

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

THOMAS CAVANAGH CONSTRUCTION LIMITED

Moving Party

-and-

CITY OF OTTAWA and FRIENDS OF THE GREENSPACE ALLIANCE

Responding Parties

Motion under s.96(1) of the *Ontario Municipal Board Act*, R.S.O. 1990, as amended

NOTICE OF MOTION FOR LEAVE TO APPEAL

The Moving Party, Thomas Cavanagh Construction Limited, will make a Motion to the Divisional Court, on a date to be set by the Registrar, at 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING:

The Motion will be heard orally.

THE MOTION IS FOR:

1. Leave to Appeal to the Divisional Court from a decision of the Ontario Municipal Board (the "Board"), issued November 25, 2011, in Board Case No. PL100206; and
2. Costs of this motion; and

3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. There are errors in law in the decision of the Board that merit the attention of the Divisional Court. The law relating to interim control by-laws has far reaching implications on property rights in the Province of Ontario. Interim control by-laws have been deemed to be a draconian method of limiting property rights which should only be used in very prescribed and limited circumstances. The use of a moratorium within an Official Plan is not authorized by the *Planning Act*. By its decision, the Board has circumvented the various protections found in the interim control by-law process (section 38 of the *Planning Act*) and allowed the Respondent to prevent or at best delay land development for five (5) years in its absolute discretion through an Official Plan moratorium. This is contrary to the specific provisions of the *Planning Act*.
2. The Board erred in law in finding that the moratorium was not a freeze on Country Lot Subdivisions and that it was really only a "Pause" on the creation of new Country Lot Subdivisions. The Board misdirected itself in determining that a "Pause" was a less drastic measure than a moratorium, and was therefore appropriate.
3. The Board erred in law in its interpretation of section 51(24) of the *Planning Act* in finding that, as an application for a Country Lot Subdivision could still be filed, the

moratorium did not remove development rights and was therefore appropriate and authorized by the *Planning Act*.

4. The Board erred in law in finding that the Moving Party's alternative ground of appeal of reducing the moratorium from five (5) years to two (2) years represented an endorsement of the use of a moratorium in an Official Plan. The Board clearly failed to properly consider that the Moving Party was simply recognizing and that the interim control process in section 38 of the *Planning Act* continues to be an available option to the Respondent.
5. The Board erred in law in finding that a five (5) year moratorium was not a land use prohibition as contemplated by section 38 of the *Planning Act*, and in failing to find that only Interim Control By-laws, passed under s.38 of the *Planning Act*, may prohibit the temporary 'freezing' of development rights for a specific purpose, such as Country Lot Subdivisions.
6. The Board erred in law in finding that section 16 of the *Planning Act*, provides municipalities with the authority to impose moratoriums, through Official Plans, for specific purposes, in this case to specifically prohibit the creation of new Country Lot Subdivisions for a period of five (5) years.
7. The Board erred in law in reading in to the very general provisions of section 16 of the *Planning Act*, the very specific power to prohibit the creation of new Country Lot Subdivisions for a five (5) year period. It is an error in law to read such a specific power when the *Planning Act* already provides for the specific mechanism of an Interim

- Control By-law under s.38 of the Act. The Board has erred in permitting the Responding Party to achieve through the Official Plan process a result which it is statutorily prevented from achieving through the processes provided under the *Planning Act*.
8. The Board erred in law in considering that the City's process and actions in "good faith" were relevant in determining whether a moratorium imposed by way of an Official Plan is authorized by the *Planning Act*.
 9. The Board erred in law in considering the process or steps taken by the City to proceed with the critical review of country lot subdivision policies as being relevant in its finding that a moratorium may be a planning tool within an Official Plan which is authorized by the *Planning Act*. The Board attempted to justify its decision of permitting a moratorium by applying a modified version of the legal analysis for interim control by-laws as mandated by section 38 of the *Planning Act*.
 10. The Board erred in law in failing to properly consider whether the moratorium imposed by virtue of paragraphs 10 and 11 of Official Plan Amendment No. 76 is consistent with the *Provincial Policy Statement*, as required, and erred in law in upholding the moratorium on Country Lot Subdivisions, contrary to the provisions of the *Provincial Policy Statement* which specifically promote limited rural residential development which is compatible with the rural landscape and sustainable by rural services.
 11. The Board erred in considering as relevant the absence of clear evidence of hardship on the Moving Party in determining whether a moratorium is an appropriate tool within an Official Plan which is authorized by the *Planning Act*.

12. There is good reason to doubt the correctness of the Board's decision in regards to the items set out above.
13. *Planning Act*, R.S.O. 1990, c.P13 sections 16, 26, 38 and 51
14. *Provincial Policy Statement*, sections 1.1.4.1;
15. *Ontario Municipal Board Act*, R.S.O. 1990, as amended, section 96; and
16. Such further and other grounds as counsel may submit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used in the hearing of the Motion:

1. Decision of the Board, issued November 25, 2011;
2. Exhibits from the Board hearing of this matter; and
3. Such further and evidence that counsel may submit and this Honourable Court may permit.

DATED: December 8, 2011

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COURT FILE NO:

SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

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