal of the notation on the assessment roll respecting the charge.

As we advised at the February 5, 2019 Committee meeting, although the *City of Barrie Act*, 1960 may give the City the legal authority in a general sense to collect charges on behalf of third parties with respect to the front ending of infrastructure and other works, the City or its delegates (such as staff) cannot exercise this authority unless the City passes a by-law specifically allowing it to do so. Without this specific enabling by-law or delegation of authority, the City cannot legally impose or collect these charges.

Pursuant to section 5(3) of the *Municipal Act*, all powers of a municipality must be exercised by by-law. If municipal powers are exercised by council or staff without a foundational by-law, such powers are exercised without lawful authority and are therefore invalid and illegal.

Despite what has been the passage of over seven (7) months and your specific direction to staff, staff have been unable to produce any documents whatsoever – such as authorizing by-laws or



specific delegations of authority – which would show the legal basis for the Charges assessed against the Subject Property.

Instead, staff have provided a letter from Mr. Craig Millar (“Millar Letter”) that strings together a planning report (Report No. 13), the approval of a site-plan application by the planning committee which includes a condition for the applicant to install sanitary sewers, and a confirmatory by-law (By-law No. 95-91) adopted by Council as either evidence of a by-law imposing the Charges or the proper delegation of authority to impose the Charges – they don’t say which.

The letter is wrong in law, wrong in fact, confuses rather than enlightens, and, if agreed to by this committee and/or Council, amounts to a nothing more than an improper usurpation by staff of a power that is rightfully in the hands of Council alone to exercise.

The fact is that the only exercise of power that is evident from the letter provided and the supporting materials is the approval of a site plan application made by the Simcoe County Roman Catholic Separate School Board (“SCRCSB”) at 201 Ashford Drive. I submit the following:

- Neither Report No. 13 nor By-law No. 95-91 include any mention of the *City of Barrie Act* or a charge under such act;
- Neither Report No. 13 nor By-law No. 95-91 include any mention or undertaking by the City to collect charges on behalf of the SCRCSB nor is there any discussions of a willingness on behalf of the City of Barrie to expend City resources and taxpayer's dollars to recover costs associated with the proposed development, which is of no benefit to the municipality whatsoever, from the residents of the City of Barrie;
- Neither Report No. 13 nor By-law No. 95-91 include any mention of any intention to provide any relevant delegation of power. I note that the policy of the City of Barrie is that unless a power, duty, or function of Council has been expressly delegated by by-law or resolution, all of the powers, duties and functions of Council remain with Council (see Attachment 1);
- The condition relied on by staff in the Millar Letter is a condition that that if the school is to be connected to sanitary sewers, that the sewers be constructed across the entire frontage of the proposed school to the satisfaction of the City. This condition was imposed pursuant to the site plan control provisions of the *Planning Act* which can, by law, only bind the owner of the lands to which the site plan applied (not my client), and must only be applicable to the lands to which the approval applies (not my client's lands);
- To the extent that liability for payment for the installation of services is discussed at all in Report No. 13 and By-law No. 95-91, condition 22 states that the SCRCSB will be responsible for any and all costs associated with the “preparation, registration and implementation of any conditions associated with the Development Agreement” (emphasis added) – this is the opposite of what is occurring as the cost is being assessed against the residents of the City of Barrie;



- Neither Report No. 13 nor By-law No. 95-91 include any mention of any of the lands that would be affected by a charge which surely would have been reviewed if the City intended to assess a charge against such lands; and,
- Neither Report No. 13 nor By-law No. 95-91 include any mention of any interest that should be payable pursuant to the Charges which surely would have been reviewed if the City intended to assess interest on the Charges.

By-law 95-91 also states that:

“... The Mayor and the proper Officers of The Corporation are hereby authorized and directed to do all things necessary to give effect to the said action or to obtain approvals where required, and the Mayor and Clerk are hereby directed to execute all documents necessary in that behalf and the Clerk is hereby authorized and directed to affix the Corporate Seal of the Corporation to all such documents.”

Mr. Millar concludes based on Report No.13 and By-law No. 95-31 (and in particular the aforesaid clause) that “the City has the legal authority to impose and collect *City of Barrie Act* charges from the owners of 685 Yonge Street, a benefitting property owner, of the works undertaken by the School Board.”

In our opinion, neither the condition cited by Mr. Millar, nor the general delegation of authority cited above provides the legal basis for the City to impose the Charges, or any charge for that matter, on the Subject Property.

The delegation of authority in By-law 95-91 cannot be relied on to authorize the imposition of *City of Barrie Act* charges. This is because the delegation is to permit the City to give effect to the site plan approval as reflected in the Report. As mentioned, there is no basis in the report to suggest that the City contemplated or authorized either the collection or imposition of *City of Barrie Act* charges. This delegation of authority, although it is worded in general terms, can only relate to matters specifically approved by Council. This would include such things as drafting and executing a site plan agreement. It does not represent a *carte blanche* authorization for staff to do anything they may deem appropriate that is tangentially related to the approval. In any event, even if we are wrong, there is no evidence that the Mayor or proper officers of the corporation authorized the Charges.

What happened here is that staff went above and beyond their authority to impose a charge on the residents of the City of Barrie that can only be assessed by Council through the passage of a by-law. We are asking Council to rectify this.

City staff have not demonstrated that there is a legal basis for the Charges that have been imposed with respect to the Subject Property. As a result, we request that the Committee recommend that Council cancel or withdraw the Charges by confirming that they were never authorized by Council and directing staff to remove the notation on the assessment roll respecting the Charges forthwith.



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We thank you for your consideration and attention to this matter.

Yours truly,

LOOPSTRA NIXON LLP

Per:


Steven C. Ferri

SCF/br

cc.: Craig Millar, Director of Finance and Treasurer – City of Barrie (craig.millar@barrie.ca)
Colleen Smith, Senior Manager of Accounting and Revenue – City of Barrie
(colleen.smith@barrie.ca)

DELEGATION OF POWERS AND DUTIES POLICY

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| <p>Policy Statement:</p> | <p>The Council of The Corporation of the City of Barrie, as a duly elected municipal government is directly accountable to its constituents for its legislative decision making, policies, and administrative functions. Council's decisions are generally expressed by by-law or resolution of Council carried by a majority vote. The efficient management of the municipal corporation and the need to respond to issues in a timely fashion require Council to entrust certain powers and duties to committees and staff while concurrently maintaining accountability, which can be effectively accomplished through the delegation of legislative and administrative functions.</p> <p>Council authority will be delegated within the context set out in the <i>Municipal Act, 2001</i> (the <i>Act</i>) and will respect the applicable restrictions outlined in the <i>Act</i>.</p> |
| <p>Purpose/Application:</p> | <p>The policy provides guidance related to the scope of the powers and duties which Council may delegate its legislative and administrative authority and establishes principles governing such delegation.</p> <p>This policy applies to all committees of Council, departments and staff with respect to the delegation of powers and duties.</p> |
| <p>Definition(s):</p> | <p>For the purpose of this policy, the following terms shall have the meaning as ascribed to them:</p> <ul style="list-style-type: none"> a) Legislative Powers - Includes all matters where council acts in a legislative or quasi-judicial function including enacting by-laws, setting policies, and exercising decision making authority. b) Administrative Powers - Includes all matters required for the management of the corporation which do not involve discretionary decision making. |
| <p>Specific Policy Requirements:</p> | <ol style="list-style-type: none"> 1. All delegations of Council powers, duties or functions shall be effected by by-law or Council resolution. 2. Unless a power, duty, or function of Council has been expressly delegated by by-law or resolution, all of the powers, duties and functions of Council remain with Council. 3. All delegation of powers and duties may be revoked at any time, without notice. 4. A delegation of a power, duty or function under any by-law or resolution to any member of staff includes a delegation to a person who is appointed by the CAO or selected from time to time by the delegate to act in the capacity of the delegate in the delegate's absence. |

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| | <ol style="list-style-type: none"> 5. Subject to section 4, a person to whom a power, duty or function has been delegated by by-law or resolution has no authority to further delegate to another person any power, duty or function that has been delegated, unless such sub-delegation is expressly permitted. 6. Legislative matters may be delegated by Council where they are minor in nature or where Council has explicitly provided for the terms and conditions under which the powers shall be exercised, and must take into account the limitations set out in the Act. 7. The delegation of legislative powers of Council are restricted to powers found in the <i>Municipal Act</i>, the <i>Planning Act</i>, a private act relating to the municipality and "such other acts as may be prescribed". 8. Administrative Matters may generally be delegated to staff subject to the conditions set out in the delegation and in this policy, and must take into account the limitations set out in the Act. 9. Any delegation of legislative or administrative powers may be subject to any regulation made by the Minister. 10. Council shall approve policies and procedures for the delegation of its powers and duties which include measures for the monitoring and accountability of the delegate and the transparency of the delegate's actions and decisions. 11. In exercising any delegated power, the delegate shall ensure the following: <ul style="list-style-type: none"> • Any expenditure related to the matter shall have been provided for in the current year's budget (or authorized by the procurement by-law) • The scope of the delegated authority shall not be exceeded by the delegate. • Where required by the specific delegated authority, reports shall be submitted to Council advising of the exercise of a delegated power and confirming compliance with the delegated authority and this policy. • Delegates shall ensure the consistent and equitable application of Council policies and guidelines. |
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| <p>Limitations</p> | <p>No delegation of legislative powers to a Corporation is permitted.</p> <p>Council is not authorized to delegate any of the following powers and duties:</p> <ul style="list-style-type: none"> a) appointing/removing statutory officers; b) issues regarding taxes; c) incorporating corporations; d) adopting or amending official plans; e) zoning by-laws; f) issues related to small business counseling and municipal capital facilities; g) community improvement plans; h) approving municipal budgets; and i) other specific prescribed powers. |
| <p>Responsibilities</p> | <p>City staff are responsible for:</p> <ul style="list-style-type: none"> • adhering to the parameters of this policy, • ensuring appropriate application of delegated authority; and • providing any reports advising of the exercise of a delegated authority and confirming compliance with the delegated authority and policy, where required. <p>The City Clerk is responsible for receiving complaints and/or concerns related to this policy. Upon receipt of a complaint or concern, the City Clerk shall notify City Council and the Chief Administrative Officer.</p> |
| <p>Implementation</p> | <p>This policy shall become effective immediately upon approval by City Council.</p> |
| <p>Date Approved by City Council</p> | <p>September 21, 2015</p> |
| <p>Rationale and Legislative Authority</p> | <p>Section 270 of the revised Municipal Act, 2001 requires each Council to adopt and maintain a policy regarding delegation of powers and duties.</p> |
| <p>Related Policies</p> | |
| <p>Dates Updated and/or Amended</p> | <p>The City Clerk shall review the policy a minimum of once per term of Council to allow for the presentation of significant amendments for City Council's consideration.</p> |